

**CHILDREN'S RIGHTS AWARENESS, RIGHTS-INFORMED PRACTICES
AND CHILD-FRIENDLY JUSTICE IN A SECURE CUSTODY
FACILITY IN CANADA**

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ABSTRACT

Although Canada has observed a drastic decrease in the use of secure custody for justice-involved children since the introduction of the *Youth Criminal Justice Act (2002)*, thousands of children are still imprisoned each year. Children in these carceral spaces tend to be the unwanted children of children's rights movements, and, as such, their rights-related experiences are often left unexamined (Abramson, 2006). To this end, by drawing on interview-based accounts and an examination of related policies and training curriculum, this thesis focuses on children's rights awareness, rights-informed practices and child-friendly justice in one provincial secure custody facility in Canada by centring the experiences of eight imprisoned children within a broader context provided by seven facility staff and two members of the provincial Office of the Child and Youth Advocate. Further, conceptualizing the secure custody facility as a porous institution (Ellis, 2021) illuminates the carceral space's dissonance between acknowledging the unique status of children (Hollingsworth, 2008) and working within a system designed for the adult prisoner. The findings indicate that imprisoned children are not made aware of the rights granted to them in the *UN Convention on the Rights of the Child (1989)* upon admission to secure custody, nor do children's rights inform decision-making at this facility. However, promisingly, the findings do demonstrate the potential to move towards a child-friendly justice space predicated upon children's rights. Building upon this potentiality, this thesis contributes to the theoretical understanding of children's rights awareness in carceral spaces while also identifying a path toward the integration of children's rights aspects and practices.

Keywords: children's rights; imprisoned children; child-friendly justice; porous institutions.

DEDICATION

To the children who shared their stories with me.

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1. INTRODUCTION

This study sought to examine imprisoned children's experiences of learning about the rights granted to them in the *United Nations Convention on the Rights of the Child*. To accomplish this academic endeavour, I met with imprisoned children and asked them to share their understanding of children's rights. To facilitate the discussion, they were provided with a copy of UNICEF's *Children's Version* of the Convention, a colourful document that presents all rights in child-friendly language. I was unprepared for many children's reactions upon learning, in some cases for the very first time, that they were entitled to rights, not because they were accused of criminalized acts but because of their humanity as children. Not all children were affected by the document, but those who were seemed overwhelmed, as though they were discovering a secret withheld from them. Cole, a 15-year-old participant, who had been in and out of the secure custody facility countless times since the age of 12, stared at the document for some time before looking up and reacting: "*That's a lot of rights I didn't even know that we had.*"¹ Indeed, seeing their humanity reflected in this colourful document was a powerful moment. Moments like these illustrate the importance of teaching children about the rights granted to them. Beyond the legal obligation identified in the Convention, empowering children, especially those impacted by imprisonment, has the potential to transform how they view themselves, and this transformative potential was the impetus for this study.

Relatively little scholarship exists examining imprisoned children's awareness of the rights granted to them in the *United Nations Convention on the Rights of the Child* (the

¹ As a measure to highlight the voices of child participants, their direct quotes have been italicized throughout this thesis.

Convention), as most research focuses on legal literacy in judicial spaces (Stalford et al., 2017).² Within the Canadian context, the legislation currently governing the justice system for children, the *Youth Criminal Justice Act* (YCJA), came into effect in 2003, and it was significant in that it was the first piece of Canadian legislation that “explicitly incorporated” the Convention (Covell et al., 2018, p. 59). Despite this incorporation, the YCJA has failed to comply with the Convention wholly, leading to questions regarding Canada’s commitment to the realization of rights for justice-involved children (Denov, 2004).

Understanding rights is essential, particularly for imprisoned children, for if they do not possess a complete rights knowledge, it limits their ability to critique their carceral experiences (Duncan, 2000). As such, the concept of child-friendly justice has emerged as a set of practices with the potential to ensure that justice spaces are rights-informed, prioritize children’s best interests and acknowledge their inherent autonomy (Council of Europe, 2010; Liefwaard, 2016). Though the conceptualization of child-friendly justice is not without its critics who question the integrity of youth justice systems which allow imprisonment (Goldson & Kilkelly, 2013; Medlicott, 2001; Goldson & Coles, 2005), it may offer the opportunity to improve systems in the interim as the broader children’s rights project continues to advocate for abolition over the long term. As part of child-friendly justice efforts, carceral spaces are supposed to ensure that staff receive specialized training focused on the Convention as well as learning techniques for working for and with children (O’Donnell, 2013; Byrne & Lundy, 2015). Additionally,

² As this study employs a children’s rights lens, “child” and “children” are used when referring to individuals under the age of 18, regardless of justice involvement, as per Article 1 of the *United Nations Convention on the Rights of the Child* (1989). When speaking directly about criminal justice legislation or specific provisions, “youth” may be utilized to reflect the legislative terminology. I have chosen to use the term “child” as an important reminder that even though individuals under 18 who are justice-involved are categorized as youth by the state, they are still, in fact, children. Additionally, “imprisoned” was chosen to describe the child participants of this study as imprisonment refers to the restraining of personal liberty rather than “incarcerated,” which is not reflective of individual personal experience but court-ordered action.

mechanisms such as *Child Rights Impact Assessments* are also supposed to be introduced to mandate rights compliance. Importantly, child-friendly justice has the potential to acknowledge the dignity of imprisoned children by centring their needs above the needs of carceral spaces and allowing them to participate in all matters which concern them (Lansdown, 2011).

However, carceral spaces have the tendency to focus on the future potentiality of imprisoned children; success tends to be measured through government metrics such as successful reintegration characterized by low recidivism. Yet, as Mark Drumbl has warned: “Children are more than just persons in a state of becoming. They are persons in a state of being. Their potentiality must not deplete their actuality” (2012, p. 208). Focusing exclusively on potentiality allows carceral spaces to forgo rights adherence and awareness by pointing to the future. Instead, child rights scholars call on justice systems to also focus on the actuality of imprisoned children and ensure that not only are they aware of the rights guaranteed to them in the Convention, but that carceral spaces actually facilitate the realization of these rights (Liefwaard, 2020).

1.1 Research Focus

Given the lack of examination related to children’s experiences of learning their unique rights while imprisoned, this study sought to address this gap by interviewing these children to allow them to share their own experiences. In doing so, the research was grounded by the *United Nations Convention on the Rights of the Child* (1989) and the rights enshrined therein, specifically Article 12, the right to be heard and Article 42, the right to be informed of the principles and provisions of the Convention (United Nations, 1989).

As no single criminological theory seemed sufficient to explore children’s rights within a carceral space, I combined two concepts to develop an applicable framework. I employed Rachel

Ellis' (2021) concept of the porous institution, a reinterpretation of Erving Goffman's (1961) total institutions, which explains that while coercive control tactics may still be present in a prison designated for children, they possess a permeability and thus are not unaffected by societal factors. Adding Katherine Hollingsworth's (2008) understanding of justice-involved children's statuses served to explain that coercive control tactics remain in a carceral space for children since children are ascribed an 'offender' status rather than being seen as children first. As carceral spaces were traditionally designed for the adult, the offender status is indiscriminately applied to all prisoners, regardless of age. As a result, coercive control contributes to the deprioritization of children's status, which translates to a deprioritization of children's rights.

Informed by this conceptual framework, I interviewed eight imprisoned children, seven facility staff and two representatives from the provincial Office of the Child and Youth Advocate regarding children's rights awareness and child-friendly justice practices at the only secure custody facility in the province of interest.³ These qualitative interviews, as well as related facility documentation, were analyzed using Braun and Clarke's (2021) reflexive thematic analysis to explore this thesis' broader objective of understanding the extent of children's rights awareness at this facility and whether rights have been used to inform facility practices. In examining this objective, specific areas of inquiry focused on training, decision-making, day-to-day practices, children's rights understanding and child-friendly justice.⁴ Informed by the research findings and the insights of imprisoned children, this study identified a path toward the realization and actualization of children's rights in this carceral space.

³ In order to protect the anonymity of the imprisoned children who participated in this study, neither the facility name nor the province will be identified.

⁴ The research sub-questions will be specified in Chapter 4.

1.2 Chapter Overview

The literature review presented in *Chapter 2* begins by exploring scholarship related to the evolution of the modern children's rights project before turning to the Canadian system of youth criminal justice to understand how this system has converged or diverged the *United Nations Convention on the Rights of the Child*. Finally, I review how child-friendly justice is conceptualized and its potential to advance children's rights within the current youth criminal justice system.

Chapter 3 discusses the conceptual framework employed in this study. The criminological concepts of porous institutions and the status of imprisoned children were used in partiality to examine the rights-related experiences of imprisoned children. *Chapter 4* moves to methodology, wherein reflexive thematic analysis is explained along with a thorough data collection discussion which acknowledges the complexity of conducting in-person research in a carceral space with imprisoned children amid a global pandemic.

Data analysis begins in *Chapter 5: Developing an Analytical Foundation* by situating the secure custody facility implicated in this research within the larger Canadian context. This chapter then introduces all three participant groups: imprisoned children, facility and Child and Youth Advocate staff, and examines the relevant documentation provided by the facility.

Chapters 6 through 8 present the three significant themes developed from the data. *Chapter 6: Systemic Barriers Limit Children's Rights Awareness* explores facility practices and ideologies which preclude children's rights awareness and education. Further, *Chapter 7: Carceral Spaces are not Child-Friendly* examines rights violations and problematic practices masked by children's rights washing. Looking toward the future, *Chapter 8: Potentiality to be*

Child-Friendly and Rights-Informed, presents opportunities to strengthen rights adherence and capitalize upon an openness to change.

Finally, *Chapter 9: Conclusions and Recommendations*, identifies this study's contribution to criminology and children's rights theorizing, as well as directions for future research. It culminates by identifying recommendations to develop a child-friendlier carceral space predicated upon children's rights.

2. LITERATURE REVIEW

This literature review aims to situate imprisoned children and child-friendly justice within the broader children's rights project to identify how imprisoned children can be empowered in carceral spaces through rights awareness and rights-informed practices. The first section begins by exploring how the western imagination formed modern understandings of children's rights as children emerged as sentimental objects in the twentieth century. In an effort to understand how the children's rights movement has seemingly not fully permeated carceral spaces, this chapter explores how normative children's rights understandings have proven harmful to children who do not conform to the ideal conceptualizations of the vulnerable child. This section closes by examining the literature surrounding the *United Nations Convention on the Rights of the Child's* Article 12, which emphasizes a child's right to be heard, with attention paid to the difficulty that systems have had in operationalizing this right. Next, a children's rights lens is applied to the evolution of Canada's youth criminal justice legislation. This section also explores the unique vulnerabilities experienced by imprisoned children and how these children have become the 'unwanted child' of the children's rights movement. The final section presents literature related to the potentiality of a rights-informed child-friendly justice system. The research emphasizes the need for specialized training, children's participation and a mechanism to ensure adherence to children's rights. I conclude this chapter by identifying critical gaps in the literature and propose how this study aims to contribute to the existing literature by addressing these gaps.

2.1 Children's Rights

Justice-involved and imprisoned children are meant to experience the same rights and freedoms granted to all children in Canada; they do not possess a unique rights framework. As

such, it is crucial to examine how the *United Nations Convention on the Rights of the Child* was informed by historical, political, and social contexts that led to children becoming rights-holders to understand how this socio-political history has shaped the actualization of the rights of all children, but more specifically, justice-involved children.

2.1.1 Contextualizing Children's Rights

The origins of children's rights, and the inherent protectionism of modern rights ideologies, derive from the devastating effects that historical conflicts have had on children (Save the Children, 2020). Prior to the wars of the twentieth century, many western countries experienced spikes in nationalism enacted upon children who had become symbolic of a country's future (Cunningham, 1995). With such value placed upon children, 'reformers,' comprised primarily of middle-class citizens, often women, began to scrutinize the abuse and neglect of children and called for more significant governmental intervention (Lindenmeyer, 1997; Skocpol, 1992).

The need for child protection was solidified with the onset of World War I when "women and children became actual as well as symbolic victims of war" (Fass, 2011, p. 22). Children's new symbolic victimhood triggered a sentimentality which led to the creation of organizations focused on improving the experiences of children in the west who had borne the brunt of war (Zelizer, 1985). Fass (2011) argues that this sentimentality and the suffering of children during WWI eventually led to an international focus on children's rights. This sentimentality was further cemented during World War II, which enacted even more devastation upon children. Many years later, in 1989, the *United Nations Convention on the Rights of the Child* (the

Convention) was introduced based upon a transnational rights framework that sought to balance the protection of children while upholding their intrinsic human rights (Moody, 2015).⁵

The Convention came into effect with sweeping international ratification, indicating that it was regarded as the preeminent authority on the rights of the child.⁶ However, critics quickly questioned its implicit protectionist ideology. As western conceptualizations of childhood dominate international understandings of rights, so too does the belief that children require adult protection. Marshall Beier (2018) argues that “As the quintessential innocents deemed in need of protection, children are constructed outside of meaningful subjecthood and objectified as the evocative ‘scenery’ of the politics of protection” (p. 164). From this protectionist understanding, children are constructed as possessing only the capacity for feelings and lacking the ability for rational judgement (Rosen, 2007), which effectively strips them of their autonomy and inhibits their ability to have “livable lives” (Isin, 2017, p. 507).

Associated with the protectionist focus, critics also questioned the Convention’s reliance on western conceptualizations of children and childhood. This understanding is imbued with a romantic idealization of childhood marked as a “period of dependency” when children are unable to care for themselves and require the tender care of adults (Burman, 1994, p. 239).⁷ Even though children have been deemed rights-holders by the Convention, the paternalization of their abilities to exercise these rights has delegitimized their participation. This paternalization is evidenced by the disparity between Articles 12 and 3; whereas Article 12 calls for the right of children to

⁵ The United Nations was established in 1945 and shortly thereafter released the *Universal Declaration of Human Rights* in 1948. While the Universal Declaration did not specifically outline children's rights, it did lay a foundation for children’s rights. In 1959, the United Nations released *the Declaration on the Rights of the Child* (based upon the 1924 Declaration of Geneva), its first attempt to institutionalize the rights of the child.

⁶ The *United Nations Convention on the Rights of the Child* (1989) has the most ratifications of any United Nations treaty.

⁷ This tendency may also portray children as incomplete humans. Influenced by the work of Shepler (2005), Mark Drumbl has warned that: “Children are more than just persons in a state of becoming. They are persons in a state of being. Their potentiality must not deplete their actuality” (2012, p. 208).

participate in all matters affecting them, Article 3 only requires that children's best interests, as identified by guardians or state institutions, be taken into consideration and does not mandate that children may speak to their own best interests.⁸ Pupavac (2001) has questioned this schism between the two articles, asking if it is not the child who can determine their own best interest, then whom?

2.1.2. Exclusion of Children

Michael Freeman, a staunch children's rights advocate and prolific writer in the field for more than 40 years, has consistently advocated for a rights system that upholds the autonomy of children. For Freeman, justice should be the ideal of law, asking how "law can create more justice...and what happens when the law fails to meet its promise of justice" (as cited in Menkel-Meadow, 2015, p. 654). Freeman (2000) was one of the first critics to point to the lack of children's participation in the drafting of the Convention:

The 1989 Convention was not formulated by children. Nor did they have any real input into it. How different a convention in which the child's voice is heard would look is a matter of some controversy. There is, though, not a little irony in having a Convention which emphasises participatory rights (in Article 12) whilst foreclosing the participation of children in the formulation of the rights enclosed. (p. 282)

⁸ **Article 12** of the *United Nations Convention on the Rights of the Child* (1989): 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. **Article 3** of the *United Nations Convention on the Rights of the Child* (1989): 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Others noted that drafters of the Convention did attempt to consult with children and, in fact, this was the first international human rights instrument that had any degree of child participation; though, generally, the consultations were “ad hoc rather than structured and occasional rather than comprehensive” (Van Bueren, 2011, as cited in Freeman et al., 2015). Children not being invited to be active agents during the development of the Convention foreshadowed the longstanding difficulty that adult systems would have with successfully operationalizing Article 12.

Perhaps due to the lack of child participation, certain groups of children and their considerations were either only vaguely addressed or completely forgotten within the text of the Convention. For instance, drafters of the Convention privileged issues that predominately affected the boy-child (such as military service) while staying silent on issues that affected the girl-child, such as female genital mutilation, son preference, sexual slavery, and child marriage (Amoah, 2007; Taefi, 2011; LeBlanc, 1995). As such, some deemed the Convention “paper equality” that had not borne out an equitable application and protection for the girl-child (Fottrell, 2000, p. 10).⁹ Nura Taefi (2011) argues that “girls are marginalised within the category of children as females, and within the category of women as minors. The issues that affect them are thus invariably eclipsed by larger concerns general to children or women” (p. 120). When girls’ identities are fragmented into mutually exclusive categories, their multiple oppressions are obscured. Regardless of the rationale, the lack of specific protections for the girl-child has caused harm, and justice involvement further amplifies this harm.

⁹ The term “girl” or “girl-child” is used to identify children who identify as girls.

Scholars point to Indigenous children as another group of children who did not receive appropriate attention in the Convention.¹⁰ Within the Canadian context, the consequences of this oversight were immediately felt as residential schools, which caused innumerable harms to Indigenous children and communities, continued to operate until 1996, despite Canada signing the Convention in 1990 (Blackstock et al., 2004). These consequences continue to proliferate through harmful practices, including the Canadian government discriminating against Indigenous children by providing inadequate and inequitable child welfare services, inequitable access to other government services and mass incarceration of Indigenous children (Canadian Human Rights Tribunal, 2016, CHRT 2). Dr. Cindy Blackstock believes the Convention to be a “useful tool in the social movement to end the inequalities in First Nations children’s public services, but it is not sufficient on its own” (Blackstock et al., 2020, p. 6).¹¹

Notwithstanding its limitations, the Convention was essential in acknowledging children as rights-holders. Instead of being conceptualized as the capstone of the children’s rights movement, it should be considered a “powerful starting point” (Gray, 2016, p. 70). Kilkelly (2008) maintains that “it is possible to draw optimism that the standards, although not perfect, represent a common reference point against which process can usefully be measured” (p. 188). In this light, the right to participate, one of the Convention’s foundational principles, is often limited for all children but especially those who are imprisoned, and thus it is relevant to review

¹⁰ The Convention does acknowledge the rights of Indigenous children in Article 30, but only in the form of a negative right. *Article 30* of the *United Nations Convention on the Rights of the Child* (1989): In those States in which ethnic, religious or linguistic minorities or persons of indigenous [*sic*] origin exist, a child belonging to such a minority or who is indigenous [*sic*] shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

¹¹ One girl child and two Indigenous children participated in this study, but as noted in Chapter 5, a limitation of the present study is that their experiences were not analyzed in relation to these identities. Future research ought to employ an intersectional lens to explore how girls and racialized children experience their rights in carceral spaces.

the literature related to Article 12 of the Convention to understand the barriers children experience in realizing this right.

2.1.3. Right to be (Un)heard

Article 12 of the Convention grants children the ‘right to be heard’ and is considered, by some, the most important article within the Convention (Van Bueren, 1998). Not only do children have the right to be heard but their views are to be “given due weight” (United Nations, 1989). In practice, this right has often been articulated as a right of participation, even though the term participation does not appear within the text of Article 12. The United Nations Committee on the Rights of the Child helped clarify this issue by releasing *General Comment No. 12 (2009): The Right of the Child to be Heard* wherein they acknowledged that the right to be heard has come to be conceptualized as participation. They also specifically addressed some issues that have been identified regarding the equal application of this right; namely, they recognized that certain groups of children may experience barriers to participation, particularly marginalized and disadvantaged groups, younger children and the girl-child. They stipulated that member states must make extra efforts to ensure that these children have access to their rights by always assuming that children have the capacity to participate (2009).

Despite the promising rhetoric of the United Nations Committee on the Rights of the Child, there are still those who have serious doubts about the authenticity of Article 12. Lee (2009) argues that Article 12 contains too much ambiguity such that it becomes a “peculiar combination of bold intent and potential toothlessness” (p. 457). Further, he adds that while the intent of the right may be commendable, it must be administered within and by adult institutions which have the potential to inadvertently silence children: “Here, if children are silent, or if their voices are hard to hear, this can be read as a sign of their inability to represent themselves by

virtue of their constitutional cognitive and/or social incompetence rather than as a result of silencing processes” (p. 468). Alderson (2012) also expressed concerns about the fact that children may only be included sometimes, which translates to: they do not participate at all other times. Rather than pointing to situations where children should be present, we must ensure the default assumption is that children be included in all situations and then identify exceptions.

It appears that Convention member states have had difficulty in ensuring that children are actively participating, so instead, have only engaged in consultation. The consultation process simply involves “seeking views” from children (Hill et al., 2004, p. 83); it does not guarantee that children will be actively involved in any aspects of decision-making or if the views sought will be incorporated into adult work. Consultative practices amount to what Cantwell (2017) calls “right inflation” where children are seemingly afforded great theoretical rights, but do not experience them in their everyday lives. Regrettably, participation which remains at the consultative level falls under tokenistic participation (Perry-Hazan, 2016).

This study examines how imprisoned children come to learn about their rights in carceral spaces and how they experience their participation rights, but it also contributes to a wider consideration of the in/exclusion of children in a variety of areas. While justice-involved children may be particularly vulnerable, all children experience barriers to meaningful participation in all aspects of their lives; be it within their own family, in educational settings or making decisions regarding their own health. How justice-involved children experience their right to be heard is relevant to all children’s experiences. Children deserve the empowerment which comes with full and meaningful participation that allows them to exert real influence over matters which affect them (Thorburn Stern, 2017). Though Article 12 has shortcomings, it has led to positive reflection on how to actualize the rights of children, and widespread agreement

that children *should* be participating citizens of their communities. Now that this ideal has reached widespread agreement, adult systems must identify the processes through which children can access their participation rights.

2.2 Systems of Youth Criminal Justice and Imprisoned Children

Academics note that throughout its history, Canada's youth criminal justice system has, at times, converged with children's rights while at other times diverged considerably from the modern children's rights project. The current youth justice legislation, the *Youth Criminal Justice Act*, claims adherence to the *United Nations Convention on the Rights of the Child*, yet the operationalization of this legislation at the subnational level has not borne out the actualization of children's rights in carceral spaces. Imprisoned children, the unseen children of our society, experience greater trauma and vulnerabilities; this is especially true for girls and racialized imprisoned children (Samuels-Wortley, 2022; Owusu-Bempah & Jeffers, 2021; Hutton & Woodworth, 2014). Yet, research indicates that the current system focuses almost exclusively on risk management, the consequence of which is prioritizing risk mitigation over actualizing children's rights (Lohmeyer, 2020).

2.2.1. Evolution of Youth Justice Legislation in Canada

Myriam Denov (2004) traced the evolution of Canada's youth criminal justice system as it paralleled concurrent national and international children's rights evolutions. The first instance of Canadian justice legislation specifically designed for children, the *Juvenile Delinquents Act* (JDA), was introduced in 1908 when children were no longer considered parental property and instead beings in need of welfarist protection and intervention. The JDA remained in effect for 76 years, but challenges began in the 1960s when rights movements were afoot in the United

States and Canada (Denov, 2004). Challenges to the JDA included, but were not limited to, concern with the paternalistic nature of the Act (Bell, 2002), the perceived lack of prioritization of public safety (Hylton, 1994) and, notably from a rights perspective, that it did not entrench the *Canadian Charter of Rights and Freedoms* which came into effect in 1982 (Bala, 2003).¹² During this time, in broader society, there was again a shift in the perception of children as they were beginning to be acknowledged as rights-holding beings (Fottrell, 2000). In 1984, the *Young Offenders Act* (YOA) came into effect, introducing a drastic change in the approach to justice-involved children from welfarist to one that more closely resembled the adult system and relied on a crime control model. In 1991, when Canada ratified the Convention, it became clear that there was a divergence between the youth justice system and children's rights, but regardless, there was still widespread criticism that the YOA was too lenient. As the federal government took steps to make legislative changes, it released reports that indicated that new youth justice legislation would prioritize public safety above all else (Caputo & Vallée, 2008).

When the *Youth Criminal Justice Act* (YCJA) came into effect in 2003, some scholars argued that the pre-release political rhetoric focused on public safety and tough-on-crime approaches was not borne out within the legislation (Doob & Sprott, 2006a, 2006b). These scholars cited elements of the new Act that called for the reduced reliance on custody and the reservation of custodial options for only the most serious instances as evidence of a less punitive approach.¹³ It also rebranded justice-involved children, replacing 'young offender' with 'young

¹² Children are afforded all of the rights within the *Canadian Charter of Rights and Freedoms*, as there are no age limitations to Charter rights. However, the Charter fails to recognize the unique status of children and the additional rights afforded to them due to their age. The Canadian Coalition for the Rights of the Child argues that children are "invisible in Canada's constitution, including the *Charter of Rights and Freedoms*" (CCRC, 2016, p. 11).

¹³ The goal to reduce incarceration rates was likely driven by the fact that Canada had the highest child incarceration rate among Western countries (Ruby et al., 2012).

person’: “this seemingly cosmetic adjustment is in fact telling of a deeper philosophical rebalancing” (Lacombe, 2017, p. 217). However, despite these positive changes, other scholars noted that the YCJA included concerning elements that seemed to conflict with the stated best interests of children. The YCJA called for a reduction in the use of custody yet retained much of the YOA’s harmful pre-trial detention provisions. The new legislation also permitted adult sentences for children 14 years and over and removed publication bans for those children who received adult sentences. According to many in the youth justice space, the YCJA signalled a more punitive approach to youth justice (Smandych, 2006; Hogeveen, 2005, 2006).

Whether the YCJA is compliant with the Convention is an area of debate. Covell et al. (2018, p. 59) noted that the YCJA was significant in that it was the first time the Convention was “explicitly incorporated” in Canada. Still, UNICEF criticized Canada for not explicitly including best interests in the Act’s guiding principles (UNICEF, 2007). Returning to Denov’s (2004) assessment of Canada’s youth justice legislation, she argues that the YJCA is both compliant and uncompliant. The YCJA did include provisions related to children’s rights, such as participation. However, in addition to failing to include the best interests of the child, it is also too reliant on punishment, fails to keep children separate from adults and adult correctional facilities, sentences children as adults, does not accommodate for the unique needs of children, and fails to account for the social and economic disadvantages experienced by justice-involved children. As Denov (2004) has contended, “[t]he inability of the YJCA to wholly comply with the Convention casts doubt on the Canadian government’s commitment to fully implementing children’s rights, particularly for children in conflict with the law” (p. 15).¹⁴ Concerns regarding Canada’s youth

¹⁴ The *United Convention on the Rights of the Child* (1989) is the most preeminent children’s rights standard, but there are three additional United Nations instruments which form the basis of justice-involved and imprisoned children and youth international canon: the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the ‘Beijing Rules’) (1985), the *United Nations Guidelines on the Prevention of Juvenile*

justice legislation were further entrenched in 2012 when then Prime Minister, Stephen Harper, introduced the *Safe Streets and Communities Act*, leading to significant amendments to the YCJA. These amendments signalled a penal intensification that sought to increase criminalized children's accountability and prioritize community safety above all else (Mann, 2014; Bala & Carrington, 2016).¹⁵

2.2.2. Justice-Involved and Imprisoned Children

Imprisoned children are often unseen in society, unseen as children and unseen as criminalized beings; they are marginalized even within the criminal justice system (Hoffman, 2019). Abramson (2006) argues that the rights-potential of the Convention has not reached justice-involved children and contends that youth criminal justice, and thus, the children within it, have become the 'unwanted child' of the children's rights movement. As justice-involved children do not exude the ideals of vulnerability, they are not afforded the same sympathies as other children, which further contributes to this unwantedness. Somewhat paradoxically, though justice-involved children may appear to have shed their vulnerability once they are criminalized, their vulnerability is intensified due to their justice involvement (Smithson & Jones, 2021). Citing this vulnerability, in their first General Comment on youth justice, *General Comment No. 10: Children's Rights in Juvenile Justice*, the United Nations Committee on the Rights of the Child stipulated that children in conflict with the law needed to be afforded dignity and respect (United Nations Committee on the Rights of the Child, 2007).¹⁶

Delinquency (the 'Riyadh Guidelines') (1990a) and the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (the 'Havana Rules') (1990b).

¹⁵ Brown (2002), Sim (2009) and Piché (2014) problematize the use of the term 'punitive turn' which implies that "there is something distinctly late-modern about the recent rise in penal excess" (Brown, 2002, p. 415). Instead, these authors use the term 'penal intensification' as it "acknowledges that current patterns of imprisonment are a continuation and acceleration of long-established patterns in punishment" (Piché, 2014, p. 30).

¹⁶ *General Comment No. 10 (2007) on Children's Rights in Juvenile Justice* has since been replaced by *General Comment No. 24 (2019) on Children's Rights in the Child Justice System*.

Compounding their vulnerability, children who fall within the YCJA's definition of a young person (12 to 17 years old) are still developing psychologically. Research has shown that 12- and 13-year-old children do not comprehend that their actions can be judged by the state and have difficulty understanding the legitimacy of laws and the justice system (Grisso, 2000; Buss, 1999). Children under 14 (Grisso, 2000) or 15 (Weijers & Grisso, 2009) have a limited understanding of judicial proceedings. This understanding is even less developed in children with intellectual or emotional difficulties (Lansdown, 2005; Scott & Steinberg, 2008).

International research has also found less developed language skills among justice-involved children; troublingly, there is an association between limited language skills and criminalized behaviours (Anderson et al., 2016). Research from New Zealand demonstrated that inability to understand the legal jargon in the courtroom led to children feeling powerless and unable to navigate systems (Lount et al., 2018). Research in the UK found that almost 50% of imprisoned children have language skills below those of the wider population and more than 25% of those children have language impairment (Hughes et al., 2012). In addition to language difficulties, research has also shown that justice-involved children have high rates of mental health and cognitive difficulties, psychiatric disorders, and substance use disorders (Chitsabesan et al., 2006; Teplin et al., 2002; Degenhardt et al., 2015; Peterson-Badali et al., 2015; Dixon et al., 2005; Gretton & Clift, 2011).

Broadening the examination of justice-involved children from the individual to their social context, children who become justice-involved often experience social inequalities. For instance, many justice-involved children experience poverty and familial socioeconomic challenges (Creaney, 2013; Goldson & Muncie, 2006). As colonialism and systemic racism continue to shape government systems, including the criminal justice system, Canada perpetuates

the mass incarceration of Indigenous peoples (Chan & Chunn, 2014; Neeganagwedgin, 2020; Jeffries & Stenning, 2014). From 2015 to 2016, 35% of the children who entered the correctional system were Indigenous, yet Indigenous children made up only 7% of the total population of children (Lockwood et al., 2018; Malakieh, 2017). This rate increased in 2018/2019 when Indigenous children represented 43% of youth correctional admissions (yet comprised only 8.8% of the child population in the country) (Malakieh, 2020).¹⁷ Looking at another government system, foster care, over half of the children in care are Indigenous, and researchers have repeatedly drawn “pathways from government care to criminalization,” meaning that placing children in care dramatically increases their likelihood of justice involvement later in life (Boyd et al., 2016, p. 535). In addition to Indigenous children, other racialized children also experience higher rates of surveillance and criminalization and are constructed as risky, deviant and dangerous (Miller, 2022; De Trinidad Young & Wallace, 2019; Mullings et al., 2016; Young, 2006; Samuels-Wortley, 2021). Despite the attention this issue has received, Samuels-Wortley (2022) notes a concerning gap in scholarship examining racial bias in the Canadian youth justice system.

The role of gender has also received less attention in scholarship on justice-involved children, particularly the experiences of children who identify as girls (Hutton & Woodworth, 2014).¹⁸ This dearth is more dramatic for scholarship related to imprisoned girls, and it may be

¹⁷ Despite the availability of data up to 2020/2021, I have chosen to only include pre-2020 data to limit the potential effects caused by the COVID-19 pandemic.

¹⁸ Sections of this literature review employ a gender binary when discussing imprisoned children. Though gender is a spectrum and is “created through interaction and...structures interaction” (West & Zimmerman, 1987, p. 131), carceral spaces for children are among the most sex-segregated institutions. These facilities often rely on normative and cisnormative understandings of sex and gender and separate children based on legal or biological markers of sex (Irvine-Baker et al., 2019). The facility where this research took place does have separate units for “males” and “females”; however, I did not investigate how gender informs placement on these units. All of the children who participated in this study identified as either “boy” or “girl,” which led me to focus on these two categories within the literature, but I acknowledge the limitations this presents.

due, in part, to the lower rates of imprisonment for this group of children. In Canada, girls made up just 22% of youth correctional admissions in 2018/2019 (Malakieh, 2020). Justice-involved girls are more vulnerable than their boy counterparts (Vitopoulos, 2016) and are more likely to have post-traumatic stress disorder or meet the criteria for PTSD diagnoses (Hennessey et al., 2004; Kerig & Ford, 2014). In one Ontario study, Cesaroni and Pelvin (2013) found that incarcerated girls (58%) were almost two times more likely than incarcerated boys (32%) to have been sexually abused. Girls experience higher incidences of self-harm, suicidal ideations, and suicide attempts (Belknap & Holsinger, 2006). Scholars have argued that the criminal justice system criminalizes trauma and, as such, girls are more likely to be punished for their traumatic histories; the pathways for girls entering the criminal justice are paved with abuse and harm (Quinn et al., 2005). While the differences between incarcerated boys and girls have been noted in the literature, carceral responses have tended to remain gender-neutral, not providing gender-responsive programming designed for the specific needs of girls (Epstein & Gonzalez, 2017; Kerig & Ford, 2014).

