

# Youth Justice Report

## Consultation with young people in out-of-home care about their experiences with police, courts and detention

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# About CREATE

CREATE Foundation is the national consumer body for children and young people with an out-of-home care experience. We represent the voices of all children and young people with a care experience, and those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential.

Our mission is to create a better life for children and young people in care.

To do this we:

- **CONNECT** children and young people to each other, CREATE, and their community to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices, and services and increase community awareness.

We achieve our mission by offering a variety of programs and services for children and young people in care, developing policy, and conducting research to advocate for a better care system.



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# Executive Summary

Young people with an out-of-home care (OOHC) experience are more likely to have contact with the justice system than peers not in care. Young people in OOHC are 19 times more likely to be under a youth justice order compared to the general population (Australian Institute of Health and Welfare [AIHW], 2017). Evidence also suggests that young people who have been maltreated are at risk of further victimisation (Biehal, 2014; McIntyre & Widom, 2011). CREATE has significant concerns about the disproportionate representation of young people in OOHC in the justice system and whether the needs of young people are being met during this time. To gain a better understanding of the engagement and experiences of young people from OOHC in the justice system, CREATE facilitated interviews with 148 young people with a care experience from throughout Australia. The young people who participated provided important insights into how they became involved with the justice system, their treatment by justice system personnel, the support they received during their interactions, the outcome of their involvement in the justice system and their recommendations for improving the justice system for young people with an OOHC experience.

## Key findings

Three distinct groups emerged based on type of contact with the justice system: offenders, young people who had contact as they had been reported missing, and victims.

Similar factors appeared to motivate young people to offend and to run away from placement. These motivators included becoming frustrated by triggers in their care environment, the need to protect themselves from a situation they deemed unsafe, and the importance of maintaining a peer group. The majority of offenders and young people who were absent from placement described experiencing intense anxiety and fear during their interactions with the police and courts, as well as feeling the police were unfairly antagonistic.

Victims described being let down by the justice system. This appeared to be driven by the justice system not acting as protectively as they expected. The majority of the victims felt powerless in the justice proceedings as they lacked the opportunity to be heard.

Similarities emerged across the offenders, young people who were absent from placement, and victim accounts. Most participants reported receiving no support during their initial interaction with police, at court, or in detention, and perceived the justice system to discriminate against young people in care. The police were perceived to lack an ability to build rapport with young people, and



young people felt police personnel did not take into consideration the influence of trauma on their behaviour.

A small minority of participants however described positive interactions with the justice system. These positive perceptions resulted from police respecting the young people, which led to their feeling listened to, and appropriately supported.

## **Key recommendations**

Following feedback from respondents, several recommendations have been developed to improve the nature of contact between young people in OOHC and the justice system.

Most importantly, the justice system should adopt a trauma-informed approach when interacting with young people in OOHC. A trauma informed model includes explaining judicial processes and terminology in a developmentally appropriate manner, clearly articulating what is expected of the young person, and ensuring that justice system authorities are trained to correctly identify and respond to trauma-influenced behaviour.

Additional recommendations have implications for case management. Specifically, there is a need for appropriate case planning that identifies and minimises the factors that increase the risk of a young person leaving placement or committing an offence. This entails connecting young people to appropriate specialist supports as required (such as mental health support), ensuring foster carers and residential workers are appropriately trained to manage challenging behaviour without police involvement, and ensuring the young person feels safe and supported in their care environment, which can minimise the triggers associated with challenging behaviour.

There is also a need to clarify the roles and expectations of the child protection workers and caregivers when a young person has contact with the justice system. Providing emotional and practical assistance should be an expectation to ensure young people are appropriately supported.

Finally, there is a need for a concerted effort by the sector to combat the stigma associated with being in OOHC. This may involve increased public education and awareness regarding the impact of negative language and stereotypes, and increased promotion of positive images of young people in OOHC. Targeted approaches should be utilised for the justice system to specifically combat the negative perceptions held by justice system authorities.



## Introduction

Children and young people in OOHC comprise a vulnerable population that is disproportionately represented in the justice system, both as victims and offenders, when compared to young people without a care experience (Mendes, Baidawi, & Snow, 2014a). The recent Royal Commission into the Protection and Detention of Children in the Northern Territory (Commonwealth of Australia, 2017a) and the Royal Commission into Institutional Responses to Child Sexual Abuse (Commonwealth of Australia, 2017b) have highlighted systemic issues within the justice system where the best interests of young people in OOHC are not being upheld. In light of these findings, CREATE Foundation identified a need to consult with young people to learn of their experiences interacting with the justice system, the outcome of this involvement, and whether they received support during their justice system involvement. Understanding young people's experiences will provide insight into why young people in OOHC have a disproportionate amount of contact with the criminal justice system, and inform recommendations to improve justice-system responses to the in-care population.

### **The Australian child protection system**

Out-of-home-care refers to the provision of overnight care funded by the state or territory for children aged 0-17 who are unable to live with their parents. In most cases, children and young people in OOHC are also on a form of care and protection order, wherein the state or territory intervenes in varying degrees to supervise and make decisions for the young person in the interest of their welfare. In 2017 approximately 48,000 children and young people were in OOHC, 95% of which were also on a care and protection order (AIHW, 2018). Aboriginal and Torres Strait Islander children make up 37% of this in-care population, and are 10 times more likely to be in OOHC compared to non-Indigenous children.

OOHC accommodation most commonly includes home-based care (93%), residential care (5%), and Other accommodation (2%). Home-based care includes kinship care (47%), where the young person lives with a relative, or a person with a pre-existing relationship to them, and foster care (38%), where a carer is reimbursed for expenses by the state/territory government. Residential care refers to the situation where the young person is placed in a residential facility typically with other young people, and there are paid supervisory staff. Other placement types include independent living arrangements (such as private boarding), and placements that do not fit the above categories (AIHW, 2018).



## Out-of-home care and youth justice involvement

Young people in the child protection system who are subsequently charged with a criminal offence are referred to as “crossover” or “dual order” children (Walsh & Jagers, 2017). In a nationwide study of young people transitioning from care, 19.2% of young people (n= 164) had experienced contact with the juvenile justice system (McDowall, 2008). Similarly, a report conducted by the AIHW (2017) found that young people in OOHC were 19 times more likely to also be under the supervision of youth justice, compared to the general population. Indigenous Australians are overrepresented in the dual order population, and are 16 times more likely to be both in the child protection system and under youth justice supervision compared to the non-Indigenous population. These statistics do not imply that the majority of young people who have had a history of abuse and neglect engage in criminal activity, but rather, that a large proportion of young people who have offended have a history of abuse and neglect (Darker, Ward, & Caulfield, 2008).

### Associations between maltreatment, trauma & offending

Whilst research consistently identifies that young people with a history of abuse and neglect are more likely to offend than young people without this history, the mechanisms that explain this association remain poorly understood (Jonson-Reid, 2002; Ryan & Testa, 2005). Understanding the association between maltreatment and criminal offending is complicated by maltreatment experiences being heterogeneous in terms of severity, type, and chronicity (Van Wert, Mishna, Trocme, & Fallon, 2017).

Research that has taken into account the heterogeneity of abuse experiences has found that young people who experienced multiple forms of abuse, and young people whose maltreatment persisted throughout childhood and adolescence, are at greater risk of later criminal convictions (Goodkind, Shook, Kim, Pohlig, & Herring, 2013; Hurren, Stewart, & Dennison, 2017; Malabo & Delfabbro, 2015; Malvaso, Delfabbro, & Day, 2017). This research identifies a profile of the young offender who has experienced significant complex trauma early in life.

The experience of complex trauma, particularly during vulnerable early development periods, can have important consequences on young people’s cognitive processing and behavioural reactions later in life (Anda et al., 2006; Bollinger, Scott-Smith, & Mendes, 2017; Weber & Reynolds, 2004). In particular, young people may have learned to be hyper-aware of potential stressors in their environment or stimuli that reminds them of their previous trauma. Trauma also impairs neurobiological development in areas of the brain responsible for impulse control and emotional regulation (such as the prefrontal cortex and limbic systems). Thus in times of stress and anxiety or



when the young person is reminded of past traumatic experiences, a young person may find it difficult to consider the consequences of their actions, to regulate and modify behaviour, and may over-estimate the presence of danger, all of which increases their risk of offending (Berbary, 2017; Bollinger et al., 2017).

### **Being taken into care as a risk factor for criminal offending**

A risk factor that has begun to receive critical attention is being taken into care, and the influence this has on the associations between childhood maltreatment and juvenile offending. Malvaso et al. (2017) found that young people with a history of maltreatment, who had been placed in OOHC, had more convictions than young people with a history of maltreatment but who were not placed in OOHC.

Doyle (2008) investigated the impact of being placed in OOHC on criminality for specifically “marginal” cases (cases where child safety officers and investigators may disagree about the recommendation for placement). Over 23,000 cases were included in the analyses. Doyle found that children who had an OOHC placement were two to three times more likely to be arrested, convicted and imprisoned, compared to children who did not have an OOHC placement. This suggests there may be factors within the OOHC environment that increase the risk of offending.

Frequent placement changes are also correlated with an increased risk of later offending, potentially due to placement instability preventing the formation of attachment bonds and relationships to mitigate the impact of early trauma (Goodkind et al., 2012; Malvaso & Delfabbro, 2015; Ryan & Testa, 2005). Mendes, Baidawi, and Snow (2014b) further identified that young people in care have limited access to other specialist support services to address trauma, mental health concerns, and developmental difficulties, and may be re-traumatised in care through failed reunification attempts or abuse by caregivers and other young people within the environment.

### **Factors in the care environment that influence offending**

The residential care environment is increasingly being identified as a factor influencing the association between in-care experiences and offending behaviour. Ryan, Marshall, Herz and Hernandez (2008) assessed a sample of over 8000 young people between the ages of 7 and 16 who had at least one OOHC placement, with no arrests prior to first placement. Compared to young people placed in foster homes, young people with at least one group home placement were 2.5 times more likely to have been arrested than young people in foster homes. This finding was replicated by Baskin and Sommers (2011), who found that youths placed in a group home were



significantly more likely to have been arrested and charged than youths placed in a foster home or whom remained with their families.

In a residential environment multiple young people with challenging behavioural and emotional disturbances are co-tenanted (Hayden, 2010). Young people may be confronted with peer pressure to commit crimes, or to imitate the criminal behaviour modelled by co-tenants (Hayden, 2010; Lee & Thompson, 2009). However, understanding the impact of placement breakdowns and residential care is complicated by the fact that young people with pre-existing complex behavioural and emotional difficulties (often the result of trauma experiences) are placed in residential facilities following placement instability as a result of these behavioural difficulties (Staines, 2017).

Young people placed in OOHC are also more likely to have contact with the justice system due to the criminalisation of behaviours that may otherwise be considered acceptable or tolerable in a home environment (Commonwealth of Australia, 2017a, Volume 3B, p. 20; Commission for Children and Young People [Victoria], 2015). Young people in a family home may damage property or threaten harm whilst angry, but parents typically manage this behaviour. In the OOHC environment, residential facility staff or foster carers are more likely to prematurely engage the police to manage the young person's behaviour, particularly when incidents are frequent (though not necessarily serious) and the young person does not respond to other sanctions, such as threat of being grounded (Cashmore, 2011; Shaw, 2016; Staines, 2017).

McFarlane (2010; 2015) has shown that in New South Wales the majority of young people in care who had to attend court were charged with minor property damage, usually of residential facilities. Research in Victoria similarly has found that while young people in the general population are more likely to be charged with stealing, young people in care are more likely to be charged with property damage (Victoria Legal Aid, 2016). This reliance on police to manage behavioural issues in OOHC may be due to a lack of training in de-escalation techniques or due to carers or staff following risk-averse procedures. However, utilising police to manage the young person's behaviour ultimately increases the likelihood of their being charged.

## **Interactions with the justice system**

Interventions such as ensuring caregivers are appropriately trained in managing challenging behaviour and providing specialist mental health services are key in preventing initial police involvement. However, understanding how young people in OOHC experience and perceive the police, courts, and detention facilities may offer another means of reducing negative exposure to the justice system and reduce recidivism.



## Perceptions of procedural justice and effect on offending

Encounters with the justice system influence how young people assess the legitimacy of the system, which in turn influences their propensity to engage in offending behaviour. When young people perceive they have been treated fairly they are more likely to perceive the justice system as legitimate and believe that the law should be adhered to. Perceiving the interaction with justice system personnel as unfair and disrespectful can reduce perceptions of legitimacy, and in turn young people may be less compelled to abide the law (Fagan & Tyler, 2005).

Procedural justice appears to be more influential in young people's perception of legitimacy. This is reflected in an analysis of complaints made against police officers in Queensland. Young people were more likely to complain about the demeanour and attitude of the officer, and the use of excessive force (complaints most often indicated involved manhandling, punching or kicking the young person), rather than their judicial outcomes (Queensland Crime and Misconduct Commission, 2009). Perceptions of being treated with respect in court however are also related to young people's satisfaction with proceedings, with lack of respect being found to predict young people's dissociation from proceedings (Choi et al., 2012; Huerter & Saltzman, 1992).

Negative perceptions of the police may influence the young person's cooperation within the interaction, in turn influencing how the police respond. Research conducted by Alder, O'Connor, Warner and White (1992) for example found that Australian police officers considered the young person's attitude and level of cooperation when deciding to informally or formally respond to the offending behaviour, as well as the seriousness of the offence. In terms of how police actually respond, the Northern Territory Royal Commission (Commonwealth of Australia, 2017a) raised concerns regarding the police's preference for arrest rather than issuing warnings or issuing a summons. Similarly, a report by the Western Australian Department of Corrective Services (2016) found that less than half of the cases that could be diverted (based on provisions in the *Young Offenders Act 1994*) were diverted, despite the Act requiring officers to preference cautioning over charging.

## Young people and justice system authorities

Research has consistently found that interactions between police and young people are problematic, with young people holding negative attitudes towards the police and vice-versa (Commonwealth of Australia, 1997). Young people perceive the police as untrustworthy, whereas police perceive young people as disrespectful (Hurst & Frank, 2000; Gormally & Deuchar, 2012; Madon, 2015; Queensland Crime and Misconduct Commission, 2009). However, research has neglected consideration of the unique experiences of young people in care.



Research has found that young people who identify with a minority group (such as racial identity) are more likely to hold negative views of the police as they believe that police are likely to be discriminatory and racist towards members of their group (Sharp & Atherton, 2007; Madon, 2015). Being in care is another minority identity associated with stigma (Denzel & MacDonald, 2014). Young people in OOHC thus may similarly possess negative perceptions of the police, if they see the police as holding stereotypical views of young people in OOHC and discriminating against them because of this identity.

There is minimal information about how young people in OOHC perceive their treatment by police. Research by Mendes et al. (2014a), who conducted interviews with 15 young people aged 18-26, highlighted that police behaviour and attitudes could be potentially traumatic. The use of restraints, aggression, negative demeanour, and reminders of authority status that feature in participant accounts were noted by researchers to be triggering for young people.

### **How are young people supported when interacting with the youth justice system?**

Considering the vulnerable profile of young people in OOHC who have contact with the criminal justice system, and the importance of the interaction with the police in determining judicial outcomes, it is clear that young people should have sufficient psychological and practical support when being questioned by the police, during court, and in detention. However, the limited body of research suggests that the support needs of young people in OOHC are not being met during these times.

Research by Mendes, Snow, and Baidawi (2012) highlights the lack of support available to young people in OOHC who come into contact with the justice system. Interviews with youth justice, child protection, and community support agencies revealed a lack of communication and confusion about whose responsibility it is to support the young person. Child protection caseworkers report they withdraw their level of support while the young person is dually case managed by youth justice. However, concerns were raised as to the youth-justice-workers' training and understanding in managing attachment and trauma-related issues and therefore raised concern as to their capacity to provide appropriate emotional and psychological support for dual-order clients.



## Support during initial police arrest

The *Crimes Act 1914* states that a young person under the age of 18 suspected of a Commonwealth offence must have an “interview friend” present during the questioning, and the young person provided the opportunity to communicate with the interview friend prior to the interview (s. 23K). This interview person may be a parent, guardian, relative, friend or legal practitioner, or an available independent person selected from the community. An interview friend thus may be a stranger, insufficiently prepared to support the young person practically or emotionally, or may be unwilling or unable to advocate for the young person’s best interests (Commonwealth of Australia, 1997).

Australian legislation regarding whether a young person has an interview friend or support person present varies across state and territory. The Victorian *Crimes Act 1958* (s. 464E) requires an interview friend for all police interviews when a young person is in custody and the South Australian *Summary Offences Act 1953* requires an interview friend when the young person is apprehended on suspicion of a crime. However, an independent person is only required if charged with a serious offence in the Northern Territory (*Youth Justice Act 2005 s. 18*). Queensland legislation similarly only states that a support person must be present when taking the identifying particulars of a young person charged with an indictable offence, if this evidence is to be admissible (*Youth Justice Act 1992 s. 26*).

The Victorian Law Reform Commission (2010) identified that finding a suitable support person during interviews was particularly difficult for young people in OOHC. There can be confusion as to who is the most appropriate support person, especially if parents and carers have no guardianship responsibilities or policies and procedures in a residential facility prevent their workers from assuming the role of an interview friend. Conger and Ross (2001) in an American study found that even when caseworkers could be contacted, they were unable to collect and support the young person, or considered being held in custody an appropriate punishment for the young person. If police are unable to release the young person to a suitable guardian, the young person is held for longer, occasionally in detention facilities.

## Support during court appearance

Evidence also suggests that young people with a care experience lack the necessary support required when attending court. The Northern Territory Royal Commission (Commonwealth of Australia, 2017a, Volume 3B, p. 25) reported that caseworkers often did not attend with the young person, had limited knowledge of the contextual issues relating to the matter at hand, and had failed to seek legal advice or representation for the young person, consistent with the findings of McFarlane (2010). Deuchar and Sapouna’s (2016) research, evaluating a social-work support program for youth



in Scotland, highlighted the importance of support in court. Young people described being less anxious and scared during the court processes, and were able to appropriately manage their behaviour when confronted by magistrates. Young people were also reminded of court dates and provided transport to make the court proceedings, thus reducing the possibility of further administrative charges (e.g., failure to attend court). The support workers similarly acted as advocates, demonstrating to magistrates that the young person had support to follow bail conditions and address underlying reasons for criminal behaviour, increasing the likelihood of bail rather than custody. Without necessary information from caseworkers regarding what support and accommodation is available for the young person if bail conditions are granted, detention is more likely (Conger & Ross, 2001).

