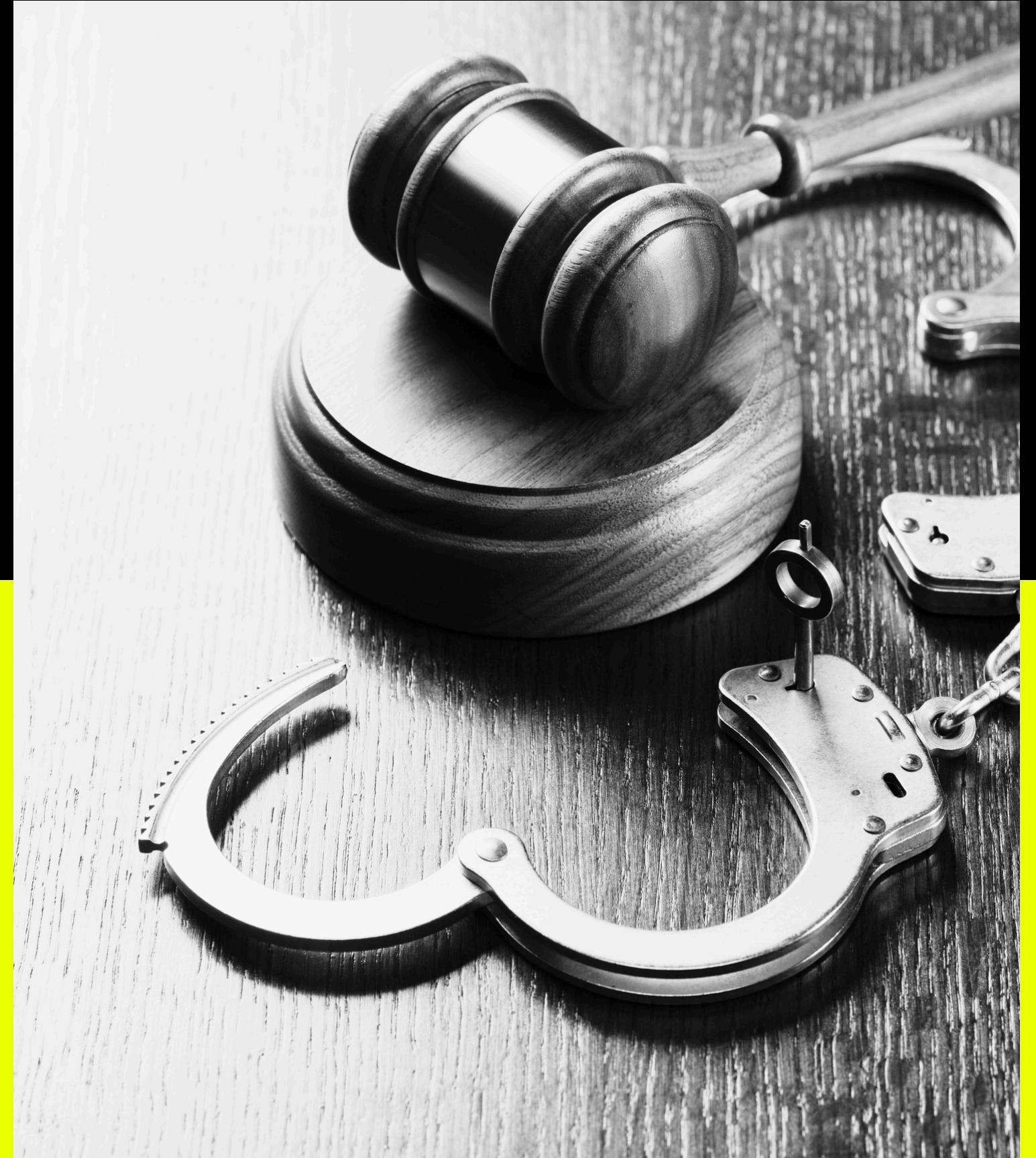




The 'Difficult Design' and Exclusionary Nature of the Canadian Youth Justice System

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The Youth Criminal Justice Act (YCJA) is designed to...

- Hold youth accountable
- Respond to the needs of young persons with special requirements.
- Assign meaningful consequences
- Focus on rehabilitation and reintegration.
- Address underlying causes of justice involvement

Consistent with the American Psychiatric Association (2022), we refer to IDD as cognitive and adaptive functioning impairments (meaning challenges with everyday living skills). Youth with an IDD may have difficulties with:

01	Problem Solving	05	Concentration
02	Memory	06	Sensory impairments
03	Processing Information (amount & pace)	07	Impulsivity
04	Communication/social difficulties	08	Learning new things

Context

Young people in Canada **experience inequalities** within the justice system (Curling and McMurtry, 2007).

