



Care and Justice

**Children and Young People in Care and
Contact with the Criminal Justice System**

Irish Penal Reform Trust

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The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort. IPRT is committed to reducing imprisonment and the progressive reform of the penal system based on evidence-led policies. IPRT works to achieve its goals through research, raising awareness, and building alliances.

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Nicola Carr and Paula Mayock, January 2019.

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Glossary

A Note on Terminology

Throughout this report we use the terms: 'children and young people in care', 'children and young people with care experience' and 'care leavers' where appropriate. This is to signify the fact that children and young people may currently be in care, have prior care experience and/or have left care and be in receipt of aftercare services. When referring to international literature the term 'Looked After Child' (LAC) is sometimes used, reflecting its usage within this literature.

Aftercare: The *Child Care Act, 1991* as amended by the *Child Care (Amendment) Act, 2015* places a statutory duty on the Child and Family Agency (Tusla) to prepare an aftercare plan for every 'eligible' child. An 'eligible' child is a child aged 16 years or over who is or has been in the care of the Child and Family Agency for a minimum period of 12 months since age 13. The legislation requires Tusla to carry out an assessment of need and prepare an aftercare plan before the child reaches the age of 18, and to prepare aftercare plans on request for an eligible adult. An eligible adult is defined as a person aged 18, 19 or 20 years who was in the care of the Child and Family Agency for a period of not less than 12 months in the five-year period immediately prior to the person reaching the age of 18 years.

Bail Supervision Scheme (BSS): The Bail Supervision Scheme provides intensive supports to young people and their families using a multi-systemic therapy (see definition below) approach to encourage adherence to bail conditions.

Care: A child is considered to be in care when they are subject to a Care Order or placed in 'Voluntary Care' under the provisions of the *Child Care Act, 1991*.

Garda Youth Diversion Programme (GYDP): This is the main mode for dealing with youth offending in Ireland. Where a child is a suspect in an offence they may be considered for diversion from prosecution. If considered suitable for inclusion in the diversion programme, a Juvenile Liaison Officer (JLO) or other suitably qualified member of An Garda Síochána can administer one of three forms of caution: 1) Informal Caution, 2) Formal Caution or 3) Restorative Caution. The Garda Youth Diversion Office makes the determination of a young person's suitability for diversion after consideration of information on the case.

Multi-Systemic Therapy (MST): Is An evidence-based approach using an intensive family and community-based treatment programme. It focuses on addressing all of the environmental systems that impact upon young people, including their homes and families, schools and teachers, communities, and friends.

Significant Event Notification (SEN): Children's residential centres have a statutory requirement to record, report and notify specified personnel within the Child and Family Agency (Tusla) of Significant Events that take place in Children's Residential Centres. Examples of Significant Events include injury, the use of restraint, absconsions and Garda involvement.

Special Care Unit (SCU): Special care units are secure, residential centres for children aged 11 to 17 years. A child can only be placed in special care on an order of the High Court and when their behaviour poses a risk of harm to their life, health, safety, development or welfare, and the placement is needed for the child's care and protection.

Tusla: The Child and Family Agency is the dedicated State agency responsible for improving wellbeing and outcomes for children, comprising HSE Children and Family Services, the Family Support Agency and the National Educational Welfare Board.

Voluntary care: Placement in voluntary care means that parent(s) enter into an agreement with Tusla consenting to the child's placement in care. Unlike an Emergency, Interim or full Care Order (*Part IV, Child Care Act 1991*), a Voluntary Care placement does not require the authorisation of a court. The majority of admissions into care are voluntary admissions.

Executive Summary

Research evidence from several countries shows that children with care experience are over-represented in the criminal justice system but, to date, no research has been conducted on this topic in the Irish context. This report presents the findings arising from a small-scale exploratory study commissioned by Irish Penal Reform Trust (IPRT) that aimed to explore the extent to which children with care experience are over-represented in the Irish youth justice system.

The vast majority of children in care do not come into contact with the criminal justice system. The report highlights that contact with the youth justice system is a particular issue *for a small cohort of young people*. The association between care and justice is an area of concern, particularly at the 'higher end' of the youth justice system, that is, when children are prosecuted in the courts and are placed in detention. This is identified as an issue for children with multiple and complex needs, many of whom are accommodated within residential care. Systemic factors including the profile of care provision, the prosecution of children in care placements and the responsiveness of the youth justice system to children in care are explored.

This report identifies a lack of data in Ireland on the extent to which children in care come into contact with the criminal justice system. There is a lack of a coordinated policy between Tusla, care providers and An Garda Síochána in this area and the development of such a policy is recommended. The report also focuses on the transition of children from care into leaving care and aftercare and the lack of information on outcomes for this group. The need for reform in this area is outlined in a series of recommendations, as follows:

Recommendations

Inter-Agency Working

1. A joint protocol aimed at addressing the involvement of children in care with the criminal justice system should be developed by the Department of Children and Youth Affairs and the Irish Youth Justice Service with the involvement of An Garda Síochána and Tusla. Such a policy should address reporting, areas of responsibility, joint training between different professionals, responses to incidents and the potential for restorative and diversionary approaches to address offending in care placements.

(Department of Children and Youth Affairs and the Irish Youth Justice Service)

2. The findings from the regional pilot addressing the interaction between Gardaí, Tusla and residential care providers should be made available and inform the development of a national policy on how the Garda Youth Diversion Programme can respond appropriately to children in care.

(An Garda Síochána and Tusla)

Equal Access to Service Provision

3. The Irish Youth Justice Service should consider adaptations to the Bail Support Scheme to ensure equity of service provision for young people in care.

(Irish Youth Justice Service)

Data Collation

4. Tusla should develop a mechanism to systematically record and report on the numbers of children in care and those in receipt of aftercare services coming into contact with the criminal justice system. Such data should be included as one of the 'outcome' measures in the *Annual Review of the Adequacy of Services* and be used to inform practice and policy going forward.

(Tusla (The Child and Family Agency))

5. The Department of Children and Youth Affairs should consider the information (see Rec 4.) from Tusla as an outcome indicator in the indicator set for *Better Outcomes, Brighter Futures* to be used to inform practice and policy going forward.

(Department of Children and Youth Affairs)

6. As part of its commitment to using data and research to inform policy-making, the Department of Justice and Equality should commission research on the extent to which people with a care history are represented within the prison population.

(Department of Justice and Equality)

7. An Garda Síochána should develop a national information system that allows them to report on the extent to which children in care come into contact with the criminal justice system.

(An Garda Síochána)

Policy

8. In its review of the Youth Justice Action Plan, the Irish Youth Justice Service should consider the specific needs of care-experienced young people.

(Irish Youth Justice Service)

9. The Irish Youth Justice Service in conjunction with An Garda Síochána should implement the recommendation of the Strategic Review Group of Penal Policy (2014) to extend the remit of the Garda Youth Diversion Programme to young adults. This may require an amendment to the Children Act 2001.

(Irish Youth Justice Service, An Garda Síochána and the Department of Children and Youth Affairs)

Awareness Raising and Training

10. The Department of Children and Youth Affairs and the Irish Youth Justice Service should consider the development of joint training for professionals working with children in care. This training should focus on understanding the reasons that children from care come into contact with the criminal justice system and the means through which this can be reduced, including strategies such as de-escalation and management of challenging behaviour, restorative practices and trauma-informed practice.

(Department of Children and Youth Affairs and Irish Youth Justice Service)

Transitions from Care/Aftercare

11. Tusla should revise its guidance on *Complex Needs in Aftercare* to provide explicit guidance on the needs and supports required for young people in contact with the criminal justice system. The guidance should also address meaningful responses to young people who disengage from services, including the provision of more flexible in-reach supports for young people involved in the criminal justice system.

(Tusla)

Legislative Provisions

12. In revising the *Child Care Act, 1991* the government should incorporate an obligation to implement any aftercare plan. It should further strengthen and prioritise placement stability/permanency, aftercare provision (including broadening the definition of an eligible child/young person), extending the age range for supports provided and ensuring that there is equity in provisions for all young people irrespective of whether they are in education and training.

There is an evident need to track the longer-term outcomes for young people leaving the care system in order to best meet the needs of children and young people, inform best practice and service delivery. The government should meet its commitment made following the publication of the *Ryan Report* to carry out longitudinal research on the outcomes for children leaving care. Such longitudinal research should include a focus on subsequent contact with the criminal justice system. This could be provided for and incorporated into the amended legislation, *Child Care Act, 1991*.

The treatment of a child's criminal records needs to be reviewed to ensure that there is equivalency across various legislation, and greater clarity should be provided on how information is created and stored on PULSE.

(Department of Children and Youth Affairs)

Introduction

Research evidence from several countries shows that children with care experience are over-represented in the criminal justice system but, to date, no research has been conducted on this topic in the Irish context. This report presents the findings arising from a small-scale exploratory study commissioned by Irish Penal Reform Trust (IPRT) that aimed to explore the extent to which children with care experience are over-represented in the Irish youth justice system.

The main legislation concerning children and the criminal justice system is the *Children Act 2001*, which expressly provides that detention should be imposed only as a measure of last resort, reflecting Article 37 of the United Nations Convention on the Rights of the Child (UNCRC). There have been significant changes in the legislative, policy and practice context both in the delivery of services to children and families and in the administration of the youth justice system over recent years. A range of government policies, including *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020* (DCYA, 2014), have articulated the importance of achieving good outcomes for children and young people and have noted the importance of evidence-based practice and adherence to children’s rights principles. Furthermore, under section 42 of the *Irish Human Rights and Equality Act 2014* all public bodies have a responsibility to promote equality, prevent discrimination and protect the human rights of their service users and everyone affected by their policies and plans.

The report begins with a review of international literature and draws attention to a small number of Irish studies that have noted a possible link between care experience and criminal justice contact. Some of the earlier research in Ireland identifies the legacies of institutionalisation and the movement of some young people through multiple services and interventions. The question of the remit of ‘care’ and ‘justice’ systems, sometimes framed as the welfare/justice debate, has long been a feature of the Irish system, and attempts to delineate the boundaries of these areas, has resulted in different legislation governing child welfare and protection (*Child Care Act, 1991*) and juvenile justice (*Children Act, 2001*). Experience shows that some young people cross the boundaries between these systems frequently because of their multiple and complex needs.

The vast majority of children in care do not come into contact with the criminal justice system. This report presents findings that outline some of the systemic factors, including the patterning of care provision and the criminal justice responses, that lead to *some young people from care* coming into contact with the criminal justice system.



1. Literature Review

Internationally, research consistently shows that young people with care experience are over-represented in criminal justice systems. Concerns about over-representation while in care, among young people transitioning from care and care leavers have been reported in several jurisdictions including England and Wales (Barn & Tan, 2012; Darker et al., 2008), Northern Ireland (Youth Justice Review Team, 2011), Scotland (Moodie and Noland, 2016; Who Cares? Scotland, 2018); Australia (Malvaso & Delfabbro, 2015; Mendes et al., 2014; McFarlane, 2017) and the United States (Cusick et al., 2012; Jonson-Reid & Barth, 2000; Vaughn et al., 2008). Findings from this body of research on why young people with care experience may be more vulnerable to becoming involved in the criminal justice system can be distilled into three main themes.

Firstly, many young people in care have encountered a range of adversities that place them at higher risk of offending. Secondly, the care experience may in itself be 'criminogenic' (i.e., a factor leading to an increased likelihood of offending). Thirdly (and linked to the first two points), the transition to adulthood for young people leaving care is often compressed and accelerated, placing them at increased vulnerability of a range of negative outcomes.

Risk Factor Research

Much of the research on the over-representation of young people in care and care leavers within the criminal justice system has been influenced by 'risk factor' research, which seeks to establish and quantify a range of characteristics that place young people at risk of offending (Farrington, 1996; 2007). This broad body of research, sometimes referred to as the 'Risk Factor Prevention Paradigm' (RFPP) (Haines & Case, 2008), is premised on identifying precursors to personal and socially harmful behaviours in order to intervene to reduce risk and harm (Haines & Case, 2008; O'Mahony, 2009).

The RFPP is derived from longitudinal research such as the Cambridge Delinquency Study (Farrington, 2007), which followed a group of young people over the life course and sought to retrospectively identify factors that led some to become involved with offending in order to develop predictive tools that would enable earlier intervention. This work and subsequent developments led to the identification of a range of risk factors focusing on the characteristics of the individual and their immediate environment.

