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EMMA COLVIN, CENTRE FOR LAW AND JUSTICE,  
CHARLES STURT UNIVERSITY

## **Care-experienced children and the criminal justice system: A UK case study**

Twitter: @DrEmmaColvin



# Outline

- What is OOHC?
- Who is in OOHC?
- Over-representation;
- Our Study – method and key findings;
- UK experience and UK case study: respondent views on over-representation, initiatives in the residential care environment, policing and custodial settings;
- Concluding thoughts.



# What is OOHC?

- Types of care
- Demographics:
  - 1 in 35 children have come to the attention of child protection services;
  - 55,300 in 2017/18 (AIHW, 2019);
  - 1-2% of total child population (DOCS, 2007);
  - Increasing numbers (AIHW, 2019);
  - \$5 billion industry (Steering Committee for the Review of Government Service Provision, 2019);
  - 52%/48% boys/girls (AIHW, 2019);
  - Overrepresentation of Indigenous children (AIHW, 2019; Mendes, Saunders, and Baidawi, 2019).



## Who is in OOHC?

- Complex needs, trauma backgrounds = trauma informed behaviour;
- Reasons for entering OOHC, e.g. neglect, abuse, violence;
- Health, emotional and behavioural issues;
- Cognitive impairment;
- Poorer educational and career outcomes;
- Substance use;
- Suicidal ideation; and
- Involvement in the Criminal Justice System (CJS).



## Overrepresentation in the CJS

- Common thread in Australia (Cashmore, 2011; Malvaso and Delfabbro, 2015; McFarlane, 2017; Gerard et al 2019);
- Internationally (Howard League, 2017 – England and Wales; Carnie and Broderick, (2015) – Scotland; Ryan and Testa (2005) – USA; and Vinnerljung & Sallnäs, 2008- Sweden); and
- Historically (Stanley, 2017).

## UK Experience

- Similarities in over-representation;
- Jay (2014) Inquiry after Rotherham and Rochdale;
- Other Inquiries – Howard League (2017), Narey (2016), Prison Reform Trust (2016);
- Shift in response to care-experienced children.



# Method

## Pilot Study (2014-16)

- OOHC providers (non-govt not-for profit & for profit agencies) (n= 17);
- NSW Police (n=10)
- Juvenile Justice (n=7);
- Legal Aid, Aboriginal Legal Service and community lawyers (n=10);
- Family and Community Services (n=5).

## Current Study (2017-19)

- UK Practitioners, n=11;
- Interviews with magistrates, n=10;
- Additional cohort interviews = legal 4, JJ 12;
- File reviews of Children's Court matters (crime), n=107;
- Observation of Children's Court matters, n=150 hours.

Total interview participants n= 86.



## Contributing Factors

- Residential Care Environment;
- Responses to trauma informed behaviour;
  - Royal Commission into Institutional Responses to Child Sexual Abuse;
- Systemic issues;
  - Resourcing;
  - Training and experience; and
  - Attitudes.





## Examples of how this happens

- Police being used as a behaviour management tool;
- A lack of training and recognition of trauma informed behaviour;
- Less access to support in the court environment;
- Difficulty in being granted bail, particularly relating to accommodation requirements; and
- A general lack of recognition of the specific needs of the care-experienced child.



## UK Case Study

- Focus on England and Wales;
- Selected based on findings from our pilot study;
- Participants from 10 agencies in the UK who are involved in developing, researching and implementing policies and practices to shift the culture;
- Aim to establish a shared understanding of how to reduce the over-representation of those with care experience in the criminal justice system;
- Four aspects: respondents' views on over-representation, analysis of initiatives in OOHC, policing and custodial settings.

## Respondents' views on over-representation

Commonality of understanding of over-representation, criminalisation and the driving factors;

- ‘...concern that children in care are perhaps held to higher account maybe for their behaviour than children who live in private homes’ (UK1).
- ‘...nobody seems to care about this child, so actually the police officers dealing with it don't care either and so it replicates that whole forgotten, abandoned child, the behaviour is replicated by all those dealing with them which is terrible and a real indictment [on] our system’ (UK 4 Police respondent).
- ‘...as carers, as corporate parents, were calling on the criminal justice system to manage the behaviour too much, too often’ (UK10);
- ‘...only 10% (of police callouts) were related to criminal offending, while the rest pertained to missing or welfare issues’ (UK7).

# Impact of Recent Initiatives

UK Government's 2013 Care Leaver Strategy (including Care Leaver Champion);

Shifting practice from punitive to holistic and relational approaches: Significant reductions in children entering the CJS:

- Surrey: 92% reduction in first time entrants in ten year period;
- UK-wide 85% reduction in first time entrants (UK Department of Education, 2018);
- 'Surrey county have managed for the last two years to not bring somebody new from the care system into the criminal justice system who wasn't already there at all' (UK4);
- 65% reduction in the overall numbers of all children coming to police attention (UK10);
- Reduction in prison numbers, particularly girls (UK2).