### **Experiences of detainees**

The Northern Territory Royal Commission (Commonwealth of Australia, 2017a) revealed that vulnerable young people, many of whom had out-of-home care experiences, were exposed to extensive abuse in youth detention centres. Rather than being rehabilitated by receiving the necessary, individualised support they needed, young people were subjected to degrading and humiliating treatment by the adults entrusted with their care. In cases where young people presented with mental health concerns, punitive measures such as restraints were implemented as opposed to therapeutic intervention. The Australian Non-Government Organisation Coalition's Submission to the UN Human Rights Committee (Howie & Cody, 2017) argues that poor behavioural management in youth detention facilities is not restricted to the Northern Territory but rather has been reported to occur across Australia including Victoria (Commission for Children and Young People [Victoria], 2017), Western Australia (Office of the Inspector of Custodial Services, 2017), and Queensland (McMillan & Davies, 2016).

Young people in Northern Territory detention centres were also not supported to have family contact. This contravenes evidence that suggests family contact whilst detained is predictive of non-recidivism (Ryan & Yang, 2005; Vidal & Woolward, 2017). Instead, they were placed in detention centres without due consideration to where their families were located and the resources available to them to travel, and decisions were made without notifying the detainees or family members. This finding is consistent with research such as by McFarlane (2015), who identified that young people in OOHC were less likely to receive visits from family, friends, and caseworkers when compared to other detainees.

Her Majesty's Inspectorate of Prison's (2011) additionally found that, from a sample of 12 English young people with a care experience who at the time were in custody, less than half of these young



people had been visited by their social workers, with frequencies ranging from once a week to once every 3 months. Half of the participants did not know who was collecting them upon release, and the lack of communication contributed to increased uncertainty about what was going to happen to them after detention. This inadequate exit planning was also identified in the Northern Territory Royal Commission (Commonwealth of Australia, 2017a), and arguably could contribute to a cycle of recidivism.

## **Victimisation whilst in care**

Young people with a care experience may also have contact with the justice system as victims of crime. Research indicates that young people who have been maltreated are likely to be re-victimised and abused later in life (McIntyre & Widon, 2011; Ogloff, Cutajar, Mann, & Mullen, 2012). However, research has identified that young people in OOHC are at risk of further neglect, and sexual, physical, and emotional abuse, perpetrated by caregivers and other young people in a placement (Helton & Gochez-Kerr, 2017). International data indicates that maltreatment (inclusive of psychological and physical abuse) occurs in approximately 4% of out-of-home care placements (Biehal, Cusworth, Wade, & Clarke, 2014).

## **Physical abuse in OOHC**

Font (2015) investigated the rate of substantiations of abuse investigations and compared the type of alleged crimes across different placement types, utilising a database on 96,000 placements. Approximately nine percent of placements were investigated for alleged abuse, and the most commonly reported allegation whilst in foster care, kinship care and residential care was physical abuse. In another study with a sample of 329 participants, one quarter of young people with a care experience reported being physically abused whilst in care, three times the rate of the general population (Euser, Alink, Tharner, van Ijzendoorn & Bakermans-Kranenburg, 2014). When placement type was analysed separately, young people placed in foster homes had a 1.6X greater chance of being physically assaulted compared to the general population, whereas young people placed in residential facilities were twice as likely to be physically assaulted. A high proportion of participants chose not to report who the perpetrator of the abuse was (38%), but of those that did, 67% of victims in foster care alleged their foster carer or an adult living in the home was the perpetrator, and a similar proportion of young people in residential care reported a staff member had physically assaulted them (71%).



## Sexual abuse in OOHC

In Australia, the recent Royal Commission into the Institutional Responses to Child Sexual Abuse (Commonwealth of Australia, 2017b) highlighted the prevalence of young people in care who were subsequently further victimised. Based on submissions, 39% of sexual abuse reports pertained to children in foster care, 33% alleged abuse in residential care, and 20% in kinship care placements. These data were obtained through submissions; however, they are not comprehensive or representative of the total OOHC population, and there remains little record of the abuse (including demographics of the victim and perpetrator) nationally. In Victoria, however, the Commission for Children and Young People (2015) investigated child sexual abuse in residential facilities. That report found 63% of sexual abuse allegations were perpetrated by individuals external to the residential, 31% were perpetrated by another young person in the residential, and 3% of alleged assaults were perpetrated by staff members.

## Interactions with police by victimised young people

If a young person does disclose abuse and pursues justice, the judicial processes contribute further to disempowerment (Gal, 2006; Skinner & Taylor, 2009). The participants of the Royal Commission into Institutional Responses to Child Sexual Abuse (Commonwealth of Australia, 2017b) who identified as sexual abuse survivors conceptualised “justice” as not only the conviction of the perpetrator, but how they were treated by criminal justice personnel, whether they had sufficient information to make informed decisions, whether their decisions were listened to and respected, and whether they had support whilst participating in the criminal justice proceedings. Being believed and listened to by authority figures contributed to the survivors perceiving justice, regardless of whether their case was progressed through the courts. Survivors instead reported that they were delegated to the role as witness to the state, and were excluded from the decision-making processes such as whether to charge the perpetrator.

Because the Australian court system is adversarial in nature, it often does not meet the needs of vulnerable witnesses who have experienced complex trauma. Cross-examination and accusatory questioning by defence teams can be overwhelming for young people, especially those with cognitive impairments or who have difficulty communicating orally (Gal, 2006). The adversarial system, for some young people, can be reminiscent of the initial abuse as they are confronted with a loss of control and power, thus re-traumatizing the young person. Similarly, the complex procedural rules and jargon of the legal system can be difficult for a young person to understand, contributing to a sense of anxiety and stress. For young victims, having to restate details, and testify about traumatic events, can similarly contribute to a vulnerable mental state (Quas & Goodman, 2012).



## How are young victims supported when interacting with the criminal justice system?

Whether victims engage with the criminal justice system is often dependent on the young person disclosing the abuse, and in turn dependent on the victim's perception of support. Previous research by CREATE found that only 63% of young people in OOHC felt they had been able to "have a say" on issues that concerned them "reasonably often" (McDowall, 2013). The Royal Commission into Institutional Responses to Child Sexual Abuse (Commonwealth of Australia, 2017b) identified several barriers that prevent young people from disclosing abuse. An imbalance of power between adults who are foster carers and residential facility staff can influence young people to feel their concerns would not be believed or listened to. Young people reported to the Commission fearing repercussions, not understanding what child sexual abuse was, fear of having to move placements, lacking a trusted person to disclose to, or perceiving a caseworker as being too busy to attend to their concerns.

Lack of knowledge about complaint processes may also hinder young people's ability to raise issues within their care environment. For example, in a sample of 1069 young people only 50% had knowledge of complaint processes in their jurisdiction, and only 19% had made a complaint. A further 24% had wanted to complain, but decided against it due to concern and fear about consequences to themselves and others, were advised not to complain by others, or felt complaining would not resolve the issue (McDowall, 2013).

Evidence similarly suggests that when young people report allegations, caseworkers do not respond effectively to support and protect the young person from further harm. The Commission for Children and Young People (Victoria) (2015) for example found that young people disclosed meeting with older adults without supervision and engaging in sexual intercourse, but there was no intervention by child safety officers. Allegations of sexual assault by individuals within the placement, although recorded in case notes, were often not formally investigated and risk assessments not completed.



# The Current Project

Previous research has identified that young people with an OOHC experience are more likely to have contact with the justice system than their peers in the general population. The ongoing effects of trauma and features within the care environment, such as peer pressure from co-tenants, criminalisation of developmentally normal behaviour, and lack of training in behavioural de-escalation techniques for caregivers contributing to an over reliance on police, are potential drivers for the association between care experience and criminal behaviour. However, young people in OOHC may also have contact with the justice system as victims of crimes perpetrated by others within their placement.

Few studies have assessed young people's perception of support when interacting with the justice system. Assessing whether young people are supported is essential considering that the justice system, with its complex rules and procedures, can be overwhelming for young people. Similarly, few studies have examined how young people in OOHC perceive the police. Whilst evidence suggests young people hold negative perceptions of the police and vice-versa, the influence of the unique experiences of young people in OOHC is unclear. This research seeks to address these gaps, giving young people with a care experience the opportunity to recommend how the justice system may better address their needs.

## Method

### Participants

Structured interviews were conducted with 195 young people. Despite recruitment materials requesting young people aged 18-25 who have had contact with the justice system including “the police, the courts, or the youth justice system” (refer to Appendix A for an example of recruitment flyer), 46 volunteers did not have direct contact with the justice system. Their responses are not presented in this report. Of the remaining 149 participants, one respondent chose to withdraw before completing the interview.

Participants were grouped according to the reason for their contact with the justice system.

- Eighty-six participants were *Offenders*- young people who had contact with the police, courts, and/or detention centres due to their engagement in anti-social behaviour;
- Thirty-two participants were *Victims*- young people who had contact with the justice system due to crimes being perpetrated against them, or witnessing of a crime;

- Eighteen respondents were *Absent From Placement (AFP)* – young people who had contact with the justice system as a result of being reported missing from their place of residence. Not all of these young people identified as being missing hence AFP is used to describe this group rather than ‘missing’;
- Three young people attempted self-harm or suicide – whose contact with the justice system was in response to this *Crisis*; and
- Nine respondents contact involved *Child Protection Intervention* – contact with the justice system in relation to child protection matters, such as being removed from their biological family or attending Family Court for appeals.

Participants were recruited from all states and territories. The number of participants in each jurisdiction, based on their type of contact with the justice system, is presented in Table 1, and demographic information is presented in Table 2.

*Table 1: Distributions of Respondents by Justice System Contact Type across Jurisdictions*

Jurisdiction	Contact Type				
	Offenders	Victims	AFP	Crisis	Child Protection Intervention
ACT	1	2	2	0	1
NSW	13	12	1	0	3
NT	9	0	2	0	3
QLD	12	2	4	0	0
SA	10	1	1	1	0
TAS	18	5	2	0	0
VIC	15	4	2	2	1
WA	8	6	4	0	1
<b>Total</b>	<b>86</b>	<b>32</b>	<b>18</b>	<b>3</b>	<b>9</b>

Table 2: Participant Demographics

Demographic	Contact Type				
	Offenders	Victim	AFP	Crisis	Child Protection Intervention
<b>Gender</b>					
Male	47 (54.7%)	8 (25%)	6 (33.3%)	0	3 (33.3%)
Female	38 (44.2%)	22 (68.8%)	12 (66.7%)	2 (66.7%)	6 (66.7%)
Other	1 (1.2%)	1 (3.1%)	0	1 (33.3%)	0
No. Indigenous Young People	28 (32.6%)	3 (9.4%)	3 (16.7%)	0	2 (22.2%)
<b>Disability</b>					
Yes	23 (26.7%)	13 (40%)	6 (33.3%)	1 (33.3%)	1 (11.1%)
<b>Place of Residence</b>					
Residential Care	55 (64.0%)	5 (15.6%)	10 (55.6%)	1 (33.3%)	1 (11.1%)
Foster Care	18 (20.9%)	13 (40%)	4 (22.2%)	2 (66.7%)	5 (55.6%)
Kinship Care	5 (5.8%)	5 (15.6%)	2 (11.1%)	0	0
Independent Living	6 (7.0%)	6 (18.8%)	0	0	1 (11.1%)
Other*	2 (2.3%)	3 (9.4%)	2 (11.1%)	0	2 (22.2%)
<b>Total</b>	<b>86</b>	<b>32</b>	<b>18</b>	<b>3</b>	<b>9</b>

\*Note. Young people reported living with their biological family and in refuges.

Figure 1 displays more information regarding the prevalence of different types of issue for the 44 young people who indicated having a disability in each justice contact group.

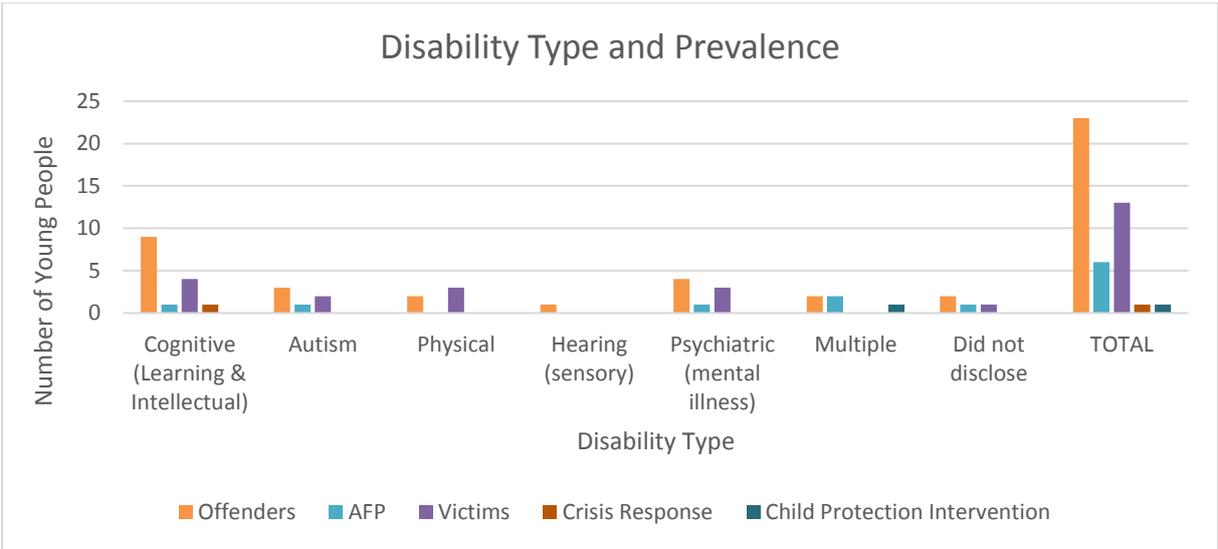


Figure 1 Disability Type and Prevalence.



## Recruitment

Convenience (non-probability) and random sampling techniques were utilised. Advertisement material was displayed on CREATE social media platforms (refer to appendix A for an example of the recruitment material), and distributed to sector connections. Recruitment material was emailed to the clubCREATE database requesting interested young people who met the eligibility criteria to contact CREATE staff to complete the interview. CREATE staff directly contacted local youth centres, service providers, and legal aid centres as well as individuals who had participated in previous consultations with CREATE. Young people had to be aged 18-25, identified as having a care experience, and had contact with the justice system including either the courts, the police, or youth detention.

## Materials

The consultation consisted of 17 questions that asked for demographics, details regarding their justice system involvement, the outcomes of the justice involvement, their reactions to their justice contact, sources of support during their contact, and the type of support these individuals provided (refer to Appendix B for a complete list of questions and prompts). To assist young people answer the questions they were provided with a flowchart (refer to Appendix C) outlining the process of justice system involvement. Participants were requested to comment on recommendations regarding how information was provided to them, and the behaviour and attitudes of justice system personnel involved. In addition, young people were asked about how they perceived the justice system as relating to children and young people in care.

## Interview procedure

Prior to the interview, participants were provided with information regarding the purpose of the study, the nature of their participation, and the content of the questions. Participants were informed of their right to consent to participate, their choice to not answer individual questions, and their ability to withdraw from the interview at any time. Participants were informed that their data would be de-identified in the final report, and would be stored within the CREATE intranet (refer to Appendix D for a copy of the consent form and participant information sheet). Due to the sensitive nature of the questions, young people under the age of 18 were advised that relevant information would be shared in accordance to mandatory reporting procedures to ensure their safety, and directed to support services if required.

Interviews took between 30-90 minutes depending on the young person's experiences. Each interview was facilitated by a CREATE staff member either face-to-face or over the telephone. The



CREATE staff member recorded the young person's responses using an online structured interview pro forma on SurveyMonkey, or on a paper-based copy that was later transcribed into SurveyMonkey. All participants were reimbursed with a \$25 voucher to compensate them for their time and effort.

## **Data analysis**

Data were exported from SurveyMonkey into an Excel spreadsheet. When the participant was unable to answer a question it was recorded as “non-applicable”. It is important that the voices of young people are the focus of the report, with minimal potentially inaccurate interpretation influenced by adult bias. Researchers thus have identified broad qualitative themes from the data, with representative comments made by young people that illustrate the themes. Whilst not every comment could be included, there was a high degree of consistency in the messages of the participants within each justice contact type group.

As there were few participants who spoke about the contact they had with the justice system because they had attempted suicide or engaged in self-harming, or had experiences with the courts as part of child protection intervention, their experiences have been thematically analysed but presented as case studies. These case studies are presented at the end of this report.



# Results

## **Self-reported reasons for contact with the justice system**

Young people were asked to reflect on the main issue or problem that led to their most significant contact with the justice system, and describe what happened during the contact. Depending on their responses young people were grouped into a contact type group: Offenders, Victims, Absent from Placement (AFP), Crisis, or Child Protection Intervention.

### **Self-reported reasons for contact with the justice system: Offenders**

Eighty-six of the 148 participants interviewed reported having experiences with the justice system due to committing an offence. Table 3 outlines the number of young people who reported committing each offence, with several young people reporting more than one. The offences represent the behaviour young people identified as the reason police became involved initially, as opposed to the formal charge (as many were not charged).

Assault and threat to cause harm was the most frequently occurring behaviour comprising 26 of 95 (27.37%) reported offences. Ten of the 26 cases of assault and threat involved offending against a peer in their placement, and eight of the 26 cases related to assault of a residential facility staff member or foster carer. Stealing was the second most frequently reported offence accounting for one-fifth (22 of 95) of reported offences. Six stealing offences were related to car theft (usually the carers or belonging to the residential facility), and two related to stealing from another young person in the facility. Wilful damage was the third most commonly reported offence, all occurring within a residential environment. Six young people described damaging property co-occurring with physical altercations with other people within the placement.