There are numerous critiques of risk factor research and its applications. Some question its predictive utility, arguing that it lacks explanatory power because it confuses causes and effects (O'Mahony, 2009). Others have observed that the narrow conceptions of what constitutes risk within this body of research (i.e., those focusing on the characteristics of individuals) do not sufficiently account for wider structural influences such as levels of inequality and the extent of social welfare provision (France, 2008; MacDonald et al., 2005). Linked to these critiques is the claim that the focus on individual-level factors means that the individual subject bears both the burden of these risks and, correspondingly, responsibility for affecting change (Phoenix & Kelly, 2013).

Given the orientation of the RFPP, it is perhaps unsurprising that research regularly points to an overlap between the backgrounds of those with care experiences and the risks associated with offending (Darker et al., 2008; Hayden, 2010; Schofield et al., 2012). Similar risk factors, which are said to increase a young person's propensity to offend – including, for example, poor caregiver attachments, lack of parental supervision and experiences of maltreatment – have been extensively reported in studies of care populations (Smith and Thornberry, 1995; Stewart et al., 2008). Some studies therefore attribute the over-representation of young people from state care in the criminal justice system to their greater likelihood of scoring highly in many risk factor domains (Schofield et al., 2012; Schofield et al., 2015; Vaughn et al., 2008).

While the identification of risks can add to our understanding and potentially help to target services and interventions, the application of the RFPP lens (particularly in relation to individual risk) is narrow in scope. Furthermore, even where attention is paid to wider factors, such as family composition and community context, these tend to be narrowly constructed in that they preclude consideration of wider structural factors such as levels of inequality or deficits in social welfare provision. Widening out this lens, an emerging body of work has sought to consider the impact of childhood trauma and Adverse Childhood Experiences (ACEs) (Turney and Wildeman, 2017; Steinke and Derrick, 2018) on children in care and to integrate a consideration of individual factors alongside the characteristics of the care system. This research has focused to a far greater extent on systemic issues within the care system and provision of supports (or the absence of these) for young people leaving care (Fitzpatrick, 2014; Mendes et al., 2014).

Criminogenic Care?

It is claimed that the type and quality of the care placement(s) may have an impact on whether a young person becomes involved in offending and/or comes to the attention of authorities for criminal behaviour (Darker et al., 2008; Hayden, 2010; Taylor, 2006). In particular, issues have been identified regarding residential care compared to foster care placements (Shaw, 2016; Gerard et al., 2017). For example, recent research conducted by the Howard League found that older children (aged 16 and 17) living in residential care in England and Wales were 15 times more likely to be criminalised than other children of the same age (Howard League, 2018a). Residential care may be positioned as a placement of 'last resort' (Schofield et al., 2017) and, in many instances, young people in residential care have experienced multiple previous placements. Residential care may also be used for older teenagers who are considered 'too difficult' to place in foster care (Shaw, 2014). Consequentially, young people with multiple and complex difficulties may be placed together in an environment that is ill-equipped to meet their developmental needs (Littlechild, 2011; Shaw, 2014). Within this context, peer influences may be particularly significant (Taylor, 2006; Shaw, 2014).

Furthermore, policies in residential units may lead to the criminalisation of young people. Examples include calling the police for relatively minor infractions, which in a non-residential care context would be dealt with without recourse to authorities (Darker et al., 2008; Hayden, 2010; Fitzpatrick, 2014). Other policies may also lead to young people in residential care coming to the attention of the police, thereby increasing their likelihood of being

charged with incidental offences (Hayden, 2010). For example, where there are policies in place that require residential units to report a young person as missing if they fail to return home at a particular time which, in some instances, can lead to young people incurring criminal charges (e.g. being found in possession of a drug when they are located). This issue has garnered recent policy attention in England and Wales, particularly in the context of reviews focusing on child sexual exploitation and the particular vulnerabilities of young people who go missing from care (Jay, 2014). Here it has been noted that, in some instances, young people are treated as potential offenders and that, in this context, the fact that they have been the victims of crime may not be recognised (Fitzpatrick, 2014; Jay, 2014;). Further still, wider research shows that young people who have had prior negative experiences of police contact may be reluctant to report incidences of personal victimisation, thereby compounding this negative effect (McAlister & Carr, 2014).

The question of the criminalisation of young people in care is one that intersects with other areas of social policy and the extent to which boundaries between child welfare and youth justice systems are delineated. One obvious area of impact is the minimum age of criminal responsibility, which varies widely across countries and, in Europe alone, ranges from 10 (England, Wales, Northern Ireland, Switzerland) to 18 years (Belgium). In Ireland the age of criminal responsibility is 12, with an exception for children aged 10 or 11 who can be charged with murder, manslaughter, rape or aggravated sexual assault. Where the age of criminal responsibility is lower, there are clearly higher risks of young people being officially processed through the criminal justice system and as a consequence, acquiring a criminal record (Carr et al., 2015). If, as the research evidence cited above suggests, young people from care are more likely to come into contact with the criminal justice system by virtue of the fact that they are on the radar of the child welfare system, then this may have a far-reaching effect.

The impact of system contact and the potential for young people to be 'recycled' through the criminal justice system is supported by findings from the *Edinburgh Study of Youth Transitions and Crime* (a longitudinal study on pathways into and out of offending of a large cohort of young people who started secondary school in 1998). In this research, McAra & McVie (2007, p.319) found that "selection effects in the youth justice process mean that certain categories of young people – the 'usual suspects' – become propelled into a repeat cycle of referral into the system". Given the issues highlighted regarding the disproportionate contact that looked after children may have with criminal justice agencies, it is not hard to see how they too

may be construed as 'usual suspects'. Moreover, the further a young person progresses through the system, the greater the difficulty in desisting from offending. This has led McAra & McVie (2007, p.315) to conclude that "the key to reducing offending lies in minimal intervention and maximum diversion".

Placement stability also emerges as a key area in relation to explorations of the link between care environments and involvement with the criminal justice system (both within care and for young people who have left care) (Barn & Tan, 2012; Cusick, et al., 2012; Ryan & Testa, 2005). Placement instability is typically associated with a range of more negative outcomes for care leavers (Devaney et al., 2018; Cashmore & Paxman, 2006; Stein, 2006a). However, disentangling whether placement instability is the cause of subsequent negative outcomes is difficult, particularly in light of the fact that placements break down for a range of reasons, including young people's behaviour, their dissatisfaction with a placement, their age at placement, placement type, supports provided, and the capacity of carers to cope (Koh et al., 2014; Leathers, 2006; Vinnerljung et al., 2014).

Transitions from Care and Criminal Justice Involvement

The processes associated with transitioning from care are the focus of a growing body of research. Set alongside a broader focus on youth transitions in the context of changing social, institutional and demographic patterns, the literature in this area has explored the variable patterns of transition for young people who experience multiple disadvantages and social exclusion (MacDonald et al., 2005; Thomson, et al., 2002). Numerous empirical studies in a range of countries attest to the challenges faced by young people transitioning from care, particularly when these transitions are fractured, accelerated and poorly supported (Courtney et al., 2010; Lee et al, 2012; 2014; Mendes & Moslehuddin, 2006; Stein, 2006a). While official data suggest an over-representation of people with care experience in the criminal justice system, the links between the difficulties faced in this transitional period and involvement with the criminal justice system have only been explored in a small number of studies to date.

Findings from the US Midwest Study identify significantly higher rates of self-reported offending among young people transitioning from care at age 17–18 compared to the general population (Cusick & Courtney, 2007). However, as this longitudinal study progressed, two years later at age 19, fewer differences in self-reported offending rates were found between the two populations; that said, care leavers reported higher rates of certain

types of offending, including damage to property and engagement in violent offences (Cusick & Courtney, 2007). Notably, while differences in self-reported rates of offending between the two groups declined over time, a significantly higher proportion of care leavers reported having been arrested by age 19. The authors concluded that this finding may reflect higher levels of engagement in serious offending by care-experienced youth or, alternatively, higher levels of scrutiny of care leavers by both child welfare systems and the police (Cusick & Courtney, 2007).

Another study of young people leaving care in England explored whether they experienced particular strains that made them more vulnerable to offending (Barn & Tan, 2012). This research explored whether strains such as experiences of victimisation, unemployment, school exclusion or homelessness placed care leavers at risk of offending. Significantly, many of the young people were themselves victims of crime (40.7%) and young women reported high rates of serious victimisation such as rape, attempted rape and domestic violence. Perhaps unsurprisingly, young people who experienced a range of these strains were more likely to engage in criminal activity while those who acquired higher education and employment skills were less likely to do so (Barn & Tan, 2012).

Irish Research

To date there has been no specific published research focusing on the links between care and criminalisation in Ireland, although a number of studies have reported on aspects of this relationship. Research on youth homelessness in particular has described aspects of an ‘institutional nexus’, whereby some young people move between multiple forms of state interventions (Mayock & Carr, 2008; Mayock & Corr, 2013; Mayock et al. 2014; Mayock & Parker, 2017). A number of Irish studies have examined the policy context of leaving care and aftercare and the experiences of young people as they prepare for and make the transition from care. For example, research by Kelleher et al., (2000) on the experiences of young people transitioning out of care highlighted the range of difficulties they encountered with limited supports, also noting the transitions of some from care into the justice system. Other more recent studies have outlined factors influencing placement stability (Devaney et al., 2018) and drawn attention to the importance of key people and transitional supports for young people leaving care (e.g. Holt & Kirwan, 2011; Daly, 2012; Gilligan & Arnau-Sabatés, 2017; Glynn & Mayock, 2018).

International Policy Context

The over-representation of children and young people with care experience within the criminal justice system has become an increased focus of policy in other jurisdictions.

For example, it was a key theme raised in a review of the Northern Irish youth justice system in 2011 (Youth Justice Review, 2011) and in a review of the English and Welsh system in 2016 (Taylor, 2016). More recently, the Department for Education, the Home Office and Ministry for Justice in England and Wales (2018) have published a joint protocol in an attempt to reduce the “unnecessary criminalisation of looked-after children”. For illustrative purposes the following section outlines the issues raised in each of these reviews and the recommendations arising.

Northern Ireland

The Northern Ireland Youth Justice Review (2011) identifies Looked After Children (LAC) as a group requiring special consideration within the existing system. Young people from care backgrounds are disproportionately represented in the custodial population, and particular issues are identified regarding the provision of appropriate accommodation for a child when a care placement has broken down. In some instances, the lack of an appropriate placement renders a child ‘homeless’ and leads to a court decision to remand the young person in custody. In response, regional guidance has been developed for residential care and social work staff to support Looked After Children who are arrested/questioned by the police or appear on court on criminal matters (DHSSPS, 2011) and the Police Service and Health and Social Care Board have also developed a joint-protocol regarding police involvement with children in residential units and for safeguarding children who go missing from care (HSCB and PSNI, 2012).

The Youth Justice Review recommended that Looked After Children should no longer be placed in custody in instances where this would not have been an outcome for children in the general population. It also recommended that all agencies working with children and young people should improve their understanding of the special needs and the impact on those specific groups over-represented in the youth justice system and in custody.¹ To this end, it recommended the development of better assessment, inter-agency information exchange and cross-referral mechanisms alongside more specialist interventions.

¹ The other ‘special groups’ specifically considered by the YJR included: children with mental health needs, those with special educational needs and young people from minority backgrounds.

The Criminal Justice Inspectorate and the Department of Justice (the sponsoring body for the Youth Justice Agency) have tracked the implementation of the recommendations of the Youth Justice Review. Notably, the Criminal Justice Inspectorate (CJINI, 2015) reported that, despite the development of practice guidance and a joint-protocol, Looked After Children continued to be referred to the police and the courts for minor matters and breaches of bail. The Inspectorate identified that progress in this area was not effective without a single agency assuming responsibility. Furthermore, the Inspectorate observed that while it was possible to establish the numbers of Looked After Children in custody, it was not possible to determine whether their 'looked after status' was a reason for their placement in custody without further supporting data. However, the inspectors noted that there was continued statistical evidence of over-representation, and that geographical variation in the use of custody added weight to the view that Looked After Children are treated differentially. The most recent statistical data published by the Youth Justice Agency (YJA) shows that the problem of over-representation persists: 43% of the population of the Juvenile Justice Centre in 2017/18 was young people either subject to care orders or in voluntary accommodation (i.e. defined as Looked After) (Mill, 2018).

