



creating a better life
for children and young
people in care

Submission to the Legal Affairs and Community Safety Committee: Youth Justice & Other Legislation Amendment Bill 2019

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About CREATE Foundation

CREATE Foundation is the national consumer body representing the voices of almost 45,800 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 run programs and services across all Australian states and territories for children and young people in foster care, kinship care, and residential care. Our research reports and articles, submissions and policy development allow us to advocate for a better care system.

At CREATE, we believe that to improve the care system, we need to listen to the people who have experienced the system firsthand. This is why youth participation is the foundation of our advocacy. Everything we do is shaped by the voices of children and young people with a care experience.

Introduction

CREATE welcomes the opportunity to comment on the *Youth Justice and Other Legislation Amendment Bill 2019* (the *Bill*). 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.

Young people in out-of-home care are 16 times more likely to have contact with the youth justice system than their peers in the general population (Australian Institute of Health and Welfare [AIHW], 2018). 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). 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 being exposed to more criminogenic behaviours of serious offenders.

Research by the Australian Institute of Health and Welfare (2012), linking available data on child protection, juvenile justice and the Supported Accommodation Assistance Program, shows that children and young people who are involved in one of these three sectors are more likely to be involved in another of the sectors than are children and young people from the general population. Particularly, this research reveals that young people with a child protection history enter juvenile justice supervision at an earlier age.

CREATE supports reforms which are consistent with upholding the *United Nations Convention on the Rights of the Child* (1989). To understand the issues that impact children and young people with a care experience in the justice system, CREATE facilitated interviews with 136 children and young people

throughout Australia in 2016¹. Based on the key findings from CREATE's *Youth Justice Report* (2018) and broader information gathered through our work with young people, CREATE submits the following comments concerning the Queensland Government's proposed legislative amendments.

CREATE is supportive of policy reform that adopts a trauma-informed lens and gives a voice to children and young people involved in the youth justice system. As such, CREATE is supportive of the commitments to remove legislative barriers which contribute to bail refusal. This entails ensuring that bail conditions are appropriate for the young person, and reducing the time period in which proceedings are finalised. Implementation of commitments to enable this change is reliant on training of personnel and resourcing to ensure that the established trajectory from care to youth justice does not continue.

Youth Justice Act Clauses 10 and 18: Bail considerations

CREATE supports the move to clarify the decision-making framework regarding bail, and the presumption of favour of release, with detaining young people as a last resort. CREATE further supports that detainment in custody must not occur simply because the young person is lacking accommodation or family support.

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. However, if young people are 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 appropriate accommodation options available. This includes carers with the capacity to provide care and protection for young people newly placed in out-of-home care, or where carers have responsibility for multiple young people in their care and bail conditions prohibit contact with other young people who may have been involved in similar circumstances. This also includes an assurance from the Department of Child Safety, Youth and Women that accommodation placements will be made available for all children and young people in care within 48 hours of arrest, or when their court matters are finalised (whichever happens first).

Clarification of matters to be considered when making decisions about bail should support police to make decisions aligned with the best interests of the young person such as taking into account their age, maturity level and developmental needs as well as Aboriginal and Torres Strait Islander status. CREATE would argue that the young person's being in out-of-home care should also be taken into account by police. This is related to young people in care disproportionately having developmental delays, mental health concerns, and having experienced trauma, which can all affect young people's cognitive capacity (Baidawi, Mendes, & Snow, 2014; Minnis, Everett, Pelosi, Dunn, & Knapp, 2006; Tarren-Sweeney, 2008). Adherence to this amendment, however, requires a level of training to be provided to police officers regarding identifying and assessing the needs and capabilities of young people they encounter, particularly in regards understanding the impact of trauma.

Young people related, through the *Youth Justice Report* (CREATE Foundation, 2018), that they felt unsupported and discriminated against during their contact with the justice system. They often felt that they were treated unfairly and reported that staff were unaware of the impact of trauma and other causal factors on their behaviours. CREATE recommends additional training for staff and more resourcing for early intervention strategies, as articulated in Atkinson's *Report on Youth Justice* (2018).

The need to ensure bail conditions are appropriate is evidenced by research that demonstrates 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

¹ In this study, a total of 148 children and young people were interviewed. Three had contact with police through their self-harming behaviour, while another nine went to court on routine child protection matters.

appointments (McFarlane, 2018). CREATE Foundation (2018) found that young people are often not supported by child protection workers and carers when they attend court; these workers could inform the court of circumstances which could result in more appropriate bail conditions being set.