Table 3: Self-Reported Reasons for Justice Involvement: Offending Group

Reason for Contact	No. Young People (n = 86)	Example Response
Assault	26	<i>I hit a carer while they were driving me somewhere. (Female, 15/22)<sup>1</sup></i>
Stealing	22	<i>I got caught shop lifting with friends when I was meant to be at school. (Female, 16/23)</i>
Wilful Damage (Property)	17	<i>I lost my cool and did unlawful damage to the extent of \$3,500. (Male, 14/19).</i>
Breaking and Entering; Trespassing	8	<i>I unlocked my agencies' window after hours, climbed in with my mates. (Male, 15/22).</i>
Fare Evasion	3	<i>Train evasion, I didn't pay my fare, my go card did not have money on it. (Female, 17/20)</i>
Public Nuisance	2	<i>Was at home got a little noisy and police came. (Male, 19)</i>
Public Intoxication	4	<i>...I was done for disorderly drunk... (Female, 16/18)</i>
Sexual Assault	3	<i>Police questioned me about a sexual allegation that was made against me by someone else at school. (Male, 13/22)</i>
Drug Related Offences	3	<i>I got in trouble for smoking weed at a park... (Female, 15/19)</i>
Driving Related Offences	3	<i>I bought a car and drove it on my own without holding a provisional driver's license. (Male, 14/18)</i>
Obstructing Police	2	<i>... I was arrested for being a public nuisance and for obstructing police. (Female, 15/21)</i>
Animal Cruelty	1	<i>They were accusing me of throwing my dog out of the window... (Male, 17/19)</i>
Other	1	<i>There were family issues that meant that I had to go to court and then I had to go to a juvenile justice team for about a year. (Male, 14/18)</i>
<b>Total</b>	<b>95*</b>	

\*Note. Some participants mentioned more than one offence.

<sup>1</sup> Quotations are referenced as (gender of the participant, age at time of incident in question/age at time of interview)

### **Self-reported reasons for contact with the justice system: Victims**

Thirty-two of the 148 participants interviewed reported having experiences with the justice system due to being a victim of or witness to a crime. Table 4 outlines their self-reported reasons for contact with the justice system and the frequency with which these were reported. The offences recorded in Table 4 are not formal charges, but rather reflect the alleged behaviour of the perpetrator that led to the young person seeking justice involvement. Abuse was the most commonly reported alleged crime perpetrated against the respondents, accounting for almost half of the total reported offences (21 of the 35 reports, 60%). Young people often identified being the victim of multiple offences, thus the total number in Table 4 is representative of the number of times each type of offence was reported.

Table 4: Self-Reported Reasons for Justice Involvement: Victim Group

Reason for Contact	No. Young People (n = 32)	Example Response
Physical Abuse	8	<i>Physically abused by my foster carer. (Female, 9/19)</i>
Sexual Abuse	7	<i>My brother sexually assaulted me and my foster siblings. (Female, 13/18)</i>
Unspecified Abuse	6	<i>I was assaulted by my mother's partner. (Female, 14/21)</i>
Threat of Harm (including stalking)	5	<i>My Dad got hold of my phone number and was sending me heaps of threatening messages. (Female, 13/18)</i>
Witness to Crime	3	<i>They [the police] had got a tip from the people that run the house that one of the kids had drugs on them... I led the woman [police officer] to where they [the drugs] were. (Male, 13/19)</i>
Wilful Damage (Property)	2	<i>An old friend came to my house, and damaged the front door in a rage. (Male, 24)</i>
Witness to Accident	2	<i>I witnessed someone drowning. (Female, 16/20)</i>
Robbed	1	<i>Pretty much me and a few mates were robbed at the [redacted- name of shopping centre], so we had to give information to police about the incident. (Male, 16/18)</i>
Kidnapped and Drugged	1	<i>Around the corner of the Residential unit a known sex offender lived around the corner. My friend and I walked past the house and were a little intoxicated. We were then drugged, kidnapped and abused and kept in the car of the offenders for about 3-4 hours. (Female, 17/22)</i>
<b>Total</b>	<b>35*</b>	

\*Note. Participants mentioned more than one offence thus total ≠ 32.

## Victim's relationship with the alleged perpetrator

Table 5 summarises the disclosed relationships young people had with the alleged perpetrator. One-third of alleged offenders were identified as a member of the young person's biological and/or step-family.

Individuals who were external to the young person's placement (i.e., not related to the young person, not in a caregiving role, and did not live in the same household) were the second most noted perpetrator including neighbours, students at school, friends, and strangers. Five young people described being offended against, but did not disclose how they knew their alleged perpetrator.

Table 5: Victim's Relationships with the Alleged Perpetrators

Relationship with Young Person	No. Young People (n = 32)	Example Response
Biological & Step-Family	11	<i>My sister had a suicide attempt.... While in Hospital she had disclosed sexual abuse. .... I had also been a victim of sexual assault by our mother and hadn't wanted to deal with it. (Female, 20/25)</i>
External	8	<i>One of my neighbours threatened me... A couple of months later he threatened me again. I defended myself and left the room, and he smashed my phone to pieces. (Female, 20/21)</i>
Foster Carers	4	<i>I called the police because my foster dad was treating his kids really bad, grabbing them by scruff of neck. I got in the middle and had my leg broken. (Male, 17/23)</i>
Foster Siblings	2	<i>The long-term placement I was in...there was also an older foster son placed there...as long as I can remember he had been sexually abusing me... (Female, 8/23)</i>
Residential Facility Co-tenant	2	<i>I was assaulted by a young person at a refuge... he grabbed my behind at the bus interchange. When I got back to the refuge I told the worker and I got them to call the police. (Male, 17/23)</i>
Did not Disclose	5	<i>I went to the police to report allegations of abuse that had been perpetrated against me. (Other, 10/23)</i>
<b>Total</b>	<b>32</b>	

## Self-reported reasons for contact with the justice system: AFPs

Eighteen young people in the sample who had contact with the justice system did so as a result of being absent from placement and reported missing (refer to Table 6). Half of those who were reported missing described running away as an attempt to leave the placement as they preferred other residences, were rebelling against the rules of the placement, or they were attempting to escape an abusive carer. Almost half (44%) of young people did not believe they were running away, but were reported missing as a result of their caregiver's behavioural management strategy. This included young people who intended to return, but had left for a period of time and caregivers had reported them as missing. One young person reported being kicked out of her foster care placement, and being reported erroneously as missing.

Table 6: Self-Reported Reasons for Justice Involvement: AFPs

Reason for Contact	No. of Young People (n = 18)	Example Response
Running away – Intentional	9	<i>I was running away constantly and kept getting brought back by police. Trying to go back to respite carers... (Female, 16/19)</i>
Left placement - Reported Missing	8	<i>I was really mad with the resi workers and I went for a walk without telling the workers, the other kids in the resi followed me, the resi workers called the police because it was protocol. (Female, 17/22)</i>
Kicked out	1	<i>I was kicked out of my foster placement but it was reported as absconding. The police called me and said I had run away, I told them this was untrue... (Female, 15/22)</i>
<b>Total</b>	<b>18</b>	



## Self-reported reasons for behaviour: Offenders and AFPs

When describing their contact with the justice system, respondents in the Offender and AFP groups elaborated on their motivations and the antecedents they identified as triggering their behaviour. While the behavioural expression between the groups are very distinct (i.e., committing an offence compared to leaving a placement), the participants within each group reported similar reasons for their behaviour thus their responses are presented together here. Self-reported reasons for their behaviour could be summarised as being influenced negatively by peers, being frustrated and angry, and being motivated by self-preservation instincts. Shared in both Offender and AFP accounts were also descriptions that suggest the criminalisation of young people within the care environment.

However, unique to the Offender group was engaging in criminal behaviour (such as assaults or obstructing police officers) to defend other people from perceived harm, and being under the influence of alcohol and illicit substances. Two young people described reasons that did not fit into any other category. These young people described they were falsely accused of sexual assault and framed for assault.

*I was set up. There was a Nigerian lady, and two 12 year olds had a knife to her throat. I took the knife off them and got framed for it. (Male, 18)*

The key themes are summarised in Table 7 below, along with the number of participants whose responses aligned with the theme. These themes are not mutually exclusive and were not expressed by all participants, but rather summarise what was often mentioned by young people and will have potential implications for practice.

Table 7: Reasons for Behaviours: Number (Percentage) of Reports by Offenders and AFPs

Reported Reasons	Justice Contact Type	
	Offenders* (n = 65)	AFPs* (n = 13)
Criminalisation of young people in care	24 (31.2%)	5 (31.3%)
Negative peer Influences	22 (28.6%)	3 (18.8%)
Expressing frustration and anger	12 (15.6%)	3 (18.8%)
Survival mechanism	10 (13.0%)	5 (31.3%)
Protecting others	5 (6.5%)	0
Alcohol and drugs	4 (5.2%)	0
<b>Total Comments</b>	<b>77 (100.0%)</b>	<b>16 (100.0%)</b>

\*Note. Numbers in parentheses show how many young people responded to this question.

#### Example Responses: Offenders

*There was new workers on and they didn't know how to deal with me and my brother arguing and escalated the situation. Me and my brother had a fight and I did property damage. (Male, 16/18)*

*In the residential unit, me and a group of friends had been involved in a robbery at bottle shop. They caught one of my friends... I explained that I was only the lookout person for the police during the robbery... (Female, 14/20)*

*I was assaulted by my carer... Stole the work car and drove it to my mums place and then I called the police... Charged me with assault to the carer and unlawful driving of the vehicle as well as car theft. (Male, 15/18)*

*Me and a groups of friends were being noisy and intoxicated in a public space... the police officer grabbed a male friend of mine. I grabbed the police officer to try and let my friend free. The police officer grabbed me and my friend and we went to lock up. (Female, 17/22)*

*I was on ice and dope and coming down and got into an argument with my girlfriend and accidentally stabbed her. (Male, 17/18)*

#### Example Responses: AFPs

*While in residential care the police were called after I failed to return after curfew. (Female, 15/20)*

*I ran away from the unit with some other kids. We were just out an about having fun... (Male, 15/22)*

*I was 13 years old and not allowed to smoke a cigarette - so I ran away. (Female, 13/23)*

*A lot of interaction were either running away or suicide attempts. Ran away for the first time at 5 due to abusive carers. This continued until I was 13. (Male, 9/22)*

#### Criminalisation of young people in care

A theme that emerged in both AFP and offender accounts was caregivers involving police as a response to challenging behaviour or minor offending, in a manner that would be atypical in a family



home. Participants reported offences that, whilst unlawful, were relatively minor transgressions. For example, one young person reported “Police were called out to the residential facility because I was using bad language towards to workers” (Female, 14/24), while another was charged for trespassing when they entered the office area of their residential facility. Other transgressions included smoking marijuana in a residential unit, stealing between cotenants, and minor property damage. Young people also described offences where equivalent behaviours in a family home may not necessarily precipitate police involvement, such as stealing between residents.

*I smashed a window in the unit, and stole my mate's scooter...The police chased after me. I threw myself to the ground. They were going to put me in handcuffs, but I was doing the right thing so they didn't. (Male, 15/19)*

Several young people spoke about engaging in physical altercations with cotenants and caregivers, however young people often did not describe the extent of injuries inflicted, which would differentiate between whether a significant offence had occurred, or if justice involvement was unnecessary. However, young people who made comments about the responses of the workers being unable to manage their behaviour, or comments that suggested police were involved when there was no immediate threat to staff or other residents, were coded as aligning with criminalisation processes.

For example one young person described being involved in a physical altercation with a cotenant that led to her being given probation but “We were best friends and we'd fight and then make up. That was how we were. He wanted to press an AVO but then we made up later” (Female, 15/20). Similarly, one young person described having an argument with a residential cotenant that lead to a physical altercation, and police were utilised even though the immediate threat had diminished.

*I had problems with one of the girls at the resi, she kept on stealing my stuff, we got in an argument, she hit me, the workers weren't there at the time but they called the cops and the cops took me away... (Female, 17/25)*

For five young people who were reported missing, the use of the police was viewed as a form of behavioural management rather than an attempt to assess the young person’s welfare as the police were generally contacted to return a young person to placement when they had disobeyed the residential worker’s instructions.

*One of the {residential} workers dropped me off to see a friend at a park, so they were fully aware of where I was. After about an hour I started receiving phone calls from the resi saying that I had absconded and where was I... about 30-45 minutes later police showed up. (Female, 14/18)*



## Negative peer influences

Peers were implicated in one third (22 of 65, 33.8%) of reports from the offending group and three reports (23.1%) in the AFPs' group. Some respondents specified their peers were friends, whilst others described the peers as other young people in care, often co-tenants in residential facilities.

It was often unclear the type of influence the peer in question had over the young person, with peers being present during the offence or having run-away with the young person. The influence of peers in some offender accounts was more explicit however with young people referring to their peer groups as the “*wrong kind of people*” and peers being described as modelling criminal behaviour:

*...they just bought you clothes you didn't get much choice ...so I had to go and steal better clothes., I was only 15 and my first time in care was in a house with other kids doing crime, I never did this stuff before I came into care. (Male, 15/24)*

## Expressing frustration and anger

When describing antecedents to their contact with the justice system, 12 Offenders reported becoming angry and frustrated and engaging in rapid behavioural escalation when confronted with a provoking situation. The provoking situation often led to the young person feeling wronged, and their subsequent behaviour was both an expression of their frustration but also an attempt to restore a sense of justice. For example, one young person became angry and frustrated by a residential co-tenant stealing their possessions, and subsequently committed property damage and assault.

*...took the rotten food and went to hide it in one of the other young people's cupboard and found a whole heap of my belongings... I wanted to bash the young person who stole my things... I threw a kid to a wall and furniture... I was an angry kid... (Male, 14/19)*

Three young people in the AFPs' group reported leaving placement because of feeling frustrated by the residential staff, and rules they perceived as unfairly restrictive:

*I was 13 years old and not allowed to smoke a cigarette – so I ran away. (Female, 13/23).*

Other provoking situations identified by young people included residential facility staff behaviour and attitude, rules and regulations of the placement that prevented young people performing certain behaviours (such as being able to leave the placement, use the toilet, or smoke), and the behaviour of other young people in the placement (stealing their belongings or trying to engage them in an argument).

### Behaviour as a survival mechanism

Ten participants in the offending group (10 of 65, 15.4%) described committing offences as a form of self-preservation. This included young people who perceived themselves in danger and reacted as part of a fight or flight response. This included a participant who hit their carer when they attempted to move the young person to a room infested with ants, and young people being charged with assault when they defended themselves against other young people in the placement assaulting them:

*[One of the girls in] Resi tried to start a fight with me. I put her up against the wall and choked her, that's all I knew how to do at the time. (Male, 13/18)*

Individuals also engaged in criminal activities in an attempt to meet their basic needs. One participant reported committing armed robbery as he:

*...needed money as I had been released from detention, I was living in a shelter and had nowhere to live and the residential unit wouldn't have me back, so I re-offended. (Male, 15/19)*

Likewise, a young person was charged with breaking and entering as they were:

*Self-selecting to sleep on the streets and I broke into a building to get a jacket to wear. (Male, 15/18)*

In these accounts the young people report being unable to obtain necessities by legitimate means, therefore resorting to crime.

Of the 13 young people who were reported missing and answered the question, five young people (38.5%) described running away to avoid abusive carers, dirty placement environments, or to return to a placement they deemed better for them.

### Protecting others

In five of the 65 Offender responses, a theme emerged of young people engaging in offending activity to protect other people. In four of these narratives, the young people were engaging in anti-social or offending behaviour (such as trespassing or being intoxicated in a public space), when the young person inserted themselves into an altercation between a police officer and their friend, as they perceived their friend was in a vulnerable position. This in turn led to charges being laid against them.

*[The police officer] was belting into my friend. He was not fighting back, he was shielding. I went back to try to grab my friend and protect him. I pushed him once in the chest. The*



*officer backhanded me and then got his OC spray and sprayed me and my friend right in the face... I was charged with assaulting a police officer... (Female, 17/19)*

In the final account, a young woman described assaulting another co-tenant when she found the co-tenant smothering her newborn child.

### Alcohol and drug use

Four Offenders described being under the influence of illicit substances when they committed crimes. This does not include young people who were charged for consuming the illicit substances per se (e.g. being charged for possession of marijuana), but rather young people who identified that the consumption of the substance influenced their criminal behaviour, such as assaulting their partner, stealing or trespassing while intoxicated, or they were charged for disorderly drunkenness.

*I was done for disorderly drunk so don't remember a lot of it but I know I was disrespectful and so they had enough and started treating me like I was treating them. (Female, 16/18)*

### Outcomes of justice contact

Participants were asked to discuss the judicial outcome following their contact with the justice system. Offenders were asked if they were charged with an offence, whether they attended court, and what was their final sentence. Victims were asked how the authorities responded, whether they went to court, and whether the perpetrator was sentenced. As the AFPs had not committed a crime nor had been offended against, they were asked to describe how the authorities responded, including whether they returned the young person to placement.

### Outcomes of justice system contact: Offenders

Despite being provided with a prompt sheet outlining the judicial process, young people reported outcomes that were inconsistent with standardised process. Confusion related to whether or not they had been charged, with 45 participants indicating they had been charged despite 49 reporting their cases were referred to court (although two young people reported they did not attend their court hearings). One young person was unsure whether they had been charged or not. Five young people reported they received no charges or did not attend court, yet described being placed on community based orders. Two young people could not remember the outcome of their cases.

Eight young people reported being held in a watch house or holding cell, prior to being collected by caregivers, while a further 11 stated they had been held on remand.

Table 8 summarises the final outcomes of justice system contact reported by the young people. The most frequently reported outcome was a community based order, such as a good behaviour bond,

probation, community service, etc. Ten young people reported being detained with two young people saying they spent one night in a detention facility. The longest sentence was 23 months.

Young people in the ‘other’ category reported being suspended or expelled from school, their residential facility asking them to pay for property damage, being moved to a new placement, having an animal removed from their care, being directed to take their car for a roadworthy assessment, and being held overnight but no ongoing charge or court dates.

*Table 8: Self-Reported Outcomes for Offender Group*

<b>Outcome</b>	<b>No. of Young People (n = 86)</b>
Community Based Order	19
Warning/Caution	14
Detention	10
No Formal Sentence	8
Diversion Program	5
Fine	4
Did Not Disclose	4
Forensic Order	3
Not Guilty	3
Charges Dismissed/Dropped	2
Still in Remand	2
Can't Remember	2
Secure Welfare	1
Suspended Sentence	1
Pending	1
24-hour Move On	1
Other	7
<b>Total</b>	<b>87*</b>

*\*Note.* One young person reported receiving a warning and community based order relating to same event.