England and Wales

The Taylor Review (2016) of the Youth Justice System in England and Wales was set against the backdrop of a marked decline in the numbers of young people entering into the youth justice system over a twelve-year period. Between 2007 and 2015, the numbers of young people cautioned and convicted in England and Wales declined by 79% and the youth custodial population similarly fell dramatically. The precise reasons for this fall-off in numbers is debated, but potential contributory factors include: the removal of police targets, a decline in crime rates, shifting patterns of crime and the impacts of austerity on the resourcing of the system (Bateman, 2012; Taylor, 2016). Set against this overall picture of system retraction, the effects of disparity are particularly marked. There is over-representation of young people from Black, Asian and Minority Ethnic (BAME) backgrounds in custody (Taylor, 2016; Lammy, 2017) and a significant proportion of young people detained in Young Offender Institutions (YOIs) (38%) and Secure Training Centres (STCs) (52%) have previously been in care (Taylor, 2016).² The reasons for the disproportionate representation of Looked After Children in the youth justice system identified in

the Taylor Report include individual risk factors and systemic issues regarding the management of young people's behaviour in care (particularly in care homes).

In England data is published on offending by children, which includes information on whether a child is 'Looked After'. This allows for a comparison of rates of offending by children in care or non-care backgrounds. This provides clear evidence that children living in residential care come into contact with the criminal justice system at much higher rates than other children, including those in other types of care. However, despite the evidence regarding the extent to which children from care come into contact with the criminal justice system in the English context, there are also limitations with the available data. Local Authorities are only required to inform government about offending by children who have been looked after continuously for 12 months. Given that more than half of children are in care for less than this period, this represents a significant gap (Howard League, 2018a). This data also does not typically distinguish rates of offending by care placement, although a more detailed breakdown was published on a once-off basis in 2014, which identified rates of criminalisation of young people in residential care as a particular problem (Howard League, 2018a). Both the Prison Reform Trust and the Howard League have directed attention towards the need to address the over-representation of children in care in the criminal justice system and the Howard League has recently launched a specific campaign to address this issue. (Laming, 2016; Howard League, 2018 a,b,c).

Some of the proposals of the Taylor Review (2016) aimed at addressing the over-representation of children from care within the custodial population are specific to the structures for service delivery within England and Wales, where the Youth Justice Board (YJB) operates at a national level and Youth Offending Teams (YOTs) deliver services locally. Effective strategies identified in the Taylor Review (2016) include the provision of additional training for staff working in children's homes specifically in the use of restorative justice approaches, which aim to resolve issues of concern within a residential home without recourse to formal processing within the criminal justice system. The Review also recommends the development of joint protocols between Local Authorities and the police as well as a requirement that inspectorates should regularly monitor the number of, and reasons for, calls to the police.

More recently the Department for Education, the

² There are three types of custodial provision for children in England and Wales: 1) Secure Children Homes (SCHs) run by Local Authorities in conjunction with the Department of Education. These homes provide placements for the most 'at risk' children and include children placed there for reasons of welfare alongside justice placements. They form a very small proportion of the overall provision across England and Wales. 2) Secure Training Centres (STCs) are purpose-built facilities accommodating children aged 12-17 who are either remanded or sentenced. 3) Young Offender Institutions (YOIs) accommodate young people aged 15-21.

Home Office and the Ministry of Justice in England and Wales (2018) have published a joint national protocol aimed at reducing the “unnecessary criminalisation of looked-after children”. This protocol sets out guidance on police response to incidents involving looked after children. It advocates restorative approaches to respond to offending within care settings and it also emphasises the need for support for care leavers up to age 25.

Key points:

- **International research shows that the over-representation of children from care in the criminal justice system is an issue of concern in different countries.**
- **The research literature identifies that individual factors, the care context and supports for young people as they transition from care are all relevant issues.**
- **Policy responses aimed at addressing the over-representation of children from care in the criminal justice system have focused on areas such as the police response to reports of offending in care settings, staff training and the development of joint-protocols between police and care providers.**



2. Research Methods

As noted in the review of the literature, international research has identified an over-representation of children with care experience in the criminal justice system. To date, however, no specific research has been carried out on this topic in Ireland. Against this backdrop, the current research adopted an exploratory approach to the investigation of a possible association between care experience and criminal justice contact among young people.

The research comprised three main phases. The first of these involved a review of relevant research literature and policy documents. In the second phase, a ‘call for submissions’ was issued, inviting individuals and organisations to comment on the extent to which they considered the ‘over-representation of children in care or those with care experience’ to be an issue within the Irish context. The call was made via the IPRT mailing lists, targeted mailing, through social media and it was also published on the IPRT website. Phase three of the research involved the conducting of in-depth interviews with relevant stakeholders, including representatives from the legal profession, the Irish Youth Justice Service, the Child and Family Agency (Tusla), Oberstown Children Detention Campus, An Garda Síochána, service providers and advocacy organisations working directly with children and young people in care (including EPIC, the national organisation which advocates on behalf of young people in care). IPRT convened a Research Advisory Group who advised the project and helped to facilitate research access.³

³ See Appendix 1 for details of the membership of the Research Advisory Group.

Subsequent to conducting interviews with stakeholders, where possible, we sought information from organisations on any available data on the extent to which children with care experience had involvement with the criminal justice system. It is important to note that the availability and quality of the data we received varied. Most participating organisations do not systematically collect data that could potentially produce reliable information on the link between care experience and criminal justice contact, while others were able to provide us with some, albeit limited, data.

In addition to the interviews conducted with stakeholders we observed an inter-disciplinary meeting convened by An Garda Síochána and attended by representatives from Tusla and local residential care providers, where the intention is to develop a regional pilot-project to address contact of children from care with the juvenile justice system.

As part of the research we also sought to interview young people from care backgrounds who had experience of contact with the criminal justice system. We tried to recruit young people with the help of organisations working directly with young people. A number of possible participants were identified, and initial contact was made through the organisations and information was provided on the project. However, for a variety of reasons including personal situations and availability, regrettably it was not possible to recruit sufficient young people to participate within the timeframe of the research.

The research was approved by Research Ethics Committees at the University of Nottingham, the School of Social Work and Social Policy, Trinity College Dublin, An Garda Síochána and Tusla. All prospective participants were provided with written information on the study and what their participation would involve. Individuals who agreed to participate signed a consent form prior to being interviewed. The consent forms noted the parameters of confidentiality, with a recognition that some respondents may be identifiable because of their specific roles (e.g. as policy lead for an area). Within the report we have not named specific respondents but assigned each a code e.g. CJ 1 and indicated the sector within which they work, e.g. Child and Family Agency, Children Detention School, Gardaí.

Table 1 provides an overview of the sample.

Table 1 Sample Overview

CJ1	Legal Advocate
CJ2	Advocate
CJ3	Advocate
CJ4	Advocate
CJ5	Youth Justice
CJ6	Children Detention School
CJ7	NGO Service Provider
CJ8	An Garda Síochána
CJ9	An Garda Síochána
CJ10	Children Detention School
CJ11	Children Detention School
CJ12	Children Detention School
CJ13	An Garda Síochána
CJ14	An Garda Síochána
CJ15	Residential Care
CJ16	NGO Service Provider
CJ17	Child and Family Agency (Tusla)
CJ18	Child and Family Agency (Tusla)
CJ19	Child and Family Agency (Tusla)
CJ20	Legal Advocate

All of the interviews were audio-recorded and subsequently transcribed. The transcripts were then coded and analysed thematically. Data from the study is securely stored and managed in compliance with the General Data Protection Regulation.

3. Findings

Responses to Call for Submissions

The call for written submissions inviting commentary on the extent to which the 'over-representation of children in care or those with care experience' is an issue, yielded ten submissions from organisations and individuals who work with young people in care or who carry out research in a relevant area.⁴ Some of the common themes raised in the submissions included a belief that young people from particular care backgrounds are over-represented within the criminal justice system and that the care system was not well equipped to deal with situations when a young person's behaviour posed difficulties. Furthermore, a number of submissions noted that issues with challenging behaviours were intrinsically linked to experiences of trauma and neglect that led to placement in care in the first instance and, in some cases, were compounded by the care experience itself.

Extent of the Issue

Organisations working directly with young people such as the Care Leavers' Network, Focus Ireland, Le Chéile, Barnardos and Cork Life Centre all observed an issue with children from care coming into contact with the criminal justice system⁵. Particular concerns were identified regarding children in residential care placements, especially among those who were placed in care at an older age and/or where there had been prior experiences of placement breakdown and instability:

We have anecdotal evidence that those who entered care later in childhood (i.e. during teenage years) are less likely to be fostered into a family placement and may be more vulnerable to worsening support problems. These young people who entered care later may also be more troubled or traumatised by the time they get to the care system ... we tend to see that the young people who have spent part of their childhood in residential care are among the most vulnerable and have particularly high support needs. Children who spent time in lengthy placements in foster families tend to fare better.
(Focus Ireland Submission)

Some reasons for the potential differential treatment of children in care and/or differences in levels of contact with the criminal justice system

were put forward. These included a view that there was less tolerance of children's behaviours in residential care and the potential to too readily resort to criminal justice intervention:

It has troubled us greatly to note that many of the charges that young people will accumulate relate directly to their behaviour while in care settings themselves – young people often face charges for destruction of property, assault of care staff and other issues such as drug possession in the care placement. While not condoning the behaviour of young people who act out and understanding the consequences for behaviour are important, it has been difficult to note in many situations we have encountered that the Gardaí are involved in issues that if happening in a family home they would not be involved with.
(Cork Life Centre Submission)

Another pattern which we have observed is that young people from backgrounds in care have often been before the Courts for what might be called 'domestic incidents' such as damage to property or assault of staff in residential settings. This may be linked to poor relationships between young people and staff, anger issues on the part of young people, and residential centre policies which require all incidents to be reported to the Gardaí.
(Le Chéile Submission)

⁴ See: Appendix 2 for a list of organisation respondents.

⁵ Some organisations also supplied background information on their services and service evaluations, e.g. O'Dwyer (2017) Reducing Youth Crime in Ireland: An Evaluation of Le Chéile Mentoring.

Capacity and Remit of the Care System

While noting that the population of young people in care is not homogenous, the extent to which the care system is adequately resourced to deal with children with complex needs and behaviours was raised in a number of submissions:

Children and young people in the care system often have high levels of need. Access to supports such as counselling services, child and adult mental health supports, family support and specialist services are essential. The State must ensure, not only are these services available countrywide, but they are easily and quickly accessible. Furthermore, in recognition of the added challenges facing children in care and care leavers, they should receive priority access to services.

(Barnardos Submission)

On the other hand, one respondent expressed the view that the care system was being inappropriately asked to deal with complex behaviours that would be dealt with more appropriately in the juvenile justice system.

The current Tusla policy is focused heavily on young people who are in education, training and employment. While the rationale for such a focus is clear, a consequence is those care leavers who have experienced high levels of trauma and may struggle to participate in training or education are often the ones with least support and are most in need of aftercare.

(Barnardos Submission)

Transitional Supports

The issue of supports for young people leaving care was also raised. While changes to legislation, which place an increased obligation on the State to provide aftercare were noted, so too were the limits of implementation, particularly for young people transitioning from care whose time in care was more disrupted and difficult.

The Aftercare Act [Child Care Amendment Act, 2015] gives each care leaver entitlement to an aftercare plan; however, there is no obligation on the State to implement the plan. There is no obligation on the State to change a young person's plan or to have it reviewed upon turning 18 meaning many young people have aftercare plans which don't meet their needs. The current Tusla policy is focused heavily on young people who are in education, training and employment. While the rationale for such a focus is clear, a consequence is those care leavers who have experienced high levels of trauma and may struggle to participate in training or education are often the ones with least support and are most in need of aftercare.

(Barnardos Submission)

The transition of young people from the juvenile justice system to the adult criminal justice system was also noted as a point of potential difficulty, particularly when charges quickly accumulated and moving into a different system resulted in young people being processed quickly through the courts.

