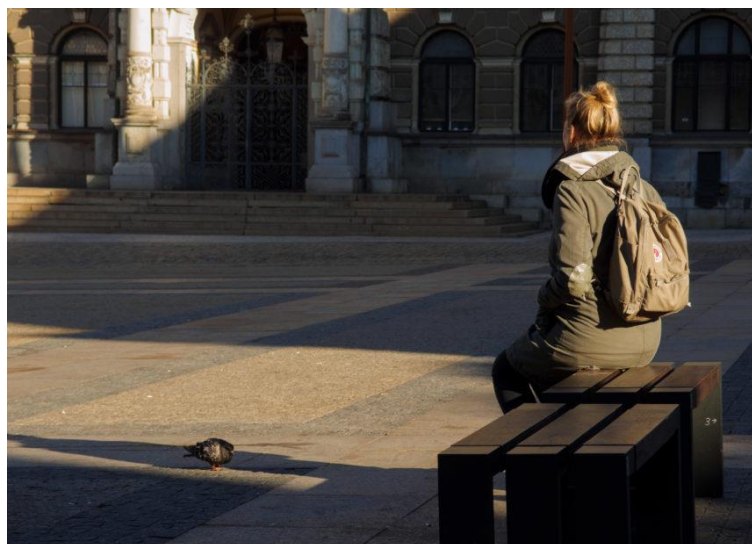




Exploring the Pathways between Care and Custody for Girls and Women

A Literature Review



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1. Introduction

Fewer than 1% of the total under-18 population in England are currently in the care system (Department for Education (DfE, 2018), yet estimates suggest that up to 50% of children in custody have been in care (Prison Reform Trust (PRT) 2016). Amongst adults, a survey by the Ministry of Justice (MoJ) found that 31% of women in prison had spent time in the care system as a child (compared to 24% of men). Whilst many children in care do very well and do not come into conflict with the law, the over-representation of care experienced individuals in criminal justice settings is a persistent problem. There has been a surge of interest recently in this issue both in England and Wales and internationally. However, this has not been consistently applied to all individuals with care experience. In particular, there has been a lack of focus on the experiences of girls and women. The interplay between gender and ethnicity has also been neglected.

This literature review provides the context for a Nuffield Foundation funded project that seeks to explore how to disrupt the routes between care and custody for girls and women. The review explores key messages from research, and highlights gaps in existing knowledge. Our aim is not to replicate other important recent reviews on the general care-crime connection (e.g. Bateman et al., 2018; Staines, 2016) but is to build on this work to produce a targeted literature review, specifically focused on exploring the care-crime connection through a gendered lens. Our literature review is distinct from earlier reviews in that it is not just focused on looked after children, but on both girls and women, with a view to highlighting the importance of the care-crime connection over time. We present here a targeted review of the literature, which draws out the specific research on care experienced girls and women in the justice system¹. Based on the databases searched for this review, we are not aware of any other attempts to review this specific topic in depth in England and Wales within the last 20 years.

¹ For the purposes of clarity, we refer to 'justice systems' or 'justice involved' girls and women in this review with specific reference to involvement in the youth justice system and/or the adult criminal justice system, as opposed to the family justice system.

2. Context

This section of the review outlines some of the available statistical data regarding girls and women in the care and criminal justice systems, and it provides important contextual information for the literature review which follows.

2.1 Girls in Care

Children in England may come into the care system through various legal routes; our particular concern in this review is with those who become 'looked after' specifically on welfare grounds. The Children Act 1989 provides two primary welfare-based routes into care: children may be looked after under a Section 31 Care Order issued by the courts, or under a Section 20 voluntary agreement with parents. At 31 March 2018, 73% of children in care were looked after under a care order, and 19% were looked after under a voluntary agreement (DfE, 2018). Whilst children remanded into youth custody are now classed as looked after under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the focus of this review is not on these children as they are specifically entering the care system under criminal justice, rather than child protection, legislation.

