



# **Surviving incarceration: the pathways of looked after and non-looked after children into, through and out of custody**

## **Executive summary**

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## Acknowledgments

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## Background and context

It is well documented that children in care – those looked-after by the local authority – are over-represented in the youth justice system.<sup>1</sup> In recent years, the relationship between care and crime has begun to receive increasing academic and policy attention, culminating, in 2018, in the government publishing a national protocol to reduce unnecessary criminalisation of children in care and improve the criminal justice responses when they do enter the youth justice system.

The use of child imprisonment has fallen dramatically over the past decade, but the experiences of children confined in the secure estate has worsened, leading to widespread acknowledgement that the incarceration of children is damaging and counterproductive and that existing provision is not fit for purpose. Looked-after children who come into contact with the justice system are seven times more likely to be detained than their non-care equivalents, but little is known about the factors leading to such over-representation or the differential experiences of children in care while in detention. This report bridges that evidence gap by considering the relationship between care and imprisonment. The research on which it draws, across the nine local authorities in the South and West Yorkshire Resettlement Consortium (SWYC) area, explored the pathways of looked-after children into, through and out of the custodial estate. A comparative approach allowed the identification of the extent to which those pathways differ for children in care and those who are not.

## Methods

The study used a mixed methods research strategy that combined:

- Analysis of quantitative data on children sentenced to custody between 2014 and 2018 in the SWYRC area;
- One-to-one semi-structured interviews with 48 children who were either in custody or had been released within the preceding twelve months;
- Analysis of case files for 45 of the 48 children who participated in interviews; and
- One-to-one interviews with 19 youth justice and social care professionals.

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<sup>1</sup> The terms ‘children in care’ and ‘looked-after children’ are used interchangeably in the report.

Ethical approval was obtained from the University of Bedfordshire and Her Majesty's Prison and Probation Service

All of the 48 children interviewed were male. Nearly half of the sample (n=22) was in care at the point of sentence (excluding those with look-after status solely on the basis of being remanded to youth detention accommodation).<sup>2</sup> Most (n=29) were placed in young offender institutions (YOIs), with just five in secure training centres (STCs) and the remaining four in secure children's homes (SCHs). This placement pattern is broadly consistent with both the national picture and that within the Consortium area.

### **The use of custody in South and West Yorkshire**

Analysis of 303 children sentenced to custody in the SWYC area, over a four year period, indicates that 17% were currently looked-after at the point they received their sentence. While all of the children displayed considerable needs, those in care were particularly vulnerable on a range of indicators. The latter group were also assessed as having a greater risk of reoffending than their non-care peers, and had longer criminal records at the point of entering custody. Nevertheless, despite index offences being broadly similar, looked after children were less likely to receive sentences of long term imprisonment for a 'grave crime' and, in other cases, tended to receive shorter custodial terms than their counterparts who were not in care (an average of 7.8 against 10.1 months). One possible explanation for these differences is that looked-after children are more likely to be imprisoned because of persistent offending, rather than for one-off serious offences. This hypothesis receives some support from the fact that the average 'gravity score' for current offending for children in care was lower than that for other children.<sup>3</sup>

On release, rates of breach for non-compliance with post-custody supervision, and the associated risk of being returned to custody, were higher for looked-after children, reducing the prospects of successful resettlement.

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<sup>2</sup> Excluding children looked-after solely on the basis of being remanded to custody. Children remanded to 'youth detention accommodation' automatically acquire looked-after status under the Legal Aid, Sentencing and Punishment of Offenders Act 2012

<sup>3</sup> The Youth Justice Board classifies offence types according to level of seriousness on an 8 point scale, with 1 being the least seriousness and 8 the highest. These are referred to as gravity scores

### Over-arching themes: survival and survivor identities

We found instances of positive practice; it was clear that the SWRC has led to greater professional understanding of children's experiences of custody, an enhanced focus on effective rehabilitation and improved provision. But it was also clear that if custody is to be reduced further and the particular challenges for looked-after children are to be addressed, changes will have to be made.

One of the over-arching themes to emerge from interviews was that pathways into, through and out of custody, can be understood in terms of strategies that disadvantaged and vulnerable children develop in order to survive, what they experience as, hostile environments. The pathways that led to their imprisonment were generally explicable in such terms. While all those sentenced to custody shared characteristics that included extremely troubled backgrounds, experience of high levels of instability at home, and limited engagement with education, there were, sometimes subtle, differences between looked-after children and those who were not. The additional challenges encountered by the former group, partly attributable to background but also to the care experience itself, exacerbated the risk that they would become entangled in the youth justice system and, when sentenced to custody, would experience deprivation of liberty and resettlement as more disruptive.

These differences also impacted on identities in important ways. All children exhibited strategies for survival at each stage of their journey, but a focus on surviving tended to become an integral part of the identity of children in care. The perceived need for looked-after children to be self-reliant because of what they understood to be an absence of adequate support from adults, professional and familial, meant that they did not just behave in ways that ensured their survival in whatever context they found themselves; they were also more likely than other children to develop, what we term, a '*survivor mentality*'. Children in care were not lacking in resilience: seeing oneself as a survivor requires considerable strength. But this form of self-reliance encouraged a focus on the here and now rather than facilitating a future orientation which aids desistance. The mechanisms that reinforced such identities, the manner in which children experienced them, and how agencies might best respond, varied at each stage of their journey.

