

Submission to the Northern Territory Social Policy Scrutiny Committee: Youth Justice and Related Legislation Amendment Bill 2019

CREATE Foundation

A 11/16 Malak Crescent

Malak, NT 0812

T 08 8945 9993

E nt@create.org.au



About CREATE Foundation

CREATE Foundation is the national consumer body representing the voices of almost 46,000 children and young people in the out-of-home care system, as well as those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential, in line with our mission to:

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

We achieve our mission by providing a variety of programs and services for children and young people in care.


Introduction

CREATE welcomes the opportunity to comment on the Northern Territory's *Youth Justice and Related Legislation Amendment Bill 2019* (the *Bill*). In submitting this paper, CREATE acknowledges the commitment the Northern Territory Government is demonstrating to address the recommendations that emerged from the 2017 *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory* (the *Royal Commission*). CREATE advocates for an ongoing commitment to the reduction in the overrepresentation of children and young people with a care experience in the youth justice system, and that young people who do come into contact with the justice system have their rights upheld and their well-being maintained.

Bail conditions and arrest: Need for inter-agency collaboration

CREATE commends the proposed changes moving to a presumption in favour of granting bail to young people, and removing the breach of bail as a criminal offence. CREATE further supports changes that bail determinations take into account the complex needs of young people, and ensure that young people are not denied bail solely on the grounds that they do not have adequate accommodation.

Research, such as that by Cashmore (2011), has identified that young people in care are often denied bail due to insecure accommodation, often the result of placement instability or inappropriate matching of placements. Further, evidence suggests that young people in care have difficulties in complying with bail conditions, particularly when they have an intellectual disability, are homeless, or lack practical support, such as being assisted to attend appointments (McFarlane, 2015). The proposed



changes are positive steps towards reducing the overrepresentation of young people with a care experience in the youth justice system.

Ensuring that the bail conditions imposed on the young person are appropriately tailored to the individual circumstances requires collaboration and communication between the child protection system and the youth justice system. A consultation undertaken by the CREATE Foundation (2018) with young people found that young people are often not supported by the child protection workers and carers when they attend court, which was also evidenced by accounts submitted to the *Royal Commission*. This may be due, as Mendes, Baidawi, and Snow (2012) found, to the lack of clarity around the responsibilities between child protection and youth justice workers when a young person is subject to dual orders.


Appropriate training and resources are needed to ensure police and court officials are aware of the complexities found in the out-of-home care environment, and that they understand the need to contact and collaborate with child protection workers. However, resourcing also is needed to enable caseworkers (who often face time constraints due to large caseloads) to engage in appropriate inter-agency decision-making processes.

Further, even if young people are not denied bail solely on the grounds that they do not have adequate accommodation, there needs to be a concerted effort to improve the range and number of accommodation options, including carers with capacity to provide care and protection for young people newly placed in OOHC or those carers have multiple young people in their care and bail conditions prohibit contact with other young people who may have been involved in similar circumstances. Effort is also required to upskill carers and residential workers so that they may better understand and support young people to comply with bail conditions.

It is well-documented that young people in care often come to the attention of police due to care-criminalisation processes, where carers and workers respond to challenging (non-criminal) behaviours by calling on a criminal justice response that would be unlikely to occur in a non-care environment (McFarlane, 2018).

Police were called out to the residential facility because I was using bad language towards to workers. (Female, 24)

I had problems with one of the girls at the resi, she kept on stealing my stuff, we got in an argument, she hit me, the workers weren't there at the time but they called the cops and the cops took me away... The police and the resi worker did not ask me what happened, they probably heard me shouting and thought it was my fault. (Female, 25)



Criminalisation processes can result in young people in care having increased contact with police, in turn increasing their risk of being charged and taken into custody, and potentially exposed to more criminogenic behaviours of serious offenders. While Section 16 in the amendments states that arrest should be utilised as a last resort, CREATE is concerned that the increased contact between young people and police for non-criminal, yet challenging behaviour may have undue influence on police decisions. Not only does the capability of carers and residential workers to respond in a therapeutic and trauma-informed manner need addressing, but also police as well may benefit on training about the effect of the care experience on young people.

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

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

Understanding rights: Need for support

In a recent consultation conducted by CREATE (2018), young people often spoke of being confused about judicial procedures, including what their charges were and details such as the date and time of when they were to attend court.

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


Two days later I was caught without a train ticket and the police said there were two warrants out for my arrest. No one had told me anything about that, they just said to tell my side of the story and that was it. They threw me in a cell, they didn't tell me what was happening and I didn't get any food until 11.30pm. (Female, 19)

Such confusion was associated with increased fear and anxiety, in conjunction with feeling intimidated by police.

I was worried. It was my first time in the justice system. There were numerous steps. I went from one jail to another jail. They had to do assessments, but they ended up just putting me where they had a bed. (Male, 23)

They took me from the house, they locked me in one of the holding cells and took my shoes and stuff (laces). They didn't explain what was happening. The police and the resi worker did not ask me what happened, they probably heard me shouting and thought it was my fault... Nobody explained what was going on, I got stressed out and anxious. (Female, 25)

It was so late when they caught me, so my Dad couldn't even call a social worker. My Dad didn't know what to do. They took my fingerprints. That made me felt violated. No one was explaining anything. I didn't tell them anything because they were against me not with me. (Female, 25)



CREATE's national survey assessing jurisdictions' performance against the *National Standards of out-of-Home Care* further found that young people are unaware of state and territories *Charter of Rights for Young People in Care* (McDowall, 2018); for example, in the Northern Territory, just under 30% knew of their *Charter of Rights*. This could relate to resourcing issues with child protection staff not taking the time to inform young people when they are in care about their rights, or relate to how information is explained, which requires accessible language and tools. Regardless, implications of this remain the same, young people do not know how to navigate a child protection system when they are concerned. Further evidence that young people in care are often uninformed of their rights is the lack of knowledge regarding complaint processes; approximately a third of young people in the NT did not know how to lodge a complaint if they had concerns about their treatment in care (McDowall, 2018). Just under a third of respondents nationally report having a complaint, but deciding not to follow through, citing being afraid of potential consequences, or doubting they would be believed (McDowall, 2018).