Despite the availability of scholarship identifying the correlations between mental health, capacities, social inequalities and justice involvement, justice-involved children are still “hyper governed” and treated as beings in need of risk management (Lohmeyer, 2020, p. 40). The current youth criminal justice system ushered in an actuarial turn that depersonalizes the child from their lived experience in order to isolate specific risk factors that can be assessed, measured and surveilled; it “dispenses with concerns about the meaning or motives behind offending” and focuses instead on “technologies of risk minimisation and the elimination of potential threats to social order” (Smith, 2006, p. 93). This “what works” movement obscures social and community level factors and may amount to “evidence-based oppression” for racialized children

(Goddard & Myers, 2017, p. 151; Pitts, 2003). Children, as rights-holding human beings, have been removed from the ‘rehabilitative’ process (Case, 2006). Almond (2012) argues that we must respect the inherent dignity of children, especially those who find themselves justice-involved, and support their ability for positive change. Moving from risk management to a holistic model that includes the participation of children would require a paradigm shift whereby the system engages children and “listen[s] to them without trying to cure their problems” (Armstrong, 2006, p. 276) and acknowledges that they are more than passive dependents awaiting the decisions of legal actors (O’Donnell, 2013).

2.2.3. Imprisoned Children’s Rights Awareness

A considerable gap also exists in the literature on justice-involved children regarding their human rights awareness as research tends to focus on legal literacy, especially in judicial spaces, and less on children’s awareness of the rights enshrined in the Convention. Children’s rights awareness in carceral spaces in Canada requires further inquiry as it is poorly understood, and little is known about rights education in these spaces. From what is available related to justice-involved children, it is unsurprising that they are unaware of their human rights; they may possess legal literacy but are often unfamiliar with the rights granted to them beyond the legal system (Stalford et al., 2017).

Importantly, educating children about their rights is the most consistent and reliable measure to ensure that their rights are respected and to equip them to report violations (Covell & Howe, 2005). If imprisoned children do not have the capacity to critique their carceral experiences, the services of an external advocate may be of little use if they are unable to identify injustices (Duncan, 2000). For justice systems to move away from punitive actuarial and crime

control methods and towards rights-respecting and child-friendly systems, all imprisoned children must understand their human rights and status as rights-holders (Bryne & Lundy, 2019).

2.3 A Rights Based Approach to Child-Friendly Justice

One potentiality of the operationalization of children's rights in the criminal justice system is the development of a system founded upon principles of child-friendly justice. Child-friendliness and child-friendly justice are emerging academic areas of inquiry that have led to system transformation throughout parts of Europe. Debate exists within the scholarship if it is possible to develop a rights-informed and rights-respecting justice system for children or if conflicting ideologies mar the endeavour. Nonetheless, many scholars contend that justice systems for children can be improved if they foster rights awareness, child participation and child-friendliness.

2.3.1. Child-Friendly Justice

Tom Liefwaard, a leading scholar in the area of child-friendly justice, posits that child-friendly justice is the culmination of all child-specific international human rights law but points to the introduction of the Convention as a cornerstone for cementing the position of children as rights-holders with the right to be heard and participate in matters which concern them (Liefwaard, 2016; Cantwell, 1992). The term 'child-friendly' appeared in the United Nations Committee on the Rights of the Child's first General Comment, *The Aims of Education* (2001), but the concept was not defined. The term 'child-friendly' appeared repeatedly throughout committee General Comment papers, but 'child-friendly justice' did not appear in a General Comment until 2019 in their *General Comment No. 24: On Children's Rights in the Child Justice System*, wherein it was acknowledged that the implementation of child-friendly justice practices had been underway for

more than a decade. One of the international leaders in this endeavour has been the Council of Europe which created the *Guidelines on Child-Friendly Justice* (2010). The Guidelines have been applauded as one of the most comprehensive guidance documents for child-friendly justice systems (Rap, 2016) and praised for seeking the views of almost 4000 children in 25 member states via surveys and through group discussions with those considered vulnerable, such as imprisoned children (Liefwaard, 2020; Kilkelly, 2010).

The Guidelines adhere to the Convention's definition of a child being any person under the age of 18 years old and defines child-friendly justice as:

...justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level...giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity. (2010, p. 17).

O'Donnell (2013) argues that child-friendly justice can only be achieved if it is predicated on a rights-based approach that supports children in realizing their full rights potential. The term "friendly" should not be confused with the belief that these practices are discretionary, as child-friendly justice is "a necessary precondition to fulfilling the rights of a child" (2013, p. 508).

Child-friendliness is often oversimplified and reduced to practices such as repackaging resources to make them more visually appealing for children (e.g., using bright colours and cartoons) and rewriting text in simpler language. Indeed, these are essential practices contributing to child-friendliness, but researchers argue that child-friendly justice is more than

graphic design. Stalford et al. (2017) found that for children to participate in child-friendly systems, they must be afforded the right to information in a meaningful way. This child-friendly right to information consists of three layers: practical and procedural, fundamental, and transformative. It is not enough to simply impart abstract legal and rights-based information to children; it must be shared so that they can develop an understanding of how they are to experience their rights pragmatically. Through developing this understanding, children can reach the transformative layer of ‘agency asserting information’ where “the process of providing information transmutes into a space and opportunity for the child to use that information in a way that enables them to assert their rights” (p. 212). Put differently, presented with rights information in a child-friendly manner, children can become “necessary and active agents in making justice” (Smith, 2011, p. 252). Despite widespread agreement that the quality of rights and legal information shared with children is the foundation of a child-friendly justice system, there has been a lack of critical scholarship on these “triggers” or “gateways” (Stalford et al., 2017, p. 208). This current study sets as one of its primary areas of inquiry to examine the quality and methods of how rights-based information is shared with imprisoned children and seeks to address this gap in knowledge as it relates to carceral settings.

Scholarship related to child-friendly justice further defines child-friendliness by examining processes and environments for effective strategies. A child-friendly justice lens is most often applied to the courtroom and legal proceedings (see Rap, 2016; Kilkelly; 2019; EU Agency for Fundamental Rights, 2017; Cashmore & Parkinson, 2007; Saywitz et al., 2010). Child-friendly justice research focuses on the court and diverting children from imprisonment (aligning with the goals of the Convention). However, in Canada, children are still sentenced to

secure custody, and there appears to be a lack of research about how these carceral spaces can be more rights-informed, rights-respecting and foster child-friendly justice.

2.3.2. Specialized Training and Awareness

Within the academic community, there is widespread consensus that specialized training and expertise are required to ensure the successful implementation of child-friendly practices (O'Donnell, 2013). Further, member states have an obligation under Article 42 of the Convention to educate both children and adults about the rights of the child.¹⁹ States are required to pursue 'active means,' and thus, it is not sufficient to post information on a website or distribute pamphlets or any other passive means; programs must be meaningful and reach audiences (Covell & Howe, 2005). Training is the only way to propagate a children's rights culture that extends beyond legal spaces to influence all attitudes and interactions with children (Byrne & Lundy, 2015; Collins, 2019). Research efforts on children's rights and child-friendly justice are futile if they are not disseminated: "Child rights efforts will fail if the adults who nurture and care for children are not cognizant of their rights and familiar with their obligations as duty-bearers to children" (Whalen & Lansdown, 2022, p. 428).

2.3.3. The Fallacy of Child-Friendly Justice

Despite child-friendly justice reforms receiving much praise, there are scholars who are critical of child-friendly justice and the modern human rights project more broadly. Goldson and Kilkelly (2013) acknowledge the harms caused by child imprisonment and question the integrity of human rights: "the fact that human rights law permits the detention of children – in the

¹⁹ *Article 42* of the *United Nations Convention on the Rights of the Child* (1989): States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

knowledge that it often imposes serious and harmful effects – and then attempt to limit such effects is arguably, in itself, an anomaly” (p. 369). They nod to the work of abolitionist Nils Christie (1982), who advocated for the abolition of prisons rather than attempting to improve them. Medlicott (2001) believes “the concept of ‘safer custody’ or the ‘caring prison’ is, in essence, an oxymoron. There is little or no evidence to imply that the innumerable policies, practices and procedures designed to provide safe environments for children in penal custody have succeeded” (p. 219). For those critical of introducing child-friendly practices, particularly into children’s carceral spaces, the work amounts to little more than participating in the “deliberate imposition of ‘organised hurt’” (Goldson & Coles, 2005, p. 61; Goldson & Kilkelly, 2013, p. 370).

The tension in the academic literature demonstrates the complexity of the issue of child-friendly justice. Liefgaard (2020) acknowledges these criticisms and complexities, but explains that child-friendly justice is in its infancy, and thus, more research is required before its efficacy can be determined.

2.3.4. Children’s Rights Adherence and Participation

A truly child-friendly justice system is premised upon children’s rights and maintains a commitment to be rights-informed and rights-respecting, but the justice system, and in particular carceral spaces for children, may require a mechanism to facilitate this commitment. Scholars and practitioners point to the efficacy of *Child Rights Impact Assessments* (CRIAs) to measure adherence to children’s rights; however, admittedly, there is little critical inquiry examining the potential of CRIAs. As a child-focused Human Rights Impact Assessment, CRIAs are a form of general measure of implementation which assess the extent to which legislation, policies and other governmental or organizational decisions impact children’s rights and identify measures to

mitigate impacts and avoid human rights violations (Harvey, 2005).²⁰ They also present an opportunity to acknowledge that no policy or decision is child-neutral and bolster children’s rights understanding in governments and organizations. Within the Welsh context, CRIAs have “contributed to embedding children and young people’s rights in policy and to the emergence of an ingrained culture of thinking about children’s rights in the Welsh Government’ while recognising that further ‘cultural change’ has to take place” (Hoffman, 2019, p. 384). Though they have noted that a lack of Convention knowledge among policymakers and a lack of child participation to be significant limitations (Hoffman, 2015). In addition to making human rights accessible to policymakers (Payne, 2019), children must be included in the CRIA process to identify potential and actual rights impacts (Yukon Child & Youth Advocate Office, 2022, p. 4; Office of the New Brunswick Child and Youth Advocate, 2015, p. 10). Finally, Ruggiero (2022) notes that for CRIAs to be effective, the process cannot be static and insular. Instead, impact assessments and evaluations must be a continuous process, published in the public domain, and invite independent oversight outside of government. CRIAs may help carceral spaces acknowledge and facilitate children’s rights awareness; yet in order for CRIAs to have the most significant impact, imprisoned children must be involved in the rights assessment process.

All children in all spaces must be permitted to participate in matters which concern them. However, given the unwantedness of justice-involved children and the invisibility of carceral spaces, increased attention must be paid to the participatory rights of imprisoned children as an essential element of child-friendly justice. Child-friendly measures to actively involve children in justice-making must not be shallow and tokenistic; these are “instances where children are apparently given a voice, but in fact have little or no choice about the subject or the style of

²⁰ Please see the United Nations Committee on the Rights of the Child’s *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child*.

communicating it, and little to no opportunity to formulate their own opinions” (Hart, 1992, p. 9). Further, it is not enough for individuals working within justice systems to be committed to children’s participatory rights, as research has shown that continuance of top-down approaches, a preoccupation with risk management and a lack of resources are barriers to integrating participatory approaches (Fischer et al., 2007; Case & Hampson, 2019). Much work must be done to overcome this “systemic neglect of young people’s views” (Smithson & Jones, 2021, p. 349). Respecting and incorporating the viewpoints of justice-involved children may make the system more relevant for children (Lansdown, 2011) and allowing justice-involved children to participate in their justice processes may also lead to adult accountability (Nguyen, 2013).

2.4 Conclusion

While the academic community has increased examination of justice-involved children’s rights and child-friendly justice principles in the justice system, especially in judicial spaces, there is still a lacuna of research on how rights are experienced in carceral spaces. Further, much of the scholarship tends to be normative and focus on measures to create pathways to the realization of these rights, such as CRIAs or engagement models. What is notably absent from the research is an understanding of the effectiveness of these pathways and whether imprisoned children enjoy greater rights awareness and realization as a result of these measures. These normative understandings also, troublingly, focus almost exclusively on the roles of adult actors. Children’s voices are rarely included in research about their carceral experiences and even less when developing recommendations for teaching children about their rights or implementing child-friendly justice strategies. Indeed, imprisoned children are behind literal and figurative walls, making them difficult to reach, but if the academy continues to speak *for* children rather than *with* children, it will perpetuate the marginalization of imprisoned children. Much like the

debate surrounding who should define a child's best interest, whom better to consult about what child-friendly justice should look like than a justice-involved child? As such, this study seeks to address these gaps in the literature by exploring rights awareness, rights-informed practices and the potentiality of child-friendly justice in a carceral space by centring the voices of imprisoned children.

3. CONCEPTUAL FRAMEWORK

A review of children's rights literature reveals a lack of criminological inquiry related to the experience of children's rights among children in carceral settings. To address this gap, I have proposed a conceptual framework which can shed light on why, despite the acknowledgment that imprisoned children deserve access to their unique rights and knowledge of those rights, this provision has yet to be realized. I begin this chapter by discussing Hughes' and Becker's traditional conceptualizations of master status and how their work has imbued Kathryn Hollingsworth's (2008) understanding of children's statuses within criminal justice processes. I then introduce Rachel Ellis' (2021) concept of porous institutions, a departure from Goffman's (1961) total institutions, to illustrate the tension between children's rights and coercive control within carceral settings. Finally, I outline a new conceptual framework which puts Hollingsworth and Ellis in conversation to explain why carceral spaces, as porous institutions, are not yet equipped to acknowledge the 'child qua child' status of children.

3.1 The Status of Imprisoned Children

In his 1945 work *Dilemmas and Contradictions of Status*, Everett Hughes conceptualized master status as being ascribed to people based on "expected or "natural" combinations of auxiliary characteristics" (p. 355). Hughes focused predominantly on positive forms of master statuses, such as those bestowed to doctors, and explained how unexpected traits, such as race and gender, may cause "status contradiction" or "status dilemma" for those ascribing status (p. 356). Master status analysis has remained so prevalent in sociology and criminology that Hughes' contribution is often unacknowledged; "[the] source is more or less forgotten or so taken for granted that the source is not cited" (Strauss, 1996, p. 280).

Howard Becker catapulted Hughes' concept of master status into the mainstream in 1963 with *Outsiders: Studies in the Sociology of Deviance*. Whereas Hughes tended to focus on positive master statuses, Becker modified the concept to examine how stigmatized auxiliary characteristics could dominate all other notable characteristics to become an individual's master status.²¹ In doing so, he also moved away from visible or formally administered statuses to less visible ones, such as the deviant:

Some statuses, in our society as in others, override all other statuses and have a certain priority...The status of deviant (depending on the kind of deviance) is this kind of master status. One receives the status as a result of breaking a rule,²² and the identification proves to be more important than most others. One will be identified as a deviant first, before other identifications are made. (1963, p. 33)

Master status labels are not constructed by the stigmatized individual, but are ascribed to them by those in positions of "political and economic power" (p. 17). This begs the question, what benefit do the powerful derive by assigning deviant or criminalized labels?

Using Hughes and Becker as a point of entry, Kathryn Hollingsworth's (2008) discussion of status aligns with traditional understandings of master status, but offers an important departure to "set out a framework for understanding children's rights in the youth justice system" (p. 229).²³ According to this framework, children, as persons, should have all the same rights

²¹ Becker was also heavily influenced by Tannenbaum (1938), who was an early contributor to labelling theory. Notably, Tannenbaum was concerned with the labelling of criminalized youth, who, he believed, were considered 'worse' than those not criminalized. Through a process of "dramatization of evil," criminalized youth are defined as such, and once this belief is entrenched in the community, these youth come to identify themselves as their label through tagging: "defining, identifying, segregating, describing, emphasizing, making conscious and self-conscious" (p. 20).

²² This statement may be less accurate when looking at offender labels ascribed to individuals imprisoned awaiting trial who have not been deemed 'guilty' by a court of law, yet they experience the weight and permanence of negative status labels.

²³ This framework was developed in the English and Wales contexts; however, it is applicable within the Canadian context.

afforded to adults, but because of their “greater vulnerability and lower level of competence” (p. 230), they require additional protections, particularly during justice-involvement. As children progress through formal criminal justice processes, the system ascribes either an offender or child status depending on the whether criminal responsibility is being assessed.²⁴ Hollingsworth contends that criminal responsibility is not necessary “at the margins of youth justice”; these margins consist of the pre-crime and post-crime milieus (p. 230), and therefore a child status *should* be the primary status experienced by children. Unlike at the margins, she believes that judicial spaces do necessitate reliance on criminal responsibility and, as such, the status experienced by children is ‘offender qua child’ in which “the child in the youth justice system is primarily there not because he is a child but because he is accused of committing a criminal offence. Thus, he has a dual status: the primary status is offender and the secondary status is child” (p. 231).²⁵ Once a verdict is rendered and the need for criminal responsibility is satisfied, the primary status of children shifts from offender qua child to ‘child qua child’ where their vulnerability is acknowledged, and their interests and well-being as children come to the fore. For children sentenced to custody, “the child’s liberty and placement into secure accommodation is the punishment, not the way he is treated whilst in state care, and, because no criminal responsibility function is being met, the child’s status as offender, should be irrelevant to the care he/she receives” (p. 239). Whether this ideal occurs in practice is a matter of debate.

Hollingsworth’s framework offers insights into how the criminal justice system imposes statuses upon children to suit its own needs. While beneficial for explanatory purposes, applying the offender status upon any justice-involved individual, particularly the justice-involved child,

²⁴ Here, Hollingsworth relies on Peter Cane’s (2002) responsibility theory.

²⁵ Not all judicial spaces necessitate the offender qua child status. In judicial spaces where children’s criminal responsibility is not being accessed, such as in family courts, children retain their child status.

should always be contested. Hollingsworth argues that a child's status is undoubtedly restored at the post-crime margin of leaving custody. However, this is unlikely the case given that the majority of children leaving custody complete their sentence in the community under probation supervision and this transcarcerality relies on an offender qua child status (Allspach, 2010; Moran, 2014). She also speaks to the necessity of the practice of assigning offender qua child status in criminal proceedings rather than critiquing this necessity. As children are viewed as offenders first, judicial spaces have failed to respect the unique needs of children and create child-friendly environments (Lount et al., 2018; Grisso, 2000; Buss, 1999; Weijers & Grisso, 2009; Lansdown, 2005; Scott & Steinberg, 2008). Rights-based theories premised on children's capacities can ultimately cause harm because implying that they have limited competence may "suggest that the rights children do have are somehow different, less fundamental, and more easily overridden by paternalistic concerns for the safety and well-being of children" (Federle, 2011, p. 472). Rather than overriding the child status in favour of an offender status which approximates an adult understanding and application of rights, Freeman (1992) calls on systems to acknowledge children's autonomy as rights-holders by "treat[ing] them as persons entitled to equal concern and respect and entitled to have both their present autonomy recognized and their capacity for future autonomy safeguarded" (p. 66). Therefore, there should be no need to apply an offender status to children during any part of the criminal justice process.

Criticisms aside, Hollingsworth's understanding of the status of imprisoned children aligns with Freeman and supports the recognition of these children as children. She is cautious in her discussion of status within carceral spaces, advising that "children in custody should be treated first and foremost as children" (2008, p. 242) while acknowledging that this is not always the case. This cautiousness is well placed as children seem to retain their offender status while

imprisoned. Without the necessity of criminal responsibility, why does the offender qua child status persist? Examining carceral spaces through a lens of porosity may provide an explanation.

3.2 The Porous (Total) Institution

Though Hollingsworth's discussion of child qua child status presents a promising opportunity to reorient the status of imprisoned children, questions remain as to why their offender status has retained its primacy even though criminal responsibility serves no function in carceral spaces. One explanation may lie in the physical and ideological construction of jails and prisons – spaces that Erving Goffman (1961) defined as total institutions. Goffman characterized a total institution as “a place of residence and work where a large number of like situated individuals, cut off from wider society for an appreciable period of time, together lead an enclosed, formally administered round of life” (p. 5). Of the five ideal types he identified, prisons and jails were listed as spaces where people are held against their will in the name of public safety.²⁶ Goffman believed that total institutions had patterns of control over the lives of inhabitants, treating inmates as one “batch” and strictly controlling their daily activities through paramilitary rule.²⁷ Total institutions also isolate those inside from society through “perceptible barriers that coercively restrict relationships with the outside world and possibilities for departure. Boundaries are thus crucial for understanding the nature of total institutions” (Clot-Garrell, 2022, p. 115). In response to this environment, inmates undergo a process of “mortification of the self” where they are stripped of their physical and moral identity with

²⁶ The other groups consisted of facilities established for the care of those deemed ‘incapable and harmless’ such as homes for the orphaned; facilities established for people who are unable to care for themselves and pose a threat to the community, such as “mental hospitals”; facilities related to the pursuit of “some worklife task,” such as boarding schools; and finally, facilities where individuals go to retreat from broader society, such as monasteries. Goffman posited that his characterizations were not “exhaustive, nor of immediate analytical use” but “provide a purely denotative definition of the category as a concrete starting point” (Goffman, 1961, p. 4).

²⁷ As Goffman utilized the term “inmate” in his original text, that term was employed when discussing his concepts.

which they entered the prison and begin to embody the inmate role, serving to demarcate inmates from the authoritarian staff class (Goffman, 1961, p. 21).

Goffman's conceptualization of total institutions, though seemingly ubiquitous in normative criminological discourse, has received criticism along several fronts. One of the first to call his concept of totality into question was Jacobs (1976), who questioned the validity of deprivation theory which postulates that prison cultures are closed and thus learned by prisoners upon entry. Instead, he argued that "The view of prisoners as isolated individuals who may or may not become socialized into an inclusive inmate culture through participation in primary groups is no longer useful in describing the contemporary prison" (1976, p. 476). Law and Lodge (1978) suggested that describing carceral spaces as total did not account for the "leakage" that occurs between inside prison walls and wider society. In that same year, Sutherland and Cressey (1978) found that "prison reforms" have led to a weakening of prisoner isolation (p. 585). McEwen (1980) believed that the totality of these institutions was greatly exaggerated. Most prominent among the critiques has been Farrington (1992), who, when examining prisons in the United States, found that Goffman's premise was "in fact, fairly inaccurate as a portrayal of the structure and functioning of the...correctional institution" as "the modern prison is not as completely or effectively cut off from wider society as Goffman's description might lead us to believe" (p. 6). Rather than Goffman's understanding, Farrington (1992) argued that:

Total institution might best be rejected in favour of a somewhat different theoretical conceptualization of the prison as a "not-so-total" institution, enclosed within an identifiable-yet-permeable membrane of structures, mechanisms and policies, all of which maintain, at most, a selective and imperfect degree of separation between what exists inside of and what lies beyond prison walls. (p. 6)

Farrington based his argument on the premise that prisons are not closed institutions; there is a constant stream of goods and services that flow in and out of carceral spaces. Like goods and services, staff must enter and exit prisons as they do not tend to live on prison grounds, cut off from the outside world. Contrary to Goffman's mortification of self, Farrington found that inmates' histories enter prison with them; they cannot be untethered from their "personal baggage" (1992, p. 14). Finally, outside entities, particularly interest groups, "express and act on a variety of prison-related concerns, often with considerable impact" (1992, p. 16). The understanding of institutions as total has persisted due to the "comforting" nature of this myth rooted in crime control ideology, reinforced through political rhetoric in the name of public safety (1992, p. 23).

More recently, there have been calls to limit dichotomizing thinking that separates inside prison from outside society and instead to think of prisons as "heterotopic spaces outside of and different from other spaces, but still inside the general social order" (Baer & Ravneberg, 2008, p. 214). Crewe (2009) was one of the first to coin the phrase "porous" concerning what have traditionally been conceptualized as total institutions, reframing them as "porous and permeable" (p. 5), in part because, somewhat reminiscent of Farrington, "attitudes, cultures, networks and ideologies formed outside the institution...provide the crucial ideological bridge between internal and external behaviours" (p. 150). Further, "the significance of these external factors in shaping adaptations is an outcome of prisons having become more porous" (p. 150).

Ellis (2021) combined critiques related to Goffman's conceptualization of total institutions to create a distinct concept of porous institutions, stating that "the total institution paradigm is at best a mischaracterization, and at worst a misleading framework that leads outsiders to ignore critical sources of inequality in contemporary punishment" (p. 182). Through

her research in a women's state prison examining the role of religion in carceral spaces, she found evidence of permeability; prisons are not left unaffected by societal factors. However, it was also noted that porous institutions retain many of the same coercive aspects observed by Goffman. Ellis cautioned that her findings are not meant to imply that prisons are less problematic or that somehow those behind the walls are 'freer'. Instead, as she contends, "viewing prisons as a total institution may do a disservice to our understanding of the inequality in the contemporary carceral landscape. It may risk further marginalizing already marginalized populations" (2021, p. 194). Employing a porosity lens illuminates the revolving door of prison, mass incarceration along racial, class and gender axes, and many other problematized aspects of imprisonment. Acknowledging porosity also recognizes the many influences that exert pressure outside prison walls, such as advocates, ombudspersons and human rights discourses. Wallace (2017) warned that "institutions are total because we make them so" (p. 5), and Ellis has chartered a course away from this totality. With the understanding that carceral spaces are porous institutions comes the appreciation that we all have a responsibility to advocate for systemic change; "We may no longer believe that reforming what goes on inside prisons is beyond reach" (Ellis, 2021, p. 195).

Admittedly, Goffman's total institution concept was not developed with a focus on carceral spaces for children. Yet, in fact, carceral systems for children were modelled from carceral systems for adults; thus, imprisoned children are often subjected to coercive control practices initially designed for adults. Feminist geography may effectively explain this incongruence, noting the interactional relationships between people and spaces, which may add to the discussion of children in carceral spaces (Moran, 2014). McDowell (1999) argues that certain spaces are designed for certain bodies, such as carceral spaces and systems which were

traditionally designed for the adult male prisoner, meaning children's bodies do not "fit" the conceptualization of prisoner required by the system (p. 61). Rather than transforming the system to meet the needs of imprisoned children, these carceral spaces have made only slight concessions to recognize the child while at other times requiring the child to play the role of the idealized "offender." Therefore, while there is some applicability of Goffman's total institution concept, porous institutions can better explain children's secure custody facilities as the concept appreciates the concessions made to adjust adult spaces for children and the many influences which permeate their walls. Additionally, the *Youth Criminal Justice Act* does not allow for complete totality as it calls upon broader society, including communities and families, to share responsibility for the needs of "young persons."²⁸ There is also a growing pressure exuded transnationally by the United Nations and subnationally by Child and Youth Advocates, to implement and respect children's rights, particularly for justice-involved children. The concept of porous institutions can also speak to the coercive control pervasive in children's carceral spaces, evidenced by paramilitary language, attire, physical environment, and punishment. Where total institutions failed to acknowledge the complexity of prisons and other carceral spaces, porous institutions can allow for a nuanced examination of these complex environments.

3.3 Children's Rights Status via Porous Institutions: A Conceptual Framework

Neither Hollingsworth's framework for understanding children's rights in the criminal justice system nor porous institutions alone can provide a thorough understanding of children's rights in carceral spaces. However, incorporating aspects of each concept offers insight into how a porous institution, such as a secure custody facility, may deprioritize a child's status in the

²⁸ *Youth Criminal Justice Act*, SC 2002, c 1, preamble.

name of safety and security. This newly formed conceptualization, children's rights status via porous institutions, combines traditional concepts from the interactionist paradigm that have been enhanced to acknowledge the role of power and systems to advance critical inquiry.

Hollingsworth (2008) argues that the status of imprisoned children should be child; there is no notable function for the offender qua child status in this environment. Hollingsworth's argument can be viewed as aligning with Hughes's (1945) original intention whereby one's master status – in this case that of a “child” – should be viewed positively, and thus overshadow criminalized behaviours or state interventions such as imprisonment. Relatedly, Freeman (1992) advocates that children should be appreciated as fully autonomous beings. Nonetheless, “offender” tends to remain their predominant status, overshadowing their humanity as children. This persistence can be explained by understanding children's carceral spaces as porous institutions; while they are more permeable to outside influence, they maintain coercive control elements in their function as “jail” (Ellis, 2021). Children are segregated behind gates, wear special attire that signals their “offender” status, are locked in cells, and are subjected to segregation in the name of institutional safety. While different, secure custody facilities for children are comparable to adult jails in that staff are called correctional officers, wear paramilitary uniforms, and undergo cadet training. There is no place for the child in coercive carceral spaces as these interventions are developed for the adult prisoner.²⁹ The complexity of these spaces is demonstrated by the pressure to respect and uphold children's rights which seeps in through international and local legal and advocacy actors. As a result, a tension exists; those in children's carceral spaces may be aware of the need to uphold and communicate children's special human rights but are limited by a structure not designed for children or their rights. In

²⁹ Though beyond the scope of this study, coercive control practices used against adult prisoners must also be problematized and contested.

such a context, children's rights washing is more likely to occur. As I illustrate later in Chapter 7, I refer to children's rights washing as the practice of engaging the language of rights without creating meaningful change.

3.4 Conclusion

Though there is an abundance of scholarship related to the broader children's rights movement, a gap exists, particularly a theoretical gap, in understanding the realization of children's rights for justice-involved children. As Hollingsworth (2008) has contended: "Despite increased rights-awareness, there is still a lack of clarity as to what we mean by *children's* rights in the field of youth justice, and how we should protect those rights" (p. 230). This gap is more predominant for imprisoned children, which may be attributed to Medlicott's (2001) argument that "the concept of 'safer custody' or the 'caring prison' is, in essence, an oxymoron" (p. 219). Alternatively, it may be that youth criminal justice is the "unwanted child" of the children's rights movement (Abramson, 2006, p. 15). Nonetheless, despite the ultimate goal to abolish carceral spaces for children, each day Canadian children find themselves locked in cells.³⁰ As such, criminological inquiry must develop a theoretical understanding of these children's rights experiences in order to advocate for the acknowledgement and realization of children's rights in *all* spaces. It is anticipated that the conceptualization of children's rights status within porous institutions that has been proposed herein and is being engaged in this thesis can address this

³⁰ Given that researchers must carefully discern when they are drawing on concepts from scholars with whom they do not fully agree, it is essential to note that while employing Hollingsworth's status concept was deemed critical for analytical purposes in this study, her lack of abolitionist goals complicated my integration of her scholarly work. Although Hollingsworth advocates for the acknowledgement of imprisoned children's child qua child status and definitively states that children should not be imprisoned if systems cannot accommodate, she also clarifies that her "article is not a call for the abolition of imprisonment for children" (2008, p. 242). In this light, though I rely on her concepts regarding the status of imprisoned children, I contest her standpoint on abolition and firmly believe that no child deserves to be imprisoned.

theoretical gap and contribute to advancements in the understanding of imprisoned children's rights experiences.

4. METHODOLOGY

This chapter outlines the methods and methodologies engaged and applied throughout this study. The chapter begins with a discussion of paradigm, ontological and epistemological decisions that informed the research direction. Additionally, reflexive practices are discussed. Next, an overview of the research design and areas of inquiry is provided. Then, the data collection process, including the recruitment, interviews, ethical considerations, and data analysis decisions, are examined. The final part of the chapter addresses challenges that arose during the data collection process and acknowledges the limitations of the research methods.

4.1 Methodological Considerations

4.1.1 *Paradigm, Ontology & Epistemology*

The critical paradigm was chosen to guide this study as it emphasizes the importance of agency and the capacity of individuals to actively challenge social structures to bring about social change (Pittaway et al., 2010; Pease et al., 2003). Most importantly, a critical approach offers the opportunity to “unmask” ideologies and practices that serve to reinforce the power of some and limit the freedoms of others (Usher, 1996, p. 21). In this way, this study aimed to be political, bridging theory and praxis, to uncover current oppressive practices and the apparatus that keep them in place (Glesne, 2010).

As critical research, this work was informed by a historical realism ontological position, which posits a reality to be examined, shaped by social, political, economic, ethnic, and gender values.³¹ Over time this reality has been “crystallized (reified) into a series of structures that are

³¹ The individual concepts used to construct the conceptual framework for this study are both rooted in interactionism and thus possess an ontological position that differs from the critical paradigm. However, as these concepts were reconstituted for critical inquiry, the overarching framework for this study maintained a historical realism ontology.

now (inappropriately) taken as “real”, that is, natural and immutable” (Guba & Lincoln, 1994, p. 110). While reality exists, it is distorted by dominant ideologies; therefore, the work of the critical approach is to undo these distortions (Glense, 2010). This project followed a transactional and subjectivist epistemology acknowledging that findings are ‘value mediated’ as my values as an investigator influenced the investigation (Guba & Lincoln, 1994). I could not disentangle myself from the research process, so I engaged in reflexive practices to understand my implication in knowledge production.

4.1.2 Reflexive Practices

According to Glisch-Sánchez (2014), reflexivity consists of a range of practices utilized by researchers to understand how their research is:

constructed by their socialization within and in relation to groups, institutions, and the profession. It is to render visible – and to the degree possible, knowable – those components and processes within the intellectual and scholarly enterprise that are invisible, taken for granted and seemingly natural. (p. 128)

Self-reflexivity has the potential to go further than acknowledging our socialization so that it also “unmasks complex political/ideological agendas hidden in our writing” (Richardson, 1994, p. 523). These intersubjective elements of the researcher, when left unexamined or ignored in favour of objectivity, can impinge upon and transform the research (Finlay, 2002a).