**Outcomes of justice contact: Victims**

Ten young people reported their cases had been presented in court, although three young people reported they did not attend. Table 9 below details the outcomes as reported by victims. Generally speaking, victims were not informed of the outcome of a case in which they were involved with one-third reporting they were not aware of any follow up.

Three young people did not pursue their case further due to: feeling overwhelmed; lacking support; and threats from people within their placement when the alleged offender was a foster sibling.

*I was given a choice - to drop the charges and stay there - or continue. My foster mother said that she would destroy all my belongings - photos and other things I had from my birth mother...felt like I had no choice. (Female, 8/23)*

The ‘other’ category represents young people who reported non-judicial outcomes. Two young people had to move placements, one young person reported their perpetrator was moved from the placement, and one perpetrator was expelled from school.

*Table 9: Self-Reported Outcomes for Victims*

<b>Outcome</b>	<b>No. of Young People (n = 32)</b>
Young Person Unaware of Result	9
Perpetrator Sentenced	6
Restraining Order against Perpetrator	5
Young Person Dropped Charges	3
Pending	1
Case Dismissed	1
Received Victim Compensation	1
Did Not Disclose	2
Other	4
<b>Total</b>	<b>32</b>

**Outcome of justice contact: AFPs**

Those who were reported missing were asked to describe the police action when they were found. Their responses are recorded in Table 10. Most young people were escorted back to placement, although one person described being taken to a watch house for six hours before being collected by residential staff members, and one young person presented herself to a police station and asked to be taken back to her placement. For three young people, police found and spoke to them to assess their welfare, without forcing the young person to return to placement.

*Because I was 16 they didn't make me go back to the house. We had a chat and then they let me go. My carer wanted me to go back but because of my age they just did a welfare check and let me go. (Female, 16/22)*

One young person reported being taken to have a mental health assessment completed, and another young person was taken to a new residential facility:

*They pulled up with a paddy wagon, and physically picked me up and threw me in the back... I had no idea where I was going. They pulled up at a service...a worker came in saying that I would be staying there now for the next few months... (Female, 16/19)*

Table 10: Self-Reported Outcomes for AFPs

Outcome	No. of Young People (n = 18)
Police Returned Young Person to Placement	12
Police Spoke to Young Person	3
Taken to Watch House	1
Mental Health Assessment	1
Taken to New Placement	1
<b>Total</b>	<b>18</b>

## Responses to the justice system process

Offenders, victims, and AFPs were asked to report how they felt about the justice system processes they encountered. They were asked to reflect on how the authorities reacted, how they felt when progressing through court procedures, and how they felt about the overall judicial outcome. The results below summarise key themes raised by young people and identify points that have theoretical and practical implications.

### Responses to justice system contact: Offenders and AFPs

Offenders identified several themes, most of which aligned with the narratives of the group who had been absent from placement. These shared experiences included feeling disrespected and unfairly treated because of the behaviour and attitudes of the justice system personnel, and feeling intense fear and anxiety during the interaction, with only a small proportion describing having satisfactory experiences. Some offenders identified their involvement with the justice system as a learning experience; this was not recorded in the AFP accounts.

Some responses are classed as 'other' as they represent standalone perceptions of the justice system processes. In the Offender group, one young person for example stated he felt guilty about damaging property. Others said they were resigned to the process, felt the process was fun, or felt the process tedious. Two young people felt their caregivers should not have contacted the police. In the AFP group one young person described being unhappy with the process, not due to police behaviour per se, but because he was returned to his carers.

## Young people felt disrespected

Emerging most frequently across 32 offending participant accounts were feelings of humiliation, intimidation, and disrespect. For five young people, not having an explanation of what was happening (e.g. why their shoes were removed, why fingerprints were taken) was perceived as disrespectful and unfair, whereas for other young people it was the use of perceived excessive force or antagonist police demeanour:

*They very sternly talked to me and it made me feel really pressured. I ended up breaking down. (Male, 16/20)*

*When the police eventually found me, they ganged up on me and bashed me a little, they split my knees open, I have scar tissue. (Male, 14/19)*

The stigmatisation of young people in out-of-home care featured strongly and led to feelings of being devalued.

*We were treated as criminals by default. I had a lot of dreams and looking into doing courses and doing things to better my life. I feel that the police and courts contributed to making me feel like crap by not listening to me - I was just another resi kid in their eyes. (Female, 17/19)*

Young people perceived that the justice system had pre-emptively labelled them as criminal due to their out of home care status, and denied the young people an opportunity to explain their actions. For example, a young person who stole clothes describes:

*They made me feel like a bad person, I don't know why someone didn't just sit down and talk to me about what was going on and why. I had no support, no one cared. If they had asked me why I could have told them why I was doing it and it might have been able to be fixed earlier. (Male, 15/24)*

The privileging of adult accounts regarding the incident, and being unable to explain or justify their actions, was a common experience that contributed to feelings of mistreatment, particularly as some young people identified that being able to explain their motivations could have informed more effective justice responses.

A similar reaction was evident in the accounts of those who were reported missing.

*Someone should have been asking about the reasons for running away...what if it was more serious? One of the people living there with me at the time would leave me sexually explicit letters under my door... I did not feel comfortable - not safe. (Female, 13/23)*

Ten young people (of the 18 young people who were reported missing) identified the police as being antagonistic and using excessive force, such as restraining them with handcuffs when taken back to their placement. Five of the AFP participants indicated that the antagonistic behaviour of the police prevented them explaining why they were running away.



*The police officers used excessive force, I had four police officers sitting on my back just to hand cuff me. (Female, 14/20)*

*I felt I was treated unfairly. The police dragged me by my hair out of the vehicle... I was scared, I did not want to be there, I was sedated. I woke up in a nappy and t-shirt ... That experience made me feel scared and degraded, I felt helpless. I was just a child, I had no authority and felt like it was my resi worker's words over mine. (Female, 17/22)*

### Young people experienced anxiety and fear

Fear and anxiety was also common. For many young people fear appeared to be driven by the presence of the police, while for others it was related to being chased, placed in handcuffs or questioned.

*The police didn't even talk to me they were just scary... They [police]... opened the door with a baton and entered the classroom chased me around the table... They grabbed me and held me really tight and carried me to another classroom and sat me on the ground and gave me a talking to. I was really frightened and scared throughout the time. (Female, 11/22)*

Nine participants in the offenders group reported fear and worry related to not understanding the justice system processes. This included not understanding why the police were questioning them initially, but more often was related to the judicial outcomes they would receive. A common experience throughout these accounts was that the young people were taken to a police station to be interviewed, and were held for an extended period of time in cells or in remand which evoked fear and confusion.

*I was a little bit scared when we got pulled over and they were asking us questions. I got more scared when they took two of us back to the cells and locked us up separately. (Female, 13/20)*

Four young people in the AFP group experienced anxiety resulting from a lack of communication about judicial processes. For these young people, there was a lack of communication from the police explaining that they had *not* committed a criminal offence and would *not* be subject to formal processing.

*I was probably just frightened and I felt like I had done something wrong... I wasn't sure what was going to happen next and if I was in big trouble. (Female, 15/22)*

### Justice contact was fair and straightforward

Conversely, approximately one quarter of offending participants described experiences with the justice system as satisfactory. Whilst not an enjoyable experience, these young people felt that the justice system personnel had treated them well and with respect. For some young people this

involved perceiving that the police had listened to their version of the incident, and had not behaved in an antagonistic manner.

*The police were always very supportive. They didn't treat me like a criminal. (Female, 14/20)*

Young people who described a satisfactory interaction similarly found the process to be straightforward, rather than confusing or uncertain, and perceived their sentencing as fair.

*It was simple, straight forward, it wasn't too difficult. (Male, 18/24)*

*Obviously losing \$200 sucks but that was because of my own stupid decision. It was totally fair. (Male, 18/19)*

Three of the 18 young people who were reported missing similarly described satisfactory encounters with the police. This level of satisfaction also appeared to be due to perceiving the police as caring, reassuring the young people they were there to check on the young persons' welfare.

**Justice system involvement as a learning experience**

Young people in the offender cohort reported the justice system processes as rehabilitative. Young people reported learning behavioural management strategies and being linked with supportive services, but also described wanting to change in a positive way. This theme was not noted in the accounts of young people who had been sentenced to detention.

*... When I went to court, it made it feel very serious and I was scared and felt like it was really scary that I was capable of something like that, and it made me change the way I saw things and I wanted to change myself. (Female, 15/18)*

*Table 11: Number (Percentages) of Themes Identified by Offenders and AFPs: Responses to Justice System*

Themes	Justice Contact Type	
	Offenders* (n = 83)	AFPs* (n = 16)
Feeling disrespected	32 (34.8%)	13 (65.0%)
Fair and straightforward	22 (23.9%)	3 (15.0%)
Fear and anxiety	17 (18.5%)	3 (15.0%)
Learning experience	8 (8.7%)	0
Other	13 (14.1%)	1 (5.0%)
<b>Total Comments</b>	<b>92 (100.0%)</b>	<b>20 (100.0%)</b>

*\*Note.* Numbers in parentheses indicate how many young people responded to this question.

### Example Responses: Offenders

*At the time I felt like it was a bit excessive - but I think it helped me get on the right path. Support and consistency from youth justice helped understand what was ok was not ok... (Male, 15/24)*

*They took my fingerprints. That made me felt violated. No one was explaining anything. I didn't tell them anything because they were against me not with me. (Female, 15/25)*

*I was quite freaked out throughout the whole process because I didn't know what was going to happen. (Female, 9/24)*

*I was laughing because it was funny. I walked out of court and they thought I was going to pay it but I didn't. (Female, 12/23)*

### Example Responses: AFPs

*Police showed up and told me I had absconded and I should be ashamed of myself ... said that I was lucky that they were not going to put handcuffs on me because normally that is what they have to do for people like me, I was made to feel quite small and inferior, I felt like a criminal. (Female, 14/18)*

*I didn't know what was going on...I would have rather known what was going on/being told what was happening. (Female, 15/22)*

*At the time I was unsure how I felt with the police there - I thought I would be in a lot more trouble. But overall they were polite and reassured me that it was OK. (Male, 15/22)*

*At the time is wasn't happy about it, but understand there was nothing else the police could have done. (Male, 9/22)*

## Responses to justice system contact: Victims

Three themes were found to summarise the responses of victims to justice system involvement. The victims described having expectations about how the justice system would respond to their concerns, and feeling subsequently let down. Respondents also described a process in which the justice system processes further disempowered the young people, while the remaining participants described their expectations had been met and the justice system had responded fairly.

### Young people felt let down

A theme that emerged in victim accounts was feeling let down by the justice system. For example, in the quotation in Table 12, a young person described that they had hoped for the police to have intervened in a more forceful manner rather than taking statements. In another account, a young person linked being let down by the justice system directly to her care experience:

*I felt let down, I felt like they would have done more if we were a "normal family"... I felt like we are always pushed to the back because we are foster kids. Police think we just make up stories, because of our care experience. (Female, 14/18)*



Young people also expressed disappointment and frustration regarding the length of the process, describing it as “*long and tiring*” (Male, 20).

Young people also conveyed disappointment regarding the outcomes that did not increase their sense of safety. For example, a young person described that, “*Even though there was a restraining order on my dad, it didn't stop him from contacting me and threatening me all the time...*” (Female, 13/18).

One young person expressed disappointment with how police spoke to him and expressed disbelief about being assaulted, due to the young person’s disability:

*Just because I have a disability doesn't make me stupid or mean I don't know what I'm doing. The cops talked slowly and treated me like a child. They questioned if it even happened....*  
(Male, 21).

### Powerlessness

Over half the victim narratives reported the justice and the child protection systems contributing to their feelings of disempowerment. Child protection for example was described by two young people as not responding to the young person’s concerns and not acting protectively to prevent further victimisation.

*I felt very hurt because I was not treated as a victim. The police provided a tokenistic response but the department did not even respond tokenistically as they didn't respond at all... they didn't take me seriously....They showed immense disinterest in seeking justice.* (Other, 10/23)

*After the court case the perpetrators continued to reside in a house around the corner from us. We asked child protection to move us a number of times, they would not. After this time I started using drugs to cope and became pregnant at 17.* (Female, 17/22)

For example, in the account below, powerlessness appeared to be driven by not receiving support from her caseworkers during difficult procedures such as trial testimony or investigative questioning.

*... [Department of Child Protection] should have explained to the judge that I had PTSD... It made me feel like everyone just gave up on me... I wasn't given a fair opportunity... I was chucked in with the defence lawyer. Of course a 15 year old is going to lose their temper when you keep asking them the same questions again and again and accuse them of lying.*  
(Female, 12/18)

The young person’s claim to not being “given a fair opportunity” refers to her expectations that procedural and distributive justice should have included more support, particularly considering her mental illness.

The example response in Table 12 outlines a similar process experienced by a young woman who was a victim of sexual assault. She further describes making the initial report as “...so clinical. You have to tell us the date and details of each ‘event’ etc. Cataloguing each and every time, and made it feel unbearable” (Female, 25). Having to remember traumatic events with no support or explanation of the justice system processes led to her feeling powerless.

In other accounts, the lack of communication from the justice system professionals regarding case progression contributed to feeling powerless. While progressing a case was often out of a young person’s control, it implies that the reasons for why police did not charge an individual or seek more evidence was not appropriately explained to the young person. As one young person stated, “There was no end result. After not finding him on looking, I guess they gave up on it” contributing to his feelings reported as “Just left waiting. Feel a bit hopeless about it all” (Male, 24).

**Expectations of justice system met**

Some victims described having satisfactory experiences with the justice system. This response appeared to be driven by perceiving the police as respectful, listening to the young person, and acting upon the young person’s concerns.

*It was fair and good. They were trying to identify who [the stalker] it was ... They took the appropriate measures and were going to do something about it. (Female, 17/19)*

*Table 12: Number (Percentages) of Themes Identified by Victims: Responses to Justice System*

<b>Theme</b>	<b>Number of Comments*</b>	<b>Example Response</b>
Powerlessness	20 (48.8%%)	<i>You just feel so powerless, and you've lost control of your life, you have trouble remembering the details etc.... It was such a murky time of my life, and the legal process made it more murky. You're told your accuser doesn't have power and control over you anymore, and after it all, that wasn't changed. (Female, 20/25)</i>
Feeling Let Down	13 (31.7%)	<i>They basically asked my foster dad what happened, and he is a liar, he said I hit him first and that is when he pushed me. That’s not what happened ... The police did an absolutely shit job. They could have arrested him... the cops should have seen it from my point of view... (Male, 17/23)</i>
Expectations Met	8 (19.5%)	<i>I was calm about it, I felt like they listened to me. (Male 16/18)</i>
<b>Total Comments</b>	<b>41 (100.0%)</b>	

\*Note. Overall, 30 “Victim” respondents provided a total of 41 responses. Percentages are calculated on the total number of comments.

## Support persons during justice contact

The consultation asked young people who had been present during their contact with the police, when they appeared in court, and while in detention (if relevant).

### Support persons identified by offenders

Consistent across the judicial process is the observation that young people received little support. As shown in Table 13, of the 86 participants reported here, almost 40% identified not receiving any support during their contact with police, while 19% and 20% report not receiving support during court, and detention respectively. Of note, one young person in detention reported no support throughout the entire process.

Support persons captured by the 'other' category were charity workers and non-government organisations, such as CREATE, *Save the Children* and *Whitelion*.

Table 13: Support Persons Identified by Offenders across Contact with Justice System

Identified Support Person*	During Police Contact (n = 86)	During Court (n = 47)	During Detention (n = 10)
No One	33	9	2
Caseworkers/Residential workers	26	16	3
Carers	10	3	1
Lawyers	6	20	0
Advocate	3	1	0
Youth Worker	7	2	0
Friends/Family	8	3	2
Youth Justice Worker	1	1	2
Other	6	2	4
Did Not Answer	0	0	1

\*Note. Participants could identify more than one support person.

### Support persons identified by victims

A lack of support was similarly found in the victim cohort. Eight received no support during the police contact, and of the seven young people who went to court, four had no support as shown in Table 14. Support persons captured by the 'other' category include a worker from a refuge, counsellor, and a *Whitelion* mentor.

Table 14: Support Persons Identified by Victims across Contact with Justice System

Identified Support Person*	During Police Contact (n = 31**)	During Court (n = 7)
No One	8	4
Caseworkers/Residential workers	7	1
Carers	3	0
Lawyers	2	0
Youth Worker	3	1
Friends/Family	12	2
Other	3	0
Did not Disclose	0	1

\*Note. Participants could identify more than one support person.

\*\* One participant reported having no direct contact with the police.

### Support persons identified by AFPs

Two-thirds of those absent from placement reported having no-one to support them during police contact (see Table 14). Of note, one young person identified a police officer as an individual who supported him. When asked to outline what assistance the police provided, the young person stated “[by] giving me advice and being supportive.” Other young people mentioned their youth worker, boyfriend, mother, and co-tenant as supporting them during their interaction.

Table 15: Support Persons Identified by AFPs during Police Contact

Identified Support Person	During Police Contact (n = 18)*
No One	12
Caseworkers/Residential workers	0
Carers	0
Youth Worker	1
Friends/Family	2
Other	2
Could not remember	1

\*Note. Participants could identify more than one support person.

### Type of support received

Respondents were asked to elaborate on the type of support received. This support could be summarised as emotional and moral support, and practical support (such as transporting the young

person to court or providing information). However, what emerged in their accounts was that, even though a recognised support individual may have been present during their contact with the justice system, this did not always result in the receipt of actual support.

As demonstrated in Table 16, Offenders and Victims tended to receive more practical support during their contact with the police than emotional and moral support.

Table 16: Type of Support Received by Young People by Type of Justice Contact

Justice Contact Type	Type of Support			
	Number of Young People Reporting Emotional and Moral Support	Number of Young People Reporting Practical Support	Number of Young People Reporting Both Emotional and Practical Support	Number of Young People Reporting Non-Supportive "Support" Person
<i>Offenders</i>				
Police Contact	15	23	4	12
Court	13	28	8	5
Detained	2	4	1	1
<i>Victim</i>				
Police Contact	12	13	6	6
Court	3	1	0	3
<i>AFPs</i>				
Police Contact	2	1	0	1
<b>Total</b>	<b>47</b>	<b>70</b>	<b>19</b>	<b>28</b>

**Emotional and Moral Support Provided**

The offending cohort and one of the AFPs described emotional and moral support as being reassured when they experienced anxiety or fear in regards to their impending outcomes.