At 31st March 2018, there were 75,420 children looked after in England. The principal reason for entering care for 63% of children who became looked after in England in 2018 was 'abuse or neglect', followed by 15% who went into care due to 'family dysfunction' (DfE, 2018). The same data shows that a mere 1% of children entered care specifically because of 'socially unacceptable behaviour', despite popular perceptions continuing to link care experience with troublesome behaviour (e.g. see Jackson, 2019).

The number of children in care has been rising steadily in recent years, with figures at their highest since the implementation of the Children Act 1989. In 2016, the then President of the Family Division, Lord Justice Munby, described the care system as being in a state of crisis. The Care Crisis Review (2018) published two years later, highlighted the concerns of professionals around the shame and blame that had permeated the system, as well as the impact of the wider climate of austerity.

“There was a palpable sense of unease about how lack of resources, poverty and deprivation are making it harder for families and the system to cope” (2018:4).

Girls make up 44% of the looked after population in England (DfE, 2018). However, the possibilities for gender analysis are very limited as other important contextual information published in the national data collection is not broken down by gender. Therefore, the following figures are for both girls and boys. At 31 March 2018:

- 75% of looked after children were White,
- 9% were of Mixed ethnicity,
- 7% were Black or Black-British,
- 5% were Asian or Asian-British and
- 3% identified as Other ethnic groups (DfE, 2018)².

Since 2014, there have been slight decreases in the proportion of White children (from 78% to 74%), and slight increases in the proportion of Asian or Asian British and Other children. The recent increase in unaccompanied asylum-seeking children, who are mainly non-white, is believed to account for this change (DfE, 2018).

The great majority of children (73%) are looked after in foster placements, with 11% placed in residential settings such as children's homes (DfE, 2018). It is noteworthy that there has been a substantial increase in the proportion of teenagers who are looked after in the last five years (Children's Commissioner, 2018a). The largest age group (39%) of looked after children in March 2018 were those aged 10 – 15 years, with nearly a quarter of children (23%) aged 16 years and over³. Therefore, looked after children of the age of criminal responsibility accounted for 62% of the overall care population (DfE, 2018).

The Minimum Age of Criminal Responsibility (MACR) in England and Wales is 10 years and amongst the lowest in Europe (Goldson, 2019; Hazel, 2008), compared to 13 years in France, 14 in Germany, 15 in Denmark and Norway, and 18 years in Belgium (Goldson, 2019). The United Nations has long argued that this should be increased to more closely match our European neighbours (United Nations, 2016), since drawing children into the system at a younger age increases their risk of future justice system contact (McAra & McVie, 2010).

² It must be noted that ethnic minority groups are not homogenous, and that ethnic categories are in themselves inherently problematic (Burton, Nandi & Platt, 2010; Parameshwaran & Engzell, 2015). We must therefore approach any analysis of ethnicity with some caution, particularly when 'groups' are combined.

³ The older age profile of looked after children may be linked to the recent increase in unaccompanied asylum seeking children. The number of looked after unaccompanied asylum seeking children has more than doubled since June 2014. Unaccompanied asylum seeking children are overwhelmingly male (92%) and the majority (82%) are aged 16 years and above (DfE, 2018).

2.2 Offending Rate Data

Official data highlights that children in care in England are over-represented in the youth justice system. In the year ending 31 March 2018:

- 4% (1,510 children) of children aged 10 years or over who were looked after for at least 12 months were cautioned or convicted during the year.
- Females accounted for 24% (n=360) of this figure.
- Males accounted for 76% (n=1,150) (DfE, 2018)⁴.

Youth justice involvement was more likely at the older ages, with 4% of looked after girls and 10% of looked after boys in the age 16-17 category receiving a caution or conviction. According to these figures, looked after children are five times more likely to receive a caution or conviction than all children (DfE, 2018). However, this official data is notably limited by being based only on those looked after continuously for 12 months or more, since nearly half of children are looked after for shorter periods of time (DfE, 2018).