I began to engage in reflexive practices as soon as I decided to study imprisoned children. I questioned whether this choice was informed by my previous experiences in the field, and I had to interrogate if I was claiming a status of authority with the intention of speaking for those who have been purposefully marginalized (hooks, 1988). Instead, I believe I aligned with Alcoff (2009), who argues that one must always aim to speak *with* by *listening to* rather than

speaking *for*. Ultimately, I believe that my subjectivities are borne out of a “passionate concern” for the rights of imprisoned children (Moustakas, 1990, p. 27). Being reflexive about my understanding of children’s carceral environment (and, at times, complicity as a former correctional officer) allowed me to “use it as a focus for more intense insight” (Frank, 1997, p. 89). I was also keenly aware that I straddle the insider-outsider boundary throughout this project (Belur, 2014). I was once an insider in the world of correctional officers and thus possess experiential knowledge about the lived realities of these positions. From this insider position (first as a correctional officer and later as an advocate in the prison volunteer sector), I witnessed the experiences of imprisoned children, but to witness is not to experience. Thus, I continuously engaged in reflexive practices, examining my impact as a researcher and evaluating the research process, method, and findings (Finlay, 2002b; Lumsden & Winter, 2014).

4.2 Research Design and Areas of Inquiry

The purpose of this project was to examine children’s rights-awareness, rights-informed practices and child-friendly justice in a carceral space for children. As such, research occurred at a youth secure custody facility in one Canadian province. Due to the small number of children in secure custody, identifying the province may reveal the identities of the child participants; thus, neither the name of the facility nor the name of the province were disclosed as a measure to protect their identities. Notably, the facility houses not only secure custody, but also the province’s only open custody unit, as well as an adult correctional facility. This project’s scope focused on the youth secure custody section of the facility, though participants also referenced open custody and the adult facility.

A qualitative research approach was adopted to understand “how people make sense of their world and the experiences they have in the world” (Merriam, 2009, p. 13). Qualitative

approaches also allow for greater flexibility as they are often interpretative and inductive (Denzin & Lincoln, 2005, p. 3; Guest et al., 2013, p. 5). Semi-structured interviews were conducted with imprisoned children, staff at this facility, and advocacy staff who work for an independent oversight body responsible for upholding children's rights in the same jurisdiction as the secure custody facility. Document analysis was conducted on relevant institutional policies and procedures, training curriculum, and a youth orientation guide.

These methodologies were employed to explore the main objective of understanding the extent of children's rights awareness at this facility and whether rights have been used to inform facility practices. The following more specific areas of inquiry were utilized to examine the stated objective:

1. What training do staff members receive regarding children's rights and the *United Nations Convention on the Rights of the Child*?
2. How do children's rights and the *United Nations Convention on the Rights of the Child* inform decision-making practices and day-to-day functions at the custodial facility?
3. How is information about children's rights granted in the *United Nations Convention on the Rights of the Child* shared with youth upon admission to the custodial facility?
4. To what extent do youth understand their rights and obligations from the information shared with them by the custodial facility?
5. How is the youth criminal justice system in this province, specifically the youth custody facility, child-friendly?

4.3 Data Collection

4.3.1 Government Documents³²

In the form of policies and procedures that govern the secure custody facility and training curriculum, government documentation was included in this project to examine how children's rights are discursively constructed in this space. Since policy documents were not publicly available, access to this documentation was requested when negotiating access to the facility, which the administration granted. The Table of Contents for youth justice policies was used to identify suitable policies for this study. Of the 62 policies listed, 36 were deemed relevant and requested; this purposive sampling method was informed by my experience working in this field and consultation with a senior staff member to ensure that all applicable policies were included in the request. Later in the project, it was discovered that not all policies were listed in the original Table of Contents, so I requested a copy of a specific Admissions policy and the opportunity to review the expanded list of policies. While they quickly provided the Admissions policy, my second request went unanswered. Permission to use the policies for analysis was granted; however, the administration asked that policies not be reproduced in full for safety and security reasons.³³ In addition to relevant policies, training curriculum materials related to children's rights were also shared.

Lastly, during interviews with most children and a few facility staff, they referenced a youth orientation booklet document. The children explained that this document formed the basis

³² Notably, government documentation contained very little information directly or indirectly related to children's rights or the Convention. Despite this limitation, I chose to retain the document analysis portion of the examination as the absence of rights-related information was, in and of itself, a telling finding which is discussed in Chapter 5.

³³ To ensure compliance with the administration's request not to reproduce the policies in full, only brief and segmented quotes were presented in this text.

of their orientation once sentenced to secure custody, and staff pointed to it as relevant to this study. I requested this document from the administration and received a copy of it immediately.

4.3.2 Recruitment

Following Research Ethics Board approval, discussed below, the recruitment phase of this project began by negotiating with the secure custody facility and the provincial government for access to research participants. Researchers have noted that gaining access, particularly to imprisoned populations, can be arduous, with many nuances to negotiate (Schlosser, 2008). I was fortunate that I did not experience barriers to access or controlling gatekeepers which was likely due to my previous experience working at the facility and later involvement with the prison volunteer sector, other research projects at this same facility and child advocacy related work. Matfin (2010) found during her experience of ‘doing research’ in a prison setting, that a “researcher’s status will determine, to some degree, the *level* of access with that prison” (p. 222), thus implying that experienced prison researchers with a proven ‘track record’ may have more access and experience fewer barriers. Matfin’s findings were indeed accurate in my case, but I also approached this governmental department at a time of significant change when the youth justice system in this province was already going through a transformation, and the administration had indicated a desire for a more progressive approach for justice-involved children. While I cannot speak to what might have occurred behind closed gates, I can report that my experience felt unmitigated and as though I had complete access. In fact, I was copied on emails that indicated that I was to have unfettered access to the children.

The administration at the facility assisted in the recruitment of staff participants by disseminating the recruitment email to all staff who fulfilled the positions listed in the inclusion

criteria. Staff who were interested in participating contacted me via email, and we arranged a one-on-one information session.

Child recruitment was more complicated as I did not want the recruitment message mediated or influenced in any way, so I met with all children at the facility for an in-person recruitment session (see youth recruitment script in Appendix A). These were held away from staff so that the children would feel more comfortable asking questions and to signal that facility staff were not involved in the data collection process. Following a recruitment session, children were given at least one day to consider the project before informing me if they wanted to participate. Preferably the children would have had more than one day for consideration; however, this amount of time was selected primarily because of the transient nature of carceral spaces; children who are not yet sentenced often move in and out of the facility quite quickly, so there was a concern that a child who attended a recruitment session, and who wished to participate in the study, would not be able to do so if the interview was not scheduled quickly. Additionally, concentrating my visits to the facility during short timeframes was operationally feasible and limited potential COVID-19 risks. Almost all children agreed to participate during the recruitment session, but regardless, I gave them one day to consider their participation.

Access negotiation was not required to approach advocacy staff. Staff were contacted via recruitment email, and they expressed interest in participating in this study by contacting me via email (see facility and advocacy recruitment emails in Appendix A).

4.3.3 Participants

When I began to conceptualize this study, the one thing I knew for certain was that I would only proceed with this area of inquiry if I were able to interview imprisoned children. Though it seemed unlikely amid the COVID-19 pandemic, I believed this research could only

move forward if I honoured the ethic ‘nothing about us without us’ (Charlton, 1998) and respected imprisoned children’s right to have their voices centred in matters which affect them (United Nations, 1989). Fortunately, I developed a safety plan that satisfied provincial regulations and the University of Ottawa’s in-person research expectations and proceeded with in-person interviews with the children.

For children to participate in the study, they had to be imprisoned at the custodial facility where the research took place, and they had to be at least 14 years of age. The age-based inclusion criterion was added so that all child participants were of an appropriate age to provide informed consent. Fortunately, there were no imprisoned children at this facility under age 14 at the time of the study, so no child had to be excluded based upon this criterion. There were no inclusion criteria related to gender, the nature of their offence(s), length of sentence, or their remanded/sentenced status. There were nine children in custody in this province during the recruitment period, seven boys and two girls ranging in age from 15 to 19,³⁴ and I was able to meet with all of them. Eight of the children agreed to participate in the study, while the ninth, a girl, declined further involvement. Child participants will be introduced in greater detail in Chapter 5.

The recruitment of staff members at the secure custody facility was purposeful and representational to allow for “the identification and selection of information-rich cases related to the phenomenon of interest” (Palinkas et al., 2015, p. 533). For this project, the phenomena of interest were rights awareness, rights-informed practices and child-friendly justice, so it was important that I interviewed individuals responsible for enshrining and mobilizing children’s rights; to this end, staff participants were recruited based upon their role at this facility. Staff in

³⁴ The 19-year-old participant received a longer sentence when they were legally considered a “young person” by the *Youth Criminal Justice Act* (between 12-17 years) and were still at the facility serving their sentence.

the following positions were invited to participate in this study: Director, Superintendent, Deputy-Superintendent, Shift Supervisor(s), Admission Officer(s), Training Officer(s), Case Manager(s), Recreation Director, and Intensive Rehabilitative Custody and Supervision Worker(s).

Regarding staff at the Office of the Child and Youth Advocate, all staff were welcomed to participate based on their general expertise in children's rights but those who work, or have worked, directly with justice-involved children were prioritized. Two senior advocacy staff with extensive histories advocating for the rights of imprisoned children agreed to participate in this study.

4.3.4 Interviews

All interviews were conducted between July 26, 2021, and November 22, 2021. While semi-structured interviews were used for all participants, there were three distinct participant groups for this project, and as such, there were three different approaches and interview guides (see all interview guides in Appendix B).

Imprisoned children at this secure custody facility generally do not have access to the internet for video interviews, and it would have been challenging to ensure that phone interviews were unmediated and confidential. Hence, all interviews occurred in-person at the facility. Interviews with children occurred in a private meeting room supervised by video surveillance, but the facility assured, in writing, that the surveillance system did not have sound capabilities. Children provided verbal consent at the beginning of the interview, and all were asked if they consented to be audio-recorded (see youth verbal consent script in Appendix C). The interviews lasted between 19 and 36 minutes, with the average interview time being 27 minutes.

A pilot interview was conducted with one child, after which I reviewed the recording and reflected on the interview questions. From this initial interview, I learned that a section of questions may be interpreted as though I was quizzing the participants on their knowledge. The questions were still important, despite their nature; thus, to address this issue, I would reassure children before the interviews began by saying: “It’s not your job to know this; it was someone’s job to tell you.” This reassurance appeared to alleviate some pressure. I also learned that I quickly moved to the next question when the child seemed uncomfortable. Upon post-interview reflection, I realized that I may have interrupted their thinking and potential response. Moving forward, I was careful to trust the silence while the children were thinking and only offered probing questions when needed. The practice of using a pilot interview greatly improved my interview approach for the remainder of the project.

In order to reduce contact due to the COVID-19 pandemic, facility and advocacy staff interviews did not occur in-person; instead, they were given the options of Zoom or MS Team for video interviews or via the telephone. None of the participants selected the phone; all adult participants selected MS Teams as their preferred medium. Verbal consent was obtained before interviews commenced, and participants were asked if they consented to be recorded (consent forms for facility and advocacy staff are available in Appendix C). All adult participants agreed to audio recording, apart from one, who preferred notetaking instead. Interviews for facility staff ranged from 23 minutes to 62 minutes, while the two advocacy staff interviews were 55 and 83 minutes in length.

4.3.5 Ethical Considerations

The COVID-19 pandemic complicated ethical considerations for this project because of the need for in-person interviews with the child participants as this group’s environment made

them highly vulnerable to the effects of COVID-19 (Penal Reform International, 2020). Before seeking ethical approval from the Research Ethics Board, the Vice-Dean of Research within the Faculty of Social Sciences approved my COVID-19 Safe Research Plan, which provided a detailed overview of all safety precautions to be followed during in-person interviews. This step was fairly straightforward because the University of Ottawa and the secure custody facility had precise safety requirements. However, an issue arose regarding contact tracing requirements as the University required student researchers to collect contact information from all in-person research participants so that participants could be contacted if there was a COVID-19 exposure. This process proved problematic as imprisoned children's identities are protected under the *Youth Criminal Justice Act*, meaning their names and contact information could not be taken from the facility. As a compromise, I confirmed with the facility that staff would log my visits so that if there were an exposure, the facility would have all the required information for contact tracing purposes.³⁵ Though initially this compromise caused some concern because the University's prescribed COVID-19 research addendum forms had to be modified, it was eventually approved (see ethical approval in Appendix D).

Considerable attention was also paid to the ethics of conducting research in a carceral context. Moore and Miller (1999) argue that imprisoned children are "doubly vulnerable" (p. 1034) due to their age and justice-involvement, which can erode their autonomy (Shafi, 2020), thus heightening the importance of the consent process. As such, special care was taken to adhere to the principles of *Ethical Research Involving Children* (ERIC) (Graham et al., 2013) to ensure that all children who attended a recruitment session knew they should not feel obliged to participate in this study. Though I cannot be certain as to the reason why, one girl-child declined

³⁵ Logging visitor information is standard practice at this facility; therefore, this practice did not compromise privacy and confidentiality.

to participate following her recruitment session which may indicate that the children were not feeling pressured to participate. Child-friendly language was used to explain the ongoing nature of both consent and withdrawal to those who agreed to participate. Lastly, absolute confidentiality could not be guaranteed as interviews were managed via staff who escorted them to and from the interview room. Additionally, there was an obligation to report if a child planned to hurt themselves or someone else or if they had experienced abuse at the facility. These limitations were explained to children during the consent phase.

There was also ethical consideration given to the staff participants at this facility as it was essential to ensure that participation was voluntary and that they did not feel as though they were required to participate as a condition of employment. Confidentiality and anonymity were the main concerns for staff as they were asked to speak about their employer's commitment to children's rights; thus, steps were taken to protect their identity, including anonymizing qualitative data, and not referring to the participants' specific positions at the facility. Ethical implications for advocacy staff participants from the Child and Youth Advocate's Office were also considered; however, their pre-identified risks and potential harm were quite low. Nonetheless, all ethical precautions were also taken with advocacy staff.

4.4 Data Analysis

Thematic analysis was chosen as the analytical strategy for this study due to its "theoretical freedom" and flexibility which can be adapted for the needs of various types of qualitative inquiry (Nowell et al., 2017 p. 2). More specifically, as thematic analysis is a "cluster of sometimes conflicting approaches," I selected Braun and Clarke's updated version of *reflexive* thematic analysis, which acknowledges researcher subjectivity (2021, p. 333). Reflexive thematic analysis is an analytical tradition that invites the researcher to engage with

their data (Guest et al., 2012); themes are developed through coding, and this “analytical *process* involves immersion in the data, reading, reflecting, questioning, imagining, wondering, writing, retreating, returning” (Braun & Clarke, 2021, p. 332). Braun and Clarke noted in their 2006 article, their original attempt to provide a thematic analysis roadmap, that themes do not emerge; however, because they observed that this point has been overlooked throughout the academy, they later reiterated the inaccuracy of the framing themes as emergent. Instead, they argue that themes are not “diamonds scattered in the sand” (Braun & Clarke, 2016, p. 740) waiting to be discovered by a passive researcher, but are generated through an active intervention process.

Braun and Clarke (2021) outline the six phases of thematic analysis and encourage researchers to detail their engagement with each phase. Phase one, *data familiarization and writing familiarization notes*, requires the researcher to fully immerse themselves in their data. As I had recorded my interviews, my first step in immersion was listening to the audio recordings to familiarize myself with the interview before beginning transcription. I completed all transcription manually, which was time-consuming but an essential step in the interpretative process (Riessman, 1993; Bird, 2005). Once the interviews were transcribed, I listened to them again while reviewing the transcription for accuracy before finally reading the text without audio. Throughout the entirety of this process, I noted observations and considerations, convergent and divergent ideas, and alignment with the academic literature.

Phase two, *systematic data coding*, calls for the generation of initial codes, which began once I was familiar with the data for all three participant groups. All coding was completed manually; however, NVivo software was used as “technological support” (Silver & Lewins,

2020, p. 912).³⁶ Inductive coding was the primary coding method, though, as Braun and Clarke (2006) note, due to the reflexivity of the researcher within this process, it is less an either-or approach between inductive or deductive coding and, instead, falls on a continuum. I had potential coding ideas informed by my academic, professional and advocacy experiences, but only coded what I identified within the data. In this way, the coding was inductive but informed by deductive reasoning.

Generating initial themes from coded and collated data is the third phase of analysis. Initially, I had unintentionally engaged in analytic foreclosure (Connelly & Peltzer, 2016) by organizing the data by topic summaries rather than legitimate themes. Braun and Clarke (2021) refer to this error as “data-topics-as-themes” where “participants responses are summarised, but there is no central concept, no *shared* mean, only a shared *topic*” (p. 341). I recognized this error during the transition from phase three to phase four, *developing and reviewing themes*, and re-established more fulsome and complex themes. Themes were judged for internal homogeneity and external heterogeneity and reviewed based upon Braun and Clarke’s (2006) two levels of analysis: level one at the code level and level two by reviewing the entire data set.³⁷ During this phase, a thematic map was created and modified several times until I was satisfied that the themes reflected the entirety of the data set.

Next, in phase five, *refining, defining and naming themes*, I ensured that theme names reflected the stories I had developed and then specified sub-themes (Braun & Clarke, 2021). I generated three themes from the data: *systemic barriers limit children’s rights awareness*, *carceral spaces are not child-friendly* and *potentiality to be child-friendly and rights-*

³⁶ NVivo offers automatic coding options, but I did not utilize these options at any point.

³⁷ Internal homogeneity ensures coherence within themes, whereas external heterogeneity ensures that themes are distinct from one another (Patton, 1990).

informed. With themes finalized, I moved to phase six, *writing the report*, where I dedicated a chapter to each of the three themes and identified extracts from the themes which went “beyond description of the data, [to] make an argument” in relation to my research questions (Braun & Clarke, 2006, p. 93).

4.5 Challenges and Limitations

In some regards, the COVID-19 pandemic hindered the efficacy of the research methods. Fortunately, the jurisdiction in which in-person research with imprisoned children occurred had not experienced high infection rates; thus, in-person research was possible. However, the required safety protocols did not lend themselves to a wide range of child-friendly research practices. One method of rapport-building that I had previously relied upon with imprisoned children is sharing a meal during our first meeting, as food seems to strengthen connection and increase comfortability. Due to pandemic restrictions, eating or drinking was not permitted during meetings, and thus, a valuable rapport-building ritual was lost. As a harm reduction strategy, data collection was limited to verbal responses. It would have been preferential to allow for more inclusive methods of sharing, such as art-based strategies, as they can be more responsive to children’s needs and incorporate diverse ways of knowing (Graham et al., 2013), but the potential of COVID-19 transmission seemed like an unnecessary risk.³⁸

³⁸ The decision to engage in scholarly inquiry in a carceral space during the pandemic was made after careful consideration of the COVID-19 experience in the specific jurisdiction where the research was planned. Gacek (2021) challenged researchers to question the implications and collateral consequences of such research, though notably, he was writing prior to the introduction of the COVID-19 vaccine. Given that COVID-19 rates were low and vaccination rates were relatively high during the data collection period, it was determined that the benefit of the research outweighed the lower risk of transmission. In an abundance of caution, very stringent COVID-19 safety protocols and procedures were employed.

Turning to potential participant limitations, while the majority of children imprisoned at this facility participated in this study, the results may not be generalizable to the experiences of children imprisoned at other secure custody facilities across Canada due to a variety of reasons, including differences in provincial/territorial legislation, staff hiring requirements and facility commitment to children's rights. Facility staff participants may not be reflective of the beliefs and sentiments of all staff at this facility. Many participants reported that the recruitment email was widely shared, yet only four non-management staff volunteered to participate in this study. Though I cannot be certain why so few staff volunteered, it was likely due to a convergence of factors, including unfortunate timing during the COVID-19 pandemic and ongoing labour issues; lack of in-person interview options; lack of availability; and lack of interest or knowledge on the topic.

Additionally, as is the case with all participant-based research, I acknowledge the potential concerns with interview respondents' memory recalls, as well as their preoccupations with trust, perceptions, impressions, repercussions and "the social norms of the research topic" (Alamri, 2019, p. 66), all of which may have implications regarding bias and validity in the research (Copes & Miller, 2015). By potentially limiting the study's generalizability, these implications highlight the need for future scholars to conduct similar research at other facilities with a larger number of imprisoned children and facility staff to gain a more diverse and representative understanding of rights awareness in carceral settings for children.

Finally, in retrospect, it might have been prudent to widen the inclusion criteria for facility staff recruitment to consider additional roles such as teachers or clinical team members, particularly social workers, given the frequency with which children referenced them as essential sources from whom to access rights-based information. However, the inclusion of these positions

was not practical as the study had already received ethical approval and adding these positions would have required further permissions from two additional governmental departments. Obtaining these permissions is generally a time-consuming endeavour, and coupled with a pandemic, the approval process would likely have been far too lengthy.

4.6 Conclusion

This project, informed by a critical lens, sought to understand children's rights awareness and child-friendly justice in a carceral space by interviewing imprisoned children, secure custody facility staff and advocacy staff, in addition to examining government-provided documents. By employing a reflexive thematic analysis, I generated three overarching themes that are explored in later chapters. Though interviewing imprisoned children, particularly during the height of the COVID-19 pandemic, came with additional safety and ethical considerations (Gacek, 2021), it was vital that children's experiences and voices were centred in the research. The next chapter introduces the participant groups, the government documentation and contextualizes the secure custody facility within the broader Canadian youth criminal justice system.

5. DEVELOPING AN ANALYTICAL FOUNDATION

Ah, when I was 12, I did like a week in, a month. And then when I was 13, I did my, like, three months. And then when I was 14, I did like six months or something like that and then I went to [drug rehabilitation facility] for three. And then I came back in for another four months. And then I went to open custody for 10 months. I got out, like I ran away a couple times for like a month here. Got out for a month. Came back. And then I got out for a month, and I came back this time and they gave me two years and 10 months.

- Bailey

In order to establish an analytical foundation, this chapter provides context related to this study's carceral setting, the documents used for analysis, and the participants. The first section situates the provincial secure custody facility within the broader Canadian youth criminal justice system. The following section presents an overview of each participant group, highlighting relevant information related to the children, facility staff and advocacy staff participants. Finally, this chapter ends with a brief overview of the facility's policies, training material and orientation guide.

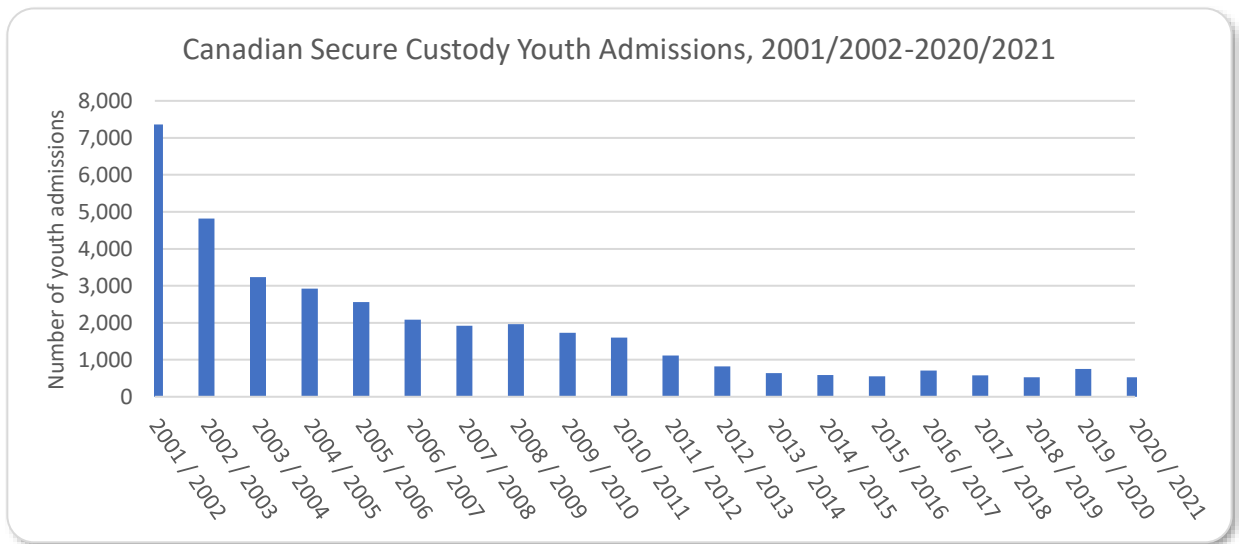
5.1 Situating the Youth Secure Custody Facility

Canada's youth criminal justice system is federally governed by the *Youth Criminal Justice Act* (YCJA), which applies to children aged 12 to 17. As previously mentioned, the YCJA highlights the importance of Canada being party to the *United Convention on the Rights of the Child* (the Convention); however, there is debate in academic and professional communities regarding the significance of this inclusion (indeed, this debate was raised by a participant in this study). In fact, immediately following the preamble, in section 2 of the Act, there is a divergence from the Convention when it defines a child as "a person who is or, in the absence of evidence to the contrary, appears to be less than twelve years old" (YCJA, 2002).

One of the most significant failings of the *Young Offenders Act* (YOA) was its overreliance on the use of custody and the resulting over-incarceration of children throughout Canada. The YCJA sought to correct this overreliance by limiting the availability of custodial sentencing options. Section 38(2) outlines guiding sentencing principles, and part (d) stipulates that “all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal [*sic*] young persons” with further limits on custodial options defined in section 39(1).³⁹ Of note, is that custody cannot be used “as a substitute for appropriate child protection, mental health or other social measures” (s. 39(5)). As a result of these limits, Canada has seen a drastic decrease in child imprisonment, as evidenced in Figure 1.

Figure 1

*Canadian Secure Custody Youth Admissions, 2002/2003-2020/2021*⁴⁰



³⁹ The YCJS continues to use this harmful and colonial language.

⁴⁰ Statistics Canada. (2022). *Table 35-10-0005-01 Youth admissions to correctional services*. <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510000501>

Reduced youth incarceration rates are often touted as demonstrative of an increased commitment to children's rights; however, the decarceration movement in Canada is predominantly in response to the YCJA and not provincial or territorial progressiveness. While limiting custody is undoubtedly positive and of great benefit to children, it is not evidence of rights-informed practices or symbolic of "a maturing human rights consciousness" (Cunneen et al., 2018, p. 424). The province within which this study was located has also seen dramatic decarceration, so much so that the nine children who attended recruitment sessions accounted for all the children imprisoned in the province during that timeframe.

Though federally mandated, the administration of custodial spaces occurs at the subnational level, as stipulated in s. 85(1) of the YCJA (2002): "in the youth custody and supervision system in each province there must be at least two levels of custody for young persons distinguished by the degree of restraint of the young persons in them." The two types of custody, open and secure, are under the purview of provincial or territorial legislation. Generally, the two are not colocated as open custody is meant to approach a community environment. However, the province involved in this research has both open and secure custody in the same facility. Of particular concern is that an adult correctional centre is also located within this facility.⁴¹ Article 37(c) of the CRC expressly prohibits this colocation, but due to Canada's reservation to this article during ratification, the practice has been permitted throughout the

⁴¹ The practice of colocation is not unique to this province as other provinces and territories also have open and secure facilities in the same location. Less common is the practice of imprisoning children and adults in one facility. The government of this province states that adults are located in a separate correctional centre, and adults are indeed held in a separate part of the facility, which bears its own name and is governed by a different branch of government. However, these are paper distinctions as it is one facility evidenced by the fact that children used to be imprisoned in the same cells where adults are now. With the decreased reliance on custody as a sentencing option for children, these cells were no longer being used, and it seems as though they were then reallocated to adult populations. In upcoming chapters, it will also be noted that many of the same facility staff work with both adults and children.

country (Noël, 2015).⁴² This practice, which is not rights-respecting nor child-friendly, has been condemned by the Canadian Standing Senate Committee on Human Rights (2007), and the United Nations Committee on the Rights of the Child has repeatedly asked Canada to remove this reservation, as recently as June 2022 in the *Concluding Observations* provided during the fifth and sixth periodic reports of Canada (UN Committee on the Rights of the Child, 2022). Despite urgent calls for reform, this practice remains in parts of the country, including the province of interest in this study.

5.2 Participants

I chose to interview three distinct participant groups in order to develop a fulsome understanding of rights awareness, rights informed practices and child-friendly justice in one youth secure custody facility. Though the children's experiences are centred in this research, the facility staff participants provide context related to policy and training, and the advocacy staff provide a systemic understanding of children's rights in the province. This section discusses relevant demographics and information related to each participant group to provide the necessary context for forthcoming analysis.

5.2.1. Imprisoned Children

The children who participated in this study were between the ages of 15 and 19 (see Table 1 for child participant demographic information). Though the YCJA is applied to individuals under the age of 18, children who are in custody are generally permitted to complete

⁴² *Article 37(c)* of the *United Nations Convention on the Rights of the Child* (1989): (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

their sentence at a youth facility until the age of twenty.⁴³ Half of the children volunteered that they were just 12 years old the first time they were imprisoned; they were 12 years old the first time they were locked in a cell and 12 years old the first time they had to submit to a strip search. This first imprisonment at a young age triggered many years in and out of custody (whether in secure or open) for long sentences or short remands, in various combinations, as demonstrated by Pierre, who, when asked how many times he thought he had been sent to the facility in the past, answered: “*Since I have been 12, so at least 100 times.*” More poignantly, Jack framed his repeated imprisonments around life events: “*I was here for my 15th birthday and my 16th birthday and my 17th birthday.*” The repeated and persistent re-imprisonment of these child participants is illustrative of the ‘revolving door of prison’ (Howerton et al., 2009). In fact, only one child, Dakota, was at the facility for the first time. Additionally, three of these participants were remanded, awaiting trial, while the remaining were serving a sentence.

Table 1

Child Participant Demographics

Child Participant	Pseudonym	Age	Gender	Grade	Status	Race
1	Brayden	16	Male	11	Sentenced	White
2	Jack	17	Male	12	Remanded	Black and White
3	Pierre	17	Male	11	Sentenced	White
4	Bailey	19	Male	12	Sentenced	White
5	Cole	15	Male	9	Sentenced	White
6	Johnny	18	Male	11 or 12 (unsure)	Sentenced	Indigenous and Black
7	Dakota	17	Male	Graduated	Remanded	White
8	Aurora	18	Female	Not enrolled	Remanded	White and Indigenous

⁴³ *Youth Criminal Justice Act*, SC 2002, c 1, s. 93(1).

Girls are far less likely to be admitted to carceral environments, often making up less than a quarter of youth custodial admissions nationally. In the province where this research took place, the average rate of girls admitted to custody is less than the national average, with just 20% of custodial admissions being girls (this rate remained constant even during the height of the COVID-19 pandemic when custodial admissions were considerably lower) (Statistics Canada, 2022a). During the study's recruitment phase, only two girls were at this facility, and just one of the girls agreed to participate. Her responses provide valuable insight into rights awareness and child-friendly justice; however, it should be noted that the interview questions did not present the opportunity for her to reflect specifically upon her gendered experience.⁴⁴ Regardless, it is relevant to consider that this facility is a gendered carceral space; girls and boys are kept in separate living units, the girls' unit is painted in a stereotypically gendered colour (as is the boys), and there is limited interaction between girls and boys.

Like with gender, child participants were not asked to explore how their cultural or racial identity influenced their experience of learning about children's rights, though I do recognize this critical gap in this study and in the wider scholarship that must be addressed in future criminological and interdisciplinary research. One child identified as Black and White, one as Indigenous and Black, one as White and Indigenous and the remaining five as White. As discussed in a previous chapter, in 2018/2019, Indigenous children represented 43% of youth correctional admissions despite comprising only 8.8% of the child population in the country (Malakiek, 2020). The province implicated in this study has not reported having the same high percentage of mass Indigenous child imprisonment, with 7% of secure and remand admissions

⁴⁴ Employing an intersectional lens, I acknowledge that her identities cannot be disentangled. I note this limitation with my data analysis along gender, racial and cultural identity axes. While an important future research endeavour, it was not within the scope of the current study.

reportedly having identified as Indigenous during this same timeframe (Statistics Canada, 2022b). Unfortunately, this province does not report the imprisonment of Black or other racialized children to Statistics Canada; thus, it was not possible to ascertain this information from a public source.

The final aspect of relevant demographic data is the respondents' grade level. Imprisonment significantly impacts children's educational progress, particularly for those in custody for a short period, as the educational component is often not prioritized. The transient nature of justice-involvement means that many children are often not tested or screened for learning disabilities or differences,⁴⁵ they are unable to build connections with educators either within or outside the walls, and frequently justice-involved children do not consistently attend schooling (Koyama, 2012; Freeman & Seymour, 2010; Macomber et al., 2010; Hart et al., 2012). It appeared that many of the children in this study faced challenges with their educational journeys as many were behind in grade level(s); one could not identify exactly which grade in which they were enrolled, and one participant did not complete their education nor were they enrolled in school. The implications of delayed and compromised education should be central considerations in carceral environments in order to develop rights-informed child-friendly spaces.

Finally, it is also interesting to note that these children's perceptions of the facility varied widely. On one end of the spectrum, Johnny described the facility as a "*basketball camp*" and, when asked to clarify, he explained:

⁴⁵ Advocates differ in language preference as some prefer "disability" as it offers legal protections, while others prefer "difference" due to its inclusivity.

Yeah, it's not very tough in here, I mean for the severity of some people's crimes or my crimes or whatever, it's pretty straight forward in here. It's not fun, but it's not terrible, right, so.

On the complete opposite end of the spectrum, Jack held a terrible perception:

Jack: *It is called [facility name], but I don't call it [facility name].*

Sarah: What do you call it?

