THE ROLE OF OUT-OF-HOME CARE IN CRIMINAL JUSTICE OUTCOMES

Children and young people in out-of-home care have experienced profound trauma and face a lifetime of consequences, including trouble with the justice system. Ché Stockley looks at where and how out-of-home care and schools can step in to break the nexus.

The connection between childhood abuse and neglect and adult contact with the criminal justice system is well documented, not least in the report of the recent *Protecting Victoria's Vulnerable Children* Inquiry[1] which found:

> '…child abuse and neglect are associated with many adverse outcomes for the people concerned and for society more broadly… poor health; poor social functioning and participation in society; poor educational attainment and labour market outcomes; homelessness; delinquency and crime; adult victimisation and early death.'[2]

What is less clear about this pathway is the role of the child protection system – in particular out-of-home care – as an agent and when it fails to intervene at the right time and the right way to break this nexus.

Childhood links with criminal justice

Research undertaken with a sample of adult women prisoners at the Victorian Metropolitan Women's Correctional Centre[3] found 76 per cent had experienced physical, emotional and/or sexual abuse in childhood or adolescence.

In 2012, the Australian Institute of Criminology[4] reported that victims of childhood sexual abuse were almost five times more likely than their peers to be charged with an offence. Childhood sexual abuse victims were more likely to offend, had more charges brought against them, had more guilty verdicts, experienced more custodial sentences and, as they grew older, continued to offend.[5]

Neither study explored whether the offenders had been in out-of-home care as children.

Clearly a complex interplay of factors contributes to criminal behaviour in adulthood. Increasingly, however, the link between the out-of-home care experience into which a number of these vulnerable young people are placed and their later adult contact with the criminal justice system is now being made. Some argue that the progression of the abused child into the child protection system, and then into the justice system, becomes pronounced when the child enters out-of-home care.[6] One study found that the longer period of time in which abuse is sustained, the sooner the young person will come into contact with the criminal justice system. Another identified a connection between the number of placements in out-of-home care and offending, finding that for young people with a higher number of placements, there was a corresponding higher number of juvenile arrests.[7]

In research conducted in Victoria, 21 per cent of a sample of children aged over 10 years and living in out-of-home care in 2007 had had contact with the police in the previous six months. This included being charged with a criminal offence or being cautioned or warned by the police.[8]

Researcher Kath McFarlane takes this thesis further. Her examination of New South Wales Children's Court criminal files found that 34 per cent of young people appearing before the court were, or had been, in out-of-home care, and that children in care were 68 times more likely to appear in the Children's Court than other children. She also identified that many of these children and young people were charged with assault against out-of-home care staff or damage of their out-of-home care property.[9]

1. P Cummins, D Scott, B Scales, Reports of the Protecting Victoria's Vunerable Children Inquiry, State of Victoria, 2012.
2. Cummins et al, ibid, page 48.
3. J Pollard, D Baker, 'An analysis of coping resources, trauma and significant life events in a sample of female prisoners,' Paper presented at the Women in Corrections: Staff and Clients Conference, Australian Institute of Criminology, 31 October 2000, availalbe at http://www.aic.gov.au/media_library/conferences/womencorrections/pollbak.pdf
4. JRP Ogloff, MC Cutajar, E Mann, P Mullen, 'Child sexual abuse and subsequent offending and victimisation: A 45 year follow-up study', in *Trends and issues in crime and criminal justice*, No 440, June 2012.
5. Ogloff et al, ibid, page 4.
6. See, for example, P Mendes & S Baidawi, 'Pathways into youth justice: Strengthening policy and program supports for young people in the youth justice system who are transitioning from out-of-home care', *Children Australia*, 37.
7. DeGue & CS Widom, 'Does out-of-home placement mediate the relationship between child maltreatment and adult criminality?', *2009 Child Maltreatment* 14, page 345.
8. S Wise & S Egger, *The Looking After Children Outcomes Data Project: Final Report*, Australian Institute of Family Studies, prepared for the Department of Human Services Victoria, 2007, page 15.
9. K McFarlane, K., 'From care to custody: Young women in out-of-home care in the criminal justice system', *Current Issues*, p346.

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McFarlane argues that particular elements of care are responsible for fast-tracking children and young people from out-of-home care into the youth justice system, with carers in residential care, in particular, likely to call the police when faced with challenging behaviour. Half of the young women in McFarlane's research identified as being in care and were facing court for property damage offences – all committed in foster care or against the group home or other 'specialist' facility in which they lived. 'Almost half the male care cohort had been charged with similar offences'.[10]

As well as the lower threshold for contacting police, research has identified other key issues within the culture of residential care that may contribute to these outcomes. These include:

- peer pressure and negative social learning, and
- poor support resulting in young people leaving care unprepared and at the earliest possible age (16 years).

Absence of positive role models or positive connections with mainstream community (for example, sport, recreation, education) can also contribute to poor outcomes for young people in residential care.[11]

Whether or not out-of-home care plays a direct or incidental role in the connection between abused young people and the criminal justice system, it is clear that the nexus is too often not broken by the out-of-home care experience, nor through contact with universal services, such as the education system, despite the opportunities for positive intervention that arise.

