



The criminalisation of youth homelessness

Yfoundations position paper

The issue

Back in 2008, Justice James Wood's [Special Inquiry into child protection services](#) identified an alarming injustice. Unsentenced under 18-year-olds were being held in detention because they couldn't provide a suitable bail address to the NSW Police or Children's Court. Essentially, they were being locked up simply because they were homeless.

Since then, the NSW Government has attempted to divert homeless young people from detention. In 2010, they introduced an after-hours [Bail Assistance Line](#). Police must now call this line before refusing bail to an under 18-year-old. This provides Bail Coordinators with an opportunity to assess the young person's housing options, and secure them alternative accommodation through the Specialist Homelessness Services (SHS) or voluntary out-of-home care (OOHC) system.

The NSW Government also altered the NSW Bail Act 2013, so that caseworkers had to report to the Children's Court magistrate every two days if an under-18-year-old was being held in detention because they were homeless. And in the same year, the NSW Youth Justice and Child Protection Department signed a memorandum of understanding designed to clarify who was responsible for these vulnerable children and young people.

Unfortunately, [Yfoundations' 2021 research report](#) shows that these efforts have not sufficiently addressed the criminalisation of youth homelessness in our state. Every year, hundreds of under-18-year-olds are still being locked up because they have nowhere else to go. This is because there is a severe shortage of appropriate accommodation for this cohort through the OOHC and youth SHS system. This shortage is compounded by ongoing confusion about the departmental responsibility for homeless children and young people who end up in detention.



[Read our 2021 research report](#)

Our asks

The NSW government must expand the Bail Assistance Line program.

As of 2021, the Bail Assistance Line has 'fee-for-service' contracts with one residential OOHC provider and six SHS Providers. In total, these providers offer 15 beds across seven of the 15 DCJ districts. A [recent evaluation](#) of the Bail Assistance Line supports our research in suggesting that more beds are required – particularly in rural and regional areas.

The NSW Government must increase the number of contracts and the funding provided through these contracts – to ensure these services can meet the often-complex needs of this cohort. Following this, the Bail Assistance Line program should be expanded to an all-hours service to better support these young people.

The NSW Government must develop and implement a new inter-agency policy involving NSW Youth Justice, Child Protection, youth SHS and peak bodies.

Currently, the response to homeless young people in detention is covered in two unpublished documents: the Youth Justice and Child Protection Memorandum of Understanding, and Youth Justice's 'Young People and Homelessness' policy. Our research shows that these documents are outdated and have significant gaps.

We need an overarching, inter-agency policy that delegates responsibilities based on accurate assessments of accommodation and support available through the SHS and Child Protection system. Its implementation needs to be closely monitored to ensure that key indicators are improving.

The NSW Government must remove the offence of breaching a bail condition for under 18-year-olds.

Our research shows that homeless young people often struggle to meet bail conditions because of their unstable living arrangements. SHS often refuse to take these young people in because, as a voluntary organisation, they can't enforce these conditions.

Recently, the [Children's Court reduced bail revocations](#) to decrease the number of young people in detention during the COVID-19 pandemic. This did not lead to a significant increase in police cautions, warnings or [Youth Justice conferences](#). NSW should follow [Victoria](#) and remove these unnecessary conditions altogether for juveniles.

The NSW Government must increase the supply of therapeutic accommodation for young people with complex needs who can't live at home.

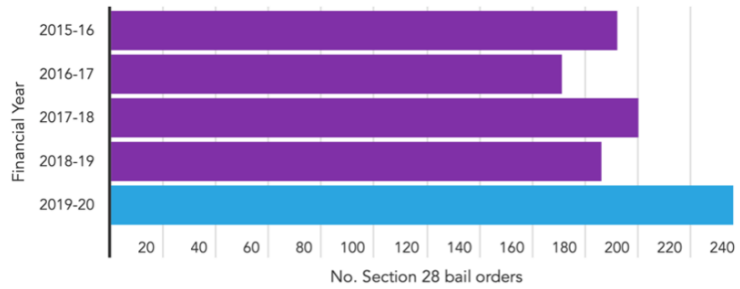
Many young people involved in the criminal justice system require more intensive support than our underfunded youth homelessness services can provide. The 'A Place To Go' program was set up to support 10 to 17-year-olds entering and exiting the juvenile justice system, with a focus on young people in remand.

Yfoundations strongly supports the expansion of this program across NSW.



The evidence

Hundreds of unsentenced children and young people are held in NSW detention centres simply because they are homeless. In 2019/20 alone, 236 highly vulnerable children and young people were held under Section 28 of the Bail Act, because they didn't have an appropriate bail address.

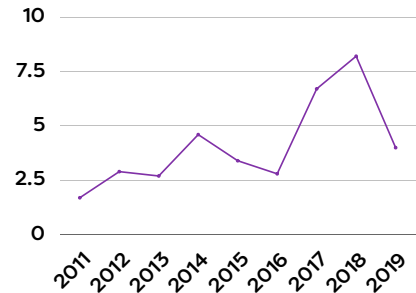


15%

of adolescents under juvenile justice supervision had received support from a homelessness service in that year

Homeless children and young people are much more likely to become involved in the criminal justice system than the average population. Linked national data from 2008/09 found that almost 15% of children and young people under juvenile justice supervision had received support from a homelessness service in that year, compared to only 2% of all Australians aged 10 to 17.

A [recent evaluation of the Bail Assistance Line](#) found that the proportion of homeless young people being diverted from detention by this service has improved. But as of 2019, less than 10% of those referred to the service were placed. One of the key reasons is the shortage of beds, particularly in rural and regional areas.



68%

of those in youth detention in NSW reported experiencing at least one form of childhood abuse or neglect.

In a [2015](#) survey, 68% of those in youth detention in NSW reported experiencing at least one form of childhood abuse or neglect. Unsurprisingly, 83% had been diagnosed with at least one psychological disorder, and 63% had been diagnosed with two or more.

From 15 March to 28 June 2020, during the first NSW COVID-19 lockdown the NSW [youth custody population decreased](#) by 27% from 273 to 203. This was due to an increase in young people being discharged to bail and a decrease in bail revocations following breaches of bail.

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