

Locked Up and Locked Out: The Intersections of Youth Justice, Violence and Homelessness

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The Current Situation

Unless found guilty, an accused person is presumed innocent under New South Wales (NSW) law and generally has a right to release on bail. However, for children and young people this is not the case. Their release is contingent on suitable arrangements for their accommodation as stipulated under section 28 of the *Bail Act 2013 (NSW)*, designed to prevent youth from exiting detention into homelessness. In effect, the pre-release condition imposed by section 28 means children and young people who are experiencing homelessness or unable to return home will end up in detention until their court date due to the lack of suitable accommodation — further increasing their vulnerability and exposure to risk.

The relationship between adolescent homelessness and incarceration is bi-directional; homelessness increases the risk of incarceration and, conversely, incarceration increases the probability of homelessness.¹

This is attributed to an overlap of risk factors among offenders and those experiencing homelessness, namely mental-ill health, experience with domestic and family violence (DFV), alcohol and other drug (AOD) use, and negative peer associations. Any experience with these risk factors increases a young person's likelihood of both experiencing homelessness and being apprehended by police. Hundreds of unsentenced adolescents are detained in NSW annually due to their homelessness status.² This is particularly true for those who have experienced or are using domestic and family violence.

Availability and Limited Scope of Services

Following an arrest, a young person might experience two possible scenarios. The first involves being granted conditional or unconditional bail and awaiting a court date. The second is being remanded into custody until their court date or until Bail Coordinators can procure appropriate accommodation.

In 2019–20, 236 young people under 18 years were detained under section 28 due to not having an appropriate bail address.³

Young people experiencing homelessness and involved in the criminal justice system are much more likely to be refused bail than adults despite the vulnerabilities of this cohort and the lower likelihood of being sentenced to jail.⁴ They face unique barriers to accessing bail, including lack of suitable accommodation and the absence of a responsible adult or guardian. Even if brief, the experience of detention can have long-lasting effects on children and young people. It increases their risk of depression, suicide and self-harm; leads to poor emotional development; results in poor educational outcomes; and further fractures family relationships.⁵

In 2010, in an attempt to deal with cases involving children and young people without an appropriate bail address, Youth Justice established the Bail Assistance Line, now known as the Bail and Accommodation Support Service (BASS). The BASS intake line is open 365 days a year from 4pm to 3am and works with multiple service systems to reduce the likelihood of police denying bail to young people experiencing homelessness. It achieves this by providing police with options for young people unable to meet bail conditions, and targets particularly vulnerable young people, including young people charged with a domestic violence assault who are unable to return home because of an Apprehended Domestic Violence Order (ADVO).

The BASS involves NSW Police and service providers collaborating to support young people with short-term accommodation, transport



and case management that helps young people gain access to bail. The BASS helps police to locate a parent or guardian and transport a young person from the police station to accommodation, so that young people can await their court date within the community as opposed to in detention. If the young person doesn't have a home to return to or returning home isn't an option, the Bail Coordinators can turn to six youth specialist homelessness services (SHS) providers and one out-of-home care (OOHC) provider contracted to provide specialist accommodation.

While young people who are successfully placed by BASS in these services avoid detention, the number of young people able to be accommodated is very limited. The contracts provide for only 15 beds in NSW across seven Department of Communities and Justice (DCJ) districts, including six beds in Sydney and Northern Sydney, five across the Central Coast, and one each in Illawarra Shoalhaven, the Nepean Blue Mountains, Western NSW and Northern NSW.

BOSCAR's evaluation of the BASS found that in 2011, 1.7 per cent of young people were successfully diverted from detention.⁶ This percentage rose to 9.4 per cent in 2019 after regulations were introduced determining that instead of sending adolescents held on remand directly to detention centres, NSW Police must use the BASS whenever conditional bail is granted or when bail is refused altogether.⁷ While this improved diversion rates, it worryingly meant that 90.6 per cent of young people were still being remanded in custody despite being referred to the BASS.

These low diversion rates can be attributed to multiple factors, the most obvious being the limited number of contracted services and beds available within these services. Additionally, the unequal distribution of the contracted SHS and OOHC placements across the state particularly prohibits access for those in rural and regional areas of NSW. These limitations are further exacerbated by the fact that these beds operate on a 'fee-for-service'

basis, meaning they are not reserved exclusively for adolescents referred by the BASS, so there is no guarantee they will be available when needed.