Overrepresentation of youth with intellectual and developmental disabilities (IDD) (Cockram et al., 2009; Jones, 2007; Marinos et al., 2020).

Limited research has focused on the experiences of crown attorneys and defence counsel

RESEARCH OBJECTIVES

1

Evaluate whether the Canada's Youth Criminal Justice Act offers justice-involved young people with Intellectual and Developmental Disabilities (IDD) developmentally appropriate protections consistent with the YCJA's legislative directives.

2

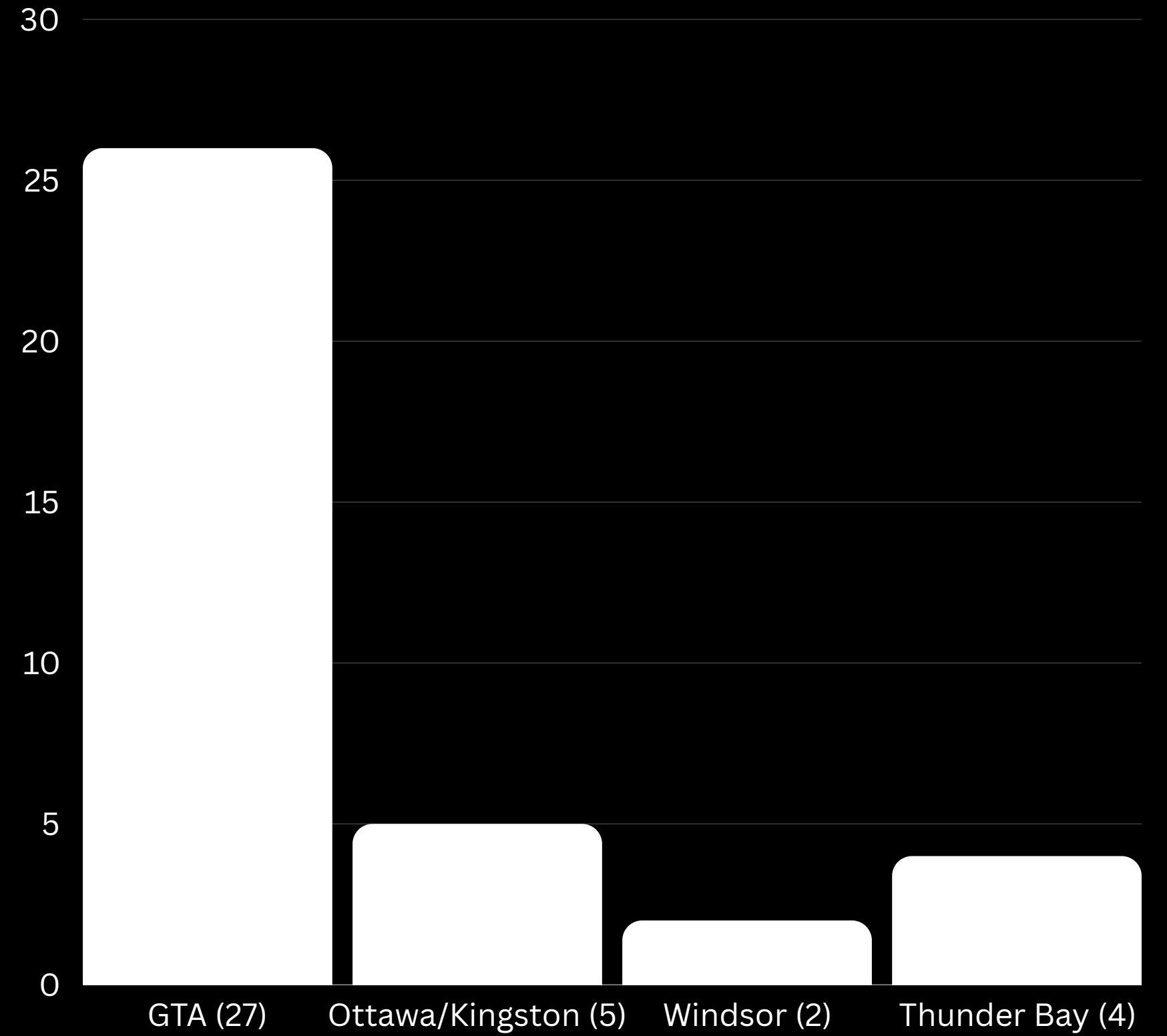