A notable feature of the responses received in the call for submissions, particularly from organisations working directly with young people, was the extent to which the themes reported were characterised as based on 'anecdotal evidence'. This suggests that while there is indeed practice evidence of differential involvement of some young people from care in the criminal justice system, there is a lack of systematic data to more broadly evidence the extent of this issue. In the interviews conducted with stakeholders we therefore sought to identify what data, if any, is available in this area and to further probe the themes identified in the submissions.

Data Deficits

One of the first findings of note is the lack of data on the extent to which children in care come into contact with the criminal justice system. During the course of the research we sought to establish if any agency systematically collects this information. While agencies typically gather information relating to individual young people and record this in case files, this data is not collected systematically nor is it available at an aggregate level. For instance, An Garda Síochána note a young person's family status and living arrangements when there is involvement with a Juvenile Liaison Officer (JLO) but this information is not compiled at a national level. Similarly, the Probation Service record information on individual case files on a young person's home circumstances, including if they are currently or have previously been in care, but this information is not collated⁶. Tusla collate and publish a range of aggregate data on children in care in their Monthly Performance Reports and in their Annual Review on the Adequacy of Child Care and Family Support Services but this does not include any information on the involvement of children in care in the criminal justice system⁷. The Irish Youth Justice Service do not collect this data, however, they previously conducted an analysis of the backgrounds of children in detention which showed a high proportion of 'cross over' between children known to child protection services and those remanded or committed to detention (Young, 2012). EPIC, the national organisation advocating for young people in care, do not collect aggregate data on the numbers of children whom they advocate for who have contact with the criminal justice system.

Owing to this absence of systematically-collected data it is not possible to establish an *overall picture* of the extent to which young people from care come into contact with the criminal justice system and whether their level of criminal justice contact is at a higher rate than their non-care peers. That said, information gathered from a range of agencies and from the interviews conducted for the purpose of this research indicates that the crossover of young people from care with the justice system is an area of concern. There is evidence to indicate that at the higher end of the youth justice system (i.e. within the courts system and the Children Detention Campus) there is a greater proportion of young people with care backgrounds. For instance, respondents who work in the Children Court in Dublin outlined that young people from care constituted a significant proportion of the court's caseload (approximately one third), while data produced by the Children Detention Campus shows that a high proportion of young people remanded and committed to detention by the Courts are from a care background. Data published by Oberstown: *Key Characteristics of Young People in Detention: A Snapshot (Q1, 2018)* finds at that time 40% of young people were either "in care or had significant involvement with Tusla", 26 young people were in care prior to detention (28%) and a further 11 had significant involvement with Tusla prior to detention (12%)⁸.

The reasons for children from care coming into contact with the criminal justice system are inevitably complex and relate to the specific patterning of the Irish system. In order to understand this overall context, we need to consider the profile of children in care, how a care status is defined and the spread in the range of care provision. This needs to be situated alongside the operation of the youth justice system, the points at which children come into contact with criminal justice agencies and their trajectories within this system. In the following sections we highlight how a range of factors, both individual and systemic, lead some children in care to come into contact with the criminal justice system and to experience different trajectories as they move through it.

⁶ Correspondence with the Probation Service.

⁷ The last publicly available Annual Review on the Adequacy of Child Care and Family Support Services is from 2016. The monthly performance data includes information on the numbers of children in care, the numbers of children in care with a social worker, a care plan, placement types, education, aftercare and adoptions. See: <https://www.tusla.ie/data-figures/>

⁸ See further: <https://www.oberstown.com/wp-content/uploads/2018/06/Key-Characteristics-2018.pdf>

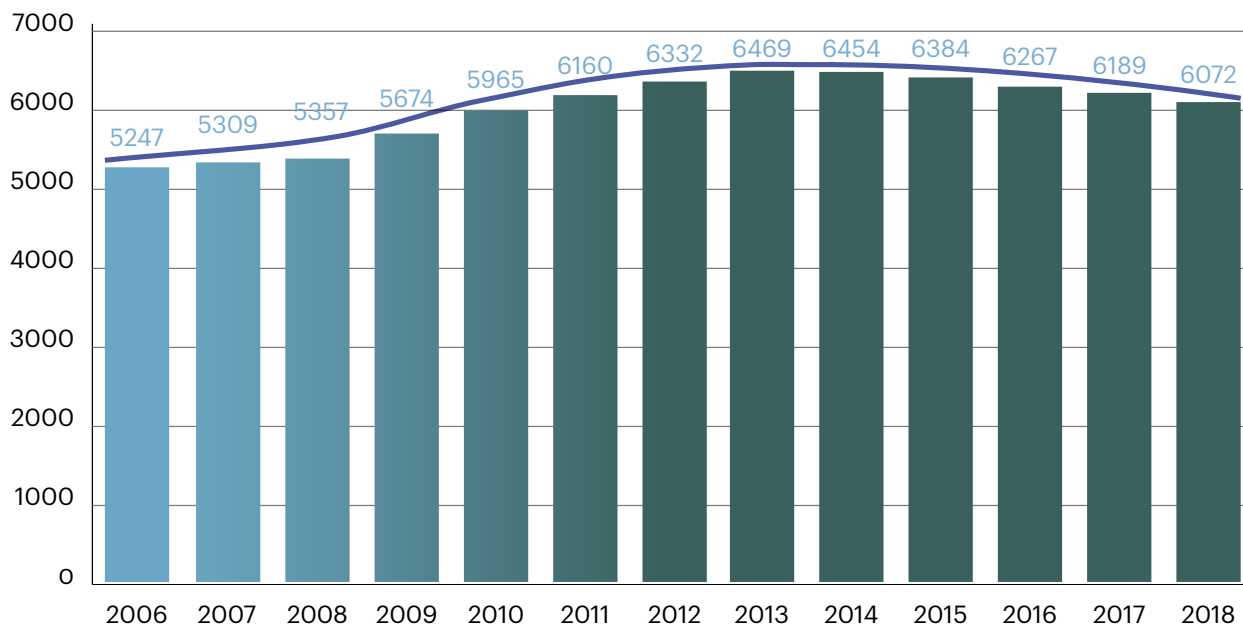


Children in Care in Ireland: Scale

The latest figures available from Tusla show that in the third quarter of 2018 there were 6,072 children in care (Tusla, 2018b). The vast majority of these children were placed in either general or relative foster care (92%). A general foster carer is a person approved by Tusla following a process of assessment and placed on a panel of approved foster carers. A relative foster carer can be a friend, neighbour or relative of a child or person with whom the child or family has had a relationship prior to the child's admission into care⁹. Just 6% (n=360) of children in care in 2018 were in a general residential care placement and a far smaller number of children were in 'special care' (n=15) or in placements abroad (n=20) (Tusla, 2018b)¹⁰. Following a marked increase in the numbers of children in care over a nine-year period between 2006 and 2014, when a 23% rise was recorded, the figures have decreased somewhat in more recent years (2015–2018) as demonstrated in **Figure 1**.

It is worth noting that, over the same time period, the number of referrals to child protection and welfare services has grown exponentially. Between 2012 and 2016 there was an 18% increase in the number of referrals, a majority (60%) of these for 'welfare' concerns. The remaining referrals were categorised as child protection concerns, that is, referrals made on the grounds of a risk of physical, sexual, emotional abuse or neglect (Tusla, 2018a)¹¹. The reasons for this rise in referrals to child protection and welfare requires further analysis but Tusla (2018a) has identified a number of potential contributing factors: 1) higher numbers of children living in relative poverty; 2) an increase in the proportion of children in the population; and 3) raised public awareness regarding child protection and welfare.

Figure 1: Annual Population of Children in Care 2006–2018



Source: Data compiled from Review of Adequacy of Services for Children and Families Reports 2006-2017 produced by the Health Service Executive and Tusla and the Quarterly Service Performance and Activity Report (Quarter 3 2018). Note: The figure of children in care for 2018 relates to Q3.

- ⁹ According to the Tusla definition: "A relative foster carer takes care of the child on behalf of and by agreement with the Agency, having completed (or having agreed to undertake) an assessment of suitability within 12 weeks of the child being placed with them." (Tusla 2017:46)
- ¹⁰ Special care units are secure, residential centres for children aged 11 to 17 years. A child can only be placed in special care on an order of the High Court and when their behaviour poses a risk of harm to their life, health, safety, development or welfare, and the placement is needed for the child's care and protection. Tusla (2018a: 63) outlines the following regarding the circumstances when a child is placed abroad: "Children placed abroad are generally those requiring placement with relatives who happen to live abroad and those requiring highly specialised care currently not available in Ireland, e.g., specialist secure forensic mental health services and therapeutic residential services addressing specific needs identified in the child's care plan."
- ¹¹ In 2012 Tusla received 40,187 child protection referrals, in 2016 it received 47,399 referrals.

The type of intervention that a child and their family receive is based on an assessment of risk and needs. A child is placed in care when it is established that their need for protection cannot be met by their parent/s. The latest available data shows that ‘child welfare’ concerns are the primary reason for admission to care (48% of cases) (Tusla, 2018a), although it is worth noting that the initial categorisation of the primary presenting concern is likely to encompass a wide range of needs. A child is considered to be in care when they are subject to a Care Order or placed in ‘Voluntary Care’ under the provisions of the *Child Care Act, 1991*. Placement in voluntary care means that parent/s enter into an agreement with Tusla consenting to the child’s placement in care. Unlike an Emergency, Interim or full Care Order (*Part IV, Child Care Act 1991*), a Voluntary Care placement does not require the authorisation of a court. The majority of admissions into care are voluntary admissions (70%) (Tusla, 2018a).

The rate of children in care in Ireland is lower – at 52 per 100,000 children – compared to England, Northern Ireland and Wales, where the rates are 60, 67 and 90 per 100,000, respectively (Tusla 2018a)¹². Data provided in Tusla’s *Annual Review of Adequacy of Services* demonstrates geographical variation in the numbers of children in care. The average rate of children in care per 1,000 of the population is 5.2 children. Dublin North City has the highest rate of children in care (at 12.6 per 1,000) while Dublin South East/Wicklow has the lowest rate of children in care nationally (at 3.3 per 1,000.) (Tusla, 2018a). The reasons for these geographical variations are not explained.

Placement Types

The majority of children in care are placed in foster care, with a far smaller proportion placed in residential care, reflecting a clear policy and practice preference towards accommodating children in foster care. Residential care is most often used when children have experienced previous placement breakdowns or for older children who enter the care system later and either do not want to be placed in foster care or for whom no alternative placement can be found. In many circumstances, children placed in residential care may be placed outside of their home neighbourhoods, possibly for child protection and safety reasons and/or the lack of availability of a suitable placement.

The latest available data shows that in 2018 there were 361 children living in residential care constituting 6% of the care population. Of these, 222 children (61%) were accommodated in private residential placements (Tusla, 2018b)¹³. Private companies are contracted by Tusla to provide residential placements (there are also some private foster care providers). Over the past ten years or so, there has been a shift in the economy of service provision with private companies now accommodating more children than either statutory or voluntary services. This shift can be partly attributed to the retraction of statutory service provision because of restrictions in funding, particularly following the economic crisis, and private providers meeting the resultant gap in services. Data from Tusla (2018b) shows the significant overspend on costs of private residential and foster care provision¹⁴.

Key points:

Based on the available data, some of the key characteristics of the Irish child protection and welfare system can be summarised as follows:

- **Proportionately lower rates of children in care compared to neighbouring jurisdictions.**
- **A high proportion of children in foster care compared to other forms of care provision in Ireland.**
- **Geographical variations in the rates of children in care.**
- **A reliance on the private sector for the delivery of residential care services.**

¹² These rates are based on 2016 figures published in the most recently published Annual Review on the Adequacy of Child Care and Family Support Services 2016 (Tusla, 2018a).

¹³ It is worth noting also that a proportion of children are also accommodated in private foster care (222 children in 2018) (Tusla, 2018b).

¹⁴ The latest available data shows that the cost to date for the spend in 2018 for private residential and foster care was 9,080 million euros with a projected 12% overspend on the annual budget (Tusla, 2018b).