The lack of caseworker support may be due, as Mendes, Baidawi, and Snow (2014) argue, to the lack of clarity regarding the responsibilities between child protection and youth justice workers when a young person is subject to dual orders. Additionally, there are capacity constraints on caseworkers when they continually have to deal with large caseloads. Appropriate training and resource allocation 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. Child protection workers in turn must be supported to provide appropriate case work responses. Effort is also required to upskill carers and residential workers so that they may better understand what is required in supporting young people to comply with bail conditions.

Youth Justice Act Clause 7 and Clause 13: Youth justice principles and timely processing

CREATE supports the timely and priority processing of children remanded in custody.

The amendments propose that proceedings should be finalised as soon as possible, and that the system gives priority to young people remanded in custody. Adherence will reduce the likelihood of young people being exposed to confronting situations, and assist the young person reintegrate in their community. It will also aid in reducing the number of young people housed in watch houses, environments unsupportive of young people's well-being. Resourcing is needed to ensure compliance and monitoring is included.

CREATE further recommends that a maximum time limit of 4 hours should apply for detaining young people in watch houses or police cells. CREATE re-iterates that a watch house environment is not conducive to the safety and psychological wellbeing of children and violates their fundamental human rights. Further, watch house staff who are used to responding to adults may not understand how they need to respond to vulnerable young people. Young people in watch houses report lack of access to family, and inadequate nutrition, health care, education, and information about their rights (Willacy, 2019).

Young people should be held in watch houses for the minimum time possible. If it is unavoidable that children and young people are briefly detained in watch houses, their rights under the UNCRC (United Nations, 1989) need to be upheld under the Youth Justice legislation. This requires regulations around using isolation, access to family, education, and health.

Police Powers and Responsibilities Act Clause 43: Providing information about legal-aid organisations

CREATE recommends that a human rights and child rights framework is adopted whenever working with children in the youth justice system, and that children and young people are supported to be aware of their rights. This includes the right to have appropriate and timely legal representation and advice. CREATE therefore supports amendments to facilitate young people having access to legal aid or legal support service.

It is important that the legal aid/support organisation has an understanding of the needs of vulnerable children and young people, such as those in care. However it is also important that young people are empowered through knowing what they are entitled to, and how to access supports. Where capacity issues may preclude young people from understanding and enacting their rights (such as because of disability or other cognitive capacity issues), there must be timely communication to their support networks, including carers and caseworkers across systems.

Youth Justice Act Clause 30: Information sharing framework

CREATE also supports appropriate information sharing to facilitate young people's rights being upheld within a coordinated response committed to meeting their needs. Information sharing must be coordinated to facilitate caseworkers and caregivers being able to provide necessary support, whether through being physically present for the young person or coordinating other practical support such as transport home, throughout the young person's contact with the justice system. This requires consideration of privacy being maintained, with clear articulation and agreement of the purpose of information requested across systems. CREATE has concerns that information beyond a "need to know" basis, without appropriately trained staff in varied roles, can contribute to further stigmatisation and labelling of young people.

CREATE supports all reforms that are underpinned by the principles of restorative justice and the appropriateness for dealing with children and young people without resorting to judicial proceedings.

Conclusion

CREATE recommends that a human rights and child rights framework is adopted when working with children in the youth justice system, and that children and young people are supported to be aware of their rights.

CREATE supports the Queensland Government moving towards a trauma-informed and restorative justice practice framework. This includes introducing reforms that are evidence-based and represent genuine efforts to lessen the over-representation of Aboriginal and Torres Strait Islander children and young people coming into contact with the youth justice system. The touchstones of this system must be inclusivity, respect for culture, and meaningful participation that engages children.

Early intervention for children and young people in care who are exhibiting behavioural issues has the potential to minimise involvement in the youth and adult justice systems. Effective early intervention must consider the need to increase of the age of criminal responsibility to 14 years for all offences.

Children taken into care due to abuse or neglect often present with difficult and challenging behaviours as a result of their life circumstances, and therefore may require support to overcome effects of trauma. It is important to recognise these as symptoms and use early intervention and prevention measures to help manage the underlying issues if the aim of the blueprint is to break the cycle of offending. For effective early intervention to occur, communication and coordination across services is required, which requires adherence to the Queensland Family and Child Commission's Joint Agency Protocol (2018) to reduce preventable police call-outs to residential care services.

Effective communication and collaboration between youth justice and child protection is particularly relevant when a young person is taken into detention. Government departments and community service providers need to work together to ensure that a young person has access to support services to address risk behaviours. Importantly, these young people should have a stable place to live. A lack of appropriate support or a stable home environment may result in a young person reoffending.

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