Jack: *Hell.*

Further, he later noted that he would rather “*live on the streets*” than be imprisoned in this facility (clarifying that he knew to what he was referring as he had previously been street-involved). This wide range of children’s perceptions must be acknowledged because regardless of how these participants felt about their experience, they all meaningfully participated in this research and offered valuable insights related to rights awareness building and child-friendly justice practices. There remains a prevailing misconception of imprisoned children as uncooperative or uninterested, but the children in this study were patient, engaged and empathetic to the needs of other children. In a later chapter, this misconception will be revisited when examining children’s participation in matters that concern them.

5.2.2. Facility Staff

Seven facility staff volunteered to participate in this research; these participants represented a variety of direct experience, years of experience and training (see Table 2 below). Three of the seven participants identified as women – more than expected as one manager commented that it was more common for male staff to work in the children’s section of the facility. Three participants held management positions, three worked directly with imprisoned children, and one had a policy-related position. Interestingly, years of experience was clearly

demarcated; either participants had spent decades working at this facility or had only worked there for a short time (from less than one year to just over six years).

An important area of inquiry explored in this study was whether staff received children's rights-related training, so staff were asked to discuss their initial training provided by the government. None of the participants could recall training related to children's rights, but a few vaguely recalled learning about the Child and Youth Advocate. Shockingly, three of the participants received absolutely no training of any kind prior to working with imprisoned children. Facility Staff 5, one of those who did not receive training, qualified that she received a 20-minute briefing before being handed keys and a radio as she was stationed to work in segregation alone. An unexpected finding was that *when* staff started at the facility had no bearing on the quality or quantity of training. For instance, two participants started in 1998; Facility Staff 3 had six weeks of intensive training while Facility Staff 5, mentioned above, had no training. There was also little consistency in what training was provided. One staff's three-day training focused on theory and was supplemented by supervised shadow shifts (Facility Staff 1). Another participant's training included theory and punitive elements of "hands-on" use of force training (Facility Staff 4). Facility Staff 7's training was more difficult to categorize as his training occurred while he was completing on-the-job training (OJT) as part of his college program requirements. He had months of experiential learning, but this training is only available to students from specific programs. Despite the inconsistency in training opportunities provided to the participants, there was one consistent finding: facility staff involved with this study received no training about the *United Nations Convention on the Rights of the Child*.

Table 2*Facility Staff Participant Demographics*

Facility Staff	Gender	Management (Yes/No)	Experience (years)	Start date	Initial training provided by government
1	Male	Yes	4 ⁴⁶	1999	3 days of theory + 2 shadow shifts
2	Female	No	> 1	2020	None
3	Male	Yes	24	1998	6 weeks intensive
4	Female	No	6.5	2006	2 weeks of theory and “some” use of force
5	Female	No	24	1998	None
6	Male	Yes	1	2020	None
7	Male	No	23	1999	On-the-job training

5.2.3. Child and Youth Advocacy Staff

Two senior child and youth advocacy staff were invited to participate in this study. Child and Youth Advocate offices are legislatively mandated and operate independently of government. Each Canadian jurisdiction may have slight differences in mandates; however, they are all primarily concerned with the protection of the rights of children and youth. The Canadian Council of Child and Youth Advocates, which consists of members from ten provinces and two territories, states that the Council and its member offices are obligated to “advance the rights of children and youth and to promote their voice” (CCCYA, 2019).⁴⁷ Advocacy Staff Participant 1 described the role of his office as:

⁴⁶ Facility Staff 1 has had four years of direct experience but has remained in the ministry and connected through various roles for 23 years.

⁴⁷ The Canadian Council of Child and Youth Advocates membership includes Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan, and Yukon.

But our statute provides a mandate to the Advocate to defend the rights and interests of children, young people in the province, to... educate [province name] with respect to children's rights and interests, to make sure that children's voices are heard in decisions that may impact them, and to make sure that they connect with the services to which they are entitled by law and make sure that that...they, that any complaints that they have about service provision are addressed; and generally, to do anything that needs to be done to promote the rights and interests of [province name] children and youth. So, it's very intentionally a rights-based mandate.

Both of the advocacy staff who participated in this study have experience working with files related to justice-involved and imprisoned children and, more broadly, have championed systemic advocacy related to the rights of imprisoned children.

5.3 Documentation: Policies, Training Curriculum and Orientation Guide

In seeking to understand the operationalization of children's rights in a secure carceral setting, one consideration was whether findings would indicate a complete lack of regard for the rights of children or if policy enshrined aspects of the Convention were merely paper policy; that is, children's rights may be codified but are not borne out in everyday practice. Thirty-seven policies were included for document analysis to examine how children's rights are discursively constructed in this space.⁴⁸ Upon initial review, I was surprised by the length of the policies, the majority of which were only one to two pages in length (see Appendix E). While lengthier policies do not equate to rights-informed policies, I was, nonetheless, concerned by their brevity. Regarding children's rights, the terms "right" or "rights" appeared in four of the thirty-seven

⁴⁸ When sharing the requested policies, the facility noted that a policy review and update were underway. Most of the policies I received came into effect in 2004 (presumably with the introduction of the *Youth Criminal Justice Act*) and were last updated in August 2012. All policies included in this study were in effect during the interview period.

policies, but only two of these policies addressed rights specifically related to children.⁴⁹ In fact, there were more references to rights bestowed to “peace officers” than the rights of children in their care. Though paper policy may not be indicative of a lack of children’s rights knowledge necessarily, this omission contravenes Article 4 of the Convention, which states that “State Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention” (United Nations, 1989). Notably, leading academics Byrne and Lundy (2019) clarify that organizational policies are included within the Conventions Article 4 requirements under “administrative and other measures,” which highlights the importance of ensuring that facility policies are rights-informed.

Two additional items were added to the document analysis. I requested any training materials or curriculum related to children’s rights. I was provided with all training materials, which consisted of three slides listing various children’s rights and presumably issues related to the realization of these rights (such as the increased use of diversion). Facility Staff Participants 1 and 2 explained that these were recent additions to “cadet” training curriculum; thus, no staff who participated in this study would have received this presentation during their training. The facility also provided a copy of a document used during some orientation sessions with children entitled *Youth Guide*. This 37-page document was last updated in 2020 and states in the introduction that it is “for use by persons sentenced, remanded or being held at [facility name]. This book provides a general guide to services available at [facility name].” Though the document does not provide any information about the Convention, it does include limited sections related to the Child and Youth Advocate and human rights. As with facility policies, this document is examined more closely in upcoming relevant chapters.

⁴⁹ The term “right” did appear in four additional policies but was in reference to direction.

5.4 Conclusion

This chapter developed an analytical foundation upon which upcoming discussion is based. As is already becoming apparent, children's rights awareness is limited among imprisoned children and the staff charged with their supervision. The next chapter delves further into this lack of awareness to examine how this limitation results from systemic barriers.

6. SYSTEMIC BARRIERS LIMIT CHILDREN’S RIGHTS AWARENESS

No, honestly, I don’t know what my rights are at all... I didn’t even really know that we had extra rights a child.

- Dakota

In order to ensure that carceral spaces actualize children’s rights, children and those working for and with children are supposed to be educated on the rights enshrined in the *United Nations Convention on the Rights of the Child* (the Convention). In this light, this chapter explores the extent to which children’s rights education and training have advanced at one secure custody facility for children.⁵⁰ It begins by exploring how imprisoned children have not been informed of their rights during admissions and orientation processes. It then turns to facility staff’s awareness of the Convention and how training has failed to equip them with the knowledge they require to make rights-informed decisions. The lack of children’s rights awareness at this facility does not appear to be the result of individual staff failure or resistance, but of systemic barriers that have contributed to the deprioritization of children’s rights.

6.1 Imprisoned Children Are Not Informed of Their Rights

Article 42 of the Convention stipulates State parties’ obligation to “make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike” (United Nations, 1989, Article 42). Though Article 42 does not provide further guidance, Article 4 identifies that State parties “shall undertake all appropriate legislative, administrative, and other measures for the implementation,” and scholars emphasize that rights-

⁵⁰ As stated at the beginning of this thesis, because a child rights lens is being employed, “child” and “children” are used when referring to individuals under the age of 18, regardless of justice involvement. However, it is important to acknowledge that secure custody facilities are only for children 12 years and older. I have chosen to use the term child as an important reminder that even though individuals under 18 who are justice-involved are categorized as youth by the state, they are still, in fact, children, as recognized by the Convention on the Rights of the Child (United Nations, 1989, Article 1).

awareness measures cannot be passive, such as the use of pamphlets (Covell & Howe, 2005). The United Nations Committee on the Rights of the Child provided guidance in *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child*, wherein they acknowledged that children have not traditionally been understood as rights-holders and that in order for children's rights to be realized: "Individuals need to know what their rights are" (para. 66). To spread awareness, State parties "should develop a comprehensive strategy for disseminating knowledge of the Convention throughout society" (para. 67) which should include providing the Convention in all languages, including children's rights in school curriculum, providing training for those working with children and engaging the media. Article 42, or discussion related to the dissemination of the Convention, is included in most of the 25 General Commentaries. Todres (2020) considers Article 42 one of the Convention's most significant articles, but argues that it has not been adequately observed, which has negatively impacted the realization of rights for children.

Given that this study sought to understand the application of Article 42 within a carceral space for children, one of the initial interview questions asked children if they were aware of the Convention. Sadly, seven of the eight children had never heard of it at any point in their lives and indicated that the facility had not provided information about the Convention. All the children were certain when answering in the negative, aside from Bailey, who was less assured, answering: "*Ah, I don't think so*" albeit recalling that he might have heard of the Convention "*but not with the real title.*" Only one child, Aurora, was more familiar with the Convention and children's rights but credited her knowledge to learning during elementary school in a different province. While she certainly was aware of the Convention, her understanding of children's rights was less developed when asked to speak about them. Following this question, the children

were given a child-friendly version of the Convention to review and asked if they wanted to reflect on the document. Some appeared overwhelmed by the amount of information and asked if they could keep the document to review (which they were permitted to do as permission was granted by the facility during the ethics process). Others provided cursory observations, such as locating rights related to justice-involved children. As already illustrated in this thesis' introduction, Cole provided perhaps the most affecting reflection saying: "*That's a lot of rights I didn't even know we had.*"

These findings were echoed by a Child and Youth Advocate participant who has found that imprisoned children often do not possess an understanding of their rights as children:

But even those youth, they would understand their rights with respect to institutional care, but did they really know very much at all about their right to education or the aims of education? Or could they, you know, formulate a critical thought with respect to what they were learning at [the facility]? Or their right to housing and safety? Or their right to an alternative justice system and the promise of...the principle of shortest sentence possible? (Advocacy Staff 1)

This advocacy staff participant's response raises two critical points. Firstly, there is a distinction between legal literacy, institutional regulations and children's rights. Research has demonstrated that justice-involved children may possess a degree of legal literacy, often due to their justice involvement, but are unaware of human or children's rights (Stalford et al., 2017). I asked the children if they were aware of the *Youth Criminal Justice Act* (YCJA), and they were indeed more aware of the Act than children's rights, but their legal literacy was limited. For instance, when asked to share what they knew about the YCJA, their responses varied:

It was an Act that they put in place to keep kids out of jail (Pierre).

I don't really know much about it, but, like, I know what it is (Cole).

I've heard of it...I don't know much about it... (Dakota).

It's changing now, so I don't really know what the new rules are, but, I don't really know it completely, I just know of it (Aurora).

That it's not the best system in the world (Brayden).

Some identified that they were charged under the Act or were somewhat familiar with it based on learning from lawyers or courtroom settings, while other children were completely unaware of the YCJA, such as Jack, who, when asked if he knew about the YCJA, answered: “*Actually, surprisingly, no I don't... I have no clue.*” These findings were concerning, given that all these children have stood in courtrooms or were serving sentences under the YCJA. Ensuring that children possess legal literacy should be an integral component of child-friendly justice spaces.

Unlike legal rights, the children appeared more comfortable discussing institutional regulations. However, problematically, many seemed to conflate children's rights and learning about children's rights with learning institutional rules upon entry, as illustrated by Pierre, who explained a right as: “*Well, you have the right to take a shower, to eat... to have outside time*” or Johnny: “*It'd be like them saying “you're allowed to this” and “you're allowed to ask this.”*”⁵¹ As all but one child participant had been in and out of custody, they were able to draw on their various experiences, with the exception of Dakota, who did not receive a formalized overview of institutional regulations until much later in his stay: “*...I don't think I got my rules explained to*

⁵¹ While these children seem to conflate rights and institutional practices or rules, the examples they provide do align with rights outlined in the Convention, notably the rights to dignity, health and leisure (United Nations, 1989). Acknowledging this alignment, a potential issue with conflating rights with institutional practices is that it presents the opportunity for rights to be framed as privileges which can be taken away. For example, Pierre references “outside time,” which would be part of the “right of the child to rest and leisure, to engage in play and recreational activities” (United Nations, 1989, Article 31). However, if this is not understood as a fundamental right of the child, it is very easy for the institution to forgo such recreation time due to institutional requirements while simultaneously making it difficult for children to advocate for their rights.

me 'till like jeeze, at least two weeks that I'd been here for sure." When asked if they were satisfied with the information they were provided by the facility, the others offered a range of responses; some children felt as though it was sufficient: *"...well the guards will like, they'll tell you like what you can do and what you can't do. Like they need to be able to see you at all times. Stuff like that"* (Cole). While Johnny thought that learning the rules was *"pretty easy,"* others felt they were not given adequate information and had to learn the institutional rules on their own: *"that was our job to look at the piece of paper on the wall on the unit"* (Aurora). Others identified having to learn rules through a process of trial and error whereby they *"learn[ed] by doing something and making a mistake and looking back at it and moving forward"* (Brayden). Others, like Johnny, explained how they learned by receiving reprimands for their mistakes: *"...sometimes if you don't even know the rules, like, you get locked in your cell if you don't know what's going on."* When asked if "getting locked" helped him learn the rules, he explained that it was customary to get locked in a cell for 24 hours in situations where a mistake was made, even if the child was unaware they had committed a violation.⁵² A final theme related to institutional rules was that children learned these regulations from their peers. One child, Jack, felt fortunate to have a relative imprisoned at the same facility from whom he could learn the institutional rules and ask questions when needed. Others identified that peers often helped each other, sharing helpful guidance to expedite their learning. Alternatively, once the participants became familiar with the institutional rules, they would look out for new children admitted to their units.

A second important point raised by the Child and Youth Advocate quoted above relates to his comment that imprisoned children may not be prepared to "formulate a critical thought"

⁵² "Getting locked" was a common vernacular used by children in this study. I asked Johnny to define getting locked, and he explained it as "they just lock you in your cell for the day." In this facility, a separate segregation unit is rarely used for children; instead, they are locked in their cells on their living units. The experience of getting locked will be explored in more detail in Chapter 7.

about their experience at the facility due to a lack of rights-based information. Todres (2020) expressed a similar concern regarding Article 42: “Without knowledge of their rights, children may be unaware that harmful treatment they experience is a violation of their rights for which there are, or should be, remedies. They are also far less likely to be able to advocate for and realize their rights, if they are unaware of them” (p. 112). To this end, it appears that the children involved in this study have been denied their rights under Article 42 of the Convention and the ability for self-advocacy in relation to all children’s rights granted to them.

The realization of Article 42 is not just an issue for this facility as Canada’s commitment to dissemination and awareness-raising was also an area of concern identified by the United Nations Committee on the Rights of the Child in its most recent *Concluding Observations to Canada*: “While noting the insufficient awareness of the Convention among adults and children in the State party, the Committee recommends that the State party strengthen its awareness-raising programmes” (2022, para. 14). While the Convention points to State party obligations, this does not negate subnational responsibilities as those who work directly with children most often fall under provincial or territorial responsibility. The Committee on the Rights of the Child included both the “federal and provincial and territorial levels” (2022, para. 14) in their observation that Canada must do more to realize Article 42. When examining the application of Article 42 at the subnational level, in carceral spaces for children, the logical point of entry is the admissions process, as this is a child’s first introduction to imprisonment.

6.2 Admissions Processes in a Porous Institution

Goffman (1961) found that the terms “trimming” or “programming” accurately described the prison admissions process as prisoners are “shaped and coded into an object that can be fed into the administrative machinery of the establishment, to be worked on smoothly by routine

operations” (p. 16). These trimming procedures include operational requirements such as photographing, assigning numbers, removing personal effects, searching and learning institutional rules.

The child participants’ experiences of their admissions processes aligned with Goffman’s understanding of admissions in total institutions, thus demonstrating the remnants of adult control tactics still present in this porous institution. When asked to explain his time in admissions, Brayden stated: “*they didn’t really tell me any laws or anything when I came in first. They are like ‘get stripped.’*” Bailey remembered: “*when you first come in, they usually ask if you got any problems, like if you’re incompatible with people...they ask if you have allergies, next of kin, um, they tell you that you get a phone call when you get to the unit.*”⁵³ Dakota’s experience felt more solitary: “*There wasn’t very much talking. There was just me being put in a room and that’s how it was.*”⁵⁴ A couple of the children remembered being asked if they were informants and most recalled undergoing a strip search. The facility’s Admission Procedures policy mostly aligns with the children’s experiences; it focuses on operational and administrative functions. However, there is an exception, as the policy dictates that “Admitting Officers will advise Young Persons about the *Youth Guide*.”⁵⁵ The *Youth Guide* informs the orientation process, but no child recalled learning about this guide during their initial admission.

⁵³ Incompatible is a term often used in total institutions. This facility did not provide a definition, but the Correctional Service of Canada defines incompatible offenders as “offenders who pose a threat to the safety and well-being of each other and may present a risk to staff, the public or other offenders” (Correctional Service Canada, 2013).

⁵⁴ Unlike the other child participants, the interview for this study occurred during Dakota’s first imprisonment, and thus, he was less familiar with the facility. During the height of the COVID-19 pandemic, institutional policy required new admissions to be placed on a segregation unit (what the children called the “quarantine unit”) for several days before being permitted to interact with other children. Dakota found this isolation particularly difficult.

⁵⁵ The Admissions Procedures policy also states: “Admitting Officers will advise Young Persons about the *Youth Handbook*.” Children or staff did not mention a handbook that differed from the orientation booklet, and when I asked about orientation materials, it was not provided.

Just as with the *Youth Guide*, none of the eight children recalled learning about rights granted under the Convention during the admissions process either. Unfortunately, this facility's admissions process closely aligns with experiences in adult total institutions where prisoners are literally and psychologically stripped of their identity and given a "clear notion of [their] plight" (Goffman, 1961, p. 18). Although there may be a need to fulfill institutional procedural obligations, these processes should be undertaken with the understanding that justice-involved children are "doubly vulnerable" (Moore & Miller, 1999, p. 1034) and, as such, require a child-friendly admissions process developed for the needs of children, rather than adopting adult processes. The child, and not the facility, should be at the forefront of the admissions process. Currently, this facility only begins conversations related to rights during a later orientation session, though one manager explained: "that's one thing I am looking at changing."

6.3 The Status of Orientation

Throughout the interview process, the facility staff and many of the children who were sentenced or who had received secure custodial sentences in the past referenced an orientation booklet. Children had different experiences learning about this booklet; some recalled meeting with a staff member to review the document and then receiving a copy to keep with them:

Pierre: *Yeah, I had an orientation folder. It says stuff that I'm allowed to do after so long.*

Sarah: And where do you keep that folder?

Pierre: *I don't have it anymore, but I had it in my cell.*

Others had a meeting with the same staff member to review the document but were not given a copy of their own. Most troublingly, some children could not recall ever having been provided information in writing: "*There's no instructions or pamphlet, or whatever, about this place when*

you come here” (Aurora). To help understand their reflections on this process, I requested a copy of the orientation booklet and spoke with staff who had administered it.

Facility Staff 5 spoke about the importance of the orientation process, and while she could not recall an orientation policy (and no such policy was identified by the facility), she believed that an orientation practice had been in place since at least 1999. Child participants consistently recalled that orientation was only completed once a child was officially sentenced and not during pre-trial detention (also called remand), which was confirmed by Facility Staff 5:

Any youth that come in, for sure sentenced, I do an orientation with them. Often with the remands, they are in and out so fast, I don’t have time to do the orientation with them. Or, sometimes, I’m overwhelming them with information that they don’t need to know about or don’t really understand. But once they are sentenced, I want them to know, like, when they can have changes in security status, what a case plan is.

To gain a greater understanding of Facility Staff 5’s “in and out so fast” comment in relation to remanded children requires a scan of average pre-trial detention lengths. Looking at pre-pandemic figures, in 2018/2019, the average pre-trial length in this province was 19 days.⁵⁶ While it is true that 53% of remands were short, lasting for one week or less, 25% lasted longer than one week to one month, and 22% were from one month to six months (Statistics Canada, 2022c). Facility Staff 5’s reference to not having enough time may point to governmental deprioritization of children’s rights. All but one facility staff participant referenced this particular staff by name when referring to orientation and the discussion of children’s rights, and six out of the eight children referenced her, rather than her position, as someone they could go to if they had questions related to their rights. Referencing a staff member by name was unusual as,

⁵⁶ Pre-trial detention lengths increased during the pandemic period 2020/2021, with an average remand lasting 35 days.

generally, references were related to a position. This staff member had been unofficially deemed responsible for orientation and children's rights discussions. The concern with this practice is that children's rights become the responsibility of one staff member based on goodwill rather than a shared responsibility based on policy. This practice creates a precarious children's rights situation, evidenced in this facility where this one individual is not able to provide orientation to all children. It also begs the question of who is responsible for orientation and children's rights discussions during evenings, weekends, holidays and other times when this one staff is not available?

The practice of waiting until children are found guilty and sentenced by judicial proceedings before they are oriented can also be explained by Hollingsworth's (2008) discussion of the function of criminal responsibility and status. Children remanded pre-trial present a challenge; they are still in the judicial process where criminal responsibility and the related offender status, according to Hollingsworth's premise, are required. However, as they await their fate, they are imprisoned in a facility conceptually designed for post-crime intervention and where the child qua child status should be their only status. Consequently, the facility appears to have prioritized the offender status of imprisoned children to justify its lack of resource allocation.

Once children are sentenced, they do receive an orientation which many participants indicated was guided by the orientation booklet, titled *Youth Guide*. Importantly, the introduction states that "this guide is written for use by persons sentenced, *remanded* [emphasis added] or being held," though this research has demonstrated that remanded children are not provided with this resource. The *Youth Guide* illustrates the impact of porosity as conceptualized by Ellis (2021) in that it dedicates considerable space to the traditional carceral elements of the

facility but there is an indication of outside influence permeating the *Youth Guide*, as evidenced by the care taken to produce a visually appealing document for children and minor additions related to children's rights. The first section includes a list of definitions, two of which are relevant to this discussion: "Child & Youth Advocate" and "right."

The Child & Youth Advocate's role is described as: "Works outside the Centre and checks out complaints, listens and assists youth, families and staff, helps to make changes when required in a fair and balanced way." Clearly, there was an attempt to make this definition child-friendly; however, in doing so, the definition fails to capture the true purpose of the role of the Child and Youth Advocate. As identified in the previous chapter, the Canadian Council of Child & Youth Advocates' mandate is "to advance the rights of children and youth and to promote their voice" (CCCYA, 2019). The description provided to children at this facility does not include information about rights protection, nor does it mention the Convention, so it fails to provide children with the information required to become active agents in claiming their rights with assistance from the Advocate (Smith, 2011). It also implies that the Advocate provides equal consideration to facility staff, and while they certainly do assist government employees in rights-related situations and learning about children's rights, their primary concern is protecting the rights of children.⁵⁷ Later in the document, the Child and Youth Advocate is discussed in the section titled "Ombudsman."⁵⁸ The document poses the question, "When should a young person contact the Child & Youth Advocate?". In response, it acknowledges that a "young person" may "write" to the Advocate at any time but that they should try to resolve issues within the facility

⁵⁷ The children's awareness and understanding of the Office of the Child and Youth Advocate is explored in Chapter 8.

⁵⁸ Ombudsman is outdated terminology as the Child and Youth Advocate replaced this position.

first.⁵⁹ This information is misleading as children also have the right to call the Advocate’s office or meet with them on-site whenever they would like, which was highlighted by Aurora who stated that “*there was a process that they wanted you to follow before you called the Child and Youth Advocate, which I find was kind of illegal cause you’re a youth, you can call the Child and Youth Advocate whenever.*”⁶⁰ The description in the *Youth Guide* also identifies the Advocate as someone who can be contacted when a child feels as though they are “being unjustly treated.” While true, this positions the Advocate strictly as a complaint mechanism rather than as a resource for imprisoned children to learn more about their unique rights. From the Advocate’s Office perspective, there is no rights related information shared with children in this facility:

So, your question was, how aware am I of the rights they are made aware of? I think there is a document; they are told of their institutional rights but ... unless something has vastly changed recently, there is nothing in my opinion related to their actual human rights in any of the information given to anyone being admitted to pre-trial detention or custody.

(Advocacy Staff 2)

Turning again to *Youth Guide* definitions, “right” was also included and defined as “something that you cannot be denied (can’t be taken away),” which is inaccurate. Non-derogable rights exist, but this definition does not capture the complexity of rights, particularly for the children who read this document whose right to liberty under the *Charter of Rights and Freedoms* (1982) has been limited, nor does it emphasize children’s rights. Given these limitations, and the noted lack of rights awareness among participants, an orientation for

⁵⁹ Further in the document, when explaining to children that their mail is “censored” except to and from individuals on an identified list, the Child and Youth Advocate is not listed. The Provincial Ombudsman is listed, so, likely, the change was not made when the Advocate came into effect in 2007; this lack of an update is a problematic oversight.

⁶⁰ Aurora was originally speaking about her experience in open custody (also located in the same facility) but the *Youth Guide* for children in secure custody indicates a similar process.

imprisoned children would be strengthened by differentiating between legal, human, and children's rights and including the rights granted to them in the Convention.⁶¹ In order to ensure that orientations are rights-informed and become the shared responsibility of all facility staff, increasing staff awareness of children's rights should be a primary objective.

6.4 Staff Awareness of Children's Rights

I began this research by interviewing children before moving to adults as a measure to ground my work in children's voices and experiences. I sensed from many of the children that they were disappointed or embarrassed for not knowing about children's rights. Thus, to alleviate these feelings, I often reassured them by saying, "it's not your job to know this; it was someone's job to tell you this." What became clear as I began interviewing the adult facility staff was that they were also not fully aware of children's rights and the Convention, and I was reminded of the reassurance I provided to the children: Was it the responsibility of those working directly with children to learn of children's rights on their own accord or should there be an expectation that the province for which they work ensures they are educated about children's rights?

All staff participants acknowledged that children have unique rights based on age, but exhibited less familiarity with the Convention or the specific rights outlined in the treaty. Those in higher managerial positions were undoubtedly more familiar with the Convention and its relevance in a carceral environment for children, but there was less familiarity among staff who worked more closely with imprisoned children. For instance, when asked: "How does the *UN Convention on the Rights of the Child* inform the work you do?", Facility Staff 3 responded, "No, it doesn't come up. We know what children's rights are...we just try to do the right thing.

⁶¹ Increasing children's rights education in carceral settings will be revisited in Chapter 8.

It's always present in the work that we do, what's in their best interest. It's how we do business.”

One manager had a similar response:

So, even though if you were to ask a frontline correctional officer if they're adhering to child rights-based...and you were starting to name off some of the UN Convention elements, many of them would probably say they weren't aware or didn't know them, but the reality is they do it instinctively, and they are not even aware.

The manager's perspective seemed to align with the frontline reality that was reported to me as most participants could not speak specifically to the Convention but, when asked to elaborate on children's rights, were able to identify principles such as best interests (as above), right to education, and the importance of ensuring the dignity of children. While the staff's awareness of children's rights should be acknowledged, the lack of specific awareness of the Convention was concerning for one child and youth advocacy participant:

...They just don't know the language around it and the problem with not knowing the language around it, is that it's very easy, then, to make decisions and take action that actually violates human rights. We see this on a daily basis. (Advocacy Staff 2)

Aligned with this advocacy participant's concerns that lack of awareness lead to rights violations, increased awareness must be accompanied by changes in praxis and measures of accountability. These changes are integral for moving towards child-friendly justice, but also for ensuring that as imprisoned children become more aware of their rights, they do not experience repercussions when self-advocating or attempting to actualize their rights. Despite the insistence that professionals working for and with children receive robust rights training, it has not yet been introduced at this facility (O'Donnell, 2013; Covell & Howe, 2005; Byrne & Lundy, 2015; Collins, 2019; Whalen & Lansdown, 2022).

6.5 Children's Rights Training in a Porous Institution

As noted above, staff working for and with children require specialized training, however, as outlined in the previous chapter, the facility staff participants identified a lack of training related to the Convention and the children's rights granted therein. Participants were also asked if they had received subsequent training related to the Convention and all indicated that no training had been provided; "No, no. I knew they had rights, and I knew about the youth advocacy program and all that...but to actually sit down and actually go through any type of training on it? No." (Facility Staff 7). Facility Staff 5 learned informally through interaction: "I've sat in probably a few meetings with the Child and Youth Advocate and learned maybe from those meetings, but I can't say that there was an official training." Another staff's response illustrated the remnants of totality within the training paradigm: "No, I believe it was more...we did do the handcuffing, we did have that. It was more of a punitive approach, to be honest. It was more of like, more of the traditional of what you'd expect being a correctional officer working in a correctional facility" (Facility Staff 4). Recalling use of force training or more operationally focused training was not unusual among staff who trained to work directly with imprisoned children as 'safety and security' of the facility was identified as the paramount concern among many participants.

Understanding this facility's training through a lens of porosity exposes that it has retained much of its totality which may be explained, in part, by the collocation of an adult facility (Ellis, 2021). Though a different government branch governs the children's side, staff work on both sides of the facility, which then informs the training curriculum. As such, all staff receive the same generalized training, which, from staff participants' accounts, emphasizes traditional, adult-based correctional training: "...essentially it was fairly focused on adult style of

corrections...because that is where the bulk of these corrections cadets were going to go” (Facility Staff 1).⁶² This training, in concert with institutional policies, informs totality-type practices such as the admissions process. These training practices may be explained by feminist geography scholarship which notes that people and spaces engage in interactional relationships, which “jointly shape subjectivity and action” (Moran, 2014, p. 38). McDowell (1999) recognized that certain spaces were designed for certain bodies, and due to this, not all bodies “fit” all spaces (p. 61). Imprisoned children do not approximate the adult prisoner, but they are forced to be in carceral spaces designed for the adult, and as a result, they are subjected to practices and processes designed for (male) adults. In overcoming this dissonance, carceral spaces may relegate a child’s status as child to the margins and rely on the offender status, which aids the system in recasting a child into a suitable recipient of mechanisms of control (Hollingsworth, 2008). Through recasting, training can be shared among those who work with children and those who work with adults because, ultimately, they are all viewed as “offenders.” Instead of forcing children to fit into adult offender moulds, spaces and practices for imprisoned children should be designed specifically for children, which can then inform specialized training for those working for and with children.

6.6 Conclusion

Each staff participant was asked if they believed it was their facility’s responsibility to teach children about the rights granted to them in the Convention, and all but one stated it was.⁶³ Staff members demonstrated a desire to realize the rights of children, but they have not received

⁶² One manager shared recent updates to “cadet” training to include more information related to the Convention. This update will be discussed in Chapter 8; however, it is important to note that none of this facility staff participants received this updated training.

⁶³ The one dissenting opinion did not take exception to children’s rights awareness in carceral spaces but argued that this education should start earlier in the school system.

the training to actualize full children's rights awareness. This secure custody facility operates as a porous institution, retaining many aspects of totality, including deficits in child rights-related training and utilizing an admissions process modelled after adult operations. During these aspects of imprisonment, children's statuses are set as "offender" to facilitate their transformation into idealized carceral bodies. Regarding other aspects, such as the orientation process, a tension exists between the child qua child status and child qua offender status; elements of children's rights have permeated the porous facility walls, but not to the extent that the child qua child status is fully entrenched (Hollingsworth, 2008; Sutherland & Cressey, 1978). For this facility to become child rights-respecting and move towards a child-friendly environment, systemic barriers must be removed, and the understanding of carceral spaces for children must be reconceptualized. The following chapter delves further into children's rights violations and unfriendly justice practices.

7. CARCERAL SPACES ARE NOT CHILD-FRIENDLY

You can't put lipstick on this place.

- Facility Staff 3

Child-friendly justice and the realization of children's rights are complimentary, as child-friendly justice is "a necessary precondition to fulfilling the rights of a child" (O'Donnell, 2013, p. 508). Despite this presupposed complementarity, since carceral spaces were traditionally conceptualized for the adult prisoner, these spaces often employ practices that are unfriendly to children. In what follows, I examine elements of this carceral space which are not child-friendly and, thus, not rights-respecting. The first section explores the harm and rights violations caused by having adults and children imprisoned within the same facility. Then, the impact of staff as 'makers and breakers' of children's carceral experiences is discussed. Segregation practices are also scrutinized in relation to international law and treaties. Finally, children's rights washing is examined critically as a problematic method used to bolster the appearance of rights adherence and mask rights violations and harmful practices.