I didn't know how to make a complaint when I was in prep and my carer used to hit me. And I thought no one would believe me. (Female, 13)

While amendments to Section 15 state that police are to provide explanations and inform young people of their right to legal representation, CREATE remains concerned that this will not occur, given the already training and awareness needs of policing roles. There must be oversight mechanisms in place to ensure this right is upheld, as well as a commitment to ensuring young people have access to appropriate support persons who can advocate on their behalf.

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

Amendments to Section 18 will require police to inform young people of their right to legal assistance when being interviewed, and access to a support person such as a friend, relative, or a responsible adult. CREATE acknowledges the compounding difficulties when a young person is in care, where there are protection concerns regarding relatives who could in other instances take on the support role. A carer or residential worker may not be comfortable taking on this role, especially if they contacted police initially. While a caseworker may take on this role, this may not be appropriate or feasible after hours or where there has not been time for the young person to develop a trusting relationship due to caseworker shifts and turnover. It is important that this does not preclude a young person's right to a support person. Where a support person cannot be located, interviews may need to be postponed (as is reasonable considering what offences have been committed and the risk posed to community), without the young person being kept in custody.



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

CREATE also raises concerns as to the proposed amendments to Section 137 of the *Police Administration Act*. This allows a young person to be held in custody, with the necessity of holding the young person in custody reviewed every four hours by a Senior Sergeant or member of higher rank. After 24 hours, police must apply to a Local Court judge to hold a young person for a further four hours. CREATE supports NTCOSS position on these amendments that this is inconsistent with the recommendations made by the *Royal Commission*, i.e., that extension beyond four hours should only be granted by a judge. Further, CREATE agrees with NTCOSS that a maximum time limit should apply for detaining young people in police cells, a reflection of the negative effects of detainment.

CREATE supports the inclusion of “health” as a factor to be taken into account when communicating with young people as a positive step, highlighting the need to consider the impact of disability, mental health, and impacts of trauma on a young person’s ability to process information, all of which disproportionately effect young people in care (Minnis, Everett, Pelosi, Dunn & Knapp, 2006; Tarren-Sweeney, 2008). This again requires a level of training to be provided to police officers regarding the impact of mental health and trauma on young people’s cognitive capacity.

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

Stigmatization of cross-over youth

CREATE commends the proposed changes to Sections 49 and 50, pertaining to proceedings involving youth to be in closed courts and prohibiting information about the proceeding that could lead to the identification of the young person involved. Such amendments, in practice, will contribute to a reduction in stigmatisation and labelling young people as delinquents. Stigma is problematic not only for the ongoing negative effects it can have on a young person’s sense of self and emotional well-being, but also because it may lead to a reluctance to seek police assistance when they feel unsafe.

Police can treat kids in care differently they think we are a bunch of kids that can't be handled and don't have respect for authority, they think we just do what we want we want. They see kids like us completely different. Sometimes they give harsher consequences to kids in care. (Female, 22)

Targeted training and campaigns should be utilised for the justice system to specifically combat any negative perceptions held by the police and court officials.

Young people in care don't have a stable environment and police and others assume they are trouble makers... You feel like people expect you to do the wrong thing. People don't give young people in care a chance to prove themselves so what are they supposed to do, they just think 'oh well I might as well do the wrong thing'. (Female, 22)



Conclusion

CREATE welcomes change that improves interactions and responses within the youth justice system towards young people. However, whether the amendments will lead to a reduction in young people entering the youth justice system, and increased protection for their well-being relies on appropriate resourcing of systems of care, including provision for youth-justice worker training and supervision of practices. Effective implementation of these changes will depend on collaboration between youth justice and child protection systems, and the making of a concerted effort by the departments to address negative stereotypes of young people with youth justice and child protection engagement.

References

- Cashmore, J. (2011). The link between child maltreatment and adolescent offending: Systems neglect of adolescents. *Family Matters*, 89, 31-45.
- CREATE Foundation (2018). *Youth Justice Report: Consultation with young people in out-of-home care about their experiences with police, courts and detention*. Brisbane: CREATE Foundation.
- McDowall, J. J. (2018). *Out-of-home care in Australia: Children and young people's views after five years of National Standards*. Sydney: CREATE Foundation.
- McFarlane, K. (2015). *Care criminalisation: The involvement of children in out of home care in the NSW criminal justice system*. (Doctoral dissertation, University of New South Wales, Sydney, Australia). Retrieved from <https://unsworks.unsw.edu.au/fapi/datastream/unsworks:38185/SOURCE02?view=true>
- McFarlane, K. (2018). 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*. 51(3), 412–433
- Mendes, P., Snow, P., & Baidawi, S. (2012). *Young people transitioning from out-of-home care in Victoria: Strengthening support services for dual clients of child protection and youth justice*. Melbourne: Monash University.
- Minnis, H., Everett, K., Pelosi, A. J., Dunn, J., & Knapp, M. (2006). Children in foster care: mental health, service use and costs. *Eur Child Adolesc Psychiatry*, 15(2), 63-70.
- Tarren-Sweeney, M. (2008). The mental health of children in out-of-home care. *Current Opinion in Psychiatry*, 21(4), 345-349.