Extent of Contact of Children from Care with the Justice System

In the course of conducting this research we sought information from a range of agencies regarding the extent to which young people in care came into contact with the criminal justice system. The Irish Foster Care Association (IFCA) indicated that this was not an issue that featured in calls to its National Support Helpline¹⁵. The Gardaí that we interviewed said that they had very limited contact with children in foster care in the course of their duties as JLOs:

I've had very limited involvement with foster care. Very, very, very limited. I think I've only dealt with two or three cases since 2011.
(CJ08, Gardaí)

EPIC, the national organisation that advocates on behalf of children and young people in care, told us that while criminal justice contact featured as an issue for some of the young people they worked with, it was often part of a constellation of other issues including homelessness, after care provision and family contact:

We would know a lot of our young people would be in contact with the criminal justice system but we wouldn't particularly be advocating on that issue for them.
(CJ03, Advocate)

A participant working in Tusla told us that although the agency does not systematically collect this data, they do not doubt that over-representation may be an issue and that care, as well as youth homelessness, may be 'significant risk factors':

Are children in care over-represented in it? It's a really good question, and I would love to see some data on it. I wouldn't doubt but that they are, the same as I wouldn't doubt in terms of homelessness, I think it's a really significant risk factor.
(CJ17, Tusla)

Some of the research respondents, including those working in the Children Court and the Children Detention Campus, identified that children from care (and those who had had significant contact with child protection and welfare services) featured prominently in their caseloads. For instance, data published by Oberstown Children Detention Campus in a 'Point in Time' Analysis recorded that of the 37 young people detained in November 2018, 11 had been in care prior to detention and a further 6 young people had had 'significant involvement' with Tusla. (Oberstown, 2018)

The question of the definition of a 'child in care' arose in some of the interviews. Respondents from Tusla noted the importance of the legal distinction between a child in care and children who are more broadly known to their services for child protection and welfare reasons:

Like children in care are children who are subject to a Care Order under the Child Care Act 1991, or who have been placed in a family arrangement... but are subject to a voluntary care agreement, and that's not an order but it is a signed agreement where the parent says - my children can be placed in your care, I'll retain guardianship, but you have the immediate custody, so that's very straight. And children for whom there isn't a voluntary care arrangement signed, or who haven't been subject to a Care Order are not in care. And that may involve children who are living with relatives or extended family and friends with Tusla supports sometimes, but definitely not with our supervision or our consent or our authorisation. It is simply a family arrangement.
(CJ17, Tusla).

Oberstown defines children in care according to the categories outlined in the *Child Care Act, 1991* and in the published statistics they report:

Care placements may not always have been active immediately prior to detention. In some cases, the young people in question had multiple placements over a number of years, while in others young people were under long-term care orders. Others still had just recently come to the attention of the care services¹⁶.

¹⁵ IFCA circulated a call to its members inviting them to participate in the research, but there were no responses to this call.

¹⁶ See: 'Statistical Breakdown of Young People on Campus, November 2018: <https://www.oberstown.com/wp-content/uploads/2018/12/November-2018-stats.pdf>

Reflecting on the profile of children in Oberstown, one respondent noted that children who interface with the Child and Family Agency broadly encompass three categories:

- 1) Children known to the Child and Family Agency historically;
- 2) Children in care; and
- 3) Children for whom child protection and welfare issues are identified following their remand or committal to the Children Detention Campus who are then referred to the Child and Family Agency:

There's the young people who are subject currently to care orders, to statutory care orders, who have come in to Oberstown. Either their placement has broken down in the community, or they have come in for offending behaviour in the community and they still have a placement. They're more straightforward in some ways because there's a statutory care order. We then have all the young people whose family may be known to the Child and Family Agency but there's no care order in place and they're children who are at risk. They're at significant risk and sometimes those children may have younger siblings who are in care. And maybe, these are 17 year-olds who have voted with their feet who won't engage in care placements and there's no statutory care order. So, they come a little bit later in to the system. And then we have other young people who we may become aware of a child protection and welfare concern and we notify the Child and Family Agency and then they may become involved because of that particular notification that we send in.

(CJ12, Children Detention School)

Many children in detention therefore have high welfare needs and ongoing prior contact with child protection and welfare services, but only a proportion of these children are *in care* immediately prior to entering custody. That said, based on the information available, it would seem that children from care feature to a greater extent at the 'higher' end of the youth justice system, bearing in mind that most young people who come into contact with the youth justice system in Ireland are dealt with through the Garda Youth Diversion Programme and, therefore, are never processed through the courts, much less through to detention.

It would also appear from the evidence available that contact with the criminal justice system is much less of an issue for children in foster care than in it is for children in residential care. Almost all of the respondents interviewed from across the various sectors identified that, in their experience, when children in care came into contact with the criminal justice system it was usually when they were in residential care. As the data on the care system outlined earlier shows, the proportion of

children in residential care in Ireland is relatively small. Therefore, it would seem that the issue of contact with the *youth justice system* is a particular concern for a *small cohort of young people*. That said the issues raised in respect of these young people are significant. The possible reasons for system contact are multiple and are discussed in the following section.

Are children in care over-represented in it? It's a really good question, and I would love to see some data on it. I wouldn't doubt but that they are, the same as I wouldn't doubt in terms of homelessness, I think it's a really significant risk factor.

(CJ17, Tusla)

Reasons Children from Residential Care come into Contact with the Criminal Justice System

We have noted that the issue of contact with the criminal justice system was reported as more of a concern for children in residential care than in foster care, and that a relatively small proportion of children are accommodated within residential care nationally. This section of the report outlines some of the themes identified in relation to residential care provision, the complex needs of children accommodated and some of the reasons for potentially disproportionate contact with the criminal justice system amongst this cohort of young people. We highlight the fact that there is no national policy relating to young people in care and contact with the criminal justice system and that this is an area that clearly merits policy attention.

Residential Care Provision

The numbers of residential care places have contracted over time and there have been shifts in service provision from state and voluntary-sector run services towards a predominance of private provision. Across the country, 36 registered child care ‘mainstream’ services and four Special Care Units are operated by Tusla. Twenty-six residential centres are run by the voluntary sector and funded by Tusla, and there are “between 82 and 84” (CJ19, Tusla) services run privately and contracted by Tusla through a procurement process. More than half of children currently in residential care are accommodated in private provision¹⁷. One of the interviewees from Tusla explained that the shift towards private provision was a result of the staffing embargo in 2008 and the closure of some statutory residential services allied with the need to accommodate young people presenting with increasingly “complex needs”:

So that has risen exponentially, and I suppose part of the reason is the complex needs for one thing, but also the diminution of our own statutory services.
(CJ19, Tusla)

Another respondent noted that when it was difficult to place children in statutory services, private provision was used to fill this gap and, as a result, private residential care is often used to accommodate children with the most difficulties:

The way the system was being set up at the time when this private/public split came was that the more difficult children would go to private

provision because our current public provision could not provide for them. So that would certainly lead down the line of you’re going to get more difficult children in the private service, therefore the Guards will be called.
(CJ17, Tusla)

Needs, Complexity And ‘Service Retreat’

The issue of ‘complexity’ in the profiles of young people was raised repeatedly throughout the interviews. As noted, the vast majority of children in care are placed in foster care and placement in residential care usually takes place in one of two ways: firstly, if a child’s placement has broken down or, secondly, if a young person enters care in later adolescence. As this respondent observes, placement breakdown, particularly when it re-occurs, can have a very negative impact:

I do think we need to go back to look at permanency for children in care and look at permanency that includes addressing things that are going to happen in children’s lives and they’ve had trauma and that’s going to present itself at certain points of their lives, and we need to empower and support foster carers to manage that, or else we will go into a cycle of placement disruption. And we have some data on that. Kids do experience placement breakdown, which is another broken attachment.
(CJ18, Tusla)

Finding foster placements for older children entering care is also a difficulty and in some instances young people themselves do not want to be placed there:

They [older children] tend to go into residential, and some because they don’t want to, they have a family and they are not interested in having another family, or that we can’t place them. We do struggle to place teenagers in foster care regardless of profile. People tend to look for a younger age group.
(CJ18, Tusla)

A further issue raised by one of the respondents from Tusla was a concern that some young people who were already involved in extensive offending behaviour were not being dealt with adequately within the justice system and were, instead, re-directed to child protection and welfare services. In the extract below the respondent describes a situation where a young person known to the Child and Family Agency (but not in care) had appeared before the District Court on criminal matters. However, no place was available in the Children Detention Campus and his parents subsequently

¹⁷ It is worth noting the cost of private placements. Each placement costs 6,000 euro per bed, per week. We were told that this figure has recently risen because of increases in insurance costs for private residential services and that insurance companies are requesting to see the ‘profile of children’ being accommodated before agreeing to provide insurance. We were told that the rise in insurance costs is “on the back of some quite significant pay-outs for staff assaults” and other claims.

refused to allow him to return home as he was out of their control. The judge then requested that Tusla provide accommodation:

But in a situation where a child is beyond the law, he's escaping from his own home, leaving his own home, taking cars and then we are going to put him in a residential placement where it's not set up for any sort of restraint, as it shouldn't be. You know if a child is behaving beyond their own bounds and is a danger to themselves and others they can be physically restrained, but that will last for a number of seconds or minutes and should be no more than that. Whereas there's a young person who you know is intentionally going out and has created harm and is likely to do again and is saying to us when we're meeting him – 'I'm going to keep doing the same thing, I'm not interested in anything that you have to offer me'... The service that we put him into subsequently, no residential provider would provide a service for him. So we end up in a situation in court where we're being harangued by the judge. The judge is getting very frustrated with us for not providing a service because we have no appropriate placement or we can't get a private provider to provide a placement. The young person isn't at home, we are ending up providing a pseudo-residential placement with staff that aren't trained, that's not appropriate to be involved with and a young person that doesn't want to be there. (CJ17, Tusla)

Further still, this respondent characterised service responses to children with high and complex needs as paradoxical in the sense that services "retreat" when faced with this complexity:

... what we see is that children with more complex needs have less and less services

involved with them. So it's the opposite of service creep, it's service retreat. You know the more complex the needs become, the more services say "we can't take him in our service". (CJ17, Tusla)

The absence of adequate adolescent mental health services generally was highlighted by a number of respondents, particularly in cases where children were presenting with difficult behaviours:

There's a huge gap [in adolescent mental health provision] and the gap widens then if the child is in any way challenging behaviourally or anything like that, they are out in a second...I've had two occasions in this year alone where we have children with diagnosed mental health conditions and as soon as they started to get aggressive or violent or whatever in a centre, they no longer met the requirement for mental health services. It is just abhorrent you know. (CJ19, Tusla)

... what we see is that children with more complex needs have less and less services involved with them. So it's the opposite of service creep, it's service retreat. You know the more complex the needs become, the more services say "we can't take him in our service". (CJ17, Tusla)

A Mobile Population

According to a number of respondents, difficulties with service access can be compounded when a young person is moved from their home area to be accommodated in another part of the country, which is frequently the case for children placed in residential care:

The problem too is young people can get moved, you'd see a lot of young people being moved from their home town or whatever and you'd see them during residential care then in other parts of the country.

(CJ11, Children Detention Campus)

I don't know how to put this, but kids coming from another area into the likes of [place name], there should be some plan put together that this kid's coming here... there isn't and a kid is usually parachuted in.

(CJ09, Gardaí)

It was also suggested that because most services across welfare, justice and mental health are based on a local delivery model, they are not sufficiently equipped to deal with situations where children move locations:

Oftentimes the way the residential provision is, there isn't a unit close to home, or the units close to home may be full or their description may be something different. So inevitably there is a distance involved and then how do you get the Guards involved when they've moved down to Kerry? How do you get CAMHS [Child and Adolescent Mental Health Services] involved? CAMHS have taken a view that they won't be involved unless there's a social worker from that local area involved with that child.

(CJ17, Tusla)

The problem too is young people can get moved, you'd see a lot of young people being moved from their home town or whatever and you'd see them during residential care then in other parts of the country.

(CJ11, Children Detention Campus)

Offending in Residential Placements

Given the issues of complexity highlighted, including the fact that in some instances children entering into care may already have had prior criminal justice involvement, contact with the criminal justice system was recognised as a significant issue for some young people in residential care:

I think it's a big issue, it's a big issue for a number of reasons I think. The most immediate thing in our face is the level of assaults and aggression and violence and so on. And there's many reasons for that of course, you know, young people are coming from quite a traumatic history and they're in a place, well they're teenagers first of all by and large so they're hard-wired to have difficult times. Both from their experiences and having to deal with authority figures and all sorts of things, and not being able to regulate themselves at times is a challenge to them and the staff that work with them.