Therapeutic care

MacKillop Family Services recognises that children and young people in out-of-home care have experienced the most profound trauma, and are likely to have experienced chronic and severe sexual and physical abuse or have lost parents and caregivers.[12] Residential care homes typically house children and young people with the most complex needs of the out-of-home care cohort. Residential care has been described as a 'last resort', housing those who have highly challenging and disruptive behaviours, conduct disorders, neuro-developmental problems, mental illness and who are a risk to themselves and others.[13]

The language of prevention, originally adopted in the public health sphere, provides a useful prism for interventions in child protection,[14] incorporating:

- a primary/universal approach that has its 'focus on whole communities in order to reduce risk factors and strengthen protective factors that contribute to child abuse and neglect'
- secondary or early interventions that 'focus on vulnerable children and families who are 'at risk' of child abuse or neglect', and
- tertiary interventions that 'focus on children and families where abuse or neglect has already occurred or children are at risk of significant harm'.[15]

In response to that trauma, MacKillop is currently engaged in providing therapeutic residential care (TRC) in Geelong. TRC has been defined as:

'…intensive and time-limited care for a child or young person in statutory care that responds to the complex impacts of abuse, neglect and separation from family. This is achieved through the creation of positive, safe,

10. Ibid p347
11. P Mendes, S Baidawi, op cit, pp14-16
12. S Yampolskaya, M Armstrong, R McNeish, 'Children placed in out-of-home care: Risk factors for involvement with the juvenile justice system", *Violence and Victims*, Vol 26, No 2, 2011.

13. S McLean, R Price-Robertson, E Robinson, 'Therapeutic residential care in Australia: Taking stock and looking forward', *National Child Protection Clearinghouse Issues* No 35, 2011, Australian Institute of Family Studies, Melbourne, p 1.
14. P Holzer, P, *Defining the public health model for the child welfare services context*, resource sheet no. 11, National Child Protection Clearinghouse, Australian Institute of Family Studies, Melbourne, 2007
15. Cummins et al, ibid, p124
16. As published in McLean et al, ibid, p2.

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healing relationships and experiences informed by a sound understanding of trauma, damaged attachment and developmental needs.'[16]

Across Australian states, the practice of TRC is based on attachment theory, trauma theory, the neurobiology of attachment and trauma and/or the concept of resilience.[17]

Evaluations of TRC point to better outcomes including in stability, achievement of developmental milestones, better continuity of care and greater opportunities for family reunification.[18] Treatment for trauma in a residential setting may assist with addressing mental ill-health, and prevent or minimise other risk factors (low education, low employment, substance abuse).[19]

There is enormous potential for the out-of-home care system to provide a more healing environment for the children and young people in its care, and therefore to break that nexus between abuse and neglect and criminality. In addition to providing TRC and therapeutic foster care, MacKillop is implementing the Sanctuary Model of care, which is a trauma-informed method for creating a culture of hope and innovation in organisations that work with vulnerable people.

While many models address the individual and group treatment needs of vulnerable clients, Sanctuary also provides leaders and community members with a framework for creating safer, better-functioning organisations. Properly adopted and implemented, MacKillop anticipates that it will lead to improved outcomes for clients, improved staff satisfaction and retention, and decreased violence and stress in the workplace.

However universal services, like the education system, must also identify opportunities for more effective and positive interventions that aim to impact on a range of outcomes, including involvement in the criminal justice system.

In response to recommendations of the *Protecting Vulnerable Victorian Children* Inquiry, the Victorian Government acknowledged that while most residential staff try to create a home-like environment for young people, many lack the specialised skills to work effectively with severely traumatised children.[20] It agreed to develop a five year plan for out-of-home-care and a complementary plan for Aboriginal children in out-of-home care. Government agencies are working on the plan in consultation with the community sector.

The Inquiry also noted the 'considerable gap' between children and young people in out-of-home care and the general school population. Unfortunately Victoria's *Out-of-Home Care Education Commitment*[21] does little to overcome structural barriers of access to education for disadvantaged children and young people, while the more recent *Towards Victoria as a Learning Community* education policy fails to address the issue of disadvantage in a convincing way.

More therapeutic care places and a greater emphasis on education will bridge the gap between children and young people in care and their peers. This will go some way to improving outcomes across a number of domains, including the over-representation in the criminal justice system of adults who, as children, experienced abuse and neglect.

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17. McLean et al, ibid p 7.
18. Department of Human Services, Evaluation of the Therapeutic Residential Care Pilot Programs: Final Summary and Technical Report, Verso Consulting, 2011.
19. Centre for Excellence in Child and Family Welfare and La Trobe University, Report: The Circle Program: an evaluation of a therapeutic approach to foster care, Centre for Excellence in Child and Family Welfare, 2012.
20. Ogloff et al, ibid, page 5.

21. Department of Human Services, Victoria's Vulnerable Children: Our Shared Responsibility, 2012, Victorian Government, p 23
22. Cummins et al, ibid, page 250.
23. Endorsed in 2011 by the Secretaries of the Department of Human Services and the Department of Education and Early Childhood Development, along with the Catholic Education Commission and Independent Schools Victoria.