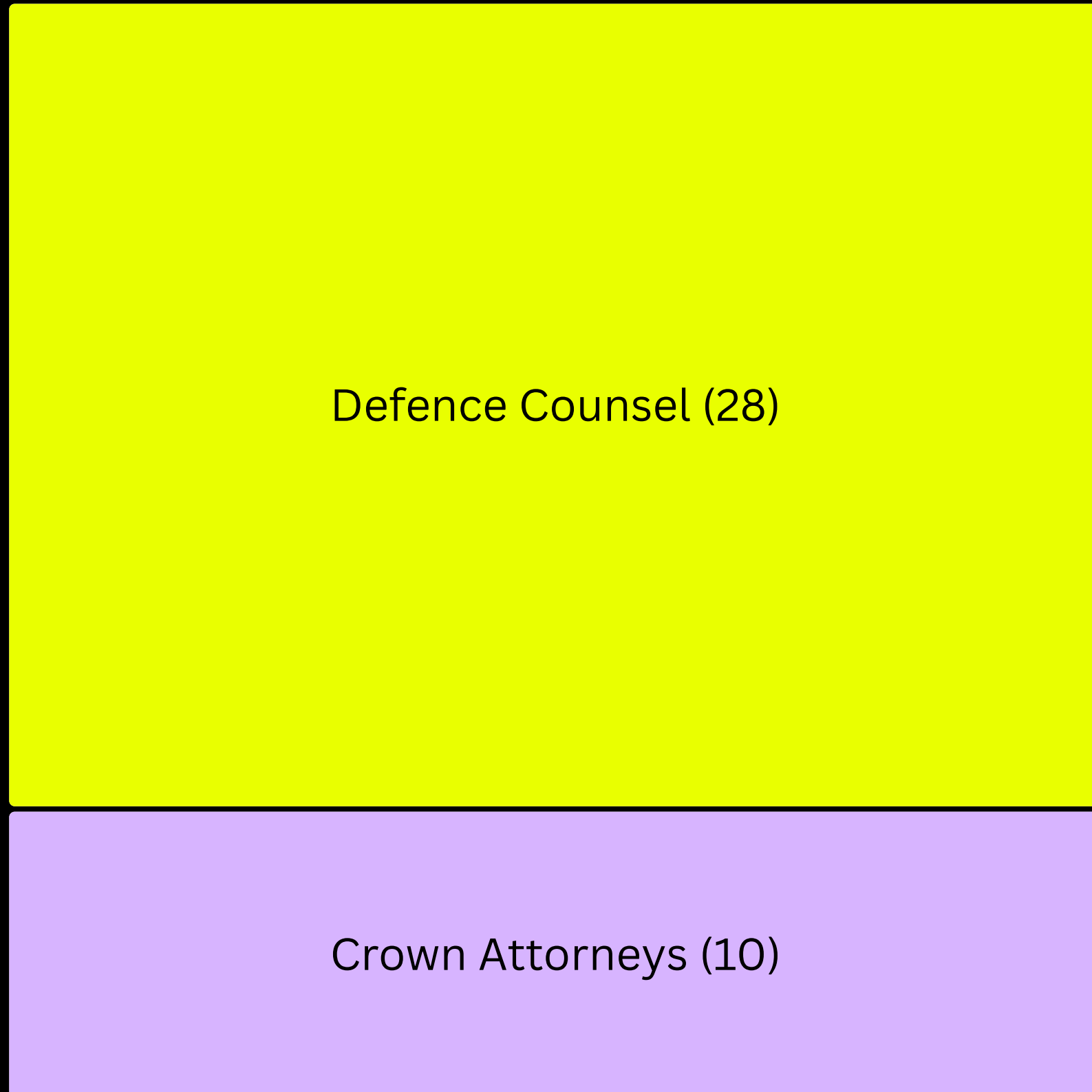
Understand the lived experiences of youth with IDD involved in the youth justice system (from the perspective of justice professionals)

Methods



- 38 interviews (May 2021 – April 2022) with crown attorneys and defence counsel who work with young people
- Approximately 60-90 minutes via Zoom
- Questions pertaining to a range of issues - understanding of IDD, YCJA and rights & experiences working with youth with IDD

Participants



Findings

The YCJA needs improvement in the following areas...