Furthermore, the official data does not break down rates of youth justice involvement by placement type, although research has shown that levels of unnecessary criminalisation may be higher in some children's homes than in foster care placements (Shaw, 2014). Following Freedom of Information Act requests, the Howard League for Penal Reform (2019) obtained valuable data on youth justice interventions in children's homes⁵. They highlight that children in residential care face disproportionate levels of youth justice sanctions compared to other children, including those in other types of care placement.

Notwithstanding the limitations of the data, the Howard League (2019) further identified a fall in the proportion of children living in children's homes who received a caution or conviction, with the figures falling from 15% in 2014 to 10% in 2018. This trend may be partly explained by a commitment to diversion in some areas aimed at steering looked after children away from formal contact with the justice system wherever possible. For example, the South East Protocol successfully achieved year on year reductions in the numbers of children being criminalised (YJB & MoJ, 2018).

⁴ All numbers have been rounded to the nearest 10 and percentages have been rounded to the nearest whole number (DfE, 2018).

⁵ This data only included children who had been looked after continuously for 12 months or more.

Despite the above evidence, good practice is inconsistently spread across the country, and the Howard League (2019) found that children in residential care continue to be over-represented in the youth justice system. In the year ending 31 March 2018:

- 8% of females (n=140) had received a caution or conviction during the year ending 31 March 2018 (Howard League, 2019).
- This compares to 11% of males (n=330)
- Girls in care are four times as likely to be youth justice involved if they are living in a children's home than girls in care more generally (DfE, 2018; Howard League, 2019).

There is increasing recognition that the over-representation of looked after children and care leavers in criminal justice settings is explicable in part by the fact that they may be subject to unnecessary criminalisation. This was a key theme highlighted in the independent review established by the PRT, and chaired by Lord Laming (PRT, 2016). More recently, the first '*National protocol on reducing unnecessary criminalisation of looked after children and care-leavers*' has been published by the DfE, the Home Office and the Ministry of Justice (2018). Whilst the development of such a protocol is very welcome, it is noteworthy that the protocol has no statutory status.

2.3 Girls in the Youth Justice System

The last decade has seen a significant contraction in the number of all children entering the youth justice system (Bateman, 2012; 2014). The number of First Time Entrants (FTEs) to the youth justice system has fallen by 86% over the ten year period, whilst the overall number of children who received a caution or conviction has fallen by 82%. The number of female FTEs fell by 92% (from over 32,100 to around 2,600) compared to 83% for males FTEs (from just over 68,000 to around 11,500) (YJB & MoJ, 2019)⁶. In the year ending March 2018, 18% of FTEs were female (with gender unknown for 1%). Figures show that 26,700 children and young people received a caution or conviction in the year ending March 2018.

- 16% of these children were female
- 73% were White (YJB & MoJ, 2019).

Whilst overall numbers have been falling, the proportion of Black children and young people given a caution or conviction has increased to 12% in the latest year, and is now three times that of the general 10-17 population (YJB & MoJ, 2019). This is of

⁶ These figures from the MoJ and YJB have been rounded to the nearest hundred.

serious concern. Also of concern is the over-representation of children from a Mixed ethnic background, accounting for 8% of those receiving a caution or conviction compared to 4% of the general 10-17 population. There is no analysis of both gender and ethnicity in the national data collection, and therefore only a partial picture is provided; due to the limitations of the data available, we are unable to comment on the potential over-representation of girls from Black, Asian or Minority Ethnic (BAME) backgrounds in the youth justice system as a whole, nor more specifically BAME girls who also have care experience.