*She [residential worker] sat down and talked to me about it and reassured me things were going to be better. I was pretty down at the time... She helped me as well writing letters to people like the Ombudsman and helped me work out the best way of saying it.*  
 (Male, 17/19)

Whilst explaining things in a developmentally appropriate language may be a form of practical support, young people associated this with reassurance and reduced anxiety about the proceedings.

This was also the case for the victim cohort. Supporters were noted to provide emotional and moral reassurance by listening to the young person and calming them before, during, and after contact



with the police. Emotional and moral support was associated with the support figure ensuring the young person understood what was happening.

*Some of my workers were supportive, especially the permanent resi staff and some agency casuals... helped me get my mind off it and were empathetic. The staff encouraged me to go to court and were proud of me for handling it responsibly. (Female, 17/19)*

### **Practical Support Provided**

During the contact with police, four Offenders reported getting assistance with being linked to services such as Legal Aid, and seven reported receiving assistance in understanding what was happening and whether to make a statement. A further seven young people said they had received transport.

For their court appearances, seven Offenders identified they received practical support that consisted of transport to and from the court and appointments with legal representatives. For nine, practical support entailed legal representation from lawyers (most often Legal Aid), and 12 reported receiving legal advice, such as whether to plead guilty and what was expected of them during court proceedings.

Victims similarly described receiving practical support during their contact with police and the courts. For four Victims, practical support entailed assistance in understanding the process, such as advice on how to make a statement. Three young people had assistance in making a report to the police by the support figures providing evidence or speaking to the police on behalf of the young person.

*Youth worker- was sitting with me and backed me up. They gave a description of the man to the police as well. And gave me extra help and gave extra details. (Female, 19)*

One Victim reported practical support during court proceedings by their caseworker who “*explained things in court*” (Male, 7/22). For the one participant in the AFP cohort, they reported practical assistance as being provided with accommodation.

### **Persons present but not providing practical or emotional support**

Offenders and Victims described individuals who were present during their contact with the justice system, but who they perceived were not supportive.

*Me, myself and I, except when they interviewed me and they got an independent person to witness it, but they did not really help me. (Female, 14/19)*

For example, several Offenders described that persons had been present during the police interview simply to facilitate the interview process, not to assist the young person.



*I was allowed to be interviewed because they were there. They didn't provide me with any personal support. I don't even think they drove me home. I think the police drove me home.*  
(Female, 15/18)

Offenders also reported that this occurred at court, with one young person describing her caseworker as “*there as an obligation but I didn't feel like I was supported, more told off by them*” (Female, 24).

This inability to recall any tangible support provided by the persons present was also documented in the Victim accounts. For example, one young person claimed “*I can't remember anyone helping me through it. I guess some government workers*” (Male, 13/21).

This was also the case with carers, as one young person describes the carer being present during the police interview, but the level of support was “*not a lot as I was neglected by my carer and she didn't really show much empathy*” (Female, 13/18).

### **Detainee support**

For the young people detained, several described receiving visits from caseworkers, friends, family, and carers, although one young person declined to answer. Individuals did not elaborate on what kind of support this entailed however the importance of visitations is demonstrated by the following account, with the lack of visits from family contributing to the negative aspects of a young person's well-being:

*The fact that I was in detention in the north 250km from the south, and there was no bus route, meant that I only received 3-4 visits from family the whole 5 years I was in detention. I became more isolated from society and my community.* (Male, 15/19)

One individual stated they received informal counselling from a charity organisation, and another stated the charity assisted the young person “*get a house and get off the drugs*” (Male, 17/18). Six individuals stated that their nominated support person provided practical support by supplying the young person with money, ensuring their possessions were at the detention centre, transporting them from the centre, and assisted with paperwork necessary for court. Two young people reported having minimal contact with a youth justice worker.

*I had a youth justice worker when I was locked up in youth detention but they never visited me there, I had no contact with them, they didn't support me. I didn't have any visitors at all the whole time.* (Male, 15/24)



## Recommendations for improving contact with justice system

Participants were asked what they thought would have improved the way their issues were dealt with. They were asked to comment on what information was provided and the attitudes and behaviour of the people involved. Offenders, Victims, and those Absent from Placement shared similar views in that they thought their contact could have been improved with the provision of more information throughout the process, more empathy from justice system personnel, and the opportunity to voice their concerns. Differences emerged however, in the Victims wanting the justice system to be more committed and protective.

### Recommendations shared by Offenders, Victims and AFPs

Offenders, Victims, and AFPs shared similar recommendations to improve the system, including the need for more information, for the police to respond more empathetically while behaving less antagonistically, and to be provided an opportunity to voice their concerns and versions of events.

#### Need for more information

Most participants indicated a need for more information. Eighteen Offenders suggested more information regarding the judicial process, such as whether they would be issued a warrant, why they were getting a specific charge, court proceedings (such as what date they had to arrive at court), and what the likely outcome would be.

Of the 15 Victims who recommended more information to be provided, seven wanted information regarding the progression of their issues (e.g., information from the police about whether they had followed up), what would happen during court, and what the expected outcomes would be. Three Victims further specified they would have preferred information about services they could access, such as mental health support and accessing victim compensation.

Whilst seven young people who were absent from placement reported that more information would have improved their outcomes, four specified they wanted clarification that police were not involved to sanction the young people, but out of concern for their welfare.

*...Made it clear that they weren't there to take me or that I was in trouble and made it clear they were there to check on me, that would've helped. (Female, 15/22)*

#### Need for more support

Participants across all contact groups reported they needed more support. The specific need for more support from departmental caseworkers was suggested by eight Offenders, and two young



people in each of the Victim and AFP groups. Victims more so than Offenders were likely to suggest that their foster families should have been more supportive.

While the participants requested more support in understanding the judicial processes, emotional and moral support emerged as a strong theme in Offender accounts.

*More support from my carer and caseworker to talk through feelings about why it happened and how I felt after. (Male, 14/20)*

*Not having a second voice made it ten times harder. It would be better to have a support person and advocate. It would be so much easier than having to learn the law at a young age. (Female, 15/20)*

Emotional and moral support was also frequently mentioned in Victim accounts.

*They had support workers at the court but I had no clue who they were. They just introduced me to them on the day... There should be prior meeting with these people to give kids more of an opportunity to build trust with them before they are thrown in to this situation. They feel like the world is coming down on them... (Female, 12/18)*

Young people in the AFP and Offender groups also recommended more support in dealing with the issues that precipitated their behaviour that resulted in police interaction.

*No one asked me why I ran away, I needed support to deal with my Aunt rather than running away. (Female, 16/19)*

*If I had more adult support prior to that time I might not have felt the need to get so drunk. (Female, 17/22)*

#### Less police antagonism and more empathy

Offenders, Victims, and AFPs recommended changes in what they perceived as antagonistic behaviour and attitudes by the police. For Offenders, police were described as “intimidating”, “arrogant”, “rude”, and “frightening” when arresting and interviewing the young people, and some young people reported being subjected to excessive force. Respondents in the absent cohort similarly reported that the police could have displayed more appropriate attitude and behaviour by acting “approachable” and “calm”, as opposed to “unfriendly” and “scary”.

Respondents argued that the demeanour of the police influenced their own reactions. Offenders stated they would have responded more calmly if the police had been respectful. For example, “if the police had treated me with more respect and not like a violent criminal and handled me like one, then I would have been more calmer” (Male, 17/18). Members of the AFP cohort also shared this belief:



*If I am being a smart arse they (police) should not be a smart arse also, they should have more control of themselves.... (Male, 15/22)*

Although the young people were often aware of how their own behaviour influenced that of the justice system personnel, it was evident they believed the police should have adhered to professional conduct by not escalating the behaviour. For one young person, they perceived the antagonistic behaviour to reflect a choice on the police personnel's part, stating *"The police purposely spoke to me in a way that was stern, because I feel like they didn't want a positive outcome"* (Male, 16/20).

However, one person who had been absent identified that a lack of awareness of trauma had influenced the antagonistic behaviour.

*The police should be trauma informed when dealing with young people. I was only one young person acting out, I didn't need four officers sitting on me... (Female, 14/20)*

Eight of the 30 Victims who responded to the questions similarly recommended the police should act less antagonistically. As demonstrated by the statement, one young person perceived the interviewing tactics of the police as intimidation, and made her feel as though she was implicated despite having only witnessed a crime.

*The police were stern and scary and tried to make us tell them everything. They were very intimidating and didn't give any comfort. They were questioning me like I had done something and I was involved. (Female, 16/20)*

Victims identified antagonism as problematic not because it escalated the young people's behaviours, but rather because it contributed to the young people not being able to disclose information.

### Opportunity to be heard and believed

Respondents in the Offenders' cohort believed their interaction could have been improved had the justice system officials given young people an opportunity to tell their side of the story. Offenders described that they wanted to explain the motivations and triggers behind their offending behaviour.

*The carers would only give them info on what I did, they would only hear the one side of the story. They wouldn't listen to the kid acting up, they just wanted to hear from the adult... (Female, 15/18)*

In this case the young person had *"lashed out"* at residential workers resulting in charges of assault and property damage. However, the young person describes how being consistently locked in her room was a trigger for her behaviour, yet the police did not give due consideration to the young



person's account. As another young person reported, "There is a reason why young people offend...more often than not it's a call for help" (Female, 14/24).

Being unable to be heard was connected to the stigma associated with being a young person in care. Six Offenders believed there was a connection between the behaviour and attitude of people in the justice system and the young person's in-care status.

*They were abrupt, no discussion on what the issue was or why I did what I did, they just charged me without even thinking about talking to me... I was another welfare kid running around that they didn't have the time or respect for which just made me act up even more. (Female, 15/22)*

Four of the 18 young people who were absent from placement similarly described wanting to be heard and taken seriously by the police personnel and caseworkers. These young people wanted the opportunity to explain their motivations for running away, and draw attention to the unsafe elements within their placement.

*My foster mum was not very caring and my case manager didn't really do her job properly because she would not make time to talk to the kids and ask if they are alright. (Male, 12/24)*

*It is different for kids in care, you try to stay away from some people, people in residential care, or who you do not want to be around because they are not safe, but you are sent back...not listened to or believed. (Male, 14/21)*

Being taken seriously and believed by justice system personnel and case managers was a recommendation made by six of the 32 Victims, with three of these participants further identifying stigma as a barrier to being taken seriously.

*They could have not told me no one was going to believe me because I was a foster kid. That has stuck with me for life. I guess they could have treated me like they believed me. (Female, 17/25)*

#### Triggers in environment removed

Rather than recommendations regarding the justice system, several young people spoke about factors in their care environment that influenced their offending behaviour. For example, one young person suggested that their caseworker should have moved them from an unsupportive placement, before the arguments they had with the carer escalated into physical assault.

Several spoke about how residential workers specifically should have not escalated the young person's behaviour by locking young people in their room or making them eat what young people perceived as rotten food. Young people also felt residential workers should have been better trained



to de-escalated the young person's behaviour. Two young people mentioned that their foster carers should have been more caring and understanding of the young person.

*My foster carers at the time should have cared for me better. Showed some love and care... When I was in foster care, I wasn't treated fairly. They didn't connect with me. They searched my bag and did not trust me and treated me like a criminal. (Male, 14/19)*

This theme also emerged in five accounts of the AFP group. Young people felt that carers should have been more caring, that they should have been allowed to choose who they were placed with, that residential workers should have attempted to contact the young person before calling police, and restrictions in care environments reduced.

*At [residential facility] you do your chores and go into your room. You're not allowed back in there until after 6pm. You couldn't smoke without parent permissions. The staff didn't care about how the kids felt, just sat in their office while we cooked them dinner, and did all the work. (Female, 16/19)*

### Individual responsibility

Nine young people in the Offender group felt that changes in their own behaviour and attitudes would have led to an improved outcome. Young people mentioned not committing the offence in the first place, but also changing their responses to the police.

*I could have hung around different people at school, I could have hung around the good group instead of the bad group. I could have dealt with it a lot better, like let the police do their job. (Female, 15/21)*

### Positive interactions

In comparison, 16 of 86 Offenders reported they had no recommendations as they believed the police had treated them "good" and "respectfully". For some young people this was due to the lack of antagonistic behaviour. Of note, one young person described the police as being "kind to me due to my situation - being almost homeless" (Male, 17/22), following charges of stealing from a store and being given a diversion order.

Seven Victims stated recommendations for improvement were not essential. This was due to perceiving the police as taking the young people's concerns seriously, and receiving support from their extended networks such as caseworkers and carers.

Table 17: Number (Percentage) of Offenders, Victims, and AFPs Making Recommendations for Improving Justice System

Recommendations	Justice Contact Type		
	Offenders* (n = 81)	Victims* (n = 30)	AFPs* (n = 17)
Police to be less antagonistic and more empathetic	37 (36.3%)	8 (19.5%)	11 (31.4%)
More information	20 (19.6%)	15 (36.6%)	7 (20.0%)
More support	20 (19.6%)	12 (29.3%)	5 (14.3%)
Opportunity to be heard and believed	13 (12.7%)	6 (14.6%)	7 (20.0%)
Triggers in environment removed	12 (11.8%)	0	5 (14.3%)
<b>Total Comments</b>	<b>102 (100.0%)</b>	<b>41 (100.0%)</b>	<b>35 (100.0%)</b>

\*Note. Numbers in parentheses indicate how many young people responded to this question.

#### Example Responses: Offenders

*The police officer was very authoritarian. He dominated the situation by asking questions that were aggressive or over my head. There should have been a safe environment to open up. (Female, 25/25)*

*The process between being arrested and my court date. I had no idea what was going on. (Male, 17/22)*

*They didn't offer me to have any support, given that I was under age and in care, they should have given me the option to have a support person. (Female, 15/22)*

*There is a reason why young people offend, we need professional workers, police and lawyers who understand why young people offend, more often than not it's a call for help. (Female, 14/24)*

*The residential workers should have been a bit more trained to deal with us. We would often get new workers every day, so they didn't really know us. (Male, 16/18)*

#### Example Responses: Victims

*They could have given me more information and help regarding the process of going through victims of crime. (Female, 8/19)*

*I think it would have helped me if I had had more support. Then it wouldn't have just been my word against my abusers. (Female, 17/25)*

*Not being believed by foster mother and caseworker - so hard. (Female, 8/23)*

#### Example Responses: AFPs

*The police were not very friendly and I was scared of them. (Female, 12/23)*

*I was only told I had to be taken, because I'd been marked as a missing person. There was no other information given, not who said I was missing. Nothing. (Female, 16/19)*

*It would of helped a lot to have a support person with me while I spoke with the police. (Female, 12/23)*



*Someone to actively listen - not just listen - I mean actively listen. Someone should have been asking about the reasons for running away...what if it was more serious? (Female, 13/23)*

*The unit could have tried to contact me. I had one call and I told them I needed space. That was all that happened in the whole week. They went straight to the police after that. (Female, 15/22)*

### **Victims want the justice system to protect young people**

Distinct from the Offenders and AFPs, when making recommendations regarding how their interaction could have been improved, eight Victims suggested that the justice system should act more protectively to ensure the young person's safety. This included young people who felt their perpetrators did not receive adequate punishment and were not deterred from further harassing the young people, and young people who felt the police were delayed in responding to their concerns.

*I feel like in the beginning they took me seriously but after I call back a few times to report they didn't really care. It took my dad to leave a threatening voicemail on my Families SA worker for the police and courts to take it seriously and send him to jail. (Female, 13/18)*

*They seemed really passionate and committed at the time but it seems like they don't now. It would have been helpful if that passion continued and let me know who was following up the case after the original officer left. My family tried to chase it up... but we gave up on it because we were not getting anywhere. (Female, 14/21)*

## **Perceptions and feelings regarding how the justice system relates to children and young people in out-of-home-care**

Young people were asked to describe their perceptions, feelings and concerns regarding how the justice system relates to young people in out of home care. Offenders, Victims and young people who were absent from placement reported similar negative perceptions and concerns regarding most commonly, stigmatisation of young people in care, and secondly, the ineffectiveness of the justice system in meeting the needs of young people in OOHC. By comparison, a smaller proportion of Offenders, Victims, and AFPs reported they felt they were treated as any other young person in the community.

### **Justice System Relates Positively to Young People in OOHC**

A small proportion of participants (16% of the 124 participants who responded to the question) reported that the justice system related positively to young people in OOHC. Of the participants who elaborated on why they held this view, it appeared that for several their perceptions were driven by their own cases having had favourable outcomes, rather than the young person reflecting on young people in care and their justice system experiences generally. One Offender for example stated “*I feel great about how it is, don't change anything. Because I was able to get a good outcome*” (Male, 20/21).



Another Offender thought that the experience was good as the magistrate took into account the influence of the care environment on the offending behaviour.

*The judge was nice. They are very forgiving when you get yourself in trouble because you've been in foster care. (Female, 15/20)*

Another young Offender felt the justice system treated people in OOHC positively as the support provided by youth justice resulted in him not ending up in detention: *“Being involved in youth justice has been a positive experience for me and helped support me through court processes. If I didn't have this help I would have ended up in detention”* (Male, 16/18).

Seven Offenders and one Victim further stated that they felt that the justice system did not discriminate against young people in care, but rather treated them the same as other young people.

*Same as everybody else. If you stay out of trouble they are going to be friendly but if you commit an offense then they are going to treat you like a normal criminal which is perfectly valid. (Male, 18/19)*

### **Negative perceptions regarding how the justice system relates to young people in OOHC**

A key theme noted in the participant narratives was the perception that the justice system stigmatised and discriminated against young people in OOHC and that justice system personnel lacked the skills to support young people who had a trauma background.

#### **Justice system is ineffective in meeting the needs of young people in OOHC**

The most prevalent view of how the justice system related to young people in OOHC held by Offenders, AFPs, and Victims was the perception that the justice system insufficiently met the unique needs of young people in OOHC. Respondents identified that justice system authorities lacked an understanding of how trauma influenced offending behaviour. Participants believed an informed understanding of trauma is required to understand motivators behind young people's behaviour to in turn respond fairly to the young person.

*I don't think they get trauma or behaviours expressed by children and young people in care so there isn't a lot of understanding towards them. It's a lot about punishment rather than rehabilitation. It's more you did the wrong thing regardless of the reasons behind it. (Female, 15/22)*

Offenders, Victims and those absent from placement described that young people in care may lack support to find different placements or implement other coping strategies. The offending behaviour was argued by participants to be a means to draw attention to their situation.