(CJ19, Tusla)

The type of incidents which Gardaí were called to respond to in residential units included criminal damage, arson, assaults on staff and other residents, theft and offending by young people in the local area (including possession of drugs and public order offences).

I think what we would see it's a huge issue for the 15–17 year olds, a significant amount of our young people are engaged in substance abuse and I think a lot of them are getting into trouble in relation to that.

(CJ15, Residential Care)

Now we've been looking at the reasoning why some of those young people have been with [Children Detention Campus] and the majority of them appear to relate to their care settings. So the offending behaviour is around the damage that was done to a residential unit; the assaults on staff, the robbery of a manager's car, or whatever, so there's a predominance around that. There are some that relate to other offences in the area, but the predominant view that I've formed is that for those that are in care at the time of admission most of the offences relate to their care settings.

(CJ06, Children Detention Campus)

During interviews, Gardaí described situations where they felt that it was appropriate that they were called to respond, for example, when there was significant criminal damage or a serious assault:

Frequent offending, you know, it depends on the kids out there [in the residential unit]. So often there's assaults against staff, breaking property damaging property, maybe setting fire to stuff, you know, that's an issue, that's a big issue.

(CJ09 Gardaí)

It's just my own experience that maybe it depends on who the manager is or whether it's reported or not, that's my feel of it. I suppose, I know there was a spate there and there was a lot of staff being assaulted but it was the same person that was assaulting them all the time. I'm assuming they only call us when absolutely necessary, that's from the care home point of view.

(CJ13, Gardaí)

However, there were other respondents who viewed calling the Gardaí as a disproportionate response to issues that they felt would have been more appropriately dealt with within the unit:

I think a lot of the offences, there isn't the need of Garda action, from the point of view of if there was a policy in place, like the home provider. Like I can only imagine, you know, in say my own home, if one of the kids threw a cup against the wall and broke it, because they were fed up of something, like we don't ring the Guards straight away, you know. And that's where these were racking up like ridiculous catalogue on the Garda system, because of all of these issues.

(CJ08, Gardaí)

Alongside the complex profile of young people, a number of other factors were highlighted as potential contributors to children from residential care coming into contact with the criminal justice system. Broad issues of behavioural management and the capacity of placements to contain children in a safe manner were raised by some respondents. Mainstream children's residential centres, that is, those that do not provide secure care, are not legally able to detain a child, even in situations where a child's behaviour may be causing concern. In some circumstances this leads care providers to contact the Gardaí in order to contain a situation. This was cited as a point of frustration on the part of Gardaí and also as a dilemma for service providers:

I understand we need care homes but our current setup of care homes, it's really a holding centre that can't hold them until they are maybe jailed for something.
(CJ09, Gardaí)

Yes, and there's the real dilemma, because it's not a criminal justice matter, you know. Nor indeed is it a Special Care [requiring secure care] ...what they need are good firm boundaries, but you need [the] back up of the agency and of the government effectively to be able to do that. And on the ground then you need a certain level of robustness and capacity within your staffing cohort to be able to do that.
(CJ19, Tusla)

I think what we would see it's a huge issue for the 15-17 year olds, a significant amount of our young people are engaged in substance abuse and I think a lot of them are getting into trouble in relation to that.
(CJ15, Residential Care)

Inconsistent Approaches and a Lack of National Policy

One of the concerns raised by a number of respondents was a lack of consistency nationally and even within local areas as to how such behaviour should be dealt with:

It seems to me to be very much something that is led by the provider rather than by the Child and Family Agency or the HSE. I have seen many instances of really, really good and understanding approaches, consistency and consistency leads to stability and I've seen other situations where because of a proliferation or a huge staff turnover and the use of agency staff. For example, that incidents occur where it is clear, sadly after that, that the staff member who was dealing with the particular young person in question was unaware of many of their background circumstances and factors. And... some of that can trigger responses which are to the benefit of nobody including those staff members. Some residential units take an absolutely zero tolerance approach to incidents that occur and others don't.
(CJ01, Legal Advocate)

As one residential care provider explained, there is no official policy in their service regarding pursuing a prosecution for criminal damage and, ultimately, the decision to pursue a prosecution rests with him.

We don't have a... the policy relates to criminal damage, it mostly rests with me, so I make a decision whether I do it or not.
(CJ15, Residential Care)

In cases where a staff member is assaulted, the decision to press charges lies with the individual and, while employers can provide support to staff, it is ultimately an individual's decision:

The policy is, it's the individual's choice, but if you want support, it's there if you want to discuss it, and more so we utilise the support of their colleagues or their managers or their de-briefers to discuss whether they do it or not [press charges] after the fact, and [after] they've slept on it, most of them will not go down that route.
(CJ15 Residential Care)

As well as the nature of the alleged offence, the manner in which children are responded to seemed to depend on wider resourcing, individual approaches and the strength of the relationships between care providers and the Gardaí:

It's completely contingent on the area, so many areas we would have fantastic relationships, they would be very active and engaging with us and trying to deter the young people from getting involved with the criminal justice system. Some of the Guards are fantastic, their relationship with the kids, they do everything, they stop and talk to the kids on the street, and so they will work very closely with us. But unfortunately there's other areas where they don't do that, the responsibility should be with us, not with them, because a lot of issues as you know with, there's no out-of-hours service in Ireland and the Gardaí feel like they're the out-of-hours. So there's that element, there's a bureaucratic element that it interferes with. I think sometimes if the Gardaí in a particular area has been subject to a lot of contact from residential centres, they tend to get quite pissed off with it. And it becomes very difficult, I suppose to engage with them on a decent level, because they feel that the other services should be stepping in earlier and they're not. So again, it's just, it's quite complicated at times. I've had Superintendents call me at the weekend over something, I've had knock down, blazing arguments with them on the telephone and then some of them will call you, they're nice as pie, and you come to a mutual agreement. (CJ15, Residential Care)

Tusla collate data on incidents that occur within residential settings under the Significant Event Notification Process, which includes reports of when children are missing, and 'unlawful behaviour'¹⁸. This reporting process has been in place since 2015 and this data has the potential to highlight patterns and differences across residential care settings that could be usefully used to inform policy. During interviews we were told that this aggregate data was currently subject to review and could not be made available at this stage¹⁹. Both the Health Information and Quality Authority (HIQA) and Tusla's Registration, Inspection and Monitoring Services review SEN reports as part of their inspection processes. There is a protocol regarding the roles and responsibilities of care providers, Tusla and An Garda Síochána when a child goes missing from care, which has been in

place since 2008²⁰. However, there is no national policy regarding reporting incidents to the Gardaí more generally. This means that practice across the country varies and is often determined by relationships between residential units and local Gardaí. There is no joint protocol between Tusla and An Garda Síochána relating to criminal justice contact for children in care and while this is a complex area, there is a clear need to address this gap at a national policy level. Such a policy should address reporting, areas of responsibility, joint training between different professionals, responses to incidents and the potential for restorative and diversionary approaches to address offending in care placements.

¹⁸ Tusla (2015) Significant Event Notification Processing. Children's Residential Services. December 2015

¹⁹ The SEN data is currently being analysed for Tusla by the UNESCO Child and Family Centre, NUIG. This data has the potential to inform analysis of patterns and trends in areas such as rates of self-harm, injuries to a young person and Garda involvement across different residential settings by service type. It therefore could provide a useful basis for Tusla to explore any reasons for differential contact with the criminal justice system across residential providers.

²⁰ The protocol was developed between the HSE and the Gardaí as it pre-dates the establishment of Tusla: Children Missing from Care. A Joint Protocol between An Garda Síochána and the Health Service Executive.

Systemic Issues Regarding Children in Care and Interactions with the Justice System

The majority of children in care in Ireland have no contact with the criminal justice system at any time during their time in care. However, those children from care who do come into contact with the criminal justice system have frequently experienced multiple adversities in their lives and criminal justice involvement is often just one of a range of issues. Some young people in this situation will have entered into care at a later age and/or have experienced multiple placement breakdowns.

In some cases, and ... on top of mental health and also traumatic care experiences perhaps or family life experiences that led them into care, so you know it's a multi-package for what's going for that young person.

(CJ04, Advocate)

The young people who are moving placements, they're very traumatised often, and the system is just constantly running around trying to find them, keep them, offer them things that they themselves don't feel are what they need or want and find it very hard to accept, trust anybody, find it very hard to settle again.

(CJ07, NGO Service Provider)

In these particular contexts, for some young people there may be an escalation through the system precisely because so many of the interventions within the youth justice system, ranging from diversion to bail support, are predicated on models of engagement with the young person and their support networks.

Bear in mind also that because of the very good diversion aspects to the criminal justice system, it is only when all else fails the children end up in the criminal justice system. Through the juvenile diversion programme, various other initiatives that are put in place where there's a child in care. My fear is that they are being accelerated into a system, much greater because they are a child in care, ironically. They don't have the same support mechanisms in place that other children do have.

(CJ01, Legal Advocate)

Everything else in the criminal justice sector they have to engage. The JLO, they have to take responsibility and engage in that; probation, they basically have to engage with probation and show up to probation, talk about their offence ... All of them, any sort of key-working is up to the young person to engage and if they don't, it kind of closes down.

(CJ16, NGO Service Provider)

As documented here, study respondents identified several systematic issues that impact criminal justice contact among young people with care histories, highlighting the need to ensure tailored responses to young people in care.

Garda Youth Diversion Programme

The Garda Youth Diversion Programme is the main mode for dealing with youth offending in Ireland. Under the legislative provisions of the *Children Act, 2001*, where a child is a suspect in an offence they may be considered for diversion from prosecution. If considered suitable for inclusion in the diversion programme, a Juvenile Liaison Officer (JLO) or other suitably qualified member of An Garda Síochána can administer one of three forms of caution: 1) Informal Caution, 2) Formal Caution or 3) Restorative Caution. The Garda Youth Diversion Office makes the determination of a young person's suitability for diversion after consideration of information on the case.

There is no limit on the number of times a young person can be subject to diversion but diversion is contingent on a young person's acceptance of this disposal. If a young person is considered 'Unsuitable for Inclusion' on the programme a Certificate is issued to the local District Officer who must consider initiating a prosecution or forwarding the file to the Director of Public Prosecution. In 2017, the Diversion Programme received 20,006 referrals relating to 10,607 children. Most cases (38%) were dealt with through an Informal Caution, almost a third were considered 'unsuitable' and a smaller proportion (20%) of young people received a Formal Caution (An Garda Síochána, 2017). The reasons for a young person being deemed unsuitable vary. Information published in the *2017 Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme* records that they included: repeat offending²¹, a young person not admitting the offence, leaving the jurisdiction, not engaging with the Gardaí or not being able to be contacted by the Gardaí (An Garda Síochána, 2017).

The Garda Youth Diversion Programme operates through a local model, meaning that Juvenile

²¹ More than two-thirds of those deemed unsuitable for the programme were referred six or more times in that year.