Of the average of 900 children held in custody at any one time in 2018, 4% were female (YJB & MoJ, 2019). Monthly statistics published by the Youth Custody Service (HM Prison & Probation Service (HMPPS), 2019) show that in April 2019:

- There were 804 children in custody (136 fewer than the previous year).
- Of these 804, 30 were girls,
- 774 were boys.
- Of the 30 girls, 11 were BAME.

Although this tells us that over a third of the girls locked up identified as BAME, no further breakdown by ethnic category is provided (HMPPS, 2019).

It is also unclear from this data how many of the girls locked up have spent time in the care system. However, the Laming review (PRT, 2016) estimated that up to half of children in custody have spent time in the care system, 44% of whom are also BAME. On this evidence, we could estimate that around 15 care experienced girls were in custody in April 2019 (based on the monthly snapshot figures), many of whom would also identify as BAME. Whilst the numbers are small, Goodfellow (2019) highlights how static, snapshot data on the numbers of girls in custody at any one time “disguises the true picture of the number detained over a longer period, caused by a frequent flow of girls through custody for brief periods on short custodial sentences and periods of remand” (2019:52).

In summary, there has been a very welcome decrease in the number of female FTEs to the youth justice system in recent years, and in the number of girls held in custody. Such falls stand in stark contrast to the record increases in numbers of children in the care system; as Bateman et al (2018) note, this suggests that the care and youth justice systems are affected by different dynamics. Furthermore, the small numbers of girls now involved in the youth justice system increases the risk that their needs and experiences will be further marginalised and overlooked (Goodfellow, 2019). This may have implications for them being later involved with the criminal justice system as adults.

2.4 Women in Prison

Evidence suggests there is a greater over-representation of care experienced women in prison than care experienced men. A MoJ Survey found that 31% of female prisoners had been in care compared with 24% of males, although these are likely to be underestimates due to the challenges in identifying care leavers in prison (MoJ, 2012). Many women are mothers and sole carers when they enter prison (Corston, 2007), which has consequences for their own children. More than 17,240 children were estimated to be separated from their mother by imprisonment in 2010 (PRT, 2018). Yet curiously there is no national data collection on the number of care experienced women entering prison who lose their own children to the care system. This knowledge gap obscures a potential intergenerational pathway.

Like girls, women are a minority within the criminal justice system, accounting for around 15% of the probation caseload and less than 5% of the prison population (PRT, 2018).

- On 30 November 2018 there were 3,807 women in prison in England and Wales.
- However, in the year to June 2018, 8,106 women entered prison either on remand or to serve a sentence.
- Most women entering prison to serve a sentence (83%) have committed a non-violent offence.
- The proportion of women serving very short prison sentences has risen sharply. In 1993 only a third of women sentenced to custody were given less than six months compared to 62% in 2017 (PRT, 2018).

In addition, “there is surprisingly little published information about the ethnicity of women in the criminal justice system” (PRT, 2017: 3).

- The majority of female (83%) prisoners were White in June 2018.
- Approximately 17% were from a BAME group.
- 8% were from a Black ethnic group.
- No percentage breakdown is provided for other BAME categories (see MoJ, 2018a).

In summary, there are clear knowledge gaps in what we can say with confidence about the care-crime connection for girls and women, based on the limited official data available. Improvements in data collection and recording are urgently needed if we are to gain a fuller picture of the key issues, as has also been highlighted in other jurisdictions (Carr & Maycock, 2018). This represents a significant challenge for

analysing the care-crime connection through a gendered lens. We now turn our attention to how far our knowledge gaps might be filled by the available research.

3. Methodology

The search strategy we employed to identify research that may help explain the care-crime connection was designed to gather literature from across a range of disciplines including Criminology, Social Work and Law. Therefore, the following databases were selected:

- Social Care Online (Social Care Institute for Excellence)
- SocINDEX
- Westlaw UK & Westlaw International
- HeinOnline
- Web of Knowledge

The search strategy also included other databases which contain 'grey' literature, such as the NSPCC Library, CommunityCareInform and the YJB's Effective Practice Library. Relevant policy documents and reports from non-governmental organisations were also drawn upon. The core database searches were supplemented with handsearching, websites and personal contacts with authors.