7.1 Colocation with Adults

As previously established, the United Nations considers the colocation of imprisoned children with imprisoned adults as a clear violation of children's rights. Yet, the government in this particular province explains that while adults and children are in the same physical facility, it is to be considered two separate institutions as each institution is governed independently. While one facility manager echoed this alleged distinction, some participants voiced conflicting views. Facility Staff 7 spoke about working on both sides of the institutions: "Technically, I'm under the youth, but in that position as a floater, like you're doing both sides where it's a combined institution." Facility Staff 6 spoke about the children's side being "distinct and different" but also

called it a “shared institution.” There were also differing opinions about staff working with both adults and children. Facility Staff 6 considered a separate staff working exclusively with children an “aspirational thing,” whereas Facility Staff 1 “sees a lot of value” in continuing to provide the same training curriculum to all staff to work with both children and adults. However, collocation is particularly concerning for the Office of the Child and Youth Advocate in this province:

I think it’s bad in so many ways.... that’s a clear violation of the YJCA and the UNCRC and it’s a good reason for, you know, taking the very small number of open custody and closed custody youth that we have in [the province] and sending them somewhere else. Somewhere that’s clearly more community-based, more child-centric, more safe and close to home.

Though collocation was discussed by facility and advocacy staff, it is relevant to note that the children did not raise the issue of collocation or speak about the adults during their interviews, but this omission does not make the practice any less problematic. In Canada’s reservation to Article 37(c), it states that it “reserves the right not to detain children separately from adults where this is not appropriate or feasible” (Canadian Bar Association, 2022).⁶⁴ Seemingly, feasibility is being used as the rationale for collocation, with the government blaming resource deficiencies, but the United Nations is definitive in its position that “limited resources are not an excuse to delay implementation” of international treaties (United Nations, n.d.). Relatedly, while Hollingsworth (2008) recognizes that governments may blame limited resources on why they face difficulties in actualizing a child qua child status for imprisoned children, she also

⁶⁴ *Article 37(c)* of the *United Nations Convention on the Rights of the Child* (1989): States Parties shall ensure that: Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

challenges this notion: “that resources might prevent this is support for limiting the numbers of children being given custodial sentences, not support for abandoning a principled and rights-based approach to children cared for by the State” (p. 242). In other words, if the resources are not available to create a rights-respecting and child-friendlier carceral space for children, then children should not be sent to custody; this is an issue of prioritization rather than resources.

When asked about training opportunities for staff who had not been provided child rights-related training, one facility manager responded with: “...there is a general expectation amongst all staff of how youth are to be treated and it is distinctly different than adult populations” but he did not explain how this general expectation was shared with staff and how they ensure such compliance. Evidently, as identified during staff interviews, they had not received training to guide this “distinctively different” practice. Colocation’s conceptual and practical consequences are that adult-like policies and practices permeate all aspects of the institution, making it impossible to transform into a more porous institution that respects children’s rights and engages in child-friendly justice practices. As a Child and Youth Advocate staff member stated, colocation “prevents the kind of specialization of practice that you would like to see in a youth detention facility.” This specialization is central to remedying the lack of adherence to children’s rights, which is essential since “rights without remedies are of symbolic importance, no more” (Freeman, 2007, p. 8). With the colocation of adults, the actualization of the rights of imprisoned children remains symbolic, with rights violations occurring at the pragmatic level. Further, colocation may make it difficult for shared facility staff to navigate two statuses – the offender status applied to adults and the child qua child status that children should maintain. As a result, because carceral spaces are better equipped to accommodate adults’ offender status, the offender status may be indiscriminately applied to all those imprisoned, regardless of age, ultimately

overshadowing children's child qua child status and thus further marginalizing imprisoned children (Hollingsworth, 2008; Hoffman, 2019).

7.2 Staff Relations: Depends on Who's Working

Colocation with adults undoubtedly violates children's rights; however, some practices that are not child-friendly are less obvious, such as children's relationships with facility staff members. Goffman (1961) was keenly aware of the significance of these relationships, observing that asymmetrical power relations between prison guards and prisoners contributed to prisoners' perceptions of powerlessness which he believed to be a distinguishing characteristic of the total institution. Indeed, these asymmetrical power relations are often still present in porous institutions, especially in children's carceral spaces, as children's ages perpetuate a power imbalance with adult correctional staff (Ellis, 2021). While many of the child participants spoke about positive relationships with at least one staff member, five addressed negative experiences or perceived inconsistencies among staff members. Jack felt disliked by staff and recounted being dismissed with phrases such as *"shut up, go away," "go do something,"* and *"shut the fuck up."* Dakota shared a concerning example of negative staff behaviour towards children segregated in their cells: *"I've seen it myself; they'll start punching the walls or stuff like that and the guards will be like, "Come on, hit it harder", or stuff like that. They'll just egg them on. And like, that's not good for a youth at all."* Bailey noticed disparities between staff's punitive techniques; in some instances, he felt he could ask questions about daily routines, whereas other times, he believed children would be punished for exercising their right of participation: *"Depending on who it is, they'll just lock us."* Aurora also noted a disparity between staff: *"some people are just overworked and been here too long."*

Notably, facility staff participants echoed some of the same concerns as the children. One manager reflected on how past practices have influenced staff beliefs about justice-involved children, and how these have been “woven into the culture of the workforce and the system.” Facility Staff 4 was concerned with the lack of consistency among staff:

I think it depends on the staff to be honest. I feel like some staff are there for more of a relationship with the kids as opposed to others who might be a little more punitive. So, it just depends on the approach that the staff’s taking. I think that a big part too, is inconsistency. So, kids need consistency. They need to know what to expect. They need to know that if I do this, this is what’s going to happen. And I feel that’s kind of where, maybe, [the facility] is missing the mark a lot of the time too. Which really essentially rolls down on frontline staff. I feel like we’re working directly with the kids. I feel like there’s a lot of inconsistency with different people’s work styles. I know that that can be a positive thing, but when it comes to all the important things, like the rules when it comes to safety, when it comes to programming, when it comes to everything, I think that there’s certain things that need to be consistent with kids. Cause you can almost set them up to fail when you’re not giving them that.

As demonstrated by the children’s reflections, the types of staff inconsistencies emphasized by Facility Staff 4, are difficult for children to navigate.

This facility is not the first children’s secure facility in Canada to report issues with staff relations. One example is the Roy McMurtry Youth Centre in Ontario, about which the provincial Advocate for Children and Youth released a report entitled *It Depends Who’s Working* (2013), wherein they called staff the “makers or breaker of youth experiences” (p. 7).

While over 75% of the children involved in that review reported having positive relationships with at least one staff member, the inconsistency among staff caused significant adverse effects on children during their imprisonment. Clearly, facility staff are the cornerstone of children's experience and, as such, are those who can best foster child-friendly practices. To this end, the Council of Europe's *Guidelines on Child-Friendly Justice* places kindness as an ideal for child-friendliness: "A child-friendly justice system brings relief and redress; it does not inflict additional pain and hardship and it does not violate children's rights" (2010, p. 8). Furthermore, because imprisoned children's vulnerabilities are intensified due to their justice involvement, additional care must be taken to ensure they are afforded dignity and respect (Smithson & Jones, 2021; United Nations Committee on the Rights of the Child, 2007). Entrenching an ethic of kindness and respect requires a move away from total institutional power dynamics. These asymmetrical power relations were not at the fore when I embarked on this research, as I had conceptualized child-friendly justice in terms of processes and practices; however, my understanding was challenged by one of the last children I met with, Dakota, who, when asked what he thought child-friendly justice meant, answered: "*Maybe have people here [at the facility] that they actually care about the kids and... are wishing for them to have a good life I guess.*" A space can only be child-friendly when it upholds all of the elements of the Convention and ensures that not only are the practices child-friendly but, perhaps more importantly, so too are the people.

7.3 Segregation

In planning for this research, there was no intention to ask participants about segregation, getting locked or COVID-19 isolation; however, these issues were raised consistently by children and adults alike. Segregation is the most harmful remnant of total institution coercive

control tactics.⁶⁵ Rather than the term segregation, the United Nations prefers “solitary confinement” and defines it as “the confinement of prisoners for 22 hours or more a day without meaningful human contact” (United Nations, 2016, Rule 44).⁶⁶ From the children’s interviews, it became evident that different forms of confinement were an accepted and expected part of their imprisonment as seven of the eight children spoke about some form of confinement. The most common mention was “getting locked,” discussed in the previous chapter, which the children explained was when they were locked in their cell on their unit at the staff’s discretion for various reasons. At times, children seemed to indicate that getting locked felt like a disproportionate response to their actions: “*Sometimes you get locked for dumb things*” (Johnny). Similarly, Cole explained: “*Like you can get locked over there for saying stupid stuff to the guards and stuff like that.*” When asked to explain the experience of getting locked, he further clarified:

...they can, like, secure you in your cell for 24 or 48 hours, depending on what ya did. But if it’s a fight, it’s usually 4 to 5 days or whatever...you stay on the unit. Unless you’re, like, popping your sprinkler or something, then they’ll like put you in segregation or whatever, seg.

This understanding was consistent among the children; getting locked was normalized, and they casually spoke about being locked for long periods. Bailey added a rights element when speaking about getting locked: “*Like, we uh, if you’re locked here, they gotta give you an hour out because they’re not allowed to keep you in your cell or in any cell longer than 23 hours a day. So, if they*

⁶⁵ Strip searches are also very harmful, particularly for imprisoned children who tend to have higher rates of child sexual harm (Cesaroni & Pelvin, 2013). This facility has purchased a body scanner (similar to those in airports) to move away from the harmful practice of strip searching.

⁶⁶ Penal Reform International stipulates that meaningful human contact “needs to provide the stimuli necessary for human well-being, which implies an empathetic exchange and sustained, social interaction...direct rather than mediated, continuous rather than abrupt, and must involve genuine dialogue. It could be provided by prison or external staff, individual prisoners, family, friends or others – or by a combination of these” (2016, p. 89).

violate that they are violating your right to, well, as a human, I guess.” Comparatively, Facility Staff 7 spoke about the use of the segregation unit and explained that the facility rarely sends a child to the segregation unit: “...it’s probably over a year since the last time we ever had a youth in segregation.” This decrease is a marked improvement from past practices, which this staff contributed to a decrease in imprisonment rates and a change in philosophy:

... I would definitely say that the numbers have also made a huge difference in the amount of seg usage there because I think if we had higher numbers, the numbers for seg would be higher, but they would be significantly lower than it was in the past and there would be shorter time periods, and it would be shorter. It would just be until you stabilize, and you’d be back. That’s how that’s changed. I mean, we used to have kids down there for months.

The facility’s Segregation policy defines segregation as “removing a young person from their regular unit to a secure cell in an area designated by the Superintendent. Segregation is to be used when more serious circumstances are presented.” What the children call “getting locked” is referred to in the policy as “room confinement” and is described as “a young person maybe [*sic*] required to remain in their room as part of a corrective intervention. Room confinement is less restrictive than segregation and shall normally apply to minor incidents.” However, the guide never explains why “room confinement” is considered less restrictive than segregation. Aside from the description, there appear to be no additional policy elements that govern “room confinement,” and it is not listed as a “discipline” measure in the *Youth Guide*. For segregation, it is mandated that children “will receive a minimum of one hour recreation which may include, shower, fresh air, gym time daily (if operationally feasible), provided the weather is acceptable and staff are available in an assigned area.” Absent from this policy is any mention of

meaningful human contact. Segregation is also listed in the *Youth Guide* as a discipline measure when children are “found guilty of a misconduct” (p. 28).⁶⁷

The segregation and “room confinement” practices at this facility are problematic for several reasons. First, it is disconcerting that according to policy, federal adult prisoners seemingly have less coercive segregation practices than imprisoned children. Correctional Service Canada (CSC) has claimed to have ended traditional segregation practices and has created Structured Intervention Units which mandate that prisoners must have the opportunity to be out of their cell for a minimum of four hours a day and that two of these hours must include meaningful human contact (Correctional Service Canada, 2019). The Structured Intervention Unit Advisory Panel has noted issues with these new practices,⁶⁸ nonetheless, it is incomprehensible that federal adults have more policy protections and independent oversight of their segregation experiences than imprisoned children (Sapers, 2022).

The above point is not raised to suggest that this facility should adopt CSC policies; it is simply illustrative of the status of imprisoned children. The United Nations has considered the solitary isolation of children as cruel and unusual since at least 1990, with the *Rules for the*

⁶⁷ COVID-19 isolation was identified as an additional form of solitary confinement by many child participants. Children reported being placed in a COVID quarantine unit for the first 4-6 days of their imprisonment during the height of the pandemic, where they were locked in cells for approximately 23 hours a day. COVID isolation fell outside the scope of this study, but it is an issue that has been identified by prisoners, of all ages, across Canada. The Alliance for Child Protection in Humanitarian Action released a technical report, *COVID-19 and Children Deprived of their Liberty*, wherein they cited that solitary confinement is forbidden under international law, “including for health reasons; health-related isolation should not be used *de facto* as solitary confinement or as a punishment” (2020, p. 8). Fittingly, Dakota said his time in COVID isolation was “*like torture*”.

⁶⁸ Given the knowledge that it causes irreparable harm, the practice of placing human beings, of any age, in solitary confinement must be contested. CSC’s Structured Intervention Units (SIUs) are not cited here as a model that this province should adopt as their segregation practice. Indeed, the policies created for SIUs have not been borne out in practice. The Implementation Advisory Panel observed that “the same population of prisoners who were chronically placed in administrative segregation is now being serially transferred to SIUs, and once transferred, are the most likely to remain in an SIU” (Sapers, 2022, p. 95). Despite the stated policy, prisoners are not receiving their mandated meaningful human contact. SIUs have also perpetuated the targeted confinement of Indigenous prisoners and those with mental health concerns. While the current CSC policy seemingly provides more protections to adult prisoners, the Implementation Advisory Panel has called for “significant changes in correctional policy and practices” (2022, p. 97).

Protection of Juveniles Deprived of their Liberty: “All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned” (para. 67). The United Nations clearly mandated that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment” in Article 37(a). Any ambiguity about what this might entail was clarified in 2007 with the Committee’s *General Comment No. 10: Children’s Rights in Juvenile Justice* when it stated that “disciplinary measures in violation of Article 37 of CRC must be strictly forbidden, including...closed or solitary confinement” (para. 89). They reiterated this same point in *General Comment No. 24 (2019): On Children’s Rights in the Child Justice System*. The *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (2016) prohibit “the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice” (2016, Rule 45.2). In 2011, the United Nations Special Rapporteur on Torture, Juan Méndez, deemed the use of solitary confinement for juveniles as torture since it violates Article 7 of *The International Covenant on Civil and Political Rights* (1966) and Article 16 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984, para. 77).

The non-exhaustive list above demonstrates the severity of the rights violations that occurs when children are placed in segregation or segregation-like environments, and this does not include the breadth of academic and grey literature which demonstrates the incredibly damaging effects that solitary confinement has on all prisoners, but especially child prisoners.⁶⁹

⁶⁹ For instance, see Clark, 2017; Haney, 2018; Birkhead, 2015; American Civil Liberties Union, 2014.

These effects are magnified for children who experience mental health and cognitive difficulties and psychiatric disorders, and research has demonstrated that justice-involved children have high rates of these difficulties (Chitsabesan et al., 2006; Teplin et al., 2002; Peterson-Badali et al., 2015; Gretton & Clift, 2011).

Returning to staff perceptions of rights, one facility manager was asked how human rights inform the work at the facility, to which he responded: “When you say that I think of other countries other than Canada. We take them for granted. It’s not something we think to talk about because the perception is that we are doing the right things.” Indeed, the perception is that Canada is a rights-respecting nation, especially concerning children; however, children’s rights violations occur systemically and systematically in this country (Pearson & Collins, 2009; Collins & Gervais, 2016; Standing Senate Committee on Human Rights, 2007; Canadian Coalition for the Rights of the Child, 2012), especially behind the walls of porous institutions where transgressions can be veiled through practices such as children’s rights washing.

7.4 Children’s Rights Washing in a Porous Institution

Washing is a technique employed by organizations or nations to obscure harmful practices through performative activism that entails “instances of shallow or self-serving support for social justice causes” (Thimsen, 2022, p. 83). Examples of washing include women’s rights washing where “women’s rights discourses [are] used to improve the negative image of a country, regime or government and to consolidate bilateral relations” (Le Renard, 2018, p. 226), rainbow washing which involves the performative use of the pride flag in company branding without the commitment to uphold 2SLGBTQIA+ rights (Rice, 2022), and greenwashing which entails “misleading consumers about...environmental performance or the environmental benefits of a product or service” (Delmas & Burano, 2011, p. 64). In the case of prisons, greenwashing

has been utilized to “manufacture consent for the increased warehousing of fellow human beings” (Piché et al., 2017, p. 41). Inspired by these concepts, I have proposed the term ‘children’s rights washing’ to describe the practice of claiming to uphold children’s rights through rights-related or child-friendly language while engaging in practices which harm children.⁷⁰ Within children’s carceral spaces, children’s rights washing can also be used to hide or cover aspects of totality to make the practices appear less coercive.

A well-known Canadian instance of children’s rights washing occurred in the case of Ashley Smith, a young woman who died while in the federal correctional system at the age of 19.⁷¹ Prior to federal imprisonment, Ashley was imprisoned in provincial correctional facilities, including almost three years at a children’s secure custody facility where, in a posthuman inquiry, the provincial Advocate noted the extended time Ashley spent in “Therapeutic Quiet,” a term the facility utilized for segregation (Ombudsman and Child and Youth Advocate, 2008). Therapeutic Quiet is an example of children’s rights washing; this innocuous term lends the impression that children are being placed in a peaceful environment, but in reality, she was placed in solitary confinement which was in violation of international treaties. Goffman (1961) observed similar practices in total institutions for men where solitary confinement was called “constructive meditation,” and staff were tasked with using “language that reflects the legitimized objectives of the institution” to mask the realities of punishment (p. 85).

Similarly, instances of children’s rights washing were noted throughout this research. Managers often referred to the secure custody facility as a “program” or “service,” which

⁷⁰ Based on an extensive search that I conducted to determine if previous advocates or scholars have used the term ‘children’s rights washing’ to explain similar practices, I am confident that that my use of the term is novel; however, I do acknowledge that my search was limited to online resources that were available in English.

⁷¹ In 2013, an Ontario Coroner’s Inquest determined that the cause of death for Ashley Smith was homicide (Office of the Chief Coroner, 2013).

deflects attention away from the reality of children's carceral experiences; these terms do not encompass the restraints that children were forced to wear, the dehumanizing strip searches that they endured, or the time they were locked in cells. Staff also referred to children's cells as "rooms." When I inquired about this term, one facility staff member explained: "for the optics, we call them rooms." "Rooms" are no different from cells; they have the same design, and the cell doors still lock. Interestingly, despite staff use of the term "room," only two child participants used this term, while five children used the term cell. While this name change may seem minor, it has serious repercussions. When cells are recast as rooms, the practice of "room confinement" seems akin to a child being sent to their bedroom by a concerned parent; however, in reality, "room confinement" in this carceral space often meets the United Nations definition of solitary confinement, a rights-violation considered torture for children (Méndez, 2011).

There was also a recent change to how staff referred to the facility, as many called it a "campus." Non-managerial staff could not explain the rationale for the name change but indicated that they had been informed by management that it would be the informal name of the facility moving forward. One manager explained:

...the idea around that is to take away some of the flavour that a centre or an institution or a facility is more a place of housing someone under their secure custody order, and reframe it a little bit, an optic, so to speak, to let people know, you know that a campus is a more soft title that... has a more dynamic role. Campuses often have different options, programs, services, libraries, and, you know, opportunities for physical activity and different settings or milieus that can exist within a certain area. We have different programs, open custody and secure custody are the two predominant ones. And so, changing the title, though in and of itself has little effect on how it impacts on the youth,

it's something that's greater for change management of the workforce and the optics for the province on what we intend to do and why we intend to soften the approach that we take around incarceration of youth in the province.

The explanation provided by this manager offers important insight into the discussion of children's rights washing. He acknowledges that the name change will not necessitate positive experiences for children; however, he has championed the name change with the intention of changing perceptions and philosophies. On the one hand, it is vital for those working for and with children to use children's rights language to facilitate child-friendly justice, but on the other hand, children's rights washing occurs when children's rights language does not equate to rights-informed practices or as one advocacy participant referred to it, "doublespeak." Despite positive intentions, campus-like carceral spaces have historically been proven ineffective and perpetuate harm to prisoners.⁷² Calling this facility a campus, while children are imprisoned with adults and placed in solitary confinement, however well-intentioned, obscures the coercive control tactics traditionally seen in total institutions and serious human rights violations.

7.5 Conclusion

In this chapter, I have demonstrated that this carceral space is not child-friendly due to various children's rights violations. As a porous institution, the effects of totality are omnipresent in the experiences of certain negative staff relations with children and the extremely harmful

⁷² For instance, when the Ottawa-Carleton Detention Centre (OCDC) opened in 1972, a local news article stated: "Officials at the new [OCDC] are hoping their \$4-million jail with its country-club setting, colour coordinated dormitories, lounges and library will be the kind of place prisoners won't mind calling home" (Brandon Sun, 1972 as cited in Doyle et al., 2021). However, OCDC did not live up to these ideals, as Doyle, Piché, and Sutton (2021) found that prisoners recounted being "treated like dogs" without proper medical and mental health care or appropriate programming (p. 162). Further, it has been found that OCDC does not meet United Nations standards for prisoners. As a result, several avoidable tragedies have occurred within the walls of the campus-like OCDC prison.

segregation practices. Totality is further reinforced by continuing the colocation with adult prisoners, which has caused the offender status to overshadow children's child qua child status. Staff participants demonstrate a desire to be rights-informed and rights-respecting by utilizing rights language, but without changing policies and practices, these efforts amount to children's rights washing. The following chapter examines practices which are rights-informed and rights-respecting to explore the potentiality of creating a child-friendlier carceral space.

8. POTENTIALITY TO BE CHILD-FRIENDLY AND RIGHTS-INFORMED

Not that any kid really deserves to be in jail...

- Bailey

The previous chapters identified areas of concern related to children's rights and child-friendly justice in a carceral space for children. This chapter, instead, presents themes related to potentiality; aspects of the facility where children's rights are beginning to inform conversations or where child-friendly practices are being considered. Though "hope is a concept not usually associated with academic criminology" (Fishwick et al., 2017, p. 9), hopefulness must not be excluded in spaces for children where adults who work with and for them have expressed a desire to do better or else we preclude a future fit for children (Loader & Sparkes, 2022; UNICEF, 2002).

Carceral spaces for children are most often modelled after adult facilities and, as such, retain aspects of total institutions and thus, tend to view the imprisoned as "offenders" rather than children (Goffman, 1961; Hollingsworth, 2008). Moving away from totality towards porosity so that children's status as child qua child is the only consideration will undeniably take a concerted effort. Part of this effort will necessarily involve reconceptualizing safety and security; perhaps seeing imprisoned children as children rather than offenders may, in fact, create safer spaces. In this light, this chapter highlights aspects of this facility where there is a potentiality to be child rights-informed and child-friendly. The chapter begins by presenting the facility administration's openness to change before moving to positive staff relationships identified by imprisoned children. Next, the integration of the Office of the Child and Youth Advocate is discussed, as well as the role that Child Rights Impact Assessments can play in ensuring rights adherence. Child-friendly understandings and practices are then explored before

the chapter closes with ideas generated by children about how best to teach imprisoned children their rights.

8.1 Openness to Change

One aspect of modern prisons which contributes to the understanding of them as total institutions is the tendency for prison officials to focus primarily on security above all else: “once administrators achieve minimal compliance with constitutional requirements, they are chiefly concerned with maintaining secure custody of inmates” (McShane & Williams, 1989, p. 572). This focus can cause a hardening of the boundary between inside and outside institutional walls and foster an ‘us versus them’ mentality where carceral administrators “operate...in semisecrecy to protect themselves and their organizations” (Cohn, 1973, p. 331) or become defensive when challenged by advocates in the community (Stojkovic, 1990; Farrington, 1992). Fortunately, the secure custody facility where this research took place did not demonstrate this marker of totality and, instead, exhibited the porous institution tendency to allow outside examination of facility practices (Ellis, 2021). In fact, my research appeared to be welcomed by the facility administration and no perceivable barriers were put in place that hindered the research process.

The openness I experienced at this facility may be explained by the department’s expressed goal to modernize youth justice in the province. The first step in this modernization was transitioning the responsibility of the secure custody facility from the correctional branch to a more community and youth-focused governmental branch. This new administration has begun to discuss children’s rights and create friendlier practices for imprisoned children, demonstrated

by a recent addition of children’s rights to the training curriculum.⁷³ The branch has also identified four fundamental principles to be used to guide decision-making moving forward, which includes “child-rights respecting,” explained by Facility Staff 6 as “relatively new and... something that we need to establish a training curriculum that’s a standard for our workforce and not just in the secure custody facilities, but across...our continuum of care, so in our community-based settings as well.” These principles appear to be a positive step, but care will have to be taken to ensure that the principles translate into actual changes in practice so that they do not further contribute to children’s rights washing. In response to the new direction of youth justice in the province, the advocacy participants were enthused by the potential for change, the increased awareness of children’s rights and the willingness to engage in conversations related to international rights instruments and child-friendly justice practices. Though there is still much work to be done for this carceral space to align with children’s rights, there is hope in the potentiality. As a starting point, the following sections discuss promising practices upon which child-friendly justice can be further developed.

8.1.1 Positive Staff Interactions⁷⁴

Though the previous chapter addressed disparities among staff and problematic treatment of imprisoned children, it must also be noted that some children spoke about positive interactions with facility staff. Cole shared that he could speak with staff about “*whatever.*” Similarly, Johnny said: “*Like, most of the guards here are pretty good. They don’t mind anything; they tell*

⁷³ The facility shared the new materials related to children’s rights which have been added to the training curriculum, which, admittedly, are lacking as they consist of just three PowerPoint slides. However, it is promising that children’s rights and the Convention are included, and facility management has expressed a desire to provide a more fulsome training unit for those working for and with children. The facility also removed the Physical Abilities Requirement Evaluation (PARE) hiring requirement, which signals a progressive move away from control tactics.

⁷⁴ The notion that any aspect of imprisonment may be positive is contested by Medicott (2001) who argues that the “caring prison” is, in essence, an oxymoron” (p. 219); however, as this study explores opportunities to improve rights experiences for imprisoned children, considering alternative practices is essential.

you what's up, and that's about it. You know what I mean? It's pretty easygoing in youth jail I find." Pierre felt he could rely on some facility staff: *"If we are having, like, a bad day or sad or need someone to talk to, you can always go to them. Or we can go to [the deputy superintendent] or [the case manager] to talk about personal stuff."* Most of the children also shared how vital the facility's social workers were to them as resources for information and people they felt they could speak with during difficult times.

Just as negative staff relations can be the "breakers" of children's experience in carceral spaces, conversely, positive staff relations can be the "makers" of their experience (Office for the Provincial Advocate for Children and Youth, 2013, p. 7). Facility staff, such as Facility Staff 4, who shared how she attempts to make the space as safe as possible by playing games with the children in order to build rapport, can be leaders in modelling positive relationship custody. Recalling Dakota's wish to have staff in place who care about the wellbeing and futures of children, staff who work directly with and for these children are best positioned to 'make' this carceral space more child-friendly.

8.1.2 Office of the Child and Youth Advocate

Turning from facility staff to advocacy staff, perhaps the most promising finding during this research was the extent to which children were aware of the Office of the Child and Youth Advocate and the integral function that the Office plays at the facility. Many children recounted being informed about their ability to call the Advocate's Office upon admission or shortly after entering custody, and most were informed that they could contact the Advocate's Office via a free phone on their unit. Only one child participant, Dakota, believed he had never received information about the Advocate from the facility but was vaguely aware of it because of learning about it from his mother. Two of the children recalled seeing information, such as the

Advocate's phone number, posted on the walls of their unit, and Brayden had the phone number in his cell. The level of engagement with advocacy staff varied for the children. Some had called to lodge complaints, including Jack, who had concerns about the food provided by the facility. Aurora had years of experience interacting with advocacy staff and knew them well due to having spent much of her childhood in care. Johnny had never met or called the Office, and when asked why, he explained that he was too "laid-back" to have issues but that he felt he could contact them if needed and never felt that the facility restricted contact. Pierre recounted a story of a peer experiencing difficulty in having the facility acknowledge his Indigenous identity and called the Advocate's Office to rectify the issue. Bailey was particularly grateful for the work of the advocacy staff as he credited them for advocating for him to receive a youth sentence:

Bailey: Um, yeah, they [the Crown] were trying to charge me as adult...and they [advocacy staff] were fighting for my right because I was a youth when I did the crime. So, they were fighting for my right [to] keep me in the youth jail.

Sarah: Were you pleased with them?

Bailey: Yeah. I don't know if [I] would have been here if they didn't make a big racket about it.

While it was promising that these children were aware of the Office of the Child and Youth Advocate and many had interacted with the Office while imprisoned, it was concerning that most of them could not explain the role of the Advocate. Some children could not provide an answer when asked to explain the role, while others had a partial understanding:

I would imagine...they look after children, I guess (Dakota).

...Don't they help you with like problems on the outside and inside, I think? (Cole).⁷⁵

⁷⁵ Outside and inside, or the related "outs" are commonly used by imprisoned children at this facility to demarcate imprisonment ("inside") and being in the community ("outside" or "outs").

Say if something is wrong that we don't agree with, we have a right to call them (Pierre).

Johnny could not explain the role of the Advocate, but after I explained that one of the main goals is to ensure children's rights are respected, he added, *"And being heard."* Aurora seemed to have the greatest understanding as she recognized that *"the Child and Youth Advocate is for the rights of a youth that are not being met."* Clearly, many of these children view the Child and Youth Advocate's role similar to how it is described in the facility's orientation booklet, *Youth Guide*, which paints the Office as a complaint resolution mechanism. This finding highlights the importance of a well-informed *Youth Guide*.

Relatedly, Bailey discussed why he had not engaged the Advocate in the past, *"I know I usually never called the Advocate because I don't want to seem like I'm rattin' out anyone, but it's not. I don't see it as rattin' anyone; it's just trying to get your rights."* Bailey's comment raises an essential consideration about how the Office of the Child and Youth Advocate and children's rights more broadly should be framed to imprisoned children; rights education must stress that children, when contacting the Advocate, are claiming the rights which have been guaranteed to them. This framing is significant for children who have been accused of criminalized acts and who may feel as though their alleged actions have caused them to forfeit their rights, which an advocacy staff participant acknowledged:

...the young people, sometimes they say "yeah, you know, I did what I did, that's why I'm here, I deserve to be here." And then, therefore, they take everything, you know, as part of that punishment. Plus, they have no idea what their rights are.

Troublingly, Johnny alluded to this belief when asked if he received adequate information during the admissions process to prepare him to enter the facility, to which he responded: *"Yeah... I didn't really care. I knew what I did was wrong, so..."* These beliefs illustrate how

justice-involvement can add to the vulnerability of children and the importance of ensuring they are informed of their rights and the allies available to help them navigate these rights (Moore & Miller, 1999).

Much like the children, facility staff participants were very familiar with the Advocate and with the fact that children should have unfettered access to contacting the Office. The facility has also made strides over the past decade in integrating the Office. Facility Staff 1 shared that they allocated office space with signage for advocacy staff to meet with children privately and that they had tried to grant advocacy staff access to the facility's client information system that stores all information related to those in custody.⁷⁶ The facility also invites advocacy staff to participate in monthly review meetings concerning all imprisoned children. When staff were asked about their perception of children's awareness of the Advocate and the services that could be provided, the responses were mixed as some felt that the children had a clear understanding, while others believed more awareness-raising was needed. As one manager explained: "...my observation is we go through a process of telling people things...going through a checkbox process of saying, here's what's available, here's the opportunities for you." But he believed they could move beyond the checkbox and include the Advocate in more matters, such as informing the Office when a child has challenged an "internal consequence." Continuing to cement the relationship with the Advocate's Office will increase children's rights awareness at the facility, and they can provide valuable direction regarding children's rights adherence through the expanded use of Child Rights Impact Assessments.

⁷⁶ Ultimately, the facility was unable to grant access to the client information system due to privacy concerns.

8.1.3 Child Rights Impact Assessments

One measure to ensure that children's rights become the central concern in all decisions directly or indirectly affecting imprisoned children is to mandate the use of Child Rights Impact Assessments (CRIAs) at the legislative level and in all policy development and day-to-day decision-making. This mandate would also serve two additional functions; first, because CRIAs employ a children's rights lens, their use would necessitate that children's status as child qua child is the only status experienced by children in carceral spaces, effectively eliminating the offender status because the needs of the child, rather than the facility, become paramount (Hollingsworth, 2008). Second, CRIAs can help to challenge coercive control practices traditionally used in total institutions, such as the use of segregation. CRIAs may also bolster institutional porousness by introducing outside influences, such as children's rights discourses, inside the institution's walls (Ellis, 2021).

The province where this research occurred requires the use of *ex-ante* Child Rights Impact Assessments (CRIAs) at the legislative level but not for lower-level decisions, nor does it require *ex-post facto* CRIAs.⁷⁷ Due to the high-level nature of this province's CRIA policy, no facility staff who work directly with children were familiar with the assessment, but higher-level managers were aware of the CRIA tool, and, of course, advocacy staff were very familiar with their use and potential. Advocacy Staff 1 spoke about the success that Scotland has experienced with their CRIA practices, where CRIAs are used not just at the parliamentary level but also with ministerial policies, directives and departmental decisions. The Scottish landscape is quite different in that they have an entire Ministry dedicated to children and young people, but Advocacy Staff 1 felt there was much to be garnered from Scotland's adherence to children's

⁷⁷ *Ex-ante* CRIAs examine potential impacts on proposed policy, and *ex-post facto* CRIAs assess the actual, intended or unintended impacts of introduced policy (New Brunswick Child & Youth Advocate, 2015).

rights, noting: "...if the CRIA is not done well or the CRIA doesn't entail participation by children, ministers are sent back to the drawing board." Advocacy Staff 2 believes that CRIAs should be used "in the practical sense on the ground in decision-making" through a simplified CRIA tool embedded in practitioner practice standards that those working for and with children can use in day-to-day operations. Facility managers were open to considering greater integration of CRIAs in practice and policy, as demonstrated by a manager who confirmed that CRIAs are not widely used but stated that if they wanted to adhere to the principle of rights-respecting: "policies, protocols and procedures would have gone through a CRIA and to ensure that it is something that is adhering to a child's rights principle...I do see it as a benefit." To maximize the effectiveness of CRIAs, children must be active participants in the assessment process.

