



# CREATE Position Paper

## Issue: Youth Justice

### CREATE's Position

CREATE believes the over-representation of young people with a care experience in the youth justice system is unacceptable. Cross-over youth experience greater disadvantage than the general youth justice population, and often present with more complex needs (Mendes, Baidawi & Snow, 2014). To ensure the needs of these young people are met, there needs to be a prioritisation of prevention strategies across state and territory governments, increased collaboration between youth justice and child protection systems, and the adoption of a trauma informed youth justice system. Such reform will assist young people achieve their best outcomes, but also lead to reduced recidivism and increased safety for communities.

**Table 1. National Standards that Relate to Youth Justice and Out-of-Home Care (FaHCSIA, 2011)**

National Standards	Measures
<b>1. Children and young people will be provided with stability and security during their time in care.</b>	1.3 The proportion of children and young people in out of-home care who report feeling safe and secure in their current placement.
<b>5. Children and young people have their physical, developmental, psychosocial and mental health needs assessed and attended to in a timely way.</b>	5.1 The number and proportion of children and young people who have an initial health check of their physical, developmental, psychosocial and mental health needs within a specified period of entering out-of-home care.
<b>10. Children and young people in care are supported to develop their identity, safely and appropriately, through contact with their families, friends, culture, spiritual sources and communities and have their life history recorded as they grow up</b>	10.2 The proportion of children (as age-appropriate) and young people who demonstrate having a sense of connection with the community in which they live
<b>12. Carers are assessed and receive relevant ongoing training, development and support, in order to provide quality care.</b>	12.3 The proportion of foster carers and kinship carers (who had at least one placement during the year) who report feeling supported in their role and who feel their developmental needs relevant to their role are catered for.

### Evidence

- A report by the Australian Institute of Health and Welfare found that young people in the child protection system were 12 times more likely to also be under youth justice supervision, compared to the general population (AIHW, 2017).
- Young Aboriginal and Torres Strait Islander Australians are 16 times more likely than the general population to have contact with the child protection and youth justice systems (AIHW, 2017).
- Several factors increase the likelihood of a young person in OOHC offending. These include:
  - Placement instability (Ryan & Testa, 2005);
  - Being placed in a residential facility (Ryan, Marshall, Herz & Hernandez, 2008);
  - The criminalising of behaviours that would be tolerated in a family home, but result in utilisation of police in a care environment when caregivers lack training in how to de-escalate behaviour (Shaw, 2016; Victoria Legal Aid, 2017);

- Young people who have left care are also more likely to have contact with the criminal justice system. Previous research by CREATE found that 46% of males and 22% of females who had transitioned from care reported involvement with the juvenile justice system (McDowall, 2009).
- Evidence suggests the prevalence of negative biases held by justice system officials. Ryan, Herz, Hernandez and Marshall (2007) found that young offenders from child protection backgrounds were less likely to receive probation than other young people regardless of offence type.
- A national consultation of 148 young people conducted by CREATE (2018) found that approximately 43% of participants felt the justice system was stigmatising. The justice system was perceived to give harsher consequences to young people in care, and the participants felt that police and court officials expected young people with a care experience to be delinquents. Many young people who have contact with the youth justice and child protection systems have experienced trauma. Trauma has an impact on young people's neurobiological development which in turn has an effect on young people's emotional and behavioural regulation capacity, and thus in times of stress and anxiety a young person may find it difficult to modify behaviour that could constitute offending (Bollinger, Scott-Smith & Mendes, 2017).
- Court processes and interactions with police can be highly stressful (Mendes et al., 2014). Without necessary support, this stress has the capacity to be re-traumatising, and a young person may react in such a way as to prolong their involvement with the youth justice system. However, CREATE's national consultation (2018) found that 38% of offenders had no one supporting them during their contact with police, and 19% reported no one had supported them during court.