Instead of appropriately meeting the needs of young people in care, Offenders, Victims, AFPs raised concerns that the justice system operated to increase the vulnerability of young people in OOHC. One Victim suggested that the justice system processes “*amplifies the worthlessness that young people who are in care feel*” (Other, 10/23), especially the lack of communication which was proposed by another Victim to make young people feel “*like you are being left behind again, like when you are coming into care*” (Female, 14/21).

Some respondents were also concerned about young people leaving care with a criminal history, and the impact this would have on future opportunities. Others were concerned about the young people’s ability to trust others, including the police when needed. Five young people in the Offender group commented that they thought the justice system was too lenient, and this was ineffective as young people were then not supported to change their behaviour.

*The system is pretty lenient, they need to be stricter on youth so that they don't end becoming worse as an adult. If the court were to charge a youth, they need to send them to an organisation that can help them with what they did, to learn from their mistakes. (Male, 16/20)*

#### Justice system stigmatises young people in OOHC

Offenders, Victims, and AFPs also believed that the police and court magistrates held prejudiced attitudes and engaged in discriminatory practises against young people because of their out of care status. Shared across the participant narratives was the perception that justice system personnel identified young people in care as deviant. Offenders utilised a range of negative labels to describe how the police perceived them, including “*delinquents*”, “*rat bags*”, “*bad kids*”, “*no hoppers*”, and “*trouble makers*”.

Respondents described stigma as one of the reasons for justice system authorities being antagonistic to young people or, as one young person argued, why the police “*give harsher consequences to kids in care*”(Female, 11/22). In other accounts, the process of labelling was proposed as a reason young people in OOHC engaged in crime, as a form of self-fulfilling prophecy.

*You feel like people expect you to do the wrong thing. People don't give young people in care a chance to prove themselves so what are they supposed to do, they just think “Oh well, I might as well do the wrong thing...” (Female, 17/22)*

Almost half of the young people who identified as Victims described the same process wherein the justice system contributed to and perpetuated stigma against young people in OOHC. These young people often were labelled as “*scum*”, “*delinquents*”, and “*troubled.*” Victims believed these attitudes

meant that the justice system did not care about the safety of young people in OOHC. For example, “they treated me like I was scum because I was in care and that it didn’t even matter what happened to me” (Female, 16/21).

Table 18. Number (Percentage) of Offenders, Victims, and AFPs Reporting Perceptions (Positive or Negative) of How the Justice System Relates to Young People in OOHC

Perception	Justice Contact Type		
	Offenders* (n = 77)	Victims* (n = 31)	AFPs* (n = 16)
<b>Positive</b>			
Justice system relates positively to young people in OOHC	14 (15.7%)	5 (13.5%)	1 (5.3%)
<b>Negative</b>			
Ineffective in meeting needs of young people in care	44 (49.4%)	20 (54.1%)	8 (42.1%)
Justice system stigmatises young people in care	31 (34.8%)	12 (32.4%)	10 (52.6%)
<b>Total Comments</b>	<b>89 (100.0%)</b>	<b>37 (100.0%)</b>	<b>19 (100.0%)</b>

\*Note. Numbers in parentheses indicate how many young people responded to this question.

#### Example Responses: Offenders

*The police could know more about what young people in care are going through.* (Female, 16/20)

*... they've made their decision before meeting. That I'm never going to be anything other than a DCP kid.* (Female, 15/18)

#### Example Responses: Victims

*I think they did a pretty good job and they have a tough job to do, considering they need to put their lives on the line.* (Female, 8/19)

*I think that there's still a huge amount of abuse being unreported and unacted on due to the system being so un-child-friendly and so unresponsive.* (Other, 10/23)

*... There is a bad stigma that people in foster care are more likely to get in trouble with the police* (Female, 20/21)

#### Example Responses: AFPs

*Justice system workers can be helpful, and works for some. As long as the officers are the nice ones.* (Female, 16/19)

*They need to be kinder to young people in care as they have been through so much and might just be trying to get out of a situation...* (Male, 13/25)

*There is a lot of judgement, especially from police. They tend to think that because we are in care that we are all going to get into trouble...* (Male, 15/22)



# Discussion

The aim of this national consultation was to listen to the voices of young people with a care experience to gain an understanding of how they became involved with the justice system, their treatment by justice system personnel, the support they received during their interactions, the outcome of their involvement in the justice system, and their recommendations for improving the justice system for young people with an OOHC experience. Below is a discussion of the key themes and needs of young people in OOHC that emerged from the consultation, as well as recommendations for policy, practice, and future research.

## Understanding why young people offend

Research has consistently identified an increased risk of offending amongst young people who have been placed in OOHC (Darker et al., 2008; Jonson-Reid, 2002; Malvaso et al., 2017; Ryan & Testa, 2005). Several explanations for this association have been proposed, such as the ongoing influence of trauma (Bollinger et al., 2017), peer contagion effects in residential facilities (Ryan et al., 2008), and the criminalisation of challenging behaviour by caregivers (Cashmore, 2011; Shaw, 2016; Staines, 2017). The accounts provided by participants in this consultation similarly echo these explanations.

Hayden (2010) for example has previously argued that the residential facility is criminogenic as a result of young people with complex, challenging behaviours being concentrated in residential care following the breakdown of foster care and other home-based arrangements. The co-tenanting of young people in residential care is argued to increase the risk of offending due to the exposure to the offending behaviour and pro-criminal attitudes of other young people, which was reflected in some participant accounts (Lee & Thompson, 2009; Victoria Legal Aid, 2016).

Young people in OOHC may also be at an increased risk of developing affiliations with deviant peer groups outside of placements. While minimal research has been conducted on how young people in OOHC develop friendships, the existing literature suggests that young people in care have difficulties in developing friendships due to placement instability, peers having negative views of the young people due to behavioural and emotional dysregulation, and young people having difficulty interacting with peers outside of school hours (Anderton, 2009; McDowall, 2013). Young people in OOHC thus may be more likely to affiliate with deviant peers, and therefore be at an increased risk of offending, if these barriers to forming positive social support networks are not addressed.



While approximately a quarter of participants in this consultation reported committing offences with other young people both within and external to the placement, young people also suggested that co-tenants triggered the offending behaviour by engaging the young person in a physical altercation, stealing their belongings, or insulting them. Over half of the inappropriate behaviour reported by Offenders was directed towards individuals within the placement, and several Victims reported being offended against by co-tenants as well.

Potentially, difficulties in finding placements for young people who present with challenging behaviour has resulted in these young people being unsuitably “matched” in the placement, contributing to a tenuous environment conducive to offending behaviour (Hayden, 2010). This finding may not be limited to the residential environment. Inappropriate matching between young people and carers may also occur, especially as there is increased demand on foster carers to look after young people, as the numbers of young people in OOHC increase while foster carer numbers decline (Senate Community Affairs References Committee Secretariat, 2005).

Emerging in participant accounts was also evidence of criminalisation of young people’s behaviour requiring police intervention that may not happen in non-care environments. Participants described situations where residential staff and foster carers called police for minor transgressions, such as fighting between siblings or minor property damage. What is interesting to consider, however, is decision-making processes with more serious offences, such as a young person stealing a caregiver’s car or driving without a licence, and whether biological parents in a non-care environment would report their own offspring to the police if they had stolen their car. While situational factors would undoubtedly influence decisions (e.g. seriousness of injury, role of third parties), differential pressures may also exist. Biological parents may be more concerned about the ongoing effects conviction would have on their relationship, whereas in the OOHC environment caregivers may need to file a report to the police to access insurance claims, or experience pressure to adhere to OOHC care policies and procedures.

The utilisation of the police to manage the young people’s behaviour also suggests caregivers may not be appropriately trained or supported to de-escalate behaviour. The Victorian *Roadmap for Reform* for example identified a need for mandatory qualifications for residential workers and increased staffing levels to improve the effectiveness of responding to challenging behaviour (Department of Health and Human Services [Victoria], 2016). The NSW Ombudsman has similarly developed the *Protocol to Reduce the Criminalisation of Young People in Residential Out of Home Care* (NSW Ombudsman, 2016). This protocol further identifies the need to appropriately train caregivers in identifying trauma behaviour, implementing individualised behaviour support plans to



de-escalate behaviour, removing potential triggers in the care environment that may facilitate escalation (e.g., ensuring the young person had privacy as required), and correctly identifying when police intervention is required. This protocol also includes guidelines for when police may be necessary, such as in an emergency situation, and when alternative methods implemented with the guidance of supervisors are ineffective (e.g., sourcing additional staff). However, it is acknowledged that, given participants in this consultation reported assaulting residential staff and foster carers, police response is sometimes required to ensure the safety of the caregiver.

**Recommendation 1:** Case planning and placement options should consider the appropriate “matching” of young people in OOHC environments, with an emphasis of placing young people with others where the formation of positive relationships is likely.

**Recommendation 2:** Caseworkers, caregivers, and specialists should conduct an analysis of disruptive behaviours that identifies the young person’s triggers, such as the behaviour of co-tenants in residential care. Sufficient training should be provided to caregivers to increase their efficacy in managing challenging behaviour without police intervention, and the young person should be linked to support services (such as mental health) as necessary.

## Young people are being re-victimised in out of home care

The narratives of the young people who participated in the consultation reiterate the key findings of the recent Royal Commission into Institutional Responses to Child Sexual Abuse (Commonwealth of Australia, 2017b), in that young people removed from families can be further victimised in placements by carers and co-tenants in what child protection authorities have deemed to be safe environments. While carers and co-tenants were not the most commonly reported perpetrators, this finding nevertheless highlights systemic issues in the assessment and supervision of placements in which vulnerable young people may be at risk of further victimisation (Biehal, 2014).

A large proportion of victims indicated they had been victimised by individuals external to their placement including friends, neighbours, adult strangers, and school peers. Previous research has identified how young people who have been maltreated and placed into OOHC are at increased risk of exploitation from adults external to the placement. For example, histories of abuse and neglect are associated with lifestyles and activities that can lead to an increased risk of victimisation, particularly use of illicit substances, alcohol consumption, sex work, and homelessness (McIntyre & Widon, 2011). Young people in a study conducted by Moore, McArthur, Roche, Death, and Tilbury (2016) similarly reported that young people in residential care might be a risk of exploitation by adults in the community as they lacked adults who were protective and supervised the young people



adequately. The participants also explained that young people accept adult advances or seek relationships with adults that ultimately are exploitative, due to a desire for acceptance, attention, and love.

The “...as a good parent would...” report by the Commission for Children and Young People (Victoria) (2015) also highlighted systematic failings in residential workers’, and child protection department responses to young people being exploited by adult predators. Case examples highlighted how residential workers failed to assist with transporting young people at night; young people who were subsequently sexually assaulted. In addition, young people known to associate with older adults were not reported to police. This led to the Victorian Commission recommending increased scrutiny and independent oversight of residential practices by child safety officers to ensure that procedures are implemented that give the needs and safety of the young people highest priority.

**Recommendation 3:** Case management practices should encourage young people to voice safety concerns within, and external to, their placements without fear of repercussions, and collaborative case planning should be utilised to address the needs of young people to increase their sense of safety and support. Programs should be implemented for teaching protective behaviours.

## The need for a trauma informed justice system

Young people in this consultation overwhelmingly reported negative experiences with the justice system, regardless of their contact type. These negative views were driven by perceptions of the authorities, particularly the police, as antagonistic, un-empathetic, and as alienating young people through a lack of information provision, and not including the young person where appropriate in decision-making processes. These experiences have the capacity to re-traumatize young people.

Participants recommended that contact with the justice system could be improved through authorities adopting behaviour and practises aligned with a trauma-informed model. A diverse range of practices and policies may be considered aligned with a trauma informed approach (Branson, Baetz, Horwitz, & Hoagwood, 2017). Core concepts include recognition of the impact that early experiences of trauma can have on cognitive processes and behaviour, such as aggression, emotion dysregulation and impulsivity, which are adaptations to previously aversive environments (Bollinger et al., 2017; Kezelman & Stavropoulos, 2016). This recognition would be aided through the use of screening and assessment for trauma. A trauma-informed justice system would not necessarily entail the treatment of trauma (Mendes et al., 2014a). Rather, a trauma-informed justice system would minimise the risk of re-traumatisation, refrain from punitive responses, and instead empower young



people to utilise trauma-specific interventions that would address trauma (such as learning strategies to manage stress and emotions, building positive relationships, etc.) (Buffington, Dierkhising, & Marsh, 2010).

In a criminal justice context, a trauma-informed approach would entail the caregivers and justice system authorities working to minimise power differences between themselves and the young person, be respectful of differences, and foster a culture of non-violence. This requires careful utilisation of language (e.g., use of non-stigmatising, problem-focused labels) as well as clear articulation of the judicial processes to reduce the young person's fear and anxiety (Kezelman & Stavropoulos, 2016; Substance Abuse and Mental Health Services Administration [SAMHSA], 2014).

The need for a clear articulation of the judicial processes to reduce fear and anxiety is especially vital considering the number of offenders in the consultation who reported confusion regarding their outcomes. As reported, several young people claimed outcomes that were inconsistent with judicial processes. This indicates that judicial outcomes are not being communicated to young people, or are not being communicated in a manner that is developmentally appropriate.

The importance of a trauma-informed response is further supported by the analyses of victim narratives. Young people often reported being excluded from decision-making processes. The decision to charge perpetrators and whether the case progresses to a prosecution agency is dependent on the police investigation. However, a young person may perceive that authorities do not believe their account, or do not value the young person's need for safety and justice, if authorities do not charge the perpetrator. The court dismissing the young person's case, or delivering a sentence that is ineffective (e.g., participants reported that AVOs did not prevent perpetrators from contacting them) similarly reinforces the perception that the young person's concerns are not valued. Conversely, research regarding restorative justice has found that victims experience more satisfactory outcomes when they are provided with an opportunity to articulate their needs and wishes, assisted to formulate realistic expectations about judicial processes and outcomes, and provided with information to understand why certain outcomes are decided upon (Choi et al., 2012).

Victims were also restricted in how they could communicate their narratives (e.g., directed to exclude the subjective feelings and impressions as they do not constitute relevant or admissible evidence), had to continually access memories that were potentially traumatic, and were confronted with indecipherable legal jargon within an adversarial legal system. As argued by the Royal Commission into Institutional Responses to Child Sex Abuse (Commonwealth of Australia, 2017b),



this disempowerment through judicial processes can parallel the abuse experienced by the victim. Without the necessary support at the time of police contact, victims may not pursue and participate in later criminal justice proceedings. This was reflected in participant responses wherein they described dropping charges because they felt “overwhelmed” by the proceedings.

A trauma informed approach further identifies the need for offenders and victims to be treated with dignity and respect (SAMHSA, 2014). In the consultation, offenders described feeling disrespected by what they perceived as antagonistic and unfair behaviour by the police personnel. An important consequence of young people perceiving the police as utilising excessive force and behaving in a disrespectful manner is that it may amplify young people’s fear of the police.

This in turn may influence the young people’s reluctance to seek the police’s assistance or to report crime (Gormally & Deuchar, 2012). Some participants expressed this concern when reflecting on how they believed the justice system interacts with young people in OOHC generally. Another implication of these views is that young people come to expect that they will be treated antagonistically and unfairly in their interactions with police; consequently, during their interactions with police, they may respond with hostility. This in turn creates a perpetuating cycle wherein the police perceive young people as rude and hostile and therefore respond in turn, ultimately solidifying young people’s mistrust of the police. This project did not examine police perceptions of young people in care; however, this cycle was been identified in the interactions between young people in marginalised communities and police in Scotland (Gormally & Deuchar, 2012).

In contrast, some Offenders and Victims described positive interactions with the police. This experience appeared to be driven by the perception of police as respectful and treating the young person with dignity, evidenced by listening to the accounts of the young person and providing adequate explanations of judicial procedures (such as case progression for victims). These actions align with a trauma-informed approach. Implementation of a trauma informed justice system requires ongoing interagency collaboration between child protection and justice systems, but can have significant effects on offending and recidivism rates. Trauma-informed protocols implemented in the United Kingdom, for example, led to a 45% reduction in rates of offending in the area of Surrey within a four-year period (Prison Reform Trust, 2016). The use of a trauma-informed model by staff at a United States girl’s secure juvenile justice facility similarly lead to reduced youth misconduct, a reduction in punishments such as restrains and isolation, and increased sense of safety for both staff and young people (Elwyn, Esaki, & Smith, 2014).



**Recommendation 4:** Training and support should be provided to disseminate trauma-informed practice across criminal justice systems, including police and court officials.

## Experiences of young people who are absent from placement

An interesting finding of the consultation was concerning the young people who had contact with the police, as they had been reported as missing. While the aim of the consultation was to recruit young people who had experiences with the justice system due to offending behaviour or being victimised, the experiences of the absent-from-placement cohort allowed for valuable insights into how the justice system relates to young people in OOHC. Most notably, there were significant similarities between the accounts of young people who were AFP, and accounts of the Offenders.

Emerging in participant accounts, similar to those of offenders, was the perception of antagonistic police responses. Young people recounted being handcuffed, dragged by their hair, and being placed in a watch house, which led to respondents feeling afraid and believing they were going to be formally charged despite not committing an offence. However, as Dedel argued, young people leave their placement because they are “*usually running away from a problem they do not know how to solve*” (2006, p. 6). Anxiety and fear from believing they are to be charged is likely to further distress an already vulnerable young person.

Those young people who were absent from placement also reported the utilisation of police as behaviour management agents. Participants reported police involvement was often unnecessary as they had intended to return, had remained in contact with their caregivers whilst absent from placement, or had been absent for a minimal amount of time. This is a trend noted in other qualitative research, such as by Finkelstein, Walmsley, Currie, and Miranda (2004) who found over two-thirds of the young people in their sample who had left placement had voluntarily returned.

The utilisation of police when a young person is absent from placement is consistent with policy guidelines of child protection departments and service providers. The Victorian report “*...as a good parent would...*” (Commission for Children and Young People [Victoria], 2015) highlighted how young people can be placed at higher risk when police are not utilised, outlining case studies of young people being taken advantage of by adult sexual predators while the young person was wandering the streets.