8.1.4 Children's Meaningful Participation: The Right to be Heard

The meaningful participation of children during CRIA processes and in all matters which affect them is central to the realization of the right to be heard granted to them in Article 12 of the Convention. Inclusion is of particular concern for imprisoned children, who are often marginalized and excluded from conversations related to their best interests (Hoffman, 2019). Furthermore, meaningful participation must go beyond harmful tokenistic and consultative practices which can contribute to rights inflation (Hill et al., 2004; Cantwell, 2017; Perry-Hazen, 2016). As such, Alderson (2012) argues that the default assumption must be that children always be included in decision-making, with few permitted exceptions.

The children imprisoned at this facility had differing experiences of being able to participate in matters concerning them. Bailey demonstrated the complexity of meaningful participation as, on the one hand, he did not feel the general opinion of imprisoned children mattered at the facility, saying: "*I don't think any of us are actually put into consideration.*"

However, on the other hand, due to the serious nature of his sentence, he felt as though he was invited to meaningfully participate in conversations related to his case plan: “...*they listen to me because it’s just about, it’s just involves me, it’s not involving anyone else in the jail.*” Responses from other children were also mixed. Johnny did not feel he could share his opinions in secure custody: “*You don’t really get a say over there. You just kind of do your time.*” Johnny’s experience was quite different from Pierre who felt he could participate in conversations related to institutional activities: “*If something goes on, on the unit and one doesn’t agree, we can ask and talk about it.*” Evidently, there is a lack of consistency in children’s participation experiences so efforts are needed to guarantee that all children feel as though they can participate as freely as Pierre.

Returning to Advocacy Staff 1’s reflection on Scotland’s requirement of child participation in their CRIAs, facility managers were asked if they could envision inviting children to participate in their CRIA processes. The facility is currently undergoing a policy review process and had considered the inclusion of imprisoned children; however, one manager reported experiencing pushback on the idea of children’s inclusion because “... it’s that dynamic of a client-serving youth program, but it’s also a jail.” The implication being that involving children would compromise safety and security, which highlights the extent to which the offender status of children is still embedded within staff culture (Hollingsworth, 2008). However, he was hopeful they would be able to “break down” these barriers. Further, including children enthused another manager: “...you know, what a great way to be able to say that we’ve made policy changes and not only have we involved inside and outside stakeholders...but we’ve actually ran it by youth and got a blessing from that angle.” Though CRIAs would not be a mechanism for children to bestow a blessing as the focus is rights adherence, this manager’s

perspective is promising. He further added: “That puts a whole new lens on, not only child rights, but you know, youth engagement and lots of other things. Yeah...I can see us doing that with this policy group as well.”

While the concerning examples provided by children about their inability to be heard should not be overlooked, the perspectives offered by these new facility managers illustrated a willingness to explore greater participation of the children in their facility moving forward. A logical entry point into developing strategies for meaningful engagement and participation may be to include children in CRIAs processes at the facility level.⁷⁸ Inviting children to participate is undoubtedly one aspect of creating a child-friendly justice space.

8.2 Child-Friendly Justice in a Carceral Space

The Council of Europe’s *Guidelines on Child-Friendly Justice* (2010) offer the most comprehensive guidance for governments committed to developing a child-friendly justice system (Rap, 2016). However, guidance specifically related to children deprived of their liberty is limited as the Council points to the many standards on the rights of children deprived of liberty already available for governments to utilize (Council of Europe, 2010, p. 67). While other standards do exist, such as the United Nations Committee on the Rights of the Child *General Comment No. 24 (2019): On Children’s Rights in the Child Justice System*, this province will have the critical work of translating the child-friendly justice standards into institutional policies, procedures and practices:

So, there’s a lot of work and the EU Guidelines on Child-friendly Justice are very detailed, but...how do we adopt them and make them our own in [this province] and

⁷⁸ Recalling limitations noted in the Welsh CRIA process, Hoffman (2015) cited a lack of children’s rights knowledge among policymakers and, as notably, the lack of child and youth participation.

Canada. I think they're completely consistent with the YCJA, so there's no legal reason not to be doing this. There's every legal reason why we should be doing this. But it does require retooling a significant culture shift. (Advocacy Staff 1)

To this end, the next section explores how the adult and child participants understand child-friendly justice in relation to this secure custody facility.

8.2.1 Child-Friendly Understandings

Before asking participants to explore the practical application of child-friendly justice principles to facility operations, I wanted to understand how they interpreted the term “child-friendly justice.” Aside from the advocacy staff, the interviews made it apparent that many participants had not previously heard the term and had some difficulty defining it. Some children provided literal responses such as “*being nice to another youth*” (Jack). Others provided more thoughtful responses such as “*That means...I would have a chance to play a part in something or do something*” (Brayden) or “*...like the guards are friendly. The place is youth-friendly. The youth are safe. Nothing should happen that shouldn't. Nothing to worry about*” (Pierre).

Comparatively, facility staff spoke about preparing children for success upon release, treating children with dignity and respect, and ensuring that carceral spaces are trauma-informed. Facility Staff 4 highlighted the importance of advocacy: “advocating for them and making sure their voices are heard and making sure that they are being treated fairly.” Interestingly, Facility Staff 3's response: “We have to remind people that they are kids,” aligns with Hollingsworth's (2008) argument that carceral spaces have difficulty recognizing that imprisoned children are children rather than offenders.

Moving from conceptualizations of child-friendly justice, participants had more insights related to the facility's environment and processes, many of which aligned with rights granted to

children in the Convention. Jack felt that a child-friendly facility should inform children of their rights immediately upon admission (United Nations, 1989, Article 42).⁷⁹ Johnny expressed a desire for more exercise in daily routines (United Nations, 1989, Article 31.1).⁸⁰ Brayden offered an interesting idea, asking for more “interaction”:

Sarah: What does interaction mean to you?

Brayden: *Interaction means playing a part in society. So, something that they could do here is...bringing some cultural advice to the children.*” (United Nations, 1989, Article 31.2)⁸¹

Similar to Johnny, Facility Staff 7 spoke about ensuring children were provided with exercise but also various activities and access to school (United Nations, 1989, Article 28) and a daily routine “that would be similar to what they’d be doing if they weren’t here.”⁸² Multiple facility staff spoke about ensuring documentation, whether facility documentation or documents sent to imprisoned children related to their judicial proceedings are age-appropriate, which relates to Article 40 of the Convention.⁸³ Positive examples of facility processes and practices that more closely aligned with child-friendly justice principles were also identified. For instance, Facility

⁷⁹ **Article 42** of the *United Nations Convention on the Rights of the Child* (1989): States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

⁸⁰ **Article 31.1** of the *United Nations Convention on the Rights of the Child* (1989): States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

⁸¹ **Article 31.2** of the *United Nations Convention on the Rights of the Child* (1989): States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

⁸² **Article 28** of the *United Nations Convention on the Rights of the Child* (1989): States Parties recognize the right of the child to education.

⁸³ **Article 40** of the *United Nations Convention on the Rights of the Child* (1989) states that justice-involved children must be “treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age.” One important example related to age-inappropriate documentation identified by staff was the legal aid forms that children must complete when applying for legal aid services. Staff noted the complexity of the document and that they were developed for adults rather than children.

Staff 5 spoke about the influence of the Child and Youth Advocate in changing restraints requirements while transporting children. Whereas in the past, all children were placed in restraints during transport, now each child is assessed based on risk level, and the Superintendent determines if restraints are reasonably required. Another example that children and adults shared was the use of YCJA Section 19 case conferences, which all cited as an example of successful child-friendly justice practices.⁸⁴

Finally, many adult participants provided ideas about improving the carceral environment, though no child offered such suggestions. The facility employs many paramilitary practices often present in total institutions, such as referring to staff trainees as “cadets,” facility supervisors titled Sergeant Majors and Corporals, and paramilitary-type uniforms that do not align with the principles of child-friendly justice. Acknowledging these elements, Facility Staff 6 expressed a desire to “remov[e] the paramilitary approach” over the next couple of years in order “to improve on being more friendly and on creating an environment that is going to allow for youth to heal and rehabilitate.”⁸⁵ Regarding child-friendliness based on children’s rights,

⁸⁴ According to the YCJA, the mandate of Section 19 case conferences “may be, among other things, to give advice on appropriate extrajudicial measures, conditions for judicial interim release, sentences, including the review of sentences, and reintegration plans” (2002, s. 19(2)). These conferences have been applauded for the inclusion of children in these discussions. Though it is commendable that these conferences help facilitate the implementation of children’s Article 12 right to be heard, Facility Staff 5 felt that case conferences could be improved by employing a trauma-informed lens. Case conferences begin by relaying a child’s history, which sometimes includes extensive trauma histories, such as instances of sexual abuse. In her experience, this facility staff has witnessed how challenging this aspect of the conference can be for the child. She recalled one particular case conference where participants were asked to review the history prior to the conference rather than review it aloud, which she felt made the experience more child-friendly. This suggestion may be a way to make a child-friendly justice practice even friendlier.

⁸⁵ Many scholars are critical of contentions similar to the one posited by Facility Staff 6 as they argue that because carceral spaces cause harm, there is no potential for healing. Notably, Goldson and Kilkelly (2013) questioned the integrity of human rights discourses that allow for the betterment of children’s carceral spaces, and Christie (1982) believed these spaces need to be eliminated rather than improved. I acknowledge that carceral spaces for children demonstrate little potential for healing but highlight this Facility Staff’s perspective as the move away from a paramilitary approach and reorienting the focus of secure custody would be an impactful change.

Advocacy Staff 2 proposed the concept of “child rights-by-design.”⁸⁶ This concept applies to all aspects of the justice process, but concerning the physical environment, this participant addressed aspects such as the design of rooms and the colour of wall paint to create more comfortable spaces for children. Similarly, Advocacy Staff 1 was critical of the “command-and-control structure” of the facility, specifically the control area (through which visitors enter), which is glassed in and intimidating, and which he contrasted to a children’s secure custody facility in another province where the control area felt welcoming, much like a community centre. Turning to the children’s secure units, he suggested that they could be improved by more closely resembling the open custody unit, and he was not the only participant to express that open custody more closely aligned with child-friendly ideals.

8.2.2 Learning from Open Custody

Though this research focused on the experience within secure custody, as noted in Chapter 6, in addition to adult colocation, a youth open custody facility is also located at this same location.⁸⁷ Despite the focus on secure custody, because most of the children had served open sentences and all of the staff were familiar with open custody operations, participants consistently referred to it during interviews.⁸⁸ In what follows, I highlight participant examples related to open custody, but I must preface this section with the understanding that open custody, conceptually, is meant to approximate a community environment, so its colocation in a carceral

⁸⁶ The concept “child rights-by-design” posited by Advocacy Staff 2 should not be confused with UNICEF’s children’s rights-by-design (CRbD) standards for data use by technology companies (Hartung, 2020).

⁸⁷ A place of open custody is not defined in this province’s legislation governing youth detention other than to state that a place of open custody is so granted by legislative authority.

⁸⁸ Additionally, children with secure custody sentences may experience open custody through the use of “step-downs”. Step-downs are a form of Reintegrative Leave developed by this province, to be used when a child has had “a period of time of stabilization and adjustment and they have also, through their positive behaviour, reduced their security rating within the facility from either a maximum, medium or a minimum. And when they’ve had a reduction...it makes them eligible for a stepdown into open custody” (Facility Staff 1). Step-downs can last a short period, such as a weekend, or children may be granted a permanent step-down.

space is widely criticized, including by Advocacy Staff 1: “I think the notion of having open custody at [the facility] is an anathema, that it’s not consistent with the YCJA. We’ve said that. We’re on record. We...agree to disagree with the department on that one.” While I echo this advocacy participant’s argument, open custody at this facility has demonstrated a more significant commitment to children’s rights and child-friendly justice practices, which exemplifies the government and the facility’s capacity to move towards friendlier justice practices.

When open custody was redesignated to the secure custody facility, the administration completed “a fair amount of renovations...to soften the environment. [We were] really trying to be intentional around eliminating a secure custody environment” (Facility Staff 1).⁸⁹ One of the most significant differences in open custody is that children are not locked in their “rooms”; the doors do lock to keep others out, but the children are able to press a buzzer inside their room to let themselves out. Significantly, Facility Staff 7 recounted that when the facility first opened (at which time the entire facility was dedicated to secure custody), all cells operated similarly. While I did not ask him what led to the change in locking cell doors on the secure side, he did specify that open custody was unique in that two staff members are always assigned to work the unit, which eliminated the need to lock cell doors, as opposed to secure custody that only has one staff member working when children are secured.⁹⁰

In addition to unlocked cells, one staff participant spoke about the quality of training they received to work in open custody:

⁸⁹ In the mid 2010s, this province terminated community-based open custody group homes and eventually relocated open custody to the youth secure custody premises.

⁹⁰ The locking of cell doors in secure custody, then, may be an example of the facility’s needs outweighing the needs of children.

...we had our own training, which I'm going to say, they did phenomenal in our open custody training, and I think a lot of that should be training that's put into the training that they do for boot camp at [the secure custody facility]. So... a huge component was actually on motivational interviewing...and I feel that would be beneficial for anyone going to work at [the secure custody facility] cause it's all about how you interact with people and asking questions and helping questions, and listening. I just feel like it would be beneficial for any correctional officers or youth workers working with kids to be trained in that. (Facility Staff 4)

This same facility staff also spoke about the inclusion of Child and Youth Advocate information in open custody policies and procedures. Aurora also recalled a more intensive orientation process at an open custody facility that included a discussion of children's rights,⁹¹ as did Cole, whose orientation for open custody included a thorough review of a book outlining unit policies and procedures.

Open custody also differs in that both children and staff are permitted to wear their own clothing, sometimes referred to as "civilian clothing" by facility staff. In contrast, children in secure custody are required to wear matching sweatsuits (according to facility staff, children's uniforms are gendered as sweatsuits are generally navy blue for the boys and pink for girls).⁹² Facility Staff 4 spoke about the significance of children being permitted to wear their own clothing while in open custody:

...the kids love that they're able to wear their own clothing.... They're able to kind of show more who they are; you know what I mean? They're not waking up, putting on

⁹¹ For clarity, Aurora recalled learning about children's rights but did not specifically refer to the Convention.

⁹² At one time, staff in the secure custody facility were also permitted to wear their own clothing before the facility mandated uniforms.

those sweatsuits being like, waking up with the identity of... “I’m an inmate”. They’re waking up as a kid and being able to kind of express themselves in that way.

This facility’s staff reference to the sweatsuit uniforms worn by children in secure custody is reminiscent of Goffman’s (1961) discussion of admissions in total institutions, where the prisoner is “stripped of his usual appearance and of the equipment and services by which he maintains it, thus suffering a personal defacement” (p. 20). Allowing open custody children to wear their own clothing eliminates the mortification of self which accompanies prison uniforms and is undoubtedly a more child-friendly practice. Most importantly, children perceive open custody to have a different function than the secure custody facility: “*You get a lot more rights over here [referring to open custody] like I say, you’re more so supposed to be locked up over there right [referring to secure custody]. Over here, it’s like a rehabilitation*” (Johnny).

Despite the apparent issues presented by the location of the open custody facility, its administration has instituted practices which are far more child-friendly and child-rights-informed. Moreover, now that both open and secure facilities fall under the same government branch, many of these practices could be instituted in the secure custody facility to improve the carceral experience for imprisoned children. To aid in the proliferation of children’s rights, imprisoned children can offer valuable insights into how to best move forward.

8.3 Teaching Imprisoned Children Their Rights

Of all the areas for growth discussed above, the participation of imprisoned children may have the most potential to create meaningful change. During my interviews with these children, I asked them to share their ideas about how the facility could teach about the rights granted to them in the Convention, and they provided thoughtful and considerate options. Brayden thought rights would be best learned through an inspirational video made by imprisoned children in

partnership with the program manager to be shown when children first arrived, though he cautioned that each child was unique and some may require time to acclimatize before viewing the video.⁹³ Brayden was also concerned with this resource being inclusive and thought that other methods, such as written text, should be available for children who may be “*blind*” or “*deaf*.”⁹⁴ Like Brayden, Bailey thought rights should be conveyed through a video but added that the video should include an entertaining character. Jack’s responses demonstrated an oversight in my questioning; while he thought all information should be posted in children’s cells and units, he had difficulty sharing ideas because he did not have a thorough understanding of children’s rights upon which to offer suggestions.⁹⁵ Nonetheless, he added that all information should include pictures for children who cannot read and for those who prefer visuals.⁹⁶ Cole would like children to receive a booklet outlining all of children’s rights as soon they enter the facility, one which they can keep with them at all times to review when they have questions. Pierre, Dakota and Aurora all prefer a one-on-one meeting with the program manager and emphasized that this meeting must occur in private so children feel safe to ask questions. Inclusivity was top of mind for Aurora, who explained that one-on-one meetings would be best for children like her with a

⁹³ Child-friendly justice standards and the Convention call on governments to include children in all matters which concern them, but we must also be cognizant of potential problematic implications of having children participate in the making of their own oppression. These implications are akin to what Kelly and Varghese (2018) call “benevolent oppression,” which “is designed to lessen the sting of institutional oppression” (p. 879). Similarly, Freire (1993) refers to this practice as “false generosity,” which is an attempt to “soften the power of the oppressor in deference to the weakness of the oppressed” (p. 26). If the participation of imprisoned children is not rights-informed and guided by authentic children’s engagement principles, then involving them in the creation of an institutional video will amount to benevolent oppression where children are used to endorse harmful institutional policies and practices. Further, without protections, their inclusion would be another example of children’s rights washing.

⁹⁴ Brayden did not specify that materials be produced in braille, but given his consideration for “blind” children, it is reasonable to assume that he intended for such inclusiveness.

⁹⁵ Failing to provide children with the foundational information they need to meaningfully participate is criticized by Smithson and Jones (2021), who argue that young people are not to be placed in “uncomfortable positions lacking the skills to undertake the activities asked of them” (p. 357). The facility can learn from my oversight by ensuring that children are fully informed before being invited to participate in engagement activities.

⁹⁶ Important consideration given findings about significant language difficulties among imprisoned children (Hughes et al., 2012).

learning disorder, and she also thought the facility needs to ensure that these meetings are trauma-informed as trauma can impact learning.

Clearly, imprisoned children can offer innovative and child-centric ideas to improve child rights education upon admission.⁹⁷ However, meaningful engagement should be a continuous process requiring ongoing conversations with many different children. Further, fostering full rights awareness does not simply entail showing a video or sharing a booklet; an authentic child-friendly space ensures that rights information is practical and procedural, fundamental, and transformative so that children are not only aware of their rights but become active agents in justice-making (Stalford et al., 2017; Smith, 2011). The eight children involved in this study may have started the conversation about rights awareness, but the transformative power of imprisoned children at this facility has only just begun.

8.4 Conclusion

In this chapter, I presented elements of this facility that demonstrated the potential to be child rights-informed and child-friendly, including positive staff relations, integration of the Office of the Child and Youth Advocate, future use of CRIAs, existing practices in open custody and learning from imprisoned children. These elements, coupled with the facility staff's expressed desire to continue conversations, evolve practices and engage children, present the

⁹⁷ As with harms associated with campus-like institutions (discussed on page 103), caution must be taken when designing “centric” carceral spaces focused on one group of prisoners. The Task Force on Federally Sentenced Women report *Creating Choices* (1990) called for the transformation of federal corrections for women by creating five regional women’s facilities designed to “promote wellness” (p. 84), staffed by those “sensitive to the issues that face federally sentenced women and responsive to their needs” (p. 85), and designed around a “holistic approach...in developing programs and in encouraging program participation” (p. 86). Hannah-Moffat (2001) argued that: “The darker side of the institutionalization of women’s concerns is the unanticipated redefining of women’s issues to make them compatible with the existing institutional arrangements of incarceration,” which has “serve[d] to make the activity of punishing less visible and open to scrutiny” (2001, p. 161).

opportunity for this facility to improve the carceral experience for imprisoned children.⁹⁸

Though many of the elements discussed are not yet fully developed, capitalizing on what is working well can contribute to a child-friendly justice space predicated upon children's rights.

⁹⁸ As noted at the onset of this thesis, the ideal adaptation of child-friendly justice is a system which does not include the imprisonment of children, or at the very least, where it is used only minimally. The ultimate goal of abolition will be discussed again in the conclusion chapter.

9. Conclusions and Recommendations

Maybe have people here [at the facility] that they actually care about the kids and...are wishing for them to have a good life, I guess.

- Dakota

Canada's reliance on imprisonment as a sentencing option for children has steadily decreased since the introduction of the *Youth Criminal Justice Act*. Nonetheless, hundreds of children each year find themselves in carceral spaces where they are left unseen as children and as criminalized beings (Hoffman, 2019). To better understand these children's experiences, this study sought to examine how imprisoned children come to learn about the rights enshrined within the *United Nations Convention on the Rights of the Child* and how these rights inform facility practices. Based upon semi-structured interviews with imprisoned children, facility staff and individuals from the Office of the Child and Youth Advocate, as well as examining related policies and training curriculum, it was discovered that barriers, such as the systemic deprioritization of children's rights, have limited children's rights awareness. In fact, imprisoned children had never been informed of their unique children's rights, and most staff were unable to speak specifically to the Convention. Further, the data uncovered that this carceral space was engaging in children's rights violations and thus was not a child-friendly justice space.

Applying criminological concepts to the study findings elucidated the persistence of rights-related issues in this facility. As a porous institution, there is sufficient permeability to allow outside children's rights discourses to enter through the walls leading to an awareness that children have rights; however, the facility retains elements of the traditional total institution, which hinder full rights integration (Ellis, 2021). Additionally, traditional markers of totality, such as segregation, have contributed to children's rights violations. Relatedly, since prisons and jails were conceptually designed for the adult male prisoner, and because this facility allows

colocation with adults, it becomes difficult to recognize the child qua child status of children (Hollingsworth, 2008). Instead, the “offender” status is applied indiscriminately to all imprisoned people, regardless of age. Only when imprisoned children are seen as children and not as approximations of the adult prisoner will this facility, and indeed the province, move beyond children’s rights washing practices and towards full children’s rights integration.

Contrary to Hollingsworth’s (2008) contention, though this study examined a secure custody facility, the ultimate goal of the children’s rights project should be the abolition of carceral spaces for children. I acknowledge that marginal improvements can often mask harm done in carceral spaces; however, the staff working in these facilities have little influence over judicial decision-making. As such, I sought to focus on areas where this facility can introduce meaningful change for children as the broader project continues abolitionist efforts. While many of this study’s findings were troubling, the final significant finding, *the potentiality to be child-friendly and rights-informed*, demonstrated that there was reason for hope as there is the potentiality for this facility to move towards child-friendliness predicated upon children’s rights.

9.1 Contribution to Criminology and Children’s Rights Theorizing

Qualitative research that includes the voices of imprisoned individuals is limited as carceral spaces are often intentionally gatekept; such gatekeeping is especially pronounced for imprisoned children (Schlosser, 2008). I was fortunate not to have experienced barriers to access and had seemingly unfettered access to all children and staff alike.⁹⁹ As a result, a study of this kind was among the first in the country and, indeed, the first in the province of interest which has allowed me to contribute to the scholarship on children’s carceral spaces and criminology more

⁹⁹ There were limitations placed on research methodologies, but these arose from legitimate health concerns related to the COVID-19 pandemic.

broadly. Situating the examination of children's rights awareness within the discipline of criminology allowed for critical inquiry using the criminological concepts of porous institutions and child qua child statuses for imprisoned children (Ellis, 2021; Hollingsworth, 2008).

Furthermore, given that research on children's understanding of their rights often centres on legal literacy or experiences in judicial spaces, this study expanded the scope of rights education and awareness examination among justice-involved children.

Applying criminological concepts to children's rights issues was a critical contribution to the field of children's rights, as there is a noted lack of theorizing in this arena. Beyond normative discourse advising that all children *should* have access to their rights, critical analysis illuminated how imprisoned children experience systemic barriers to learning about their rights. These barriers are often literal, such as being segregated in cells, but just as troublingly, the conceptual barriers of status confusion and remnants of totality thinking in porous institutions may be just as threatening to children's rights.

Lastly, imprisoned children have been marginalized within normative children's rights scholarship as they have often been considered the 'unwanted child' of the children's rights movement (Abramson, 2006). This unwantedness is compounded by the belief that these children do not exude the traditional vulnerabilities of childhood; consequently, they do not elicit the same sympathies as other children. However, imprisoned children experience intensified vulnerability due to their justice involvement and, as such, should receive increased attention from children's rights scholars. In acknowledging this oversight, one of the most significant contributions of this research was to advocate that imprisoned children deserve the same rights-protections as all children and that *all* spaces, but especially carceral spaces, must be rights-informed.

9.2. Limitations and Future Directions

This study offered important insight into a space where critical inquiry is not often permitted and it allowed imprisoned children to share their lived experiences. However, research efforts were hindered by the global COVID-19 pandemic as many child-friendly research techniques which may have fostered engagement, such as those identified within the *Ethical Research Involving Children* (2013) principles, were not feasible due to safety concerns. All ethical principles were strictly adhered to, and all efforts were made to make the research process as child-friendly as possible, but there was no opportunity to introduce different techniques, such as art-based mediums, into the process. Future researchers, ideally in a post-pandemic context, should aim to continue to examine children's rights awareness and education in carceral spaces by employing various methods to encourage different ways of knowing not often captured in research. Further, expanding the inclusion criteria to allow for staff participation from the educational and clinical teams, particularly social workers, may provide future research with additional insights; such an expanded sampling will make for a child-informed research endeavour given that the children who participated in this study frequently referenced them as sources from whom to access rights-based information (Graham et al., 2013).

Additionally, a limitation that emerged during the interview process was that children were asked to share their ideas related to children's rights education and awareness raising without possessing a fulsome knowledge of the rights enshrined in the *United Nations Convention on the Rights of the Child*. Though this finding does not diminish the contribution of the child participants, future research ought to ensure that children are equipped with a rights knowledge before asking them how other imprisoned children might best learn. A strategy such

as facilitating children's rights awareness sessions will strengthen rights foundations and allow these children to provide more informed responses.

As noted throughout this study, girls and racialized children were included in this research, but their experiences were not analyzed in relation to these identities. This limitation is notable as researchers have drawn attention to the concerning gap in academic scholarship, which fails to examine the experiences of justice-involved racialized children who are subjected to higher rates of criminalization and surveillance (Samuels-Wortley, 2022; Owusu-Bempah & Jeffers, 2021), and justice-involved girls who are often marginalized within both categories of women and children (Hutton & Woodworth, 2014; Taefi, 2011). Future scholars exploring the rights experiences of imprisoned children should employ an intersectional lens to offer an analysis of the experiences of racialized children and the girl-child in order to understand how their identities impact their rights awareness in carceral spaces (Amoah, 2007).

Finally, although this study was limited to an examination of children's experiences in a carceral space, it was nevertheless essential to scrutinize how imprisonment harms children (Goldson & Kilkelly, 2013). As such, there is a need to transform criminal justice culture so that imprisonment is not available nor utilized as a response to children's criminalized behaviours. Future inquiry regarding criminal justice system responses for children should explore the efficacy of alternative forms of justice, such as restorative justice or extrajudicial measures, to aid in the transformation of criminal justice approaches so that it is no longer considered ethical or just to imprison a child.

9.3. Applied Recommendations

This study presented the opportunity to put forth recommendations that could improve children's rights awareness and child-friendly justice practices in the secure custody facility for children. At the onset of this research, given the areas of inquiry, I anticipated that the applied recommendations would be focused on sharing rights information with children and staff and bolstering child-friendly justice practices. However, the data revealed that children's rights actualization is complex in that rights cannot be realized in isolation, which reflects UNICEF's position that children's rights are "all interrelated, interdependent and indivisible" (UNICEF, n.d.). Therefore, by identifying barriers to the realization of *United Nations Convention on the Rights of the Child* Article 42, the obligation to make children's rights widely known among children and adults, it was uncovered that rights violations are barriers to children's rights awareness. To discuss any one specific children's right is to discuss all children's rights. As such, not all applied recommendations are directly related to learning rights in carceral spaces, but also about rectifying rights violations.

In what follows, I have intentionally selected six applied recommendations for discussion; however, the complete list, comprised of 17 recommendations are organized into seven categories by area of application: *admissions and orientation processes, raising children's rights awareness among imprisoned children, child rights impact assessments, child-friendly justice practices, training, segregation and cell confinement, and colocation with adults* (the complete list of recommendations can be found in Appendix F). Of these recommendations, some are focused on widespread transformation in secure custody practices as they reflect the international community's mandated children's rights standards. Others are more pragmatic,

meant to illicit change in children’s rights consciousness and day-to-day practices for those working directly for and with children.¹⁰⁰

Colocation with adults

Given that the *United Nations Convention on the Rights of the Child* (1989) strictly prohibits the colocation of imprisoned adults and children in Article 37(c) and that this practice has been condemned by the Canadian Standing Senate Committee on Human Rights (2007) and by the United Nations Committee on the Rights of the Child (2022), it is recommended that this province end the colocation of imprisoned adults and children in one physical facility.

As discussed in Chapter 7, *Carceral Spaces are Not Child-Friendly*, imprisoning children with adults is a clear violation of the *United Nations Convention on the Rights of the Child*. While Canada maintains a reservation against this particular article, the United Nations has consistently called for the end of this harmful practice. Though the facility where this research occurred claims that children and adults are held separately in two distinct institutions, the fact that staff and resources are shared and that participants themselves referred to it as a “shared institution” signals a rights violation. Colocation prohibits full children’s rights realization as such an institution inevitably prioritizes the adult prisoner and the coercive control tactics used in

¹⁰⁰ This study’s findings will be submitted to the relevant government department with the hope that they will continue with their openness to change and implement the 17 recommendations. Additionally, in keeping with the principles of child-friendliness and *Ethical Research Involving Children* (ERIC) (2013), I have developed a child-friendly one-page version of my study’s key findings, presented in Appendix G. Though it may not be possible to follow up directly with the children who participated in this study as many will have been released and contacting the facility about specific children could potentially reveal their participation, it is important, nonetheless, to provide a child-friendly resource for all children to review. It is my hope that this child-friendly version will be made available on the provincial Office of the Child and Youth Advocate’s official website. Among the ethical ideals which guide ERIC is the principle of *beneficence*, which is the “obligation to improve the status, rights and/or well-being of children” (Graham et al., 2013, p. 17) either as individuals or as a social group. By presenting the key findings from this study in a child-friendly manner and making it available in an online space designed for children, children (or their families) facing imprisonment may “use that information in a way that enables them to assert their rights” (Stalford et al., 2017, p. 212).

adult carceral spaces, limiting children’s rights and child-friendly justice practices. Recalling UNICEF’s position above, it is simply impossible to ensure that all other children’s rights are preserved in a carceral space knowingly perpetuating a rights violation. Although Canada has indicated in the past that it is working to remove the reservation against Article 37(c), thus, formally banning colocation with adults, this province has yet to work towards prioritizing this right of imprisoned children (United Nations Committee on the Rights of the Child, 2003, para. 6). Given the knowledge that child imprisonment is harmful in that “the current method of addressing youth incarceration is outmoded and does not possess the ability to rehabilitate those who come into contact with its system” (Washington et al., 2011, p. 3), the ideal solution to the children’s rights violations resulting from colocation would be decarcerating children. Rather than seeking another punitive solution, such as creating a separate prison for children, alleged harms carried out by children should be addressed through alternative forms of justice. As this province currently imprisons so few children and has expressed a willingness to respect children’s rights, it is the opportune time to identify a more effective alternative to imprisonment.

Segregation

Given that the United Nations considers solitary confinement, or segregation, cruel and unusual punishment for imprisoned children and prohibits cruel and unusual punishment for children in Article 37(a) of the *United Nations Convention on the Rights of the Child* (1989), Article 7 in the *International Covenant on Civil and Political Rights* (1966), and Article 16 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), as well as explicitly prohibiting solitary confinement for children in *General Comment No. 24 (2019): Children’s Rights in the Child Justice System*, and Rule 45.2 in the *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (2016), it is recommended that this province immediately cease segregation practices that constitute the United Nation’s definition of solitary confinement, including placing children in a cell, in any area of the facility, for more than 22 hours a day without meaningful human contact.

The children involved in this study alerted me to the prevalence of segregation or segregation-like practices employed at this facility. While they, and many staff participants, delineated between the official segregation area and “getting locked” on a living unit, often this distinction amounted to a difference in location rather than substantive practice. Children recalled being locked in their cells for long periods of time, well past the United Nations definition of solitary confinement.¹⁰¹ Moreover, segregation is considered “cruel and unusual punishment” by the United Nations, which is prohibited for children in several international treaties and guidelines. Further, segregation is expressly prohibited in the United Nations Committee on the Rights of the Child’s *General Comment No. 24 (2019): On Children’s Rights in the Child Justice System* and the *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (2016). The practice is considered so harmful for children that the UN Special Rapporteur on Torture deemed the use of solitary confinement for children torture in 2011.¹⁰² One facility manager participant identified “child-rights respecting” as one of the main principles they will utilize to inform policies and practices moving forward. However, like with the colocation with adult prisoners, until segregation and segregation-like practices, which amount to cruel, unusual and torturous treatment, are prohibited, this facility will not be rights-respecting nor child-friendly.