Liaison Officers (JLOs) deal with children living in their local area regardless of where the offence was committed. One of the issues raised in the course of this research was the extent to which the JLO scheme is equipped to deal with children who move to different areas of the country, which is the case for some young people in care who are placed outside of their home area. Some young people who experience placement breakdowns may be moved on multiple occasions. As one respondent who works in a service providing supports to young people observed, many services including the Gardaí operate models that are not responsive when young people are mobile:

The difficulty for [the Gardaí] as well is the young people in care maybe moving. It's hard for them also to offer, you know, the system isn't probably as flexible as it could be. So, they may have a relationship with a particular guard or they may need to build a relationship with a particular guard because say for example they've broken a window in a residential in [area name] but then the next thing they're in the inner city because they're in [homeless services], two weeks later they're in [another area name] because there was a bed out there. I think for the guard the Juvenile Liaison Officer would probably want to try and follow them because they're probably not going to stay in [area name] either let's face it, but they face the same problem that in a way all the other services face is that they're still very siloed.
(CJ07, NGO Service Provider)

One of the issues raised in interviews with Gardaí was the fact that children's residential units in their areas were often the source of frequent calls to the Gardaí but that the children living in the units were rarely if ever from the local area. This posed a difficulty in establishing relationships and some of the JLOs interviewed spoke about the difficulty of dealing with such cases, both in terms of engaging the young person and, subsequently, when a young person moved out of the area. One of the issues highlighted was that a usual approach of JLOs was to try to get family members on board with supporting the young person in encouraging desistance from further offending, but that this engagement was not as easy within the residential care environment (or, indeed, that JLOs felt less equipped to engage with young people in this setting):

Yes it is different, it's hugely different if you're called to somebody's home to speak to mum and dad... kids are totally different in the presence of their parents. Whereas kids in the care home they're isolated in a way, they're completely isolated they don't have that you know the parent there to chastise them about their wrongdoing. When you're in the care system you're way past that, you know what I mean, you're nearly on your own. It's like a unit, it's like a hotel etc. not paying

for staying but you come and go as you like and you get fed, you get what you want but I don't mean that as in... sometimes I think staff appease the young people just to keep them quiet.
(CJ09, Gardaí)

This Juvenile Liaison Officer explained the difficulties in making onward referrals and following up on cases where children in care experience placement moves:

Well, it's based in terms... of no matter where you make your offence, the referral goes to where they live. I think that's, to be fair, is for the benefit of the child. You know, that's so you can build up some kind of relationship with the JLO... rather than if you were... if they committed an offence in Dublin, and they had to go to the JLO in Dublin for a caution, and then there is another offence in Kerry, and go to Kerry for a caution, that wouldn't work, you know. Like one of the girls in [unit name] at the moment, like she was sent to a [unit name] in [place name] for a couple of months and, at that point like, I would go and send her file down to the JLO in [place name]. But then I was told that she's coming back so I never did. But, you know, you just... you'd either email to the JLO yourself, or you could send it through the national office, that this person is no longer... like you can't supervise them. Like, I couldn't be going down to [place name] when she was in [place name].
(CJ08, Gardaí)

One of the JLOs interviewed felt that the local Garda Youth Diversion Projects in his area were ill-equipped to deal with the presenting needs of children in care and that there was a concern that residential care should be providing more structures for young people to engage:

Rarely. I don't send any of my kids in care to the Gardaí diversion project mainly because the project tends to say well those kids are in full time care instead so why do they need another you know, another level of intervention? But I think there is work that could be done... on the Gardaí diversion project that they could have more of an impact, I don't know how that's done because obviously they're liable to say well these kids are in care, the care home have staff there that should be trained, you know, the kids should be doing more with the care staff. But I don't think that happens in my experience here locally.
(CJ09, Gardaí)

A respondent from the residential care sector involved in service delivery across the country noted inconsistencies in responses to young people by both the Courts and the Gardaí:

... it depends what judge you get up in front of, some of the judges will give them chance after chance after chance, some of the judges will throw the book at them. So there's an element of

inconsistency around the country in relation to what actually happens... I think the JLO service, depending on what part of the country, is inconsistent at times as well. I think some of the JLOs will take a particular interest in a particular child, maybe based on their history and stuff like that, and some of them will try and pass the buck to another area, the child goes to a different area, etc. It's very inconsistent. If the child is very engaging, the JLOs will engage with them; if the child is not the kind of, they're moving forward a lot quicker, for the kid to end up in the court system, whereas some of the JLOs would work more closely with the kids, would do everything in their power to keep them out of the criminal justice system, in terms of going to court and stuff. But again, it really just depends on the area. (CJ15, Residential Care)

Because the Garda Diversion model is premised on engagement by the young person, the fact that young people may face multiple onward referrals when they move placements is clearly an issue that merits further attention, in particular to ensure the fit of the diversionary model for children in care in these situations. The Diversion Programme Policy Unit in the Garda Youth Diversion Office is currently exploring how children in care are dealt with at a national level, including how information sharing takes place to ensure that cases involving children from care are dealt with more appropriately. A regional pilot is also taking place with a focus on developing clearer lines of communication between Tusla, An Garda Síochána and residential care providers at a local level. The learning from this pilot should be made available and used to develop national policy.

Bail Supervision Scheme

The Irish Youth Justice Service has introduced a pilot Bail Supervision Scheme (BSS) based on a Multi-Systemic Therapy (MST) model to reduce the use of remand to custody of young people. MST is an intensive family and community-based treatment program. The BSS is run by Extern and has been operational in Dublin and surrounding areas since mid-2017. The service receives referrals either directly from the Dublin Children Court when the judge is considering remanding a young person to custody or from Oberstown Children Detention Campus when a young person has been placed there on remand. The young person and their home situation is assessed and the service operates through working intensively with a primary carer and the wider family system to a planned programme of work which, in the case of the BSS, includes adherence to bail conditions. The service is currently being evaluated, but initial indicators suggest that it has been successful in reducing re-arrests and supporting families and there are plans

to extend the service (CJ5, CJ16). However, for the most part, this scheme is not available to young people in care. During interviews the reason for this was explained:

The main criteria is that they have to have a primary caregiver who they are living with. That is based on the fact that MST is focusing on improving parenting skills, improving families, improving family functioning. So the parent needs to be in the family home for the parent to practise and develop those skills. (CJ16, NGO Service Provider)

It's very straightforward, a young person is placed on remand, the work was around the support that the family could provide for the young person when they were released from remand. So there was some work being done with the young person but the key work was with the family. So the question was, if you have a young person in care, who are you working with? So, yes, there was a view that you don't know what residential unit they're going to go to ... if there is no family... So it was something that we can't even go there. (CJ06, Children Detention Campus)

The fact that the scheme is not generally available to young people in care (although there is a possibility that it may be offered in long-term foster placements where there is an 'emotional bond') is a recognised gap in the service:

It is something that we have definitely noticed as a gap. So I suppose the logic behind not working with young people in care is that many of the interventions that we will be suggesting about boundaries, about maybe parenting, maybe rule-setting, you would presume that within a care structure that they would be in place. Or there would be some sort of behaviour management in place, ... we have often discussed it as a team like is there something where we could go in like as a support to staff? (CJ16, NGO Service Provider)

Information provided to us by Extern shows that, of 33 referrals to the service in 2017, two young people were deemed unsuitable due to being in care. In the first six months of 2018, of 14 referrals received, two were deemed unsuitable because of their care status (one of these young people was a re-referral from the previous year). While this is a pilot project, there is a clear issue with equity of service provision for young people in care regarding access to the Bail Support Scheme (see also: Shannon, 2018). This is an area that the Irish Youth Justice Service should address as it progresses to extend the pilot of this scheme.

Criminal Records

The issue of criminal records is one that does not receive wide attention within the youth justice system, despite the possible impacts of criminal records on education, employment and other areas (IPRT, 2017; Carr, 2019). This may be because of a misapprehension that diversionary disposals will not be subject to criminal record disclosure and/or that sanctions within the youth justice system are not subject to disclosure when a young person reaches 18. However, as the most recent report of the *Committee Appointed to Monitor the Effectiveness of the Diversion Programme* observes, there are legislative discrepancies between the provisions of the *Children Act, 2001* and the *National Vetting Bureau (Children and Vulnerable Persons) Acts, 2012 to 2016*, whereby convictions of children under 18 should not generally be disclosed for vetting purposes, but a child's inclusion in the Diversion Programme can be made subject to disclosure (An Garda Síochána, 2017).

Clearly this is an area that needs to be addressed. More broadly, the question of information held on the PULSE system in relation to children was also raised in interviews. This arose from a concern voiced by Gardaí that, in their view, some staff in residential centres did not fully appreciate the fact that reports on incidents relating to children were recorded on the PULSE system:

Once that report is made to us and it's on the system, that's it like. There's no, like, this will just disappear in days or gone like, do you know. This could end up a record, it could end up with them getting a conviction. That's the reality, you know.
(CJ09, Gardaí)

The treatment of a young person's criminal records needs to be reviewed to ensure that there is consistency across various legislation, and greater clarity should be provided on how information is created and stored on PULSE.



Leaving care and especially leaving residential at 18 years old, like being in care, it leaves a social imprint on young people and their life trajectory is delayed, you know. They're not ready to leave residential at 18 years old and you'll see it, it's so obvious, it's so obvious to me, anyway that these young people are ending up in the criminal justice system when they don't mean to be. They need to be still in a house [in care] until they're 21.

(CJ02, Advocate)

Transitioning from Care

The point at which a young person transitions from care is a key point in their lives. Depending on their age and personal circumstances, for some, leaving care may mean a return to the family home while for others it may mean a move to more independent living. Similarly, for some young people this transition is planned and they have time to prepare while for others the transition can be more abrupt. International research on leaving care provisions and young people's experiences shows that in the context of extended transitions to adulthood, young people from care often have to make the transition to adulthood at a more accelerated pace with fewer supports (see for example: Stein & Munro, 2008; Singer & Berzin, 2015; Cameron et al., 2018). The inequity of this situation has led to an increased policy and practice focus on strengthening leaving and aftercare supports.

The *Child Care Act, 1991* as amended by the *Child Care (Amendment) Act, 2015* places a statutory duty on Tusla to prepare an aftercare plan for every 'eligible' child. An 'eligible' child is a child aged 16 years or over who is or has been in the care of the Child and Family Agency for a minimum period of 12 months since age 13. The legislation requires Tusla to carry out an assessment of need and prepare an aftercare plan before the child reaches the age of 18 and to prepare aftercare plans on request for an eligible adult. An eligible adult is defined as a person aged 18, 19 or 20 years who was in the care of the Child and Family Agency for a period of not less than 12 months in the five-year period immediately prior to the person reaching the age of 18 years. These legislative provisions were enacted in September 2017 and have now been in place for a little over one year.

Respondents from Tusla noted the policy developments in the area of aftercare and the 'significant resources' that have been invested in service provision, including the development of dedicated aftercare teams and drop-in services. Data on aftercare published by Tusla in 2018 which reports on young people aged 18–22 years in receipt of an aftercare service shows that almost half of care-leavers remained in their care placements, approximately one-third were living independently, 10% returned home and 9% were living in 'other accommodation' (Tusla, 2018a). We were informed that young people in prison are included in this 'other' category but that this information is not disaggregated:

We do collect the living arrangements of those over 18... and there is a section in it 'other' and the percentage in it is quite low but that includes prison ... because it is so small we did not break it down.
(CJ18, Tusla)

During interview, advocates working with young people spoke about the challenges faced by some in accessing aftercare supports and also reported what they perceived as inequities in provision for young people in residential and foster care respectively:

Young people leave residential at 18 years old, whereas if you're in foster care you might get to stay on until you're 21 or 23. So as one of the young people said the other day, just discussing with her if she would have like to have participated in this and she said, 'Well it's easy - care, homelessness, drugs, prison, what else do you want to know?'
(CJ02, Advocate)

The Tusla (2017a) *National Policy on Aftercare* notes that the services offered to a young person will be informed by the assessment of need undertaken by the agency. The policy guidance further elaborates:

The aftercare service is mainly an adult service, which is dependent on cooperation, and participation of the young person/young adult. The young person/young adult will be asked to sign a service agreement on their initial engagement with the aftercare service. This agreement will provide an outline of the expectations of the young person/young adult and the aftercare service. It also includes a commitment from the young person/young adult, the social work department/key personnel, foster carers and the aftercare service to work in a respectful and collaborative partnership in the development of the aftercare plan.
(Tusla, 2017a: 14)

The aftercare supports provided can include an allocated aftercare worker (up to age 21 years or up to 23 years for those in education and training), a drop-in service providing advice and support and financial support (again up to age 23 for those in education and employment). Tusla (2017b) has also published guidance on *Complex Needs in Aftercare*, outlining that some young people may require additional supports. The following definition is provided:

People with complex needs are understood as having multiple issues in their lives which can include mental health and/or addictions, developmental issues, involvement in the criminal justice system, finding and maintaining housing.
(Tusla, 2017b: 1)

The guidance elaborates on the needs of young adults with disabilities, young people experiencing difficulties with substance misuse, those with mental health needs, young people who are parents and separated children seeking asylum. However, there is no further reference to the support needs of young people involved in the criminal justice system.