# Residential Care Environment

- Training and education: social pedagogy
- ‘...a duty to get ahead of that behaviour and be as good as we can possibly be’ (UK10).
- Stronger child voice in care and decision-making;
- Better monitoring and reflexive practice.



# Policing

- National Strategy for the Policing of Children and Young People – acknowledges over-representation and trauma informed behaviour, focuses on building strong partnerships;
- National Protocol – child centred policing strategy (UK Department of Education, 2018);
- Stronger partnership between police and carers – multi-agency responses (South East Protocol to Reduce Offending and Criminalisation of Children in Care);
- Not always a punitive response: ‘We might call the police to help us because there’s a riot in the home but that doesn’t mean we’d actually want them to prosecute every child in the home’ (UK10);
- Listening to children – guest seminars/presenters.



# Custody

- Rejection of the idea that in order to get support in place for a child they need to come before the court;
- Therapeutic responses outside the CJS needed;
- Welfare needs and homelessness not a reason to hold a child in custody;
- Restorative interventions can be used for serious offending – relational approach, encourage child to take responsibility;
- Better identification, collection of data, and linking up with resources;
- Care-leaver reps in prison – address stigma, increase visibility.

## Concluding Thoughts

- Pockets of change
- Positive Results
- Lessons for Australia
  - Child centred approach
  - Protocols
  - ‘it’s about a shift in attitude not in practice’ (UK4).
- BUT! Needs to be contextualised to the Australian experience – colonisation, intergenerational trauma,
- Indigenous led, strengths based approaches.





# References

- Australian Institute of Health and Welfare. (2019). *Child protection Australia 2017-18*. Canberra: Australian Institute of Health and Welfare.
- Carnie, J., & Broderick, R. (2015). *Prisoner Survey 2015* (Vol. 15): Scottish Prisoner Service.
- Cashmore, J. (2011). The link between child maltreatment and adolescent offending: Systems neglect of adolescents. *Family Matters*, 89, 31-41.
- Department of Community Services (DOCS) (2007) *Annual Report 2006/07*, Sydney, Australia: Department of Community Services.
- Department of Education. (2018). *The National Protocol on reducing unnecessary criminalisation of looked-after children and care-leavers*. London: UK Government.
- Gerard, A., McGrath, A., Colvin, E., & McFarlane, K. (2019). 'I'm not getting out of bed!' The criminalisation of young people in residential care. *Australian & New Zealand Journal of Criminology*, 52(1), 76-93. doi: 10.1177/0004865818778739
- HM Government (2013) 'Care Leaver Strategy: A cross departmental strategy for young people leaving care', UK Government: London
- Howard League. (2017). *Ending the criminalisation of children in residential care: Briefing one*. London: Howard League.
- Jay, A. (2014) *Independent Inquiry into Child Sexual Exploitation in Rotherham 1997–2013*, Rotherham: Rotherham Metropolitan Borough Council.
- Malvaso, C. G., & Delfabbro, P. (2015). Offending behaviour among young people with complex needs in the Australian out-of-home care system. *Journal of Child and Family Studies*, 24(12), 3561-3569. doi: 10.1007/s10826-015-0157-z
- McFarlane, K. (2017). Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian & New Zealand Journal of Criminology*.
- Mendes, P., Saunders, B., & Baidawi, S. (2019). The Experiences of Indigenous Young People Transitioning from Out-of-Home Care in Victoria, Australia. *Leaving Care and the Transition to Adulthood: International Contributions to Theory, Research, and Practice*, 149.
- Narey, M (2016) 'Residential Care in England' (Report of Sir Martin Narey's Independent Review of Children's Residential Care, Department of Education.
- National Police Chief's Council (2015) 'National Strategy for the Policing of Children and Young People', National Police Chief's Council: London.
- Prison Reform Trust. (2016). *In Care, Out of Trouble. An Independent Review Chaired by Lord Laming*. London: Prison Reform Trust.
- Ryan, J. P., & Testa, M. F. (2005). Child maltreatment and juvenile delinquency: Investigating the role of placement and placement instability. *Children and Youth Services Review*, 27(3), 227-249.
- Stanley, E. (2017). From care to custody: Trajectories of children in post-war New Zealand. *Youth Justice*, 17(1), 57-72.
- Steering Committee for the Review of Government Service Provision 2019. *Report on government services 2019*. Canberra: Productivity Commission.
- Vinnerljung, B. & Sallnäs, M. (2008). Into adulthood: a follow-up study of 718 young people who were placed in out-of-home care during their teens. *Child & Family Social Work*, 13(2), 144-155.