¹⁰¹ The *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* defines solitary confinement as “the confinement of prisoners for 22 hours or more a day without meaningful human contact” (United Nations, 2016; Rule 44).

¹⁰² Juan Méndez, then Special Rapporteur, argued that: “the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture” (2011, para. 77).

Child Rights Impact Assessments

This province uses ex-ante *Child Rights Impact Assessments* (CRIA) at the legislative level, but it is recommended that it expand the use of CRIsAs to all departmental, branch, policy and procedural decisions which directly or indirectly relate to imprisoned children. Further, CRIsAs should be used in day-to-day decision-making by those working for and with imprisoned children. To this end, in partnership with the Office of the Child and Youth Advocate, this province should develop a practical CRIA tool that can be used by all facility staff to ensure all decisions are children’s rights informed and respecting.

While Child Rights Impact Assessments (CRIsAs) are simply a tool, and thus, only as effective as their implementation, they do provide a pragmatic and efficient means to infuse children’s rights into day-to-day discussion and decision-making which was a significant finding in the Welsh context where the use of CRIsAs “contributed to embedding children and young people’s rights in policy and to the emergence of an ingrained culture of thinking about children’s rights” (Hoffman, 2019, p. 384). Whereas this province has had experience with CRIsAs at the legislative level, they are uniquely positioned to capitalize on their experience and expand the use of CRIsAs to all individuals working for and with imprisoned children. In doing so, the children’s rights lens necessitated by CRIsAs will center the needs of children and prioritize their rights. Findings related to CRIsAs illustrate potentiality because, as one facility manager expressed, ensuring that all “policies, protocols and procedures would have gone through a CRIA” would be of “benefit” and advance the facility’s goal of being a rights-respecting space.

Training

Children’s rights awareness raising and education must be a shared responsibility among all facility staff; thus, in adherence to Article 42 of the *United Nations Convention on the Rights of the Child* (1989), it is recommended that all facility

staff receive regular children's rights training.¹⁰³ This training must make children's rights accessible, incorporating both international and national obligations, including the *United Nations Convention on the Rights of the Child* (1989). The province should work in partnership with the Office of the Child and Youth Advocate to develop and deliver this training. Further, to ensure the effectiveness of this training, it must undergo regular evaluation.

This study identified that staff participants received no formal children's rights training either before or since they began working for and with imprisoned children. In fact, children's rights seemed precariously positioned as the responsibility of one case manager who had also not received training but took it upon themselves to learn through interactions with the Office of the Child and Youth Advocate. While most staff knew that children had their own human rights and could identify relevant rights, they were less aware of the language of rights from the *United Nations Convention on the Rights of the Child*. One advocacy participant expressed concern for this finding: "...the problem with not knowing the language around it, is that it's very easy, then, to make decisions and take action that actually violates human rights." Learning the language of rights can also serve to ensure that staff discern between institutional regulations and children's human rights so that rights are not framed as privileges and staff understand their role as duty-bearers to children (Byrne & Lundy, 2019). Accordingly, appropriate and ongoing training remains the top priority for the United Nations Committee on the Rights of the Child. *General Comment No. 24 (2019): On Children's Rights in Child Justice System*, stipulates that:

It is essential for the quality of the administration of juvenile justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of CRC in general,

¹⁰³ **Article 42** of the *United Nations Convention on the Rights of the Child* (1989): States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

particularly those directly relevant to their daily practice. This training should be organized in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions. (para. 123)

The *Global Study on Children Deprived of Liberty* discovered deficits in training and, thus, recommended:

States should enhance the capacity, by means of investing in human resources, awareness-raising and systematic education and training, of all professionals who work with and for children in decisions leading to their deprivation of liberty, and those who are responsible for their well-being while in detention. (Nowak, 2019, para. 105)

The *Global Study* specifically identified “prison guards” as individuals who should receive this specialized training. Finally, in the recent Concluding Observations (2022), the UN Committee on the Rights of the Child called on Canada to improve its general measures of implementation, including recommending that Canada “provide mandatory training on the rights of the child under the Convention and national law to all professionals working with and for children, including government officials, [and] judicial authorities...” (para. 14).

Rights-based training must be developed solely for those working in children’s carceral spaces, especially those working in secure custodial facilities, and there must be a commitment to provide ongoing and continuous training, as identified in General Comment No. 24. Without such a commitment, as argued by Whalen and Lansdown (2022), “Child rights efforts will fail if the adults who nurture and care for children are not cognizant of their rights and familiar with their obligations as duty-bearers to children” (p. 428).

In addition to fostering children’s rights awareness among staff, imprisoned children identified caring about children as a cornerstone of a child-friendly justice space:

A significant finding of this study was that imprisoned children's description of child-friendly justice included child-friendliness among staff, aligning with the Council of Europe's *Guidelines on Child-friendly Justice* (2010), which posits kindness and friendliness as essential to building child-friendly justice spaces. To increase child-friendly capacity among facility staff, it is recommended that the facility implement the *Guidelines* training requirement: "Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability" (2010, p. 23).

What resonated strongly in the study findings was that imprisoned children sought to be treated with dignity by staff who demonstrated that they cared for their well-being. These findings aligned with results from a systemic review of practices at the Roy McMurtry Youth Centre in Ontario (Provincial Advocate for Children & Youth, 2013), where it was discovered that staff have the potential to be "makers" of improved carceral experiences for children (p. 7). When children imprisoned at that secure custody facility were asked what they would like to see altered, many of them presented ideas to improve treatment by staff: "[Staff should know] how to interact with youth, how to solve a problem without locking people down, if something is missing, try to solve it before a strip search" or "All staff should have experience with youth," citing examples such as recruiting workers who have a positive attitude or can relate to marginalized youth (2013, p. 90). The children involved in this study had similar suggestions, such as Dakota, quoted at the opening of this chapter, who hoped that staff working with imprisoned children would be "*wishing for them to have a good life.*" Many children identified the importance of caring, despite not always using the same language. Most resoundingly, children were more inclusive than adult participants in acknowledging the heterogeneity of imprisoned children and the unique needs of each individual child. In many ways, it seemed as though the child participants were asking to be seen.

Many children provided examples of positive interactions with staff and identified that there were staff they could speak to about important matters. However, there were also instances of negative staff relations or of children who felt as though the facility, generally, did not prioritize the well-being of children, as demonstrated in the sentiment: “*I don’t really trust everything that the jail tells you because they’re also going to look out for themselves before they look out, for like, the kids.*” The foundation of a child-friendly justice space must be child-friendly people, and building this foundation demands that those hired to work for and with imprisoned children demonstrate this ethic of caring. Additionally, training must be provided to all current and future staff to foster this ethic, as identified in the Council of Europe’s *Guidelines on Child-Friendly Justice* (2010), which considers specialized training a “general element of child-friendly justice” whereby: “Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability” (p. 23). Child-friendly justice practices have improved justice systems for children in countries such as Scotland and Wales (Hoffman, 2019), but barriers, including a lack of child-friendly training, must be overcome to move beyond potentiality in Canada.

Raising Children’s Rights Awareness Among Imprisoned Children

The children who participated in this study presented many ideas to improve how this facility teaches imprisoned children their rights, including booklets, videos, entertaining characters, and one-on-one meetings. Though their ideas varied, they consistently stressed the importance of inclusivity and that children’s rights education methods must align with each child’s needs. It is recommended that this facility realize the *United Nations Convention on the Rights of the Child* (1989) Article 12.1, the right of children to express their views in matters which affect them and have those given due weight, by meaningfully engaging with children to build upon the ideas presented in this study and develop multiple child-friendly

approaches to sharing rights information with imprisoned children.¹⁰⁴ Child rights education and awareness raising must occur regularly and consistently and be the shared responsibility of all staff based upon policy.

The imprisoned children involved in this study were not aware of their unique rights as children, nor were they informed of these rights by the secure custody facility and as discussed in Chapter 6, *Systemic Barriers Limit Children's Rights Awareness*, the children were also not aware of the *United Nations Convention on the Rights of the Child*. Educating children about their rights empowers them to report violations (Covell & Howe, 2005), fosters self-worth, dignity and confidence (Gervais, 2012), and facilitates sensitivity to the rights of others (Gervais, 2011). In educating imprisoned children about their rights, the facility must also engage children's right to be heard, which is among the most important and potentially transformative rights granted to children in the *United Nations Convention on the Rights of the Child* as not only does it allow children to exert influence in their lives but it also serves to validate them and their experiences (Van Bueren, 1998; Gervais et al., 2022; DeCarlo-Slobodnik & Gervais, 2022).

Indeed, the power of participation was evident during the course of the research as the child participants, when reassured that their opinions were wanted and valid, shared thoughtful responses about children's rights education in the facility. In implementing this recommendation, the facility must employ child-friendly practices to prepare children for meaningful participation so that they are not placed in "uncomfortable positions lacking the skills to undertake the activities asked of them" (Smithson & Jones, 2021, p. 357). Without proper preparation, these practices amount to consultation, where children's views are not given due consideration (Hill et al., 2004; Cantwell, 2017). Instead, efforts must be made to cultivate participatory environments

¹⁰⁴ **Article 12.1** of the *United Nations Convention on the Rights of the Child* (1989): States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

that welcome children’s views using inclusive and meaningful engagement methods (Reid & Gilliss, 2016). The desire of imprisoned children to meaningfully participate was illustrated by Brayden, who shared that a child-friendly justice space would allow him to “*have a chance to play a part in something.*”

Among the benefits of reconceptualizing children’s carceral spaces as porous institutions is that those of us in standing outside the walls of imprisonment “may no longer believe that reforming what goes on inside prisons is beyond reach” (Ellis, 2021, p. 195). My findings illustrated the challenges that imprisoned children face in experiencing the rights guaranteed to them in the *United Nations Convention on the Rights of the Child*, the lack of rights education provided to them and the many ways in which this secure custody facility engages in practices that are not child-friendly. However, the findings also revealed that there may be reason for hope as there was an apparent willingness among staff participants to foster rights awareness among children and staff, make rights-informed decisions and develop child-friendly justice practices.

In this light, informed by the experiences of imprisoned children themselves, I have presented 17 recommendations which I hope will contribute to fuller rights realization at this facility; however, these recommendations are merely a starting point upon which greater transformation must occur. Future inquiry should monitor the facility’s commitment to children’s rights and the extent to which they implement these recommendations. It must always be remembered that those imprisoned in secure custody facilities are children and thus we all have a responsibility, as Dakota so poignantly stated, to wish “*for them to have a good life.*”

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APPENDIX A: RECRUITMENT MATERIALS

Recruitment Script Youth Participants

Hi, my name is Sarah Gilliss and I'm a master's student in the Department of Criminology at the University of Ottawa. This means that I got my bachelor's degree and then decided to go back to school again. My school is in Ottawa, but I live here in [community name].

I am doing a research project about this place, the [facility name]. I am interested in learning about some of your experiences. I would like to ask you questions about children's rights in jail [*Note for reviewers- "jail" is being used intentionally because that is the language used by the youth*]. I'm asking you to be part of this project because your voice and opinions matter. You are here at [facility name] so you are the best person to talk about children's rights in jail.

Participation:

It is up to you if you would like to be part of this project. You should not feel like you have to come back for the interview. If you don't want to do the interview you won't get in trouble and I won't be upset.

If you want to be in the project now but change your mind later, that's okay. You can stop at any time.

If you do want to be in the project but don't want to answer all of the questions, that's okay too. We can skip any questions you're not comfortable with.

What you will be asked to do:

If you do want to be part of this project, we will meet again for an interview. Consent is another way to ask, "Do I have your permission". If you consent, I will ask you some questions. There are no right or wrong answers to the questions. You don't have to answer any questions you're not comfortable with. It should take about an hour. You can see the questions on the sheet in front of you. Let's go through them together. [*I will then review each question with the youth.*] Do you have any questions about them?

If you're okay with it, I would like to audio record our interview. I do this so I don't miss anything important you tell me. Only me and my teacher will hear the recording. No one here at [facility name] will hear the recording.

COVID-19 Measures:

If you decide to come back for the interview, there are few COVID-19 safety measures we have to follow. Before coming to the main building please make sure that you do not have any

COVID-19 symptoms and you can do this by answering questions in the screening tool [*youth will be shown the [province name] government's screening assessment tool*].

If you are feeling fine you can come to the main building to meet with me. When you get here, we will stay socially distanced, and I ask that you sanitize your hands and keep your mask on.

Potential Risks and Discomfort:

You might find some questions uncomfortable to answer because I am going to ask you about learning about your rights while in jail. You don't have to answer any question that makes you feel uncomfortable. You can also ask me questions about any question I ask you.

I hope you don't, but you may feel pressure from staff or other youth to participate, or not to participate. I can't control that, but I can tell you that the bosses at [facility name] support this project and gave me permission to come here and talk to youth. No one should tell you that you have to take part in this project or that you shouldn't take part. You get to decide if you want to answer questions.

Confidentiality:

None of the staff or other youth will know what you have said. When I tell other people about my project, I will not use your name, and no one will be able to tell who I'm talking about.

I do have to tell someone if you tell me you have experienced abuse here or if you plan to hurt yourself or someone else. I will tell [designated staff member] what you told me about the abuse/harm to self/other but not your answers to any other questions. If this happens, I won't surprise you. I will tell you in the interview that I am going to speak to [designated staff member] and I will tell you exactly what I am going to tell her/him.

Do you have any questions about this?

Supervisor:

My teacher for this project is Christine Gervais. She has done lots of research about children's rights. She also teaches about children's rights at my school. She won't be able to come visit because she is in Ottawa.

How to contact me:

My email is [email address]. I know it won't be easy for you to contact me if you have any questions so after you have a little time to think about this project, I will call you on the unit and you can tell me if you want to do the interview or ask me any questions you have.

Recruitment Email Facility Staff

Hello,

My name is Sarah Gilliss and I am currently enrolled as a Master of Arts in Criminology student at the University of Ottawa. As part of my master's degree, I am conducting a study examining child rights awareness, rights advocacy and rights-informed practices at [facility name]. This research will be accomplished by looking at how youth are informed of their rights upon admission, the ways in which staff training is child rights-informed, and how children's rights are considered during decision-making and day-to-day functioning. The goal of this research aligns with Article 42 of the *United Nations Convention on the Rights of the Child* which stipulates that State Parties must undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Given your role at [facility name], you are well suited to provide insight into this topic and I would like to invite you to participate in this study which has been approved by the Director of [government branch] and the [facility name] Superintendent; thus, I have been given permission to recruit staff; however, it is not associated with the organization and you are under no obligation to participate. Whether you agree or not agree to participate in the study, I will not reveal your decision to anyone (including the Superintendent and/or Director).

If you agree to take part in this study, I would like to connect with you via phone or video call for a short information session during which I can provide an overview of the study and answer any questions you may have. You will be sent a consent form via email and asked to provide verbal consent before participating in a one-hour interview via phone or video call (whichever you prefer) at a mutually convenient time. Interviews will be audio-recorded to ensure accurate transcription. Your participation will be confidential so none of your identifying information will be disclosed.

The supervising professor for this study is Dr. Christine Gervais, an Associate Professor in the Department of Criminology at the University of Ottawa and a member of the Interdisciplinary Research Laboratory on the Rights of the Child (IRLRC) and the Child Rights Academic Network (CRAN).

If you are interested in participating or have further questions, please contact me at [email address].

Your participation will be greatly appreciated.

Thank you in advance,
Sarah Gilliss

Recruitment Script
Office of the Child and Youth Advocate Staff

Hello,

My name is Sarah Gilliss and I am currently enrolled as a Master of Arts in Criminology student at the University of Ottawa. As part of my master's degree, I am conducting a study examining child rights awareness, rights advocacy and rights-informed practices at [facility name]. This research will be accomplished by looking at how youth are informed of their rights upon admission, the ways in which staff training is child rights-informed, and how children's rights are considered during decision-making and day-to-day functioning. The goal of this research aligns with Article 42 of the *United Nations Convention on the Rights of the Child* which stipulates that State Parties must undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Given your role at the Child and Youth Advocate's Office advocating for justice-involved youth and your ability to reflect upon children's rights and child-friendly justice, I think that you are well suited to provide insight into this topic and I am thus inviting you to participate in this study. This study has been approved by the Office of the Child and Youth Advocate; thus, I have been given permission to recruit staff; however, it is not associated with this project, and you are under no obligation to participate.

If you agree to take part in this study, I would like to connect with you via phone or video call for a short information session during which I can provide an overview of the study and answer any questions you may have. You will be sent a consent form via email and asked to provide verbal consent before participating in a one-hour interview via phone or video call (whichever you prefer) at a mutually convenient time. Interviews will be audio-recorded to ensure accurate transcription. Your participation will be confidential so none of your identifying information will be disclosed.

The supervising professor for this study is Dr. Christine Gervais, an Associate Professor in the Department of Criminology at the University of Ottawa and a member of the Interdisciplinary Research Laboratory on the Rights of the Child (IRLRC) and the Child Rights Academic Network (CRAN).

If you are interested in participating or have further questions, please contact me at [email address].

Your participation will be greatly appreciated.

Thank you in advance,
Sarah Gilliss

APPENDIX B: INTERVIEW GUIDES

Interview Guide Youth Participants

To note to participant: I may say ‘child’ and ‘children’. I will say child because that means anyone between 0 and 18 years old.

Demographic Questions

1. How old are you?
2. What gender(s) do you identify with?
3. What cultural/ethnic group(s) do you identify with?
4. When you are at home or with your friends or family, what language(s) do you speak?
5. What grade are you in?
 - If you are not in school, what was the last grade you were in?

Situating Custody

6. Is this your first time at [facility name]?
 - If yes, how long have you been here?
 - If no, how many times have you been here before? How old were you the first time you were sent here? Altogether, how long would you say you have been here at [facility name]?
7. Are you sentenced or remanded?

Rights

8. Do you know what the Youth Criminal Justice Act is?
 - If yes, can you tell me what you know about it.
9. Do you know what a right is?
 - If yes, can you tell me how you understand rights?

[Following this question, I will explain the difference between legal rights and children's rights]

Legal Rights

As a young person you have all of the same rights as an adult who is charged with a crime, plus some special rights that only apply to young people. The law that gives special rights to young people from age 12 to 17 is called the Youth Criminal Justice Act (YJCA).

Some of the rights you have that are the same as adults include the right to:

- know why the police are detaining or arresting you
- not be searched unreasonably
- speak to a lawyer in most situations

Some of the **special youth rights** that you have include:

- The involvement of parents or a supportive adult.
- Special privacy rules about your identity in court, who can access your youth record, and whether the information in your youth record can be shared.

Source: <https://stepstojustice.ca/questions/criminal-law/im-under-18-and-charged-crime-what-are-my-rights>

Children's Rights

Every child under the age of 18 has rights. These are things that allow you to live a full life and allow you to live to your fullest potential. Every child around the world has the same rights as you.

Some examples of children's rights are:

- When adults make decisions, they need to think about how their decision will affect children
- Access to education
- Right to be heard

Source: <https://www.unicef.org/sop/convention-rights-child-child-friendly-version>

10. Do you have any questions about these definitions? Is there anything you want to add?

11. Do you know what the United Nations Convention on the Rights of the Child is? Have you ever heard of this before?

If yes, please tell me what you know about it.

If no, what do you think it might be?

[I will then provide the definition]

The United Nations Convention on the Rights of the Child is an important agreement by countries who have promised to protect children's rights. The Convention on the Rights of the Child explains who children are, all their rights, and the responsibilities of governments. All the rights are connected, they are all equally important and they cannot be taken away from children.

A Convention is a human rights treaty, which is an agreement signed by countries to promise to protect the human rights of all people living in that country.

Source: <https://www.unicef.org/media/60981/file/convention-rights-child-text-child-friendly-version.pdf>

I will have a copy of the UNCRC child-friendly version if youth would like more information.

12. When you first got here, did anyone tell you about your rights child rights?
 - If yes, can you tell me what you were told about rights? How did they tell you about rights? Did they give you anything to read or take with you to the unit? Did you understand everything?
 - If no, what were you told when you went through admissions?
13. Did you wish that you were told more about your rights?
 - If yes, what would you like to know? What would be the best way to tell children and youth about their rights in custody? Telling you? In writing? Pictures? Videos?
 - If no, why not?
14. Are you given the chance to ask questions about decisions that are made here?
 - If yes, can you tell me more about that? Do you have an example?
 - If no, have you ever tried to ask questions? If yes, what happened? How did that make you feel?
15. If you had questions about your rights, who here at [facility name] could you ask?
[Youth may name an individual. They will be de-identified and only the position title will be used]
 - If yes, why do you think you could ask them?
 - If a youth replies 'no one' or 'don't know', why do you think that is?
16. Did anyone here tell you about the Child and Youth Advocate?
 - If yes, what did they tell you? Have you ever met someone working for the Advocate? Have you ever reached out to the Advocate because you had a problem?
 - [If a youth responds no to this question, I will provide them with a description of the Child and Youth Advocate]
 - If no, now that you know what the Child and Youth Advocate does, do you think youth here should be told about the Advocate? Why/why not?

Description: The Child and Youth Advocate ensures that your rights and interests are protected. They can investigate complaints about how the government handled situations. They listen to the needs and concerns of children and youth.
Source: [provincial Advocate website]

17. What does child-friendly [or youth-friendly] mean to you?

18. Do you think [province] youth criminal justice system is child-friendly?

- If yes or no, can you tell me why you think that way?

Concluding Question

19. Do you have any questions about this research project?

Concluding Question Not Recorded

20. I have to give you a fake name for my project. Would you like to pick a name I can use?
If so, what do you want it to be?

Additional interview materials provided to child participants:¹⁰⁵

1  DEFINITION OF A CHILD	2  NO DISCRIMINATION	3  BEST INTERESTS OF THE CHILD	4  MAKING RIGHTS REAL	5  FAMILY GUIDANCE AS CHILDREN DEVELOP	6  LIFE, SURVIVAL AND DEVELOPMENT	7  NAME AND NATIONALITY
8  IDENTITY	9  KEEPING FAMILIES TOGETHER	10  CONTACT WITH PARENTS ACROSS COUNTRIES	11  PROTECTION FROM KIDNAPPING	12  RESPECT FOR CHILDREN'S VIEWS	13  SHARING THOUGHTS FREELY	14  FREEDOM OF THOUGHT AND RELIGION
15  SETTING UP OR JOINING GROUPS	16  PROTECTION OF PRIVACY	17  ACCESS TO INFORMATION	18  RESPONSIBILITY OF PARENTS	19  PROTECTION FROM VIOLENCE	20  CHILDREN WITHOUT FAMILIES	21  CHILDREN WHO ARE ADOPTED
22  REFUGEE CHILDREN	23  CHILDREN WITH DISABILITIES	24  HEALTH, WATER, FOOD, ENVIRONMENT	25  REVIEW OF A CHILD'S PLACEMENT	26  SOCIAL AND ECONOMIC HELP	27  FOOD, CLOTHING, A SAFE HOME	28  ACCESS TO EDUCATION
29  AIMS OF EDUCATION	30  MINORITY CULTURE, LANGUAGE AND RELIGION	31  REST, PLAY, CULTURE, ARTS	32  PROTECTION FROM HARMFUL WORK	33  PROTECTION FROM HARMFUL DRUGS	34  PROTECTION FROM SEXUAL ABUSE	35  PREVENTION OF SALE AND TRAFFICKING
36  PROTECTION FROM EXPLOITATION	37  CHILDREN IN DETENTION	38  PROTECTION IN WAR	39  RECOVERY AND REINTEGRATION	40  CHILDREN WHO BREAK THE LAW	41  BEST LAW FOR CHILDREN APPLIES	42  EVERYONE MUST KNOW CHILDREN'S RIGHTS
43-54  HOW THE CONVENTION WORKS	CONVENTION ON THE RIGHTS OF THE CHILD					

¹⁰⁵ UNICEF. (n.d.). *The United Nations Convention on the Rights of the Child – the children's version*. <https://www.unicef.org/media/56661/file>



THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD – THE CHILDREN’S VERSION

The United Nations Convention on the Rights of the Child is an important agreement by countries who have promised to protect children’s rights.

The Convention on the Rights of the Child explains who children are, all their rights, and the responsibilities of governments. All the rights are connected, they are all equally important and they cannot be taken away from children.

This text is supported by the Committee on the Rights of the Child.





1
DEFINITION OF A CHILD
A child is any person under the age of 18.



2
NO DISCRIMINATION
All children have all these rights, no matter who they are, where they live, what language they speak, what their religion is, what they think, what they look like, if they are a boy or girl, if they have a disability, if they are rich or poor, and no matter who their parents or families are or what their parents or families believe or do. No child should be treated unfairly for any reason.



3
BEST INTERESTS OF THE CHILD
When adults make decisions, they should think about how their decisions will affect children. All adults should do what is best for children. Governments should make sure children are protected and looked after by their parents, or by other people when this is needed. Governments should make sure that people and places responsible for looking after children are doing a good job.



4
MAKING RIGHTS REAL
Governments must do all they can to make sure that every child in their countries can enjoy all the rights in this Convention.



5
FAMILY GUIDANCE AS CHILDREN DEVELOP
Governments should let families and communities guide their children so that, as they grow up, they learn to use their rights in the best way. The more children grow, the less guidance they will need.



6
LIFE, SURVIVAL AND DEVELOPMENT
Every child has the right to be alive. Governments must make sure that children survive and develop in the best possible way.



7
NAME AND NATIONALITY
Children must be registered when they are born and given a name which is officially recognized by the government. Children must have a nationality (belong to a country). Whenever possible, children should know their parents and be looked after by them.



8
IDENTITY
Children have the right to their own identity – an official record of who they are which includes their name, nationality and family relations. No one should take this away from them, but if this happens, governments must help children to quickly get their identity back.



9
KEEPING FAMILIES TOGETHER
Children should not be separated from their parents unless they are not being properly looked after – for example, if a parent hurts or does not take care of a child. Children whose parents don't live together should stay in contact with both parents unless this might harm the child.



10
CONTACT WITH PARENTS ACROSS COUNTRIES
If a child lives in a different country than their parents, governments must let the child and parents travel so that they can stay in contact and be together.



11
PROTECTION FROM KIDNAPPING
Governments must stop children being taken out of the country when this is against the law – for example, being kidnapped by someone or held abroad by a parent when the other parent does not agree.



12
RESPECT FOR CHILDREN'S VIEWS
Children have the right to give their opinions freely on issues that affect them. Adults should listen and take children seriously.



13
SHARING THOUGHTS FREELY
Children have the right to share freely with others what they learn, think and feel, by talking, drawing, writing or in any other way unless it harms other people.



14
FREEDOM OF THOUGHT AND RELIGION
Children can choose their own thoughts, opinions and religion, but this should not stop other people from enjoying their rights. Parents can guide children so that as they grow up, they learn to properly use this right.



15
SETTING UP OR JOINING GROUPS
Children can join or set up groups or organisations, and they can meet with others, as long as this does not harm other people.



16
PROTECTION OF PRIVACY
Every child has the right to privacy. The law must protect children's privacy, family, home, communications and reputation (or good name) from any attack.



17
ACCESS TO INFORMATION
Children have the right to get information from the Internet, radio, television, newspapers, books and other sources. Adults should make sure the information they are getting is not harmful. Governments should encourage the media to share information from lots of different sources, in languages that all children can understand.



18
RESPONSIBILITY OF PARENTS
Parents are the main people responsible for bringing up a child. When the child does not have any parents, another adult will have this responsibility and they are called a "guardian". Parents and guardians should always consider what is best for that child. Governments should help them. Where a child has both parents, both of them should be responsible for bringing up the child.



19
PROTECTION FROM VIOLENCE
Governments must protect children from violence, abuse and being neglected by anyone who looks after them.



20
CHILDREN WITHOUT FAMILIES
Every child who cannot be looked after by their own family has the right to be looked after properly by people who respect the child's religion, culture, language and other aspects of their life.



21
CHILDREN WHO ARE ADOPTED
When children are adopted, the most important thing is to do what is best for them. If a child cannot be properly looked after in their own country – for example by living with another family – then they might be adopted in another country.



22 Children who move from their home country to another country as refugees (because it was not safe for them to stay there) should get help and protection and have the same rights as children born in that country.



23 Every child with a disability should enjoy the best possible life in society. Governments should remove all obstacles for children with disabilities to become independent and to participate actively in the community.



24 Children have the right to the best health care possible, clean water to drink, healthy food and a clean and safe environment to live in. All adults and children should have information about how to stay safe and healthy.



25 Every child who has been placed somewhere away from home - for their care, protection or health - should have their situation checked regularly to see if everything is going well and if this is still the best place for the child to be.



26 Governments should provide money or other support to help children from poor families.



27 Children have the right to food, clothing and a safe place to live so they can develop in the best possible way. The government should help families and children who cannot afford this.



28 Every child has the right to an education. Primary education should be free. Secondary and higher education should be available to every child. Children should be encouraged to go to school to the highest level possible. Discipline in schools should respect children's rights and never use violence.



29 Children's education should help them fully develop their personalities, talents and abilities. It should teach them to understand their own rights, and to respect other people's rights, cultures and differences. It should help them to live peacefully and protect the environment.



30 Children have the right to use their own language, culture and religion - even if these are not shared by most people in the country where they live.



31 Every child has the right to rest, relax, play and to take part in cultural and creative activities.



32 Children have the right to be protected from doing work that is dangerous or bad for their education, health or development. If children work, they have the right to be safe and paid fairly.



33 Governments must protect children from taking, making, carrying or selling harmful drugs.



34 The government should protect children from sexual exploitation (being taken advantage of) and sexual abuse, including by people forcing children to have sex for money, or making sexual pictures or films of them.



35 Governments must make sure that children are not kidnapped or sold, or taken to other countries or places to be exploited (taken advantage of).



36 Children have the right to be protected from all other kinds of exploitation (being taken advantage of), even if these are not specifically mentioned in this Convention.



37 Children who are accused of breaking the law should not be killed, tortured, treated cruelly, put in prison forever, or put in prison with adults. Prison should always be the last choice and only for the shortest possible time. Children in prison should have legal help and be able to stay in contact with their family.



38 Children have the right to be protected during war. No child under 15 can join the army or take part in war.



39 Children have the right to get help if they have been hurt, neglected, treated badly or affected by war, so they can get back their health and dignity.



40 Children accused of breaking the law have the right to legal help and fair treatment. There should be lots of solutions to help these children become good members of their communities. Prison should only be the last choice.



41 If the laws of a country protect children's rights better than this Convention, then those laws should be used.



42 Governments should actively tell children and adults about this Convention so that everyone knows about children's rights.



43-54 These articles explain how governments, the United Nations - including the Committee on the Rights of the Child and UNICEF - and other organisations work to make sure all children enjoy all their rights.

Interview Guide [Facility name] Staff

Opening Questions

1. When did you start working at [facility name]?
2. What is your position at [facility name]?
3. What are your responsibilities in this position?
4. How long have you been in the position?
 - Follow-up: Have you ever held another position at [facility name]? Can you tell me about that?
 - *[If a participant has ever held an additional position that is included in this study, they will be informed that they may answer questions from the perspective of that related position as well. I will ask them to identify which position they are speaking from when answering questions.]*

Training

5. Can you tell me about the training you received when you started here at [facility name]?
 - Prompts: Duration? Theory versus practical? Who conducted the training?
6. During this training, did you learn about children’s rights and the United Nations Convention on the Rights of the Child?
 - If yes, did you learn how to speak with youth about the rights granted to them in the CRC, which are different than the legal rights granted to them in the Youth Criminal Justice Act?
 - If no, did you receive any rights-based training? Can you tell me about it?
7. Since that initial training, can you tell me about any subsequent training [facility name] has provided about children’s rights and United Nations Convention on the Rights of the Child?
8. During initial or subsequent training, did you learn about international instruments or standards related to youth justice or prisoners in general? This could have included: The United Nations Standard Minimum Rules for the Treatment of Prisoners, The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“The Havana Rules”), The United Nations Guidelines for Action on Children in the Criminal Justice System (“The Vienna Guidelines”) and the United Nations Committee on the Rights of the Child, General Comment No. 24 (2019) on Children’s Rights in the Child Justice System.

9. How are children's rights and the United Nations Convention on the Rights of the Child included in [facility name] training?
- *If the response is a variation of 'they aren't':* If they are not, why not?

Children's Rights Advocacy

10. What is the role of the Child and Youth Advocate?
- Follow-up: Can you tell me what you know about them? Have you received training about the role of the Child and Youth Advocate? Are you expected to provide youth with information about the Advocate?

Children's Rights in Custody/Child-Friendly Justice

11. How does the United Nations Convention on the Rights of the Child inform the work you do?
- Follow-up: Do children's rights inform your day-to-day decision making and practices?
12. Are youth given the chance to ask questions about decisions which affect them?
- If yes, can you tell me more about this? Can you provide examples?
 - If no, why do you think that is?
13. Can you tell me about what child rights-based information is shared with youth at [facility name]?
14. What rights-based information is shared with youth during the admission process?
- Follow-up: How is this information shared?
15. What child-friendly practices are used to educate youth about their rights?
- Prompts: What language is used? Is information shared verbally, written, and/or through pictures or video? Are there information sessions?
16. Do you think it's [facility name] responsibility to teach youth about their rights? Why do you think this? If not, why not?
17. How do you understand child-friendly justice?
18. Do you think the [facility name] aligns with the principles of child-friendly justice?
19. Does the [facility name] use Child Rights Impact Assessments (CRIA) when making policy changes?
- If yes, can you tell me about instances when CRIA was used? Why are CRIAs important? Are youth involved in these assessments (as per the direction of the Office of the Child and Youth Advocate's Office)?
 - If not, if you do not use CRIA per se, are there are child-rights assessments or policies that you integrate into your inventions and/practices?
 - If no, can you tell me why not?