As the extract from the guidance above illustrates, aftercare provision is clearly predicated on a model of engagement with the young person in that the young person should be involved in the assessment process and work collaboratively with Tusla. These aspirations are clearly in line with best practice regarding the meaningful participation of young people in their care and aftercare planning (Glynn and Mayock, 2018). However, part of the difficulty identified by some respondents in this research was that this model of practice does not address the issue of young people who have difficulty engaging with services, including those involved in the criminal justice system and who are precisely those who may require most supports:

And EPIC of course would, say, have a lot of advocacy around those particular young people but then again a lot of them just drop off the system – they become our young adults in prison basically, you know.

(CJ07, NGO Service Provider)

The stipulation that a young person must have been in care for a period of 12 months (either consecutively or cumulatively) from the age of 13 does not adequately address the needs of young people who spend significant periods in difficult and unstable home situations and/or on the ‘edges of care’ (Ombudsman for Children, 2016, 2018). As one advocate explained, this was a particular issue for one young person she worked with and this was not an uncommon occurrence:

One young person is very vulnerable because she’d been in and out of care an awful lot and she wasn’t sure whether she was in care or not. She thought she was looking back and then she was one of our cases. And as soon as she went into Oberstown they [Tusla] kind of closed the book and then she went on and she ended up in adult [prison] afterwards and it was still very difficult to get any, even the terms of her social welfare rights, to get a social worker to write her a letter to find out exactly whether she was... that would have been... one particular case... there is definitely a lack of clarity.

(CJ02, Advocate)

The cut-off point for the provision of aftercare supports is somewhat arbitrary and does not align with wider government policy (e.g. *Better Outcomes, Brighter Futures*), which extends to the age of 24 years. Furthermore, the statutory provision that young people who are in education and training can receive aftercare supports for longer periods than those who are not (up to age 23 compared to age 21), disadvantages young people who may have experienced educational difficulties, again the young people who may have experienced the most disruptions in care (Darmody et al., 2013).

And EPIC of course would, say, have a lot of advocacy around those particular young people but then again a lot of them just drop off the system – they become our young adults in prison basically, you know.

(CJ07, NGO Service Provider)

Transition from Youth Justice to the Adult Criminal Justice System

On reaching adulthood, in addition to transitioning from care, some young people transition from the youth justice to the adult criminal justice system where they encounter a very different approach. As outlined earlier in this report, for the most part, the Irish youth justice system is based on a diversionary model whereby the majority of youth offending is dealt with through the Garda Youth Diversion Programme (GYDP). There are no limits to the amount of times that a young person can be subject to diversion. This approach changes markedly when a young person reaches adulthood and, for some young people, criminal charges quickly accumulate resulting in processing through the courts and an escalation in possible penalties. As advocates working directly with young people told us, for some this transition can be particularly stark:

You'd have kids picking up different charges and then it wasn't until after the 18th birthday, bang, wallop.
(CJ03, Advocate).

It's not uncommon that we've been working with young people who we've been engaged with them from the time they're 17/18 and they've already been in trouble with the guards and accumulated a number of outstanding warrants and they continue to offend, maybe shop-lifting, feeding drug-related habits and whatever and then they're in Mountjoy or Wheatfield.
(CJ04, Advocate)

In recognition of the fact that the transition to adulthood does not occur abruptly at age 18 and involves a longer process of maturation, some countries have adapted their youth justice systems accordingly. For example, in Germany and the Netherlands the age remit under which young people can be dealt with through youth justice measures has been extended to the early 20s (Pruin and Dunkel, 2015). Previous research conducted by IPRT has identified the need for such an approach within the Irish system, particularly in light of the proportion of young adults in the prison population (Costello, 2015).

The *Strategic Review of Penal Policy (2014)* recommended the extension of the Garda Youth Diversion Programme to young people aged 18–21, but to date this recommendation has not been implemented. International research on the experiences of care leavers shows that some young people may become involved in the criminal justice system in early adulthood because of wider experiences of exclusion and lack of supports (Cusick et al, 2012; Fitzpatrick & Williams, 2016). Therefore, extending the remit of the youth justice system to young adulthood may be of particular benefit to young people in this situation. The next

review of the Youth Justice Action Plan (the current plan dates from 2014–2018) by the Irish Youth Justice Service may therefore provide an opportune time for this recommendation to be taken forward.

Data Deficiencies and Transitions

The problem of data deficiencies is a clear thread running through this report. The issue of the adequacy of available data in relation to children in care and those who have left the care system in particular, is highlighted as an area that requires attention. In its response to the publication of the *Report of the Commission to Inquire into Child Abuse (Ryan Report) (2009)*, the government noted the following:

There has been no systematic follow-up of all young people who have left care, so it is not possible to estimate the percentage who experience difficulties beyond those normally encountered in the transition from adolescence to adulthood. Research and other reports have identified a higher representation of children who were in care than in the general population who, as young adults, access homelessness and mental health services.
(Office of the Minister for Children and Youth Affairs, 2009:48)

Following the publication of the *Ryan Report*, the government committed to strengthening aftercare provisions and to instigating a longitudinal study that would track the outcomes for young people leaving care. However, to date this latter action has not been implemented.

As the Ombudsman for Children (2018) notes, the development of an indicator set to monitor and assess the implementation of the *Better Outcomes, Brighter Futures National Policy Framework*, will assist in providing aggregate headline information and a general picture of how children in Ireland are faring. However, it does not capture outcomes for young people leaving care nor does it capture potential areas of intersection including, for example, the number of children with care experience who have contact with the criminal justice system. For instance, the indicators that will be used to measure the health and wellbeing of children and young people in care and aftercare are the percentage of young people in receipt of aftercare support in full-time education and the percentage of children in care on their third or more care placement within a 12-month period. The measures used to establish levels of offending by children and young people are the numbers of referrals to the Garda Youth Diversion Programme, the numbers in juvenile detention and under the supervision of the Probation Service. Furthermore, the quality of the information provided is dependent on the quality of the source statistics.

There is therefore clearly a need to track the outcomes for children leaving care in a more systematic and in-depth way in order to establish if there is a greater prevalence of people with experiences of care coming into contact with the criminal justice system over time (including in the period of young adulthood). Indications from other research suggest that people with prior care experience may be over-represented in the adult prison population. For example, recent research by O'Malley (2018) found that 11% of female prisoners who were also mothers reported a prior care history. Earlier research conducted by O'Mahony (1997) noted the numbers of prisoners who had a prior history of 'institutional care' while research by Kelleher et al. (2000) found that some young people lacking adequate leaving care supports transitioned into the criminal justice system.

Certainly, the evidence from other jurisdictions suggests that there is an issue with the over-representation of people with care experience within the prison system. For instance, research conducted in England and Wales has shown that prisoners are 13 times more likely to have been in care as a child (Social Exclusion Unit, 2000), while the Scottish Prisoner Survey (Carnie et al., 2017) records that a quarter of prisoners report being in care as a child. As noted earlier in this report, the reasons for this are complex and merit further exploration. However, there is a clear need to address the lack of data and knowledge about the longer-term outcomes for care leavers across a range of domains and in particular in relation to contact with the criminal justice system.





4. Conclusion

This small-scale exploratory study has documented concerns on the part of a number of stakeholders including children's advocates, the Gardaí, Tusla and the Oberstown Children Detention Campus, about the extent to which some young people from care come into contact with the criminal justice system. There has been a lack of sustained policy attention in this area, evident in the fact that no statutory agency systematically collects data on this topic. Particular issues have been highlighted in relation to residential care provision and the circumstances under which children can be prosecuted for offending within their care placements. There is a lack of national policy in this area and, as a consequence, potential for differential treatment across care settings. Children in these situations most often present with complex needs and there is a clear need for a coordinated response across a range of agencies. Particular issues have also been identified in relation to the fit and responsiveness of services for children in care and the need for sustained supports as young people transition from care. In the next and final section of the report we make a series of recommendations aimed at addressing these areas.

Recommendations

Inter-Agency Working

1. A joint protocol aimed at addressing the involvement of children in care with the criminal justice system should be developed by the Department of Children and Youth Affairs and the Irish Youth Justice Service with the involvement of An Garda Síochána and Tusla. Such a policy should address reporting, areas of responsibility, joint training between different professionals, responses to incidents and the potential for restorative and diversionary approaches to address offending in care placements.

(Department of Children and Youth Affairs and the Irish Youth Justice Service)

2. The findings from the regional pilot addressing the interaction between Gardaí, Tusla and residential care providers should be made available and inform the development of a national policy on how the Garda Youth Diversion Programme can respond appropriately to children in care.

(An Garda Síochána and Tusla)

Equal Access to Service Provision

3. The Irish Youth Justice Service should consider adaptations to the Bail Support Scheme to ensure equity of service provision for young people in care.

(Irish Youth Justice Service)

Data Collation

4. Tusla should develop a mechanism to systematically record and report on the numbers of children in care and those in receipt of aftercare services coming into contact with the criminal justice system. Such data should be included as one of the 'outcome' measures in the *Annual Review of the Adequacy of Services* and be used to inform practice and policy going forward.

(Tusla (The Child and Family Agency))

5. The Department of Children and Youth Affairs should consider the information (see Rec 4.) from Tusla as an outcome indicator in the indicator set for *Better Outcomes, Brighter Futures* to be used to inform practice and policy going forward.

(Department of Children and Youth Affairs)

6. As part of its commitment to using data and research to inform policy-making, the Department of Justice and Equality should commission research on the extent to which people with a care history are represented within the prison population.

(Department of Justice and Equality)

7. An Garda Síochána should develop a national information system that allows them to report on the extent to which children in care come into contact with the criminal justice system.

(An Garda Síochána)

Policy

8. In its review of the Youth Justice Action Plan, the Irish Youth Justice Service should consider the specific needs of care-experienced young people.

(Irish Youth Justice Service)

9. The Irish Youth Justice Service in conjunction with An Garda Síochána should implement the recommendation of the Strategic Review Group of Penal Policy (2014) to extend the remit of the Garda Youth Diversion Programme to young adults. This may require an amendment to the Children Act 2001.

(Irish Youth Justice Service, An Garda Síochána and the Department of Children and Youth Affairs)

Awareness Raising and Training

10. The Department of Children and Youth Affairs and the Irish Youth Justice Service should consider the development of joint training for professionals working with children in care. This training should focus on understanding the reasons that children from care come into contact with the criminal justice system and the means through which this can be reduced, including strategies such as de-escalation and management of challenging behaviour, restorative practices and trauma-informed practice.

(Department of Children and Youth Affairs and Irish Youth Justice Service)

Transitions from Care/Aftercare

11. Tusla should revise its guidance on *Complex Needs in Aftercare* to provide explicit guidance on the needs and supports required for young people in contact with the criminal justice system. The guidance should also address meaningful responses to young people who disengage from services, including the provision of more flexible in-reach supports for young people involved in the criminal justice system.

(Tusla)

Legislative Provisions

12. In revising the *Child Care Act, 1991* the government should incorporate an obligation to implement any aftercare plan. It should further strengthen and prioritise placement stability/permanency, aftercare provision (including broadening the definition of an eligible child/young person), extending the age range for supports provided and ensuring that there is equity in provisions for all young people irrespective of whether they are in education and training.

There is an evident need to track the longer-term outcomes for young people leaving the care system in order to best meet the needs of children and young people, inform best practice and service delivery. The government should meet its commitment made following the publication of the *Ryan Report* to carry out longitudinal research on the outcomes for children leaving care. Such longitudinal research should include a focus on subsequent contact with the criminal justice system. This could be provided for and incorporated into the amended legislation, *Child Care Act, 1991*.

The treatment of a child's criminal records needs to be reviewed to ensure that there is equivalency across various legislation, and greater clarity should be provided on how information is created and stored on PULSE.

(Department of Children and Youth Affairs)



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Appendix 1: Membership of Research Advisory Group

Catherine Bond, Irish Foster Care Association

Karla Charles, EPIC

Eddie D'Arcy, Solas Project

Nuala Finn, An Garda Síochána

Michelle Martyn, IPRT

Appendix 2: Organisation Respondents to the Call for Submissions

Le Chéile Mentoring and Youth Justice Support Services
Care Leavers' Network
Focus Ireland
Cork Life Centre
Barnardos

The authors also received a number of individual submissions in response to the call for input.



IPRT
Irish Penal Reform Trust



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