Intersections Between Child Maltreatment, Domestic and Family Violence and Juvenile Offending

The link between children who experience violence or neglect and their involvement in the youth justice system is substantiated by the growing body of research that shows a correlation between child maltreatment, including family violence, and social issues such as homelessness and substance abuse.⁸ Compared to children whose abuse is contained to their childhood, young people whose experiences of violence or neglect persists throughout or begins in adolescence are increasingly likely to be involved in the youth justice system.⁹

Additionally, recent ANROWS research investigating adolescent family violence in Australia highlights a strong link between young people's exposure to violence and

the perpetration of violence. Results from their survey of 5,000 young Australians aged 16 to 20 years indicate that one in five respondents reported using adolescent family violence and, of these, 89 per cent reported previous experiences of child abuse.¹⁰ The research found that young people who had experienced child abuse, be it witnessing violence between other family members or being directly subjected to it, were 9.2 times more likely to use violence in the home compared to respondents who had not.¹¹

Key findings from Yfoundations' Youth Justice Report highlighted that committing offences, particularly violent offences in the home, can result in adolescents experiencing homelessness.¹² This is due to families or kin being reluctant to accept the young person back into their home or obtaining an ADVO that prevents them from legally returning. When returning home is no longer an option, the options for young people exiting custody are limited. This speaks to the intersecting nature of domestic and family violence (DFV), juvenile offending and homelessness.

If no accommodation can be procured through the BASS, Bail Coordinators must reach out to other youth SHS to secure a bed. The lack of funding and resources for youth SHS means most are ill-equipped to deal with clients with high or complex needs or cannot take them on due to risk assessment requirements. There is an overall misconception that youth SHS are the 'end of the road' for these vulnerable young people, and an expectation that they provide integrated, intensive wraparound support for clients with high or complex needs. In reality, this is not always achievable and is further exacerbated by a lack of coordination and involvement by mainstream agencies and the services they deliver, such as child protection, mental health and alcohol and other drug services. In Yfoundations' 2021–22 membership survey, 63.7 per cent of respondents identified 'difficulty meeting high or complex needs of clients' (including young people exiting youth justice or using family violence in the home) as a key issue facing the sector.

Young people who have experienced and/or are using DFV and are involved in the youth justice system require

support that is trauma-informed, therapeutic and multidisciplinary. This necessitates an increased investment into both additional BASS contracts and capacity building to support the increasing amount of young people presenting to youth SHS, particularly those exiting custody. This will ensure the youth SHS system is equipped to holistically support these young people in the community rather than having them languish in detention centres.

Youth Justice Project

Yfoundations has recently received DCJ funding to initiate a Youth Justice SHS Capacity Building project, which will equip youth SHS providers with the tools to confidently accept referrals of young people following a DFV incident. We will achieve this through the proliferation of training and resources that operationalise a trauma-informed understanding of what leads young people to be perpetrators of DFV. This will enable workers to understand and support young people who have cumulative traumatic stress underlying offending behaviour, by undertaking risk and needs assessments examining their experiences of DFV and other forms of child abuse, extending beyond the immediate risk of harm to '*risk of adverse outcomes and related unique recovery support needs*'.¹³ It is particularly important to ensure training and resources are culturally safe, appropriate and accessible to Aboriginal and Torres Strait Islander people and address their needs within a DFV context that acknowledges they are far more likely than the general population to come from families and communities experiencing intergenerational stress, trauma and disadvantage, which may underlie offending behaviour.

This project will involve extensive consultation with youth SHS providers, particularly those with a BASS contract, to seek their expertise on current practice in responding to young people charged with DFV offences, as well as identifying gaps in current practice, understanding, capability and capacity. Bringing in frontline youth accommodation provider expertise during the development phase will ensure the training and resources are informed by practice that is responsive and experienced.

Nonetheless, it is critical to note that although the training will bolster the sector to provide best practice responses for young people using violence, this will only be a 'band-aid' solution if the currently overstretched youth SHS sector is not provided with additional funding, and nothing is done to improve the coordination and accessibility of mainstream services to provide wraparound support for vulnerable young people with cumulative forms of trauma. Without this, the specialised and integrated responses required for the most vulnerable within the youth homelessness and youth justice systems are not possible.

Yfoundations' call for a standalone National Child and Youth Homelessness and Housing Plan includes a double investment to fund both 'upstream' and 'downstream' responses, and a mechanism to ensure mainstream agencies are accountable and responsible for children and young people at risk of or experiencing homelessness who enter their service systems.

Endnotes

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5. Baldry E and Cunneen C 2019, *Locking up kids damages their mental health and leads to more disadvantage. Is this what we want?* UNSW, 21 June 2019, <https://newsroom.unsw.edu.au/news/social-affairs/locking-kids-damages-their-mental-health-and-leads-more-disadvantage-what-we>
6. Klauzner I 2021, Op cit.
7. Ibid.
8. Cashmore J 2011, 'The link between child maltreatment and adolescent offending: Systems neglect of adolescents', *Family Matters*, 89, pp.31–41.
9. Ibid.
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11. Ibid.
12. Yfoundations 2021, op cit.
13. Fitz-Gibbon K et al 2022, op cit.