Concluding Questions

20. Is there anything else that you would like to tell me that you think is relevant for this research study?
21. Do you have any questions regarding this research study?

Interview Guide
Office of the Child and Youth Advocate Staff

Opening Questions

1. What is your position at the Office of the Child and Youth Advocate's office?
2. What are your responsibilities in this position?
3. How long have you been in the position?
 - Follow-up: have you ever held another position at the CYA office? Can you tell me about that briefly?

Children's Rights

4. How does the United Nations Convention on the Rights of the Child and/or other international instruments inform the work you do?
5. The Office of the Child and Youth Advocate has stated multiple times that, in many ways, [province] is failing to incorporate the United Nations Convention on the Rights of the Child (CRC). For example, the *Alternative Report on the Fifth and Sixth Periodic Reports of Canada to the UN Committee on the Rights of the Child, RE: [province] (2020)* the office stated that the CRC has not been incorporated into any [province] legislation, and that despite the guidance outlined in General Comment No. 24 (2019) on children's rights in the child justice system, [province] currently does not have a youth centered child justice system. Can you explain why [province] child justice system is not youth/child centered?

Children's Rights in Custody/Child-Friendly Justice

6. Can you tell me about what child rights-based information is shared with youth at the [facility name]?
Follow-up: What child-rights based information would you like to see youth learn upon admission to the [facility name]?
7. In your opinion, do the youth you have interacted with/advocated for at the [facility name] fully understand their child rights? Please explain.
8. Do youth at the [facility name] learn about the Child and Youth Advocate's Office?
 - If yes, how do youth at the [facility name] learn about the Child and Youth Advocate's office? How do they learn how to contact the office? Is contact mediated by [facility name] staff?
 - If no, do you think youth should learn about the CYA office? Please explain.

9. Are you aware of what child rights-informed training staff at [facility name] receive?
 - If yes, can you tell me about it? What is included? What is not included? Are the CRC and related international instruments included in the training?
10. What would you recommend to build the capacity of staff at [facility name] so they are rights-aware and make rights-informed decisions?
11. Focusing specifically on youth custodial environments, how can [province] make this aspect of the youth justice system child-centered/child-friendly?
12. Are Child Rights Impact Assessments (CRIA) or similar child-rights assessments used at the institution-level, by [facility name], to help evaluate policy changes?
 - If yes, can you provide examples?
 - If no, do you think CRIA would be useful at this level? Would CRIA contribute to child-friendly justice, rights awareness and rights-informed practices?

Concluding Questions

13. Is there anything else that you would like to tell me that you think is relevant for this research study?
14. Do you have any questions regarding this research study?

APPENDIX C: PARTICIPANT CONSENT FORMS



Université d'Ottawa | University of Ottawa

Faculté des sciences sociales | Faculty of Social Sciences
Département de criminologie | Department of Criminology

Oral Consent Form Youth Participants

Assigned Research Participant ID number: _____

You can help me pick your Participant ID. Pick a favourite relative and tell me the first two letters of their name. And what is the day of your birth? These will go together to make your ID. For example, it will look something like MA08.

Title of study: Rights Awareness, Rights Advocacy and Rights-Informed Practices: Children's Rights in a Youth Custodial Environment

Principal Investigator: Sarah Gilliss
MA Student
Department of Criminology,
Faculty of Social Sciences, University of Ottawa

Thesis Supervisor: Dr. Christine Gervais
Associate Professor
Department of Criminology,
Faculty of Social Sciences, University of Ottawa
christine.gervais@uottawa.ca

SCRIPT

Invitation and Purpose of Study:

Hi. It's nice to see you again. If you remember, my name is Sarah and I am here to ask you to take part in a research project I am doing for school. I am a master's student in Criminology at the University of Ottawa.

In this research project, I want to learn about children's rights in jail. You are being asked to be part of this project because your voice and opinions matter. You are here at [facility name] so you are the best person to talk about children's rights in jail.

You will not be asked about the reason you are here at [facility name] or anything that has happened in your past that led you to be involved in the youth criminal justice system. This project is not about 'crime' or your behaviour, so we won't be talking about that.

If you have any questions about what I am telling you, you can ask me at any time.

What you will be asked to do [Participation]:

If it's okay with you, I will ask you some questions which should take about an hour. I am going to ask you the questions out loud and you can answer me out loud. There are no right or wrong answers to these questions. You can answer all of them or you can decide to just answer some of them. If there is a question or questions you don't want to answer you can just say "skip". If it's okay with you, I would like to audio record our interview. Only me and my teacher will hear the recording. I might also write some notes when you are talking. I want to record our interview and take a few notes, so I don't miss anything you say.

Potential Risks and Discomforts:

You might find some questions uncomfortable to answer because I am going to ask you about learning about your rights while in jail. You don't have to answer any question that makes you feel uncomfortable. You can also ask me questions about any question I ask you.

I hope you don't, but you may feel pressure from staff or other youth to participate, or not to participate. I can't control that, but I can tell you that the bosses at [facility name] support this project and gave me permission to come here and talk to youth. No one should tell you that you have to take part in this project or that you shouldn't take part. You get to decide if you want to answer questions.

Benefits:

A benefit means that you might gain something from being part of this research project. By being in this study, you might learn more about your rights as a child (a child is someone between the ages of 0-18). This project may help us learn better ways to teach kids in jail about their rights. Your opinions might help to shape policy changes that may improve other youth's experience with the youth criminal justice system in the future.

Confidentiality

People here may know that you have talked with me but none of the staff or other youth will know what you have said. When I tell other people about my project, I won't use your name, and no one will be able to tell who I'm talking about.

Only me and my teacher will hear the recording of this interview or see any notes.

I do have to tell someone if you tell me you experienced abuse here or if you plan to hurt yourself or someone else. I will tell [designated staff member] what you told me about the abuse/harm to self/other but not your answers to any other questions. If this happens, I won't surprise you. I will tell you in the interview that I am going to speak to [designated staff member] and I will tell you exactly what I am going to tell her/him.

Keeping the data:

Data is the information you share with me today. This will be the audio recording and any notes I take. I will also type up our conversation. All of this data will be kept safe. I will take the audio recording off this machine and move it onto my computer so I can password protect it. Any electronic files will also be on my computer and will be password protected. Any handwritten notes I take will be kept in a locked cabinet at my house. No one here at [facility name] will listen to the recording or see any notes. I will keep this data for five years. I will keep an electronic copy of it on a password protected USB in a locked cabinet in my home office. After five years, I will destroy the USB and all of the data on it.

Compensation:

You will receive a \$20 Subway or Tim Horton's gift card as a thank you for your being part of this research project. Even if you don't answer all of the questions or decide that you no longer want to answer questions, you will still get the \$20 gift card. Because you can't have the gift card right now, it will be put in your personals so you can use it when you leave [facility name].

COVID-19 [uOttawa Consent Information Addedndum-COVID-19 Risks]

I am going to read you information about COVID-19 and safety measures. Please feel free to ask me any questions if anything is unclear.

We are putting in place safety precautions to reduce exposure to COVID-19, but the risk of exposure can still exist. COVID-19 can result in severe illness, medical expenses, and loss of income and in some cases, death.

If you are considered vulnerable to the effects of COVID-19 (e.g., an older adult; underlying medical conditions or a compromised immune system), please discuss your participation with the me before consenting to participate.

Potential COVID-19 symptoms include: new or worsening cough, shortness of breath or difficulty breathing, temperature equal to or over 38C (100.4F), feeling feverish, chills, fatigue or weakness, muscle or body aches, new loss of smell or taste, headache, gastrointestinal symptoms (abdominal pain, diarrhea, vomiting), or feeling very unwell.

To reduce the possibility of COVID-19, we have put in place the following safety procedures:

- Regular handwashing
- Using hand sanitizer when handwashing is not possible

- Wearing of face masks/face coverings
- Physical distancing (as recommended by the local health authority)
- No shared material and documents
- Sanitizing surfaces and shared equipment
- Waiting 30 minutes between each interview
- Using Plexiglas barriers

Please tell me if you think a safety measure is not being taken, or that your safety is at risk.

For the Participant:

We ask that you:

- Wear a mask or face covering.
- Have completed a screening assessment before our meeting.
- Sanitize your hands upon arrival. Hand sanitizer has been provided.
- Maintain physical distancing during our meeting.

We ask that you follow the health-related directives above for your safety and the safety of the researcher.

Information for Contact Tracing

I cannot collect your personal contact information because your identity is protected under the Youth Criminal Justice Act. The youth centre has all of your information and all of my personal contact information and they know the date and time of our meeting. If Public Health contacts me to tell me that I have been exposed to COVID-19, I will tell them I was here, and they will contact [facility name] so they can take the appropriate precautions. If there is a chance that I was exposed to COVID-19 during our interview, I will be contacted.

Voluntary Participation:

You don't have to be in this research study. It is up to you. You can say yes now and still change your mind later. All you have to do is tell me. No one will be upset with you if you change your mind. You will not get in trouble if you decide you don't want to participate.

If you do want to be in the study but don't want to answer all the questions, that's okay too. We can skip any questions you're not comfortable with.

After we are all done and I leave, if you decide you don't want your answers to the questions to be part of this research project you can fill out a request slip and ask to speak with me. You do not have to tell them why you need to speak with me on the request slip. [facility name] will let me know you need to talk to me, and I will make sure to call you as soon as possible.

Do you have any questions?

Acceptance:

Do you agree to take part in this research project, knowing that you can decide that you don't want to be part of it at any time?

Participant provided oral consent: Yes No

Participant provided consent for audio recording of interview: Yes No

Participant provided consent for note taking: Yes No

Ethics are rules related to trust, honesty, and respect that we have to follow when doing research. My school has to give me permission to do this research. If you have questions about ethics for this project, you can contact my school at:

Protocol Officer for Ethics in Research, University of Ottawa, Tabaret Hall, 550 Cumberland Street, Room 154, Ottawa, ON K1N 6N5

Tel.: (613) 562-5387

Email: ethics@uottawa.ca

Oral Consent Form
[Facility name] Staff

Title of study: Rights Awareness, Rights Advocacy and Rights-Informed Practices:
Children's Rights in a Youth Custodial Environment

Principal Investigator: Sarah Gilliss
MA Student
Department of Criminology,
Faculty of Social Sciences, University of Ottawa

Thesis Supervisor: Dr. Christine Gervais
Associate Professor
Department of Criminology,
Faculty of Social Sciences, University of Ottawa
christine.gervais@uottawa.ca

Invitation to Participate: I am invited to participate in the abovementioned research study conducted by Sarah Gilliss under the supervision of Dr. Christine Gervais, of the Department of Criminology, University of Ottawa. This is a master's research thesis and is part of the requirements for completing the Master of Arts in Criminology degree.

Purpose of the Study: The purpose of the study is to examine child rights advocacy, rights awareness and rights-informed practices at [facility name].

Participation: My participation will consist of a one-hour, audio recorded, semi-structured interview during which I will be asked to answer a series of questions related both to my experience working at the [facility name] and to how children's rights are integrated into the admissions process and day-to-day decision making. I have been offered the choice to have the interview via phone or video (MS Teams).

Risks: My participation in this study will entail discussing my experience working at the [facility name] and this may cause some discomfort. I have received assurance from the researcher that every effort will be made to minimize these risks and that I will not have to answer any questions that I am not comfortable answering.

Benefits: Through my participation in this research study, I may learn more about children's rights and have the opportunity to reflect on my own rights-informed practices. My participation in this study will help contribute to literature related to rights awareness, rights-advocacy and rights-informed practices in youth custodial environments.

Confidentiality and Anonymity: I have received assurance from the researcher that my identity and any identifiable information will remain confidential. I understand that the contents of my interview (for example, in the form of quotes) will be used for analysis and discussion in Sarah Gilliss' MA thesis, but any information I provide will be deidentified and a pseudonym will be used. I understand that the nature of the information I share may point to my identity, but the researcher will change as many specific details as possible in order to minimize any potential links to me or my position at [facility name]. The researcher will take steps to protect my confidentiality by ensuring the secure storage of my name and identifying information separate from transcripts, audio material and interview data. If I am concerned about using my work email to communicate with the researcher, I know I can use my personal email.

I understand that if I disclose an instance or instances of abuse against youth at [facility name] which had not been previously reported, the researcher has a duty to report this allegation. In reporting this allegation, the researcher will be required to report my name and the allegation.

I have the option to complete my interview via MS Teams or Zoom. I understand that in order to minimize the risk of security breaches and to help ensure my confidentiality, it is recommended that I use standard safety measures such as signing out of my account, closing my browser and locking my screen or device when I have completed the interview.

Conservation of data: All data collected, including audio recordings, interview transcripts and written research notes will be kept in a secure manner. The principal investigator, Sarah Gilliss, will store electronic data a password protected computer, and hard copies will be stored in a locked cabinet for the duration of the research project (until August 2022). Following the completion of the research project, all data will be retained for a period of five years. During this retention period, all anonymized data will be stored electronically on a password protected USB key. The USB containing all data will be securely stored in Sarah Gilliss' home office in a locked cabinet. Only Sarah Gilliss will have the key to this locked cabinet. Once the retention period has ended in August 2027, the USB will be securely destroyed by pulverizing it (physically destroying the USB).

COVID-19 Risks: All research activities will occur via email and phone or video calls. As such, there are no COVID-19-related risks to participating in this study.

Voluntary Participation: This is an independent research project and is not associated with any organization. I am under no obligation to participate and if I choose to participate, I can withdraw from the study at any time and/or refuse to answer any questions, without suffering any negative consequences. If I choose to withdraw, all data gathered until the time of withdrawal will be safely destroyed.

Acceptance: I agree to participate in the above research study conducted by Sarah Gilliss, under the supervision of Dr. Christine Gervais of the Department of Criminology, Faculty of Social Sciences, University of Ottawa.

If I have any questions about the study, I may contact the researcher and/or her supervisor.

If I have any questions regarding the ethical conduct of this study, I may contact the Protocol Officer for Ethics in Research, University of Ottawa, Tabaret Hall, 550 Cumberland Street, Room 154, Ottawa, ON K1N 6N5
Tel.: (613) 562-5387
Email: ethics@uottawa.ca

Acceptance:

Participant Name: _____

Interview method: Phone Zoom MS Teams

Participant provided oral consent: Yes No

Participant provided consent for audio recording of interview: Yes No

Participant provided consent for Note taking: Yes No



Université d'Ottawa | University of Ottawa

Faculté des sciences sociales | Faculty of Social Sciences
Département de criminologie | Department of Criminology

Oral Consent Form
Office of the Child and Youth Advocate Staff

Title of study: Rights Awareness, Rights Advocacy and Rights-Informed Practices:
Children's Rights in a Youth Custodial Environment

Principal Investigator: Sarah Gilliss
MA Student
Department of Criminology,
Faculty of Social Sciences, University of Ottawa

Thesis Supervisor: Dr. Christine Gervais
Associate Professor
Department of Criminology,
Faculty of Social Sciences, University of Ottawa
christine.gervais@uottawa.ca

Invitation to Participate: I am invited to participate in the abovementioned research study conducted by Sarah Gilliss under the supervision of Dr. Christine Gervais, of the Department of Criminology, University of Ottawa. The research is being completed as a Master's thesis in fulfillment of program requirements for a Master of Arts in Criminology at the University of Ottawa.

Purpose of the Study: The purpose of the study is to examine child rights advocacy, rights awareness and rights-informed practices at the [facility name].

Participation: My participation will consist of a one-hour, audio recorded, semi-structured interview during which I will be asked to answer a series of questions related both to my experience working at the [province] Child and Youth Advocate's Office and to children's rights in a custodial environment. I have been offered the choice to have the interview via phone or video call.

Risks: My participation in this study will entail discussing my experience working at the [province] Child and Youth Advocate's Office and the integration of children's rights at the [facility name], and this may cause some discomfort. I have received assurance from the researcher that every effort will be made to minimize these risks and that I will not have to answer any questions that I am not comfortable answering.

Benefits: My participation in this study will offer me the opportunity to discuss my experience in the Child and Youth Advocate's Office and my advocacy work with youth at the [facility name]. My participation

in this study will help contribute to literature related to rights awareness, rights-advocacy and rights-informed practices in youth custodial environments.

Confidentiality and Anonymity: I have received assurance from the researcher that my identity and any identifiable information will remain confidential. I understand that the contents of my interview (for example, in the form of quotes) will be used for analysis and discussion in Sarah Gilliss' MA thesis, but any information I provide will be deidentified and a pseudonym will be used. The researcher will take steps to protect my confidentiality by ensuring the secure storage of my name and identifying information separate from transcripts, audio material and interview data. If I am concerned about using my work email to communicate with the researcher, I know I can use my personal email.

I have the option to complete my interview via MS Teams or Zoom. I understand that in order to minimize the risk of security breaches and to help ensure my confidentiality, it is recommended that I use standard safety measures such as signing out of my account, closing my browser and locking my screen or device when I have completed the interview.

Conservation of data: All data collected, including audio recordings, interview transcripts and written research notes will be kept in a secure manner. The principal investigator, Sarah Gilliss, will store electronic data on a password protected computer, and hard copies will be stored in a locked cabinet for the duration of the research project (until August 2022). Following the completion of the research project, all data will be retained for a period of five years. During this retention period, all anonymized data will be stored electronically on a password protected USB key. The USB containing all data will be securely stored in Sarah Gilliss' home office in a locked cabinet. Only Sarah Gilliss will have the key to this locked cabinet. Once the retention period has ended in August 2027, the USB will be securely destroyed by pulverizing it (physically destroying the USB).

COVID-19 Risks: All research activities will occur via email and phone or video calls. As such, there are no COVID-19-related risks to participating in this study.

Voluntary Participation: This is an independent research project and is not associated with any organization. I am under no obligation to participate and if I choose to participate, I can withdraw from the study at any time and/or refuse to answer any questions, without suffering any negative consequences. If I choose to withdraw, all data gathered until the time of withdrawal will be safely destroyed.

Acceptance: I agree to participate in the above research study conducted by Sarah Gilliss, under the supervision of Dr. Christine Gervais of the Department of Criminology, Faculty of Social Sciences, University of Ottawa.

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Tel.: (613) 562-5387

Email: ethics@uottawa.ca

Acceptance:

Participant Name: _____

Interview method: Phone Zoom MS Teams

Participant provided oral consent: Yes No

Participant provided consent for audio recording of interview: Yes No

Participant provided consent for Note taking: Yes No

APPENDIX D: CERTIFICATES OF ETHICS APPROVAL

08/07/2021

Université d'Ottawa

Bureau d'éthique et d'intégrité de la recherche

University of Ottawa

Office of Research Ethics and Integrity

CERTIFICAT D'APPROBATION ÉTHIQUE | CERTIFICATE OF ETHICS APPROVAL

Numéro du dossier / Ethics File Number

S-05-21-6736

Titre du projet / Project Title

Rights Awareness,
Rights-Advocacy and
Rights-Informed Practices:
Children's Rights in a Youth
Custodial Environment.

Type de projet / Project Type

Thèse de maîtrise / Master's
thesis

Statut du projet / Project Status

Approuvé / Approved

Date d'approbation (jj/mm/aaaa) / Approval Date (dd/mm/yyyy)

08/07/2021

Date d'expiration (jj/mm/aaaa) / Expiry Date (dd/mm/yyyy)

07/07/2022

Équipe de recherche / Research Team

**Chercheur /
Researcher**

Affiliation

Role

Sarah GILLISS

Département de criminologie / Department of
Criminology

Chercheur Principal / Principal
Investigator

Christine GERVAIS

Département de criminologie / Department of
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Superviseur / Supervisor

Conditions spéciales ou commentaires / Special conditions or comments

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CERTIFICAT D'APPROBATION ÉTHIQUE | CERTIFICATE OF ETHICS APPROVAL

Numéro du dossier / Ethics File Number

S-05-21-6736

Titre du projet / Project Title

Rights Awareness,
Rights-Advocacy and
Rights-Informed Practices:
Children's Rights in a Youth
Custodial Environment.

Type de projet / Project Type

Thèse de maîtrise / Master's
thesis

Statut du projet / Project Status

Renouvelé / Renewed

Date d'approbation (jj/mm/aaaa) / Approval Date (dd/mm/yyyy)

08/07/2021

Date d'expiration (jj/mm/aaaa) / Expiry Date (dd/mm/yyyy)

07/07/2023

Équipe de recherche / Research Team

**Chercheur /
Researcher**

Affiliation

Role

Sarah GILLISS

Département de criminologie / Department of
Criminology

Chercheur Principal / Principal
Investigator

Christine GERVAIS

Département de criminologie / Department of
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Superviseur / Supervisor

Conditions spéciales ou commentaires / Special conditions or comments

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APPENDIX E: FACILITY POLICIES

*Policies Included for Analysis*¹⁰⁶

Policy Title	Pages
Access to File Information	4
Admission Procedures	3
Allegations of Assault of a Young Person	1
Cell Extraction	2
Central Office Reports	2
Conditional Sentence	2
Delegation of Duties and Responsibilities	1
Development of Policy and Procedures	1
Dress & Deportment	4
Face to Face Conditional Supervisory Protocol	2
Foreign Young Person	1
Immigration Orders	1
Imprisonment Under the Arrest and Examinations Act	1
Incident Report Procedure	2
Inspection of Facilities	1
Institutional Tours	1
Intensive Supervision	2
Legal Authority and Protection	1
Mission Statement	1
Organization	1
Outstanding Charges	1
Police Search Warrants	1
Questioning of Young Persons by Law Enforcement	1
Release/Discharge	2
Restraint & Safety Prevention Equipment	6
Review of Detention Where Trial Delayed	1
Security Rounds	1
Segregation	3
Staff Conduct & Deportment	5
Use of Force	2
Video Recording	2
Young Person Complaints	1
Young Person Files	1
Young Person Supervision	1
Young Person Transfer	3
Youth Criminal Justice Act Principles	2

¹⁰⁶ So as not to reveal the name of the province, full citations have not been included for facility policies.

APPENDIX F: RECOMMENDATIONS

Admissions and Orientation Processes

1. Currently, this facility's admissions process is modelled after adult correctional processes and focuses exclusively on institutional procedural obligations. Instead, it is recommended that this facility develop a child-friendly admissions process that prioritizes the needs of the child through rights- and trauma-informed approaches. This new process must include sharing children's rights as well as legal, human, and institutional rights in an updated *Youth Guide* and explaining all admissions steps in child-friendly language. Further, admissions of children must only be conducted by trained admissions staff. To ensure consistency, the *Admissions Procedures* policy must be updated to codify the new process.
2. Imprisoned children and facility staff indicated that children do not receive a formal orientation until they are formally sentenced, and thus, remanded children do not receive an orientation. It is recommended that all children, regardless of remanded or sentenced status, receive a complete orientation as soon as possible upon admission. To facilitate this recommendation, orientation sessions may be required during nights, weekends and holidays to accommodate new admissions. This new orientation process must be codified in an official orientation policy.
3. As identified in Article 42 of the *United Nations Convention on the Rights of the Child* (1989), it is the province's responsibility to make the rights enshrined in the Convention "widely known, by appropriate and active means" to children.¹⁰⁷ As part of adhering to Article 42, it is recommended that this facility update the *Youth Guide*, to be given to all children upon admission, to include a section dedicated to children's rights, including [UNICEF's Children's Version](#) of the *United Nations Convention on the Rights of the Child* (1989). This section must also articulate children's rights meaningfully and pragmatically so that imprisoned children fully understand how they are meant to experience their rights. Additionally, the *Youth Guide* should:
 - a. Use child-friendly language and design without compromising the comprehensiveness of the material.
 - b. Include separate sections dedicated to human rights more broadly (such as the *Canadian Charter of Rights and Freedoms* (1982)), legal literacy (such as the *Youth Criminal Justice Act* (2002)) and all institutional policies and regulations.

¹⁰⁷ **Article 42** of the *United Nations Convention on the Rights of the Child* (1989): States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

- c. Be given to each child upon admission to be kept with them during the duration of their imprisonment.

Raising Children's Rights Awareness Among Imprisoned Children

4. The children who participated in this study presented many ideas to improve how this facility teaches imprisoned children their rights, including booklets, videos, entertaining characters, and one-on-one meetings. Though their ideas varied, they consistently stressed the importance of inclusivity and that children's rights education methods must align with each child's needs. It is recommended that this facility realize the *United Nations Convention on the Rights of the Child* (1989) Article 12.1, the right of children to express their views in matters which affect them and have those given due weight, by meaningfully engaging with children to build upon the ideas presented in this study and develop multiple child-friendly approaches to sharing rights information with imprisoned children.¹⁰⁸ Child rights education and awareness raising must occur regularly and consistently and be the shared responsibility of all staff based upon policy.

Child Rights Impact Assessments

5. This province uses ex-ante *Child Rights Impact Assessments* (CRIA) at the legislative level, but it is recommended that it expand the use of CRIAs to all departmental, branch, policy and procedural decisions which directly or indirectly relate to imprisoned children. Further, CRIAs should be used in day-to-day decision-making by those working for and with imprisoned children. To this end, in partnership with the Office of the Child and Youth Advocate, this province should develop a practical CRIA tool that can be used by all facility staff to ensure all decisions are children's rights informed and respecting.
6. In order to ensure that Child Rights Impact Assessments (CRIAs) are effective and accurately identify potential children's rights impacts, imprisoned children must meaningfully participate in the assessment process. It is recommended that this facility develop a policy-informed practice that ensures that children are fully informed of their rights and actively engaged in CRIA assessments. The default assumption must always be that imprisoned children should always participate, but in rare circumstances when it is not appropriate, a clear explanation must be provided for why children were not included.

¹⁰⁸ **Article 12.1** of the *United Nations Convention on the Rights of the Child* (1989): States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

7. Child Rights Impact Assessments (CRIAs) can only be completed by individuals who have a full understanding of children's rights, the *United Nations Convention on the Rights of the Child* (1989) and how to conduct an effective CRIA. It is recommended that this province build children's rights knowledge capacity among all facility staff and provide CRIA training for all facility staff. Further, CRIAs must only be completed by those who possess the appropriate knowledge and training.
8. Ruggiero (2022) identified that Child Rights Impact Assessments (CRIAs) must invite independent oversight outside of government. As such, it is recommended that a multi-disciplinary team, including representation from the Office of the Child and Youth Advocate, regularly review and evaluate the effectiveness of the facility's CRIAs.

Child-friendly Justice Practices

9. Paramilitary elements present in this facility undermine all attempts to facilitate child-friendliness. It is recommended that this facility discontinue the use of all paramilitary language and practices, including facility staff paramilitary uniforms and language used to refer to facility staff, including cadets, Sergeant Majors and Corporals. This recommendation applies to all other paramilitaristic language and practices still in use but not explicitly identified in the study.
10. The facility has been critiqued as a "command and control structure" which lacks a child-friendly physical environment. Acknowledging the concept of "child rights-by-design" identified by a representative from the Office of the Child and Youth Advocate, it is recommended that this facility create a physical environment more aligned with the ideals of child-friendliness. These improvements should include, but are not limited to, creating a more welcoming entry point and improving the design of units and cells to more closely align with the design of the open custody unit. During implementation, careful consideration must be given to the language assigned to aspects of the physical environment to avoid children's right washing through language.
11. This study found that children imprisoned at the facility were aware of the Office of the Child and Youth Advocate and their right to contact them at any time. However, the children were less aware of the purpose and potential services offered by the Office. It is recommended that the facility works with the Office of the Child and Youth Advocate to increase awareness among children about their role and the connection to the rights granted to them in the *United Nations Convention on the Rights of the Child* (1989). These steps should include an entire section in the *Youth Guide* dedicated to the Child and Youth Advocate, in-depth discussion about the Child and Youth Advocate during

admissions and orientation, increased signage throughout the main building and units, and information posted or available in each cell.

Training

12. Children’s rights awareness raising and education must be a shared responsibility among all facility staff; thus, in adherence to Article 42 of the *United Nations Convention on the Rights of the Child* (1989), it is recommended that all facility staff receive regular children’s rights training.¹⁰⁹ This training must make children’s rights accessible, incorporating both international and national obligations, including the *United Nations Convention on the Rights of the Child* (1989). The province should work in partnership with the Office of the Child and Youth Advocate to develop and deliver this training. Further, to ensure the effectiveness of this training, it must undergo regular evaluation.
13. Those who work for and with imprisoned children need specialized training to fully appreciate their unique status and the rights granted to them, as well as to eliminate the propagation of coercive control tactics traditionally used with imprisoned adults. As such, it is recommended that this province cease the practice of training all future correctional officers (currently referred to as ‘cadets’) using one standard training curriculum. Instead, this province must develop a training curriculum specifically for those who will work with imprisoned children, which prioritizes children’s rights, trauma-informed care, meaningful engagement, child-friendliness, and least restrictive control tactics. To develop the children’s rights aspects of this training, the province should work in partnership with the Office of the Child and Youth Advocate.
14. A significant finding of this study was that imprisoned children’s description of child-friendly justice included child-friendliness among staff, aligning with the Council of Europe’s *Guidelines on Child-friendly Justice* (2010), which posits kindness and friendliness as essential to building child-friendly justice spaces. To increase child-friendly capacity among facility staff, it is recommended that the facility implement the *Guidelines* training requirement: “Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability” (2010, p. 23).

¹⁰⁹ **Article 42** of the *United Nations Convention on the Rights of the Child* (1989): States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Segregation and Cell Confinement

15. Given that the United Nations considers solitary confinement, or segregation, cruel and unusual punishment for imprisoned children, and prohibits cruel and unusual punishment for children in Article 37(a) of the *United Nations Convention on the Rights of the Child* (1989), Article 7 in the *International Covenant on Civil and Political Rights* (1966), and Article 16 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), as well as explicitly prohibiting solitary confinement for children in General Comment No. 24 *Children's Rights in the Child Justice System*, and Rule 45.2 in the *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (2016), it is recommended that this province immediately cease segregation practices that constitute the United Nation's definition of solitary confinement, including placing children in a cell, in any area of the facility, for more than 22 hours a day without meaningful human contact.

16. Cell confinement should only be used in limited circumstances when it is necessary to ensure the safety of children. It is recommended that a clear policy be developed which outlines the specific incidents/behaviours which qualify for cell confinement to ensure that it is only used for serious incidents and not as retribution or punishment. The policy must identify the rights of children being confined and mandatory requirements that must occur during the time outside of the cell, including meaningful human contact, visits, service provision, schooling, phone calls, showers, etc.¹¹⁰ Cell confinement must only be used for the shortest period of time required and must never approximate the United Nations' definition of solitary confinement. Finally, to facilitate effective and transparent tracking of cell confinement usage to ensure it is not being overused and only reserved for instances identified in the above-mentioned policy, it is also recommended that:
 - a. All instances of cell confinement, regardless of length, be accompanied by a formal incident report to be entered in the client information system.
 - b. Cell confinement data be compiled and reviewed regularly during Behavioural Management Review Board meetings. This data should include usage, length, rationale, and demographic data, including age, gender(s), race and cultural identity. Reporting must also indicate time out of cell and how this time was used for meaningful human contact.

¹¹⁰ Penal Reform International stipulates that meaningful human contact “needs to provide the stimuli necessary for human well-being, which implies an empathetic exchange and sustained, social interaction...direct rather than mediated, continuous rather than abrupt, and must involve genuine dialogue. It could be provided by prison or external staff, individual prisoners, family, friends or others – or by a combination of these” (2016, p. 89).

Colocation with Adults

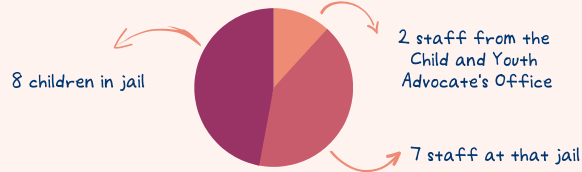
17. Given that the *United Nations Convention on the Rights of the Child* (1989) strictly prohibits the colocation of imprisoned adults and children in Article 37(c) and that this practice has been condemned by the Canadian Standing Senate Committee on Human Rights (2007) and by the United Nations Committee on the Rights of the Child (2022), it is recommended that this province end the colocation of imprisoned adults and children in one physical facility.

APPENDIX G: CHILD-FRIENDLY SUMMARY

CHILDREN'S RIGHTS IN JAIL

A NEW STUDY ASKED THE QUESTION: ARE CHILDREN WHO GO TO JAIL TOLD ABOUT THEIR HUMAN RIGHTS?

To answer this question, children in jail, staff from jail and staff from the Child and Youth Advocate's office were interviewed.



WHAT DID THE STUDY FIND?

- Children are not told about their human rights when they go to jail.
- Children and adults should not be in the same jail together.
- Children should not be placed in segregation.
- Staff need better training to learn about children's rights.
- Most children know about the Child and Youth Advocate and that they can contact them at any time.
- Children have the right to have their voices heard in jail and in all parts of their lives.

If you or someone you know are facing jail time, here's what you need to know:

All children have rights! Even if you go to jail, you still get to keep your rights. The *United Nations Convention on the Rights of the Child* outlines all of your rights. You can find a child-friendly version of your rights [here](#).

Most provinces and territories have a person or office responsible for children's rights. If you are in jail, you can contact them to learn more about your rights. To find out who to contact, you can visit the Canadian Council of Child & Youth Advocates [website](#).