However, there is a need to consider the implications of utilising police to manage absconding behaviour. Research has found that increased contact with the police increases the propensity of young people engaging in criminal behaviour (Wiley, Slocum, & Esbensen, 2013), and running away



from placement is a predictor of later youth justice involvement (Sarri, Stoffregen, & Ryan, 2016). A report analysing police responses to those absent from placement in the United Kingdom similarly found that OOHC service providers “over reporting” missing persons contributes to police delaying their response as they believe the absence is likely to be temporary, thus ultimately increasing the vulnerability of the young person (Social Exclusion Unit, 2002).

As Jackson (2015) argues, alternative methods of responding to young people who go missing are required. Jackson specifically argued for interventions that are trauma informed. Few studies have been conducted evaluating the efficacy of such interventions, although an evaluation of a therapeutic residential care model in Victoria that utilised trauma-informed principles led to a reduction in absconding behaviour (VERSO Consulting, 2011).

Further recommendations regarding responses to young people being absent from OOHC placements were outlined in the Queensland Family and Child Commission *When a Child is Missing* (2016) report. These recommendations included ceasing the use of the term “absconding” (as it implies criminality), updating internal policies and guidelines that will clarify the roles and responsibilities of staff, carers, and service providers when a young person is absent from placement, and developing clearer, consistent definitions that assist in identifying when a young person is absent or missing from placement. The report also recommended the need to consult with the young person upon their return, and collaboratively address the issues that underlie the young person’s desire to leave placement. While participants in this consultation were not asked explicitly about return interviews, several participants indicated their experiences would have been improved by being given an opportunity to explain why they were running away.

**Recommendation 5:** CREATE supports the recent efforts of the Queensland Government to improve police responding to young people who are absent from their OOHC placements. CREATE encourages other states and territories, as has Queensland, to develop joint guidelines and protocols with the police and child protection agencies that provide guidance on when police intervention is necessary.

## Young people in OOHC lack support during contact with the justice system

There was a consistent lack of support reported by Offenders, Victims, and AFPs across different stages of the judicial processes. Almost 67% of those absent from placement, 38% of Offenders and 25% of Victims, reported having no support during their contact with the police. A significant proportion of young people (19% Offenders and four of the seven Victims who attended court) also reported no support during court proceedings. Further, 2 of the 10 young people sentenced to



detention reported “no one” had supported them whilst detained. Additionally, while approximately 60% of Offenders reported having a support person present during their interaction with police, over a quarter felt this support was inadequate, describing their caregivers and caseworkers as present but not providing emotional or practical support. Similar trends emerged for AFP and Victim cohorts. What emerges then is that young people identify that they have psychological and practical needs that are not being met by the residential workers, caseworkers, foster carers, etc.

This consistent lack of support across the judicial process suggests that the *National Framework for Protecting Australia’s Children 2009-2020* (Commonwealth of Australia, 2009) is not being upheld. Specifically, the framework states that children “*who have been abused or neglected receive the support and care they need for their safety and well-being*” (p. 25). It can be argued that part of the responsibilities of the state is ensuring young people in OOHC are effectively supported during their contact with the justice system, as this interaction has implications for the long-term well-being of the young person.

For example, eight young people reported that their experiences with the justice system had been a learning experience. These young people suggested that their contact with the justice system had motivated attitudinal and behavioural change due to fear of further justice system involvement, but also due to the involvement of youth justice workers teaching the young person appropriate behaviour and being supportive. This suggests that the goals of a rehabilitative justice system are feasible, particularly with the provision of appropriate support.

While it was beyond the scope of this consultation to assess explanations for the lack of support perceived by the participants, previous literature suggests possibilities. For example, young people may lack secure and trusting relationships with their caregivers; they do not seek out support from these individuals. High turnover of caseworkers, frequently changing casual staff in residential facilities, and placement instability reduces the capacity for the young person to develop supportive relationships with caregivers. Previous research by the CREATE foundation has found that over a third of young people in OOHC have had more than five caseworkers (McDowall, 2013). This high turnover results in young people not trusting their caseworkers (Stolin-Goltzman, Kollar, & Trinkle, 2010).

A potential explanation for the lack of support offenders receive during police and court proceedings may be the lack of interagency collaboration between child protection, service providers, police, and youth justice. For example, in the case of juvenile offenders, research has identified interagency confusion between child protection services and youth justice services concerning case management



roles. Potentially, young people are not being supported due to a lack of information sharing, collaboration through regular care meetings, and clarity regarding roles (Hart, 2006; Mendes et al., 2012). This has implications for delivering a trauma-informed response, as child protection workers may be best placed to inform the court of the influence of a traumatic background on the young person's behaviour. A limitation of the study however was that the survey asked young people whether their "caseworker/residential worker" supported them during their contact with the justice system. Combining these distinct support figures prevented exploration of trends regarding who is more likely to support a young person. Despite this, results seemed to indicate regardless of specific agency affiliation caseworkers and residential workers are often not present during police contact or court.

Considering the number of offences committed against young people by perpetrators within their placement, it may not be surprising that caregivers (foster carers and adult residential facility staff) would not support the young person when they, the caregiver, is the offender. In cases where the caregiver themselves is not the offender, they may have a pre-existing relationship with the alleged offender (e.g., the alleged offender may be a biological relation). The caregiver may experience a conflict of loyalties between the offender and the victim, and thus may not believe the victim. While the rate of re-victimisation in out-of-home-care placement is low, these incidents highlight an important reason why communication and rapport between the young person and their other supports, such as child protection worker and public guardian advocate, is vital.

The lack of psychological support provided by caregivers as reported by respondents does not necessarily imply that these caregivers do not care about the young person's well-being, particularly as national surveys of young people in care found young people consistently rated these support figures as "concerned" to "very concerned", across jurisdictions and placement types (McDowall, 2013). Rather, caregivers may struggle between wanting to be nurturing and supportive, and wanting to control the young person's offending behaviour and ensure they received an appropriate consequence for their actions. This tension has emerged in previous qualitative research with carers who have foster children on remand. Lipscombe (2007) argued that these two parenting styles emerge as a result of confusion and lack of clarity as to the foster carer's role in managing an offending youth in-care. This confusion between nurturing and regulation may similarly be influencing the behaviours and attitudes of kinship carers, residential workers, and case managers. Considering that caregivers may interpret being absent from placement as disobedience, there may be a similar tension between caregivers wanting to be nurturing but also wanting to reduce the likelihood of the young person running away again through more punitive responses.



**Recommendation 6:** Clear protocols need to be developed collaboratively by child protection, youth justice, and community service agencies who provide placements for young people in OOHC, that outline the roles and expectations of caregivers in managing young people’s offending behaviour. This includes their responsibilities in supporting the young person while being interviewed, during court proceedings, following bail conditions, etc. Appropriate training and resources should be provided to effectively support caregivers to meet role expectations.

**Recommendation 7:** Further research is required to assess why young people in OOHC experience a lack of support by caregivers and child protection workers when navigating the criminal and youth justice systems.

## The prevalence of stigma

Prior research has acknowledged how stigma operates to make young people in OOHC feel excluded, different, and less important than young people not in OOHC. Denzel and MacDonald (2014) examined the existence of stigma, and the effect it has on the general public’s perception of young people in care. The researchers found that members of the general public rated a young person in foster care, compared with one living with family, as more likely to be angry and bitter, and be emotionally fragile during childhood, and be expected to engage in petty theft, engage in underage drinking, be in jail, live in poverty, and more likely to abuse drugs and alcohol as an adolescent and adult.

The self-fulfilling prophecy effect of these negative expectations were consistently expressed by participants in the consultation, who identified that being labelled as a young person in OOHC and the negative connotations associated with this label (e.g., “deviant”, “troubled”), resulted in an internalisation of these views and increased recidivism. Stigma was also reported to increase reluctance in seeking assistance from the justice system authorities, due to the belief they would be treated unfairly by the justice system. A concerning consequence of stigma may be the child welfare bias identified by Ryan, Herz, Hernandez, and Marshall (2007), who found that young offenders from child welfare backgrounds were less likely to receive probation than non-welfare young people regardless of offence type. This consultation thus complements other research that has identified how stigma results in lower educational attainment, difficulty forming relationships with peers and romantic partners, and reluctance in seeking specialist services (CREATE, 2006; McDowall, 2008).

**Recommendation 8:** As CREATE (2017) has previously argued, there is a need for increased public education and awareness of the impacts of negative language and stereotypes



regarding young people in OOHC, and a need to promote positive images of young people in OOHC to reduce internalisation of negative perceptions. Targeted approaches should be utilised for the justice system to specifically combat any negative perceptions held by justice system authorities.

## Strengths & limitations

The results of this consultation need to be considered in light of its strengths and limitations. For example, this consultation utilised a mostly convenience sample of young people who had both a care experience and contact with the criminal justice system. Unfortunately, researchers did not have access to records detailing actual charges and offences. There are further limitations with relying on self-reported outcomes due to associated biases and selective memory (particularly as some participants described incidents that had occurred several years prior). However, privileging the accounts of the participants enabled important findings to emerge, such as Offenders experiencing confusion regarding whether they were charged or how they were sentenced.

Assessing variables, such as number of placements, criminality prior to entering care, or offending behaviour over time was beyond the scope of this consultation. This limits understanding of causal mechanisms behind offending behaviour, and potentially the unique perceptions young people who are both victimised and offend whilst in care have of the justice system, but offers opportunity for future research.

One strength of this consultation was that it represented the diversity found in the OOHC population. For example, approximately 30% of the total sample reported having a disability or mental health condition. Previous research has found higher prevalence of disability and mental illness in crossover populations, as well as behavioural issues, substance abuse, and low to moderate IQ compared with the general population (see Dowse, Cumming, Strnadova, Lee, & Trofimovs, 2014, for a review). In the current sample disability and mental health conditions were present in a quarter (26.7%) of Offenders, and 40% (13 of 32) of Victims.

While the relatively low participant numbers in each group preclude analyses of the influence of type of disability on justice involvement, trends emerged that warrant further investigation. For example, several Offenders appeared to have intellectual and learning disorders, and psychiatric conditions. These disorders have implications for how young people process information from their environment and regulate behaviour, which can have implications for offending behaviour (Lewis & Small, 2017; Quinn, Rutherford, Leone, Osher, & Poirier, 2005). However, these rates are lower than found in other reports, such as a study in NSW which found 87% of young offenders in custody presented with



at least one psychological disorder, and 22.1% had a disability or illness (Indig et al., 2009). This difference may be a reflection of convenience sampling where young people without disability and mental illness self-selected to participate, or an effect of conditions being undiagnosed.

The high prevalence of disability and mental illness in the victim cohort speaks to their increased vulnerability of being targeted (Dowse, Deane, Trofimovs, & Tzoumakis, 2014). Disability and mental illness were salient factors that influenced their justice involvement for several Victims, with one participant perceiving police to communicate with them differently while others felt more support should have been provided while testifying in court or when giving statements. This is consistent with previous research that has found victims with disabilities face barriers when not sufficiently supported, such as experiencing difficulty in communicating with justice professionals, becoming overwhelmed by complex processes, or being perceived as an unreliable witness by police leading to their claims not being progressed (Dowse, Deane et al., 2014).

Further diversity in the sample was achieved by including a proportional representation of participants who identified as Aboriginal or Torres Strait Islander. For example, over a third of Offenders identified as Aboriginal or Torres Strait Islander, consistent with other research that has found Indigenous populations are over-represented in the crossover population (AIHW, 2017). However, few young people reported their race as a salient factor that influenced their justice involvement unlike previous research with ethnic minorities (e.g., Commonwealth of Australia, 1997; Sharp & Atherton, 2007). Young people did not report the perception that police held racist attitudes. This is not to imply that young people do not consider their ethnicity as important in shaping these justice interactions and perceptions. Rather, young people may not have felt comfortable expressing these ideas to the non-indigenous interviewers. Future research will need to examine how the care experience interacts with Indigenous identity in formulating perceptions of police and the law.

A major strength of this consultation was the privileging of young people's views and perspectives regarding the interconnections between the criminal justice system and OOHC. Young people's perspectives add a further level of understanding to why young people commit, or are victims of crime, and what happens during their interactions with the justice system (Skrzypiec, 2013). The youth people's perspectives were consistent with previous research, increasing the validity of past findings. Privileging the accounts of young people also enabled this consultation to highlight potentially overlooked factors, such as the experiences of those absent from placement aligning with Offenders as opposed to Victims, the role of appropriate placement matching, the value young people place on peers, and the need for specifically psychological and emotional support. Similarly,



recommendations informed by young people are likely to be perceived as more relevant by the young people (Cashmore, 2002).

This consultation revealed important insights into why young people offend, what crimes young people are victims of in OOHC, and how they perceive the criminal justice system. Importantly, the results suggest that young people are not being adequately supported during their contact with the justice system, and that the behaviour and attitudes of the criminal justice system authorities are contributing to this vulnerable cohort feeling disrespected and powerless. In order to reduce potentially re-traumatizing this vulnerable population, there needs to be concerted effort directed to implementing trauma-informed practice within all levels of the justice system, from when police interact with young people upon arrest or interview, to when a young person attends court. Concerted efforts to improve the capacity of caregivers to manage challenging behaviour, and public awareness strategies to minimise stigmatized attitudes also are essential.



## Case Studies

The consultation aimed to understand the experiences young people in OOHC have with the justice system. A broad definition of justice system was utilised in the consultation, which led to participants having experiences outside of the typical dichotomy of Offender, or Victim of crime perpetrated by someone else. This included police attending to a young person attempting suicide or self-harming, and young people having experiences with the courts as part of child protection intervention (such as appealing custody decisions).

### Contact with the justice system as part of crisis response

Three young people had contact with the police as they had attempted suicide or engaged in self-harming behaviours. In these instances the police were called as part of a crisis response. For one young person with an intellectual disability, her self-harming also involved being violent towards her foster carer. When police attended the respondent stated the police *“talk[ed] to me tried to calm me down, they eventually calmed me down...Police gave me some strategies and dealing with my self-harming”* (Female, 15/19). The young person reported that her carer was able to support her during this police contact by reassuring the young person *“Everything was going to be OK”*. Overall, the respondent described her treatment by the police as *“good”*.

For the second respondent who claimed to have experienced a “mental breakdown”, the police drove the young person to the hospital where this young person then spent two weeks in a psychiatric ward. During the interaction the young person described feeling *“scared”* due to uncertainty about what was going to happen: *“I didn't know I was going to go to hospital, I thought they were going to lock me up”* (Other, 13/24). During the interaction, the young person also described becoming agitated and being violent towards the police officers. Despite this, the respondent explained that the police *“handled it really well”*, which appeared to be a result of their decision not to charge the young person: *“They said they were going to charge me, but they decided that was not the right option at that time”* (Other, 13/24). The respondent stated that during the interaction their foster parents had been present, providing *“emotional support”*.

The third respondent was in a residential facility and three police officers attended due to her self-harming. When describing the interaction, the young person claimed:

*They didn't like my rudeness and gave me a lecture on why I should stop doing what I was doing... They did not listen to me. They took my phone out (of) my room and searched through it without my permission, and searched through my draws without a warrant. They didn't even introduce themselves... (Female, 15/18)*



When describing her response to the situation, the young person stated:

*I hated it. I was crying a lot. It was pretty stressful. The way they treated me reminded me of how I was treated at home, other than the abuse side. I did have a temper. But they made me feel really overwhelmed. (Female, 15/18)*

In terms of support, the young person listed her caseworker/residential staff member. This person took the young person to a park following the event to have “a good conversation” and help the young person access supports such as Kids Helpline and Headspace. In terms of improving the situation, the young person thought the police could have introduced themselves, and let the young person calm down “rather than jumping straight into it”. Overall, she perceived the police acting “as if we were wasting their time”.

What emerges in these accounts is how the behaviour and attitudes of the police shape the young person’s experiences. In the first account there is evidence of the police having experience and expertise to de-escalate a young person’s behaviour, as well as to teach helpful coping strategies. This is compared to the experiences of the second respondent, who experienced fear and uncertainty in anticipation of being charged, and the third respondent, where the antagonistic behaviour of the police was reminiscent of her previous abuse experiences.

While limited previous research on police responses to self-harming and suicidality in OOHC populations is available, research by Robinson, McCutcheon, Browne and Witt (2016) highlights how negative, dismissive, and uncompassionate responses from health professionals can discourage young people from seeking assistance. Police similarly may lack training and confidence to respond appropriately to the needs of a young person self-harming (Cummins, 2008).

Generalisations are unable to be made due to the limited number of respondents in this category. Further research that specifically examines the unique experience of young people having police contact when in a highly vulnerable mental state is required, especially considering the high rates of mental illness in the OOHC population (Sawyer, Carbone, Searle, & Robinson, 2007; Tarren-Sweeney, 2008).

### **Contact with the Justice System as part of child protection intervention**

Nine young people had contact with the justice system because of child protection interventions. Some young people described their contact as being removed from their biological families by the child protection department and having to attend Family Court following the removal, whereas others described attending court after being placed to appeal custody decisions.

### Initial child protection intervention: Being removed

These young people did not elaborate on the circumstances that led to their removal, with one participant simply stating *“my pop couldn’t look after me anymore”* (Female, 13/18), and another *“I don't want to go into too much detail but my dad was caught doing something and then the Department found that his care was no longer a suitable placement for me”* (Female, 14/24).

One young person, removed as a young teenager, described being sad following removal and having to attend Family Court because she *“didn’t know why my pop didn’t want me anymore. I was still young and didn’t really understand”* (Female, 13/18). However, she ultimately thought *“being in foster care was a great experience”*. The foster carer was reported to have supported her during court, *“reassuring me that I’m going to be OK”*. In terms of recommendations, the young person suggested *“...more communication. Let me know what’s going to happen”*.

A second young person removed from her father’s care, stated *“I was refusing to go with the police. I didn’t know why they were there... they handcuffed me and put me in the back of the paddy wagon”* (Female, 14/24). This young person remained at the station overnight before being placed in emergency accommodation. She further described feeling *“worried and shaky...at that time I didn’t know what was going on and why I was taken”*. Three days later the young person attended court and read out a statement describing her perceived positive and negatives aspects of living with her father. This young person reported having *“no one”* supporting her throughout the interaction. In terms of recommendations for improving the contact, the young person thought the police could have explained why they were removing her from the house, and that she should have had a lawyer represent her at court.

A third young person did not elaborate on her experience of being removed and having to testify in court, but stated her carer and lawyer were supportive and informed her of her rights. They were able to provide *“moral support and gave me information as well as transport”* (Female, 14/19). As did the others in this group, this young person similarly wanted more information about her situation, specifically from her caseworker.