1

**Lack of
Protections**

2

**Extrajudicial
Measures
and
Sanctions**

3

**Section 34
Reports**

Lack of Protections

- The YCJA lacks specification for youth with IDD(s)
 - Vague language is used in Section 3(d) for the YCJA which state “special considerations apply in respect of proceedings against young persons”.
 - It does not speak specifically to those who are neurodiverse.
-

Josh (Defence Counsel)

“I don't know that the act specifically does much in terms of protecting the rights of youth with IDD. I think it's something more that focuses on the rights of youth in general. But it could be more effective in terms of creating a subcategory of youth, who also have IDD issues, and that might be something that could perhaps offer enhanced protections concerning statements that they make to persons in authority”

Jamie (Defence Counsel):

We have interpreters for people who don't understand English, we don't have interpreters for young people, and especially young people with IDD that can break it down, and lawyers are not trained to do that. Lawyers are notoriously bad at explaining difficult concepts in simple language - we're really bad at that.

Rachel (Crown Attorney)

So, I think the gaps are at the beginning, when they're arrested. I worry about the on call duty counsel not knowing what's going on with the young person. When the young person is on bail, so bail pending, they're often released to their parents and they're not given access to resources until they're actually finding of guilt. So, those sort of pre-finding supports are important.

Extrajudicial Measures and Sanctions

- Extrajudicial sanctions or measures, which hold youth accountable for their actions through means outside of traditional court, such as through community programs
 - Can be assigned by a police officer (extrajudicial measure) or judge (extrajudicial sanction).
 - It does not speak specifically to those who are neurodiverse.
 - Youth will be given a set amount of time to complete an assigned task, such as counseling or participating in charity work
-

A lack of funding for community programming can be a barrier to the application of extrajudicial measures/sanctions

Shengrui (Crown Attorney):

So, my biggest complaint would be funding, you know, for anything. They have all of these initiatives and they all sound great, but there's no funding that's really attached to them. So, we have a diversion program but my diversion program is literally working off of a shoestring budget, where the girls are so vested in these youth that they're working for \$25-\$30,000 a year. Can't even afford to live on their own. You know, and they're running these programs on volunteers and whatever else and I'm like, are you kidding me? Like, yeah, it's this great program written into the legislation, you know, extrajudicial sanctions and then it's not funded, it's beyond negligible.

Specific community programs suited to justice-involved youth with IDD(s) are not readily available.

Marcus (Crown Attorney):

I wish we had access to more community-based programming that maybe focused on youth with IDD that we can help engage to improve their outcomes. I have been told sometimes by youth workers that they feel there's a limit on some of the resources...but that's not a problem with the statute, that's really more a problem with both federal and provincial governments. I suppose ensuring that adequate resources are behind the statute so that those of us on the front lines can adequately take advantage of what it offers.

Section 34 Reports

- Section 34 (1) of the YCJA determines that, with the permission of the youth and prosecutor, an assessment by a qualified individual may be performed at any point in the court proceedings.
 - Section 34 reports are typically ordered by a judge and completed within four to six weeks over a series of appointments (London Family Court Clinic, 2022)
 - The findings of section 34 reports can influence sentencing decisions.
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Over-reliance on Lawyers to Recognize IDD(s)

Interviewer:

Would you say that you are informed if your clients have an intellectual and developmental disability?

Mark (Defence Counsel):

I would say if it's a brand-new client that comes in the door, most of the time, no. Most of the time, it's kind of for me to see certain...I don't want to say symptoms, but certain aspects of their behavior that I think trigger certain disability difficulties. Most of the time, I'm almost the first person to kind of realize that there might be an issue.

YCJA assumes that disabilities are visible.

Nicole (Defence Counsel):

I would say that, the amount of people who have intellectual disabilities, and youth who have intellectual disabilities in the criminal justice system, is probably way higher than we realize.

Interviewer:

You're saying that a lot of people go underdiagnosed?

Nicole (Defence Counsel):

Yeah, either underdiagnosed, or they present in a way that...it's not questioned...the question doesn't get asked either by the defence lawyer, or the crown, or the judge.

A stack of colorful sticky notes (pink, green, purple, brown) is shown against a light grey background. The top sticky note is light blue and has the text "TIME FOR CHANGE" written in a bold, black, hand-drawn font. The entire image is framed by a thick yellow border.

**TIME
FOR
CHANGE**

Call for change...

Our research findings indicate two areas of concern for justice-involved youth with IDD, ultimately necessitating reformations to be made in:

1

Including more explicit guidance on fundamental components of the YCJA and how it can be applied to youth with IDD

2

Providing sufficient funding and program development to fulfill YCJA principles in promoting 'rehabilitation and reintegration' for neurodiverse youth.