### Surviving life before custody: responding to 'street lifestyles'

The pathway to custody was, for most children, associated with spending considerable periods out of education and away from home. The adoption of a 'street lifestyle' frequently involved forms of 'survival' behaviour – such as robbery, or fighting to maintain status - that brought them into contact with the criminal justice system and an enhanced risk of custody. Aspects of the care experience made it more likely that looked-after children would make their way onto the streets, particularly for those placed in residential provision a long way from home, often against their expressed wishes. Becoming increasingly detached from those responsible for their care, and spending more time in the company of peers on the street, encouraged a perception among such children that they could not rely on others.

**We recommend that local agencies consider how best to support children who adopt a street lifestyle, ensuring they have access to constructive activities and are re-engaged in education or training.** The development of a detached youth provision might form an important element of such a strategy. Reducing the number of looked-after children who go missing, and drift towards the street, is an urgent necessity. Children's services must meet the statutory duty to secure sufficient accommodation for children in care within the local authority area wherever possible, developing additional 'in house' residential children's homes as required.

Where placements out of area are unavoidable, the provision of enhanced local support to ensure constructive daytime and evening activities that meet children's wishes and interests, and to maintain links with professionals, family and friends from their home community will help to reduce the risk that children go missing, migrate to the street and develop a survivor identity.

### Surviving custody: countering isolation

Most children, particularly those in YOIs, had a negative experience of custody which they regarded as an episode to be endured. Contact with families and friends was restricted and children complained about what they saw as the excessive use of isolation, often involving confinement to their cells for much of the day. Children in care felt particularly isolated because a lack of familial support, confirming a perception that being looked-after set them

apart from other children. They adopted a distinct strategy for surviving custody, fighting to maintain status and avoid victimisation, rather than keeping their head down. This preference, a reflection of a survivor identity, led to increased restraint and segregation.

**We propose that to address the perceived isolation of looked-after children in custody, professionals prioritise ‘informal’ contact, including regular visiting, not linked to statutory planning processes, in order to demonstrate what children see as a level of genuine care.**

Professionals considered that the presence of a link worker in the custodial setting, funded by the SWYRC, made it easier to maintain meaningful relationships with children on their caseload. Local authorities with a custodial establishment in their area should accordingly consider establishing similar link worker posts.

### **Surviving resettlement: promoting positive futures**

The transition from custody to the community provided a window of opportunity for positive change for some children, but was challenging to most. The challenge was greatest where settled accommodation or family support was lacking, factors more likely to impact children in care, thereby increasing the risk of a resumption of a ‘street lifestyle’, punctuated by further brushes with the law. Prevailing concerns over where they would live made it considerably more difficult for many looked-after children to reflect on how they might construct a positive future for themselves or take advantage of practical or emotional support offered by professionals, which are prerequisites of effective resettlement.

While difficulties with identifying stable accommodation remained, the existence of a local protocol across the SWYRC area, agreed by Directors of Children’s Services, requiring that a suitable address was identified at least two weeks prior to release, had had a positive impact. **We recommend that other local authorities adopt a similar protocol.** Children in care should be involved, from an early point in their sentence, in discussions about where they will live so that they feel assured that suitable accommodation will be found, perceptions of the need for self-reliance are alleviated, and the potential for a focus on longer-term planning and the development of future aspirations is enhanced.

Children in care were more likely than their peers to be breached for failure to comply with post-custody supervision and were, therefore, at a higher risk of being returned to custody. Non-compliance was in some cases associated with unstable or unsuitable accommodation and the intensity of contact required by youth justice services. **We propose that youth offending teams monitor breach to determine whether looked-after children are disproportionately subject to proceedings for non-compliance. A presumption against breach should be introduced for children in care.**

### **The importance of identity: addressing ‘survivor mentality’**

The behaviour of most children could be seen as a response to surviving the environments in which they found themselves, but survival took on a particular resonance for children in care, who felt that they had to be self-reliant because they had less support and fewer people who cared about them. If all children sometimes engaged in ‘doing survival’, looked-after children were more likely to manifest a ‘survivor mentality’ in which relying on one’s own resources, became part of their identity.

The model of resettlement previously developed by the Beyond Youth Custody (BYC) programme,<sup>4</sup> has highlighted the importance of services providing practical and emotional support to children that will empower them to develop a sense of identity consistent with future ambitions for positive achievement and leaving their offending behind them. Our research suggests that the dynamics associated with being a looked-after child at risk of, or in custody may have significant implications for how they see themselves and their future prospects. **We recommend that practitioners with this group of children consider how to apply the BYC model by building on the resilience associated with being self-reliant while recognising that where a survivor mentality becomes part of a child’s identity, fostering a sense they can also rely on others may be key to enabling the development of positive future aspirations and enhancing the prospects of desistance from offending.**

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<sup>4</sup> Beyond Youth Custody was a six year ‘learning and awareness’ programme focused on building a robust evidence base for effective resettlement of children and young people to promote better policy and practice. See [www.beyondyouthcustody.net/](http://www.beyondyouthcustody.net/)