### Child protection intervention: Appealing child protection decisions

Five young people described having to go to Family Court as a result of appeals regarding custody.

*Custody Battle. I was under permanent orders, and my birth mother was after legal custody... We (the kids) went along with everything that was happening. No one really asked us anything... (Female, 10/21)*



Four cases regarding custody decisions were presented to court. Two cases were dismissed; in one case the parent in question did not appear, and in the other case the appeal was denied due to the parent having other charges. One young person's parent successfully gained custody, while the remaining young person described appealing her mother's custody claim to stay with her foster carer as she wished.

One young person's contact with the justice system involved applying to the court to ask for more family contact, after they sought advice from advice from Legal Aid. At the time of the interview the respondent was unaware of any follow up.

When describing their contact with the court systems, three young people mentioned it was slow and tiring, and a further two respondents experienced uncertainty, as one stated:

*There was nothing told/given to us. So what we knew was gleaned from listening to conversations... We were kinda dumped in the waiting room and they [foster carers] went and did their stuff. (Female, 10/21)*

In terms of support, two people reported receiving assistance from carers (which involved transporting the young person to court, and providing moral support such as listening to the young person's concerns), one person had assistance from a lawyer who was described as "*my voice in court, he made sure my views were heard and listened to..*" (Female, 16/19). One young person described being transported by his caseworker who also "*provided me with more info on my level about what was happening*" (Male, 9/20). Two young people had no support.

When asked what could have improved their outcome, two young people wanted the chance to communicate with their biological families to motivate them to attend court. Three young people reported they should have received more information and have been consulted in the decision making, so they "*could be more informed about potential decisions I could have made*" (Male, 9/20).

These young people were asked to discuss the most significant contact they have had with the justice system. While young people may have chosen to discuss child protection intervention as they had no further contact as an offender or victim, their responses highlight the role child protection intervention can have in influencing young people's beliefs and attitudes towards the justice system. Further exploration of the influence child protection intervention has on perceptions regarding the justice system is warranted, especially as this particular contact can be emotional and distressing for young people. This particular contact thus may have unique and significant influence on how young people perceive and interact with the justice system later in their development.



A common feature in the accounts of young people who had justice system contact due to child protection intervention is the lack of communication and inclusion of these young people in decision-making. As one participant stated, this lack of inclusion can have ongoing consequences such as young people not knowing how to access the system when needed (such as when they are victimised): *“Without a good knowledge of how it works, young people could feel alienated from the system and their access to it, without proper support from caseworker or carers”* (Male, 9/20).

There has been a concerted effort by researchers and practitioners within the child protection sphere to encourage greater participation by young people in decision-making. For example, the entitlement to participation is included in the Charter of Rights for Children and Young People in Care across states and territories. The results of this consultation, however, indicate how young people are not being adequately consulted during Family Court processes (although there are limits to generalisability considering small participant numbers).

This is consistent with previous research that has found young people report on average participating in child protection care meetings only “sometimes”, and over a third young people in OOHC have “little” or “no involvement” in case planning (McDowall, 2013). There are barriers to including young people in decision-making (e.g., safety concerns may need to be prioritised and the need to minimise young people’s exposure to potentially distressing information). However, children should still be provided developmentally appropriate information and the opportunity to express their concerns considering the positive benefits associated with participation, and as participants indicated, the negative emotional consequences associated with uncertainty and exclusion (Cashmore, 2002).



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# Appendix

## Appendix A Recruitment Advertisement

**ARE YOU  
AGED  
BETWEEN  
18-25**

and have had contact with the justice system including: the Police, the Courts or **the Youth Justice System?**

If yes, **CREATE** wants to hear from you about your experiences.

CREATE wants to improve the system and provide greater support to children and young people if they have contact with the justice system.

**YOU'LL ALSO RECEIVE A  
\$25  
VOUCHER  
TO SAY THANKS FOR  
YOUR TIME.**

If you are interested give us a call on **1800 655 105** or email [createreplies@create.org.au](mailto:createreplies@create.org.au) to let us know your contact details and a staff member will be in touch.

[www.create.org.au](http://www.create.org.au)  
1800 655 105  
[facebook.com/CREATEfind](https://www.facebook.com/CREATEfind)

**create**  
FOUNDATION



Appendix B  
Interview Questions

**Interviews with young people from out-of-home care discussing their contact with the justice system**

*Instructions for Participants – CREATE staff to read out to young person prior to commencing the interview*

Hi ..... (*Name of Young Person*)

My name is ..... (*Name of Interviewer*)

I am calling you from CREATE. You may know that CREATE is the organisation that advocates on behalf of children and young people in out-of-home care to try to improve the care system.

I obtained your number from the clubCREATE data base because you are a young person who has left care and we would like to hear about any experience you might have had with the justice system, i.e., the police, the courts, and youth justice. Before I can ask you to be involved, I need to explain what you will be asked to do and how any information you give us will be used.

I would like to ask you some questions (over the phone) that will take about 15–20 minutes or so, depending on how much you want to say. The information you provide may be included in reports CREATE will produce for governments and the sector. These will highlight the issues raised by you and other young people who were in care and had experiences with the justice system.

If you don't want to chat over the phone there is also the option for you to come into the office or we can come to you and can chat face-to-face (only available to young people in metro areas who can access CREATE offices or CREATE staff can travel to them). CREATE staff may need to travel to regional areas in order to reach young people who do not live in metro areas. Any travel is to be discussed with the Project Officer prior to it being arranged.

We at CREATE hope that what you tell us will enable decision makers to help improve the system for children and young people currently in care. Your answers to any questions will be treated confidentially and will be anonymous. No one will be able to identify you through your answers. You can withdraw from doing the interview at any time and this will not affect any of your other interactions with CREATE. Also, to thank you for taking the time



to answer the questions, CREATE will provide you with a \$25 gift voucher.

So, at this stage you have the choice to:

- Say that you don't want to be involved in the interview;
- Continue with the interview now, if it is a convenient time; or
- Agree to think about participating, and if you decide to contribute later, text your name and phone number to CREATE on 0412 430 738. When this message is received, a CREATE staff member will contact you to complete the interview.

What would you like to do?

IF "NO", CONCLUDE: 'Thank you for your time.

IF THE YOUNG PERSON DECIDES TO PARTICIPATE LATER: organise a date and time to contact them.

IF THE YOUNG PERSON DECIDES TO CONTINUE: see below and begin interview.

Thank you for continuing. Your information will help improve the system for the future.

The questions in the interview will provide you with an opportunity to tell your story about your interactions with or perceptions of the justice system as a young person with a care experience.

I stress again that your responses will be anonymous. All individual responses are treated confidentially and will be presented in a combined, non-identifiable form in the final report. However, if you say something that makes us concerned about your own or another young person's safety who is in out-of-home care right now, I have to report that risk. I will discuss that with you if it happens.

If at any time you feel that you don't want to continue with the interview, you may simply stop answering the questions. None of your data will be included in the analyses. Of course, we at CREATE hope you will choose to answer all questions. In summary, do you understand that:

- your responses are anonymous and confidential;
- you can stop at any time if you don't want to continue and your answers will not be used;
- your information will be stored securely and will not be shared with others, unless you say something that raises concerns about your safety or the safety of another young person; and

- your non-identifiable comments will be recorded and may be used in reports, publications, and presentations.

IF “YES” CONDUCT THE INTERVIEW

Thank you for the valuable information you have shared with me today. CREATE, and the future children and young people in care, thank you for contributing to this study.

IF “NO”, CONCLUDE: ‘Thank you for your time.

CREATE Policy and Advocacy Manager

Ms. Noelle Hudson

Email: [noelle.hudson@create.org.au](mailto:noelle.hudson@create.org.au)

Ph.: 07 30624860

Policy Officer

Ms. Alex Cahill,

CREATE Foundation

Email: [alex.cahill@create.org.au](mailto:alex.cahill@create.org.au)

Ph.: 07 30624860

If you want to talk about how you are feeling after completing the interview, you can discuss it with someone you trust, contact CREATE on 1800 655 105, or call Lifeline on 131114.

I have read the instructions to the young person and he / she has indicated that the details are understood. (If "True," type an X in the box below.)

**1. Do you identify as female or male?**

- Male
- Female
- Unsure

**2. What is your age? \_\_\_\_\_**

**3. In which state or territory do you live in? Please circle.**

ACT    NSW    NT    QLD    SA    TAS    VIC    WA

4. **In which state or territory did you live in when you were in care? Please circle. (*If more than one jurisdiction, choose the one where you spent most time.*)**

ACT    NSW    NT    QLD    SA    TAS    VIC    WA

5. **With what cultural group do you identify? Please circle**

*Aboriginal and/or Torres Strait Islander*                      *No special group*                      *Other cultural group*  
(please specify) \_\_\_\_\_

6. **Do you have a disability? (Yes /No)**

If yes, what is your disability?

**CREATE staff instructions:**

**The following interview questions are for young people with a care experience aged 18 – 25 years; the main question has been highlighted for ease of identification; the topics in italics are to be used as prompts to help draw out the young person’s story. It is important that relevant information be entered under each heading.**

7. **Have you had any contact or dealings with the justice system? (*The justice system includes the police, the courts, and/or youth justice.*)**

Please circle:                      Yes                      No

**If no, continue to Question 15.**

8. **In what type of placement were you living when the episode occurred?**

Foster Care      Kinship care                      Residential                      Independent  
Other

9. **How old were you at the time? \_\_\_\_\_**

10. **Can you tell us what happened during this contact? If you have experienced a number of contacts with the justice system, please tell us about the one that was the most significant to you?**

- *What was the problem or issue?*
- *What did you do?*
- *What did the authorities do?*
- *Were you charged with an offence?*
- *Did you end up in court?*
- *Were you taken into custody or detention?*

**11. What was the outcome of your contact with the justice system?**

- *What was the end result?*
- *How did you feel about the process?*

**12. Who supported you during your contact with the police?**

- *Caseworker/Resi Worker?*
- *Carer?*
- *Advocate?*
- *Lawyer?*

*Who supported you if you went to court?*

- *Caseworker/Resi Worker?*
- *Carer?*
- *Advocate?*
- *Lawyer?*

*Who supported you if you ended up in detention?*

- *Caseworker/Resi Worker?*
- *Carer?*
- *Advocate?*
- *Lawyer?*

**13. What support was provided?**

**14. What might have helped improve the way your issue was dealt with (lead to a better outcome)?**

- *Information?*
- *Behaviour?*
- *Attitudes?*
- *People?*

**15. What are your perceptions of how the justice system relates to children and young people in care?**

- *Thoughts?*

- 
- *Feelings?*
  - *Concerns?*

**16. Did you see someone else have dealings with members of the justice system during your time in care?**

**Yes**

**No**

**If “Yes”:**

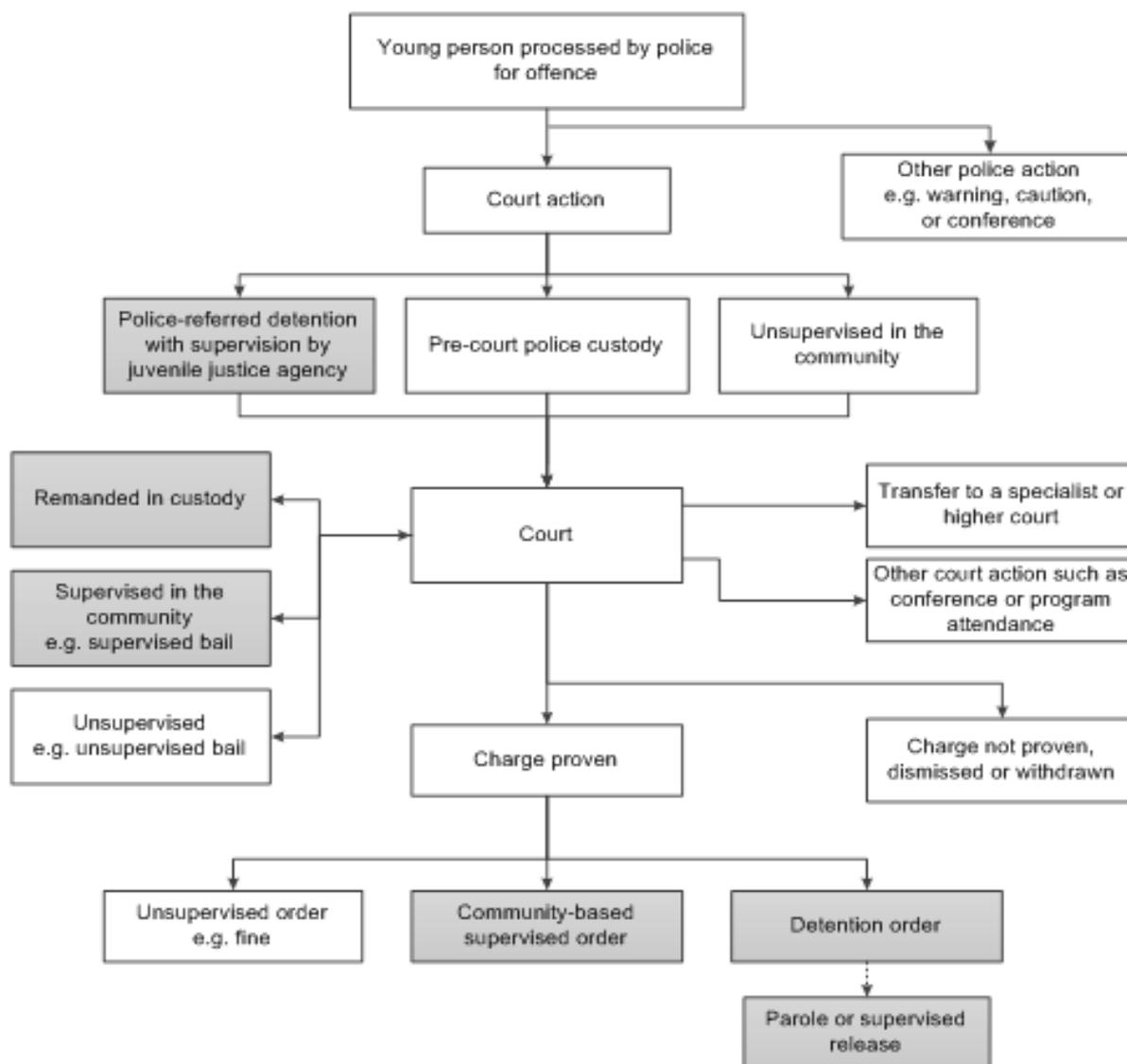
- *Who was involved?*
- *What happened? (When; Where; Why?)*
- *What was the outcome?*
- *What was your reaction?*

**ALL YOUNG PEOPLE TO BE ASKED THIS QUESTION**

**17. Is there anything else you would like to say about young people in care and their contact with the justice system?**

**END**

Appendix C  
Flow-Chart Outlining Australian Youth Justice Processes





Appendix D  
Participant Information Sheet & Consent Form

**Staff:** <Insert Name and position>

**Topic:** Interviews with young people with a care experience and their contact with the justice system (police, the courts, and youth detention).

CREATE Foundation represents children and young people with a care experience in Australia. This means we listen to ideas from children and young people about foster care, kinship care and residential care and share those ideas with people who run the care system – this is called consultation.

We think it's important to ask children and young people what they think, because they are in a special position and have seen the system like no one else has.

**Being part of an interview (like a survey or focus group) is always your choice.**

If you are over 18, you will need to complete a consent form.

**What happens to the information you give us?**

CREATE will summarise what you and other young people say in a report. CREATE will send you a summary of the report so you can see what we wrote.

No names will be used in the report. The report will show the age, culture, and types of placement of everyone in the interviews. If something you say is used as a quote, your name won't be used – only your sex and age will be given (e.g., Male, 14 years).

None of your personal details will be given to anyone else UNLESS it's needed in an emergency. If you say something that makes us concerned about the safety of you or another child or young person still in care, we will have to report that risk and will talk to you about this.

You can ask questions if some things aren't clear to you. If you don't feel comfortable, talk to the CREATE staff member and they can help you.

**Your right to say “no”**

If you agree to take part and you don't want to answer some of the interview questions, you don't have to. If you decide you want to stop once the interview starts, you can ask to stop and we will. Then we won't use any of your individual answers or quotes. You can withdraw at any time during the process without any consequences for your future involvement with CREATE.

**Other stuff you might want to know**

We are inviting young people aged 18-25 years from all over Australia to have a say on the justice system. Once we finish the interviews and write the report it will become the property of CREATE, and we may use some or all of the information you tell us to help us let governments and other organisations know what young people think about being in care and having interactions with the justice system.

**If you have any questions about the interviews you can call <insert CREATE staff name > at CREATE on 1800 605 105 or <insert State office number>. Or if you just feel like you want to talk to someone about how you are feeling after the interview call your local CREATE office on 1800 655 105 or Lifeline on 131114.**



## PARTICIPANT CONSENT FORM

**Topic: Young people with a care experience and their contact with the justice system**

**CREATE staff member:**

**Participant's name:** \_\_\_\_\_

I acknowledge that I am consenting to participate in the above interview conducted by CREATE Foundation. Any information that I provide to CREATE during the interview (by phone or in person) may inform the development of a report and/or publication that seek to improve the life outcomes for children and young people with an out-of-home care experience.

I agree that:

- I have read the Participant Information Sheet and I understand the purpose of the interview;
- my questions have been answered to my satisfaction and I know what I will be asked to do;
- my participation in this interview is voluntary and I am free to withdraw at any time without any consequences for future involvement with CREATE;
- the risks involved in my participation in the interview have been explained to me;
- there might be no direct benefit to me from my participation in this interview, but my comments will lead to improvements in the care system;
- my personal information collected for the interview will be stored securely and will only be used for purposes that I have agreed to, except as required by law;
- any information that I provide to CREATE during my interview may be used, copied, aggregated, shared by CREATE for research and advocacy purposes. My comments may be included in reports, case studies, presentations, and other publications (print and electronic media).
- if I have any concerns about the ethical conduct of the interview or if I have any additional questions about my participation, I can contact the National Policy and Advocacy Manager, CREATE on 07 3062 4860 or email: [noelle.hudson@create.org.au](mailto:noelle.hudson@create.org.au).

### Participant consent

By signing this consent form, I agree, under the stated conditions, to take part in this interview.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Date: \_\_\_\_/\_\_\_\_/2016