## Actions

CREATE calls on state and territory governments with responsibility for child protection and youth justice to implement strategies to reduce the number of young people with a care experience entering the youth justice system, and ensuring that those young people who do have contact with police, courts and youth detention facilities are provided with the necessary information, guidance and support to improve wellbeing outcomes and reduce recidivism. CREATE specifically advocates for:

1. Increased training and resources provided to residential workers, foster and kinship carers regarding how to manage challenging behaviour within a trauma informed framework. This can include the development of protocols and MOU's between OOHC service providers and police, clearly outlining what contexts require the police to attend and supporting the use of diversionary responses. This will ensure young people in OOHC are not disproportionately having contact with police that would not occur in a non-OOHC environment;
2. The adoption of a trauma informed youth justice system which promotes policy and practice that better manages challenging behaviours, develops young person resilience and strength, and ultimately leads to increased cooperation with youth justice staff and reduced recidivism (Elwyn, Esaki & Smith, 2014). Practices aligned with a trauma informed approach include screening for trauma exposure, using non-judgemental language, and ensuring judicial processes are explained in a developmentally appropriate manner (Branson, Baetz, Horwitz, & Hoagwood, 2017);
3. A high proportion of young people with a care experience are unsupported during their justice system contact. There is a need for greater clarity regarding the roles and expectations of caregivers and professionals in supporting young people through the justice system. Child protection, youth justice, and community service agencies who provide placements for young people in OOHC need to work together to develop clear protocols about how best to support young people who may have contact with the youth justice system at each stage, and support the sharing of necessary information to facilitate this.
4. Increased public education and awareness of the impact of negative language and stereotyping on young people in OOHC, and a need to promote positive images of young people in OOHC to reduce internalisation of negative perceptions.

## References

- Australian Institute of Health and Welfare [AIHW]. (2017). *Young people in child protection and under youth justice supervision 2015-16*. Canberra: Author.
- Bollinger, J., Scott-Smith, S., & Mendes, P. (2017). How complex developmental trauma, residential out-of-home care and contact with the justice system intersect. *Children Australia*, 42(2), 108–112.
- Branson, C. E., Baetz, C. L., Horwitz, S. M., & Hoagwood, K. E. (2017). Trauma-informed juvenile justice systems: A systematic review of definitions and core components. *Psychological Trauma: Theory, Research, Practice, and Policy*, 9(6), 635–646.
- CREATE Foundation (2018). *Youth Justice Report: Consultation with young people in out-of-home care about their experiences with police, courts and detention*. Brisbane: Author.
- Department of Families, Housing, Community Services, and Indigenous Affairs (FaHCSIA). (2011). An outline of National Standards for out-of-home care. Canberra: Commonwealth of Australia.
- Elwyn, L. J., Esaki, N., & Smith, C. A. (2014). Safety at a girls' secure juvenile justice facility. *Therapeutic Communities*, 36(4), 209–218.
- McDowall, J. J. (2009). CREATE Report Card 2009- *Transitioning from Care: Tracking Progress*. Sydney: CREATE Foundation.
- Mendes, P., Baidawi, S., & Snow, P. C. (2014). *Good practice in reducing the over-representation of care leavers in the youth justice system: Leaving care and youth justice—Phase Three report*. Melbourne: Monash University.
- Ryan, J. P., Herz, D., Hernandez, P. M., & Marshall, J. M. (2007). Maltreatment and delinquency: Investigating child welfare bias in juvenile justice processing. *Children and Youth Services Review*, 29(8), 1035–1050.
- Ryan, J. P., Marshall, J. M., Herz, D., & Hernandez, P. M. (2008). Juvenile delinquency in child welfare: Investigating group home effects. *Children and Youth Services Review*, 30, 1088–1099.
- Ryan, J. P., & Testa, M. F. (2005). Child maltreatment and juvenile delinquency: Investigating the role of placement and placement instability. *Children and Youth Services Review*, 27, 227–249.
- Shaw, J. (2016). Policy, practice and perceptions: Exploring the criminalisation of children's home residents in England. *Youth Justice*, 16(2), 147–161.
- Victoria Legal Aid. (2016). *Care not custody: A new approach the keep kids in residential care out of the criminal justice system*. Melbourne: Author.