Specifically, the review considered research with girls and women who had experienced being 'looked after' in the care system and who had involvement with the youth/criminal justice system. The review was also interested in the ways in which gender and ethnicity might intersect within these systems to produce particular experiences. The review considered key features of girls' and women's overlapping care and criminal careers. It also explored what aspects of the care experience might contribute to, or protect against, girls and women becoming involved in the youth and criminal justice system. The search terms employed included a combination of words and phrases relating to gender, care experience and justice involvement (Appendix A). In order to be included in the review, the literature had to be available in English and to have been published in the last 20 years. Studies concerning girls admitted to mental health residential facilities were excluded, since these girls are entering a different state system under distinct mental health legislation. Very small-scale studies, which were based on fewer than five participants, were also excluded from the review due to their limited generalisability.

Database searches identified just 12 pieces of literature (Appendix B) which had a specific focus on girls and/or women who had been both looked after and had justice

system contact⁷. Of these, only two discussed the intersections between gender and ethnicity. A much greater number of sources (over 200) were identified which included some discussion of gender in relation to care and justice involvement, although this was often very limited; only the most relevant sources are included in our discussion below. It is notable that the law databases produced very few relevant results at all: HeinOnline produced just six relevant journal articles whereas Westlaw UK produced no relevant journal articles but a handful of cases. There were no relevant results found through searches of Westlaw International.

The database searches suggest that there is a distinct lack of discussion of the association between gender, care experience and criminal justice involvement, particularly within the field of Law. The vast majority of our results came from Criminology and Social Work journals, with a sizable minority stemming from Psychology journals. Given the lack of directly relevant research, it was necessary to supplement our review with broader categories of literature. Therefore, we have also drawn upon some of the literature that covers all individuals with care experience (including boys/men and girls/women) and youth/criminal justice experience. In addition, we draw on the broader literature on girls and women with youth/criminal justice experience, but who may not have been 'looked after', as well as on some literature which considers the role of ethnicity within the care or justice systems.

Due to capacity, the scope of our search strategy was limited to a 20-year period as highlighted above. However, in recognition of the relevant and pioneering work of earlier authors, we have also incorporated a small number of 'classic' studies into our narrative (e.g. Carlen, 1988). The review primarily includes large-scale quantitative studies of administrative data, but smaller-scale qualitative studies and mixed-methods studies are also present. The majority of the available literature, including those categorised as 'very relevant' and other relevant literature, was from the USA, Canada, Australia and Western Europe⁸. We have woven findings from different jurisdictions into our narrative, although we recognise that both care and justice systems may be quite different in different countries and are not always directly comparable.

⁷ Although the review includes literature pertaining to girls in secure care on both welfare and justice grounds, these were not felt to fall under the 'very relevant' category which deals specifically with girls and women in the care system who experience justice involvement.

⁸ The only piece of literature from the UK that emerged from the searches on our specific topic was Fitzpatrick (2017). This discusses how care experienced girls in the youth justice system in England and Wales have been overlooked in policy and practice, and highlights the need for more targeted research. It is included in this review. However, it does not draw upon any primary empirical data and so is not included in our list of 'very relevant' literature in Appendix B.

Our review is divided into three key sections. We begin by exploring the overlapping biographies of girls and women with care experience, and those in the youth and adult justice systems. The review then moves on to consider experiences within the care system, before we finish by examining the issue of care experienced girls and women in justice systems.

4. Overlapping Biographies: The Impact of Early Experiences

4.1 Trauma and Adverse Life Experiences

Looked after children and care leavers are likely to have been subjected to a range of traumatic life experiences that can continue to have an impact in adulthood (Baynes-Dunning & Worthington, 2013; Simkiss, 2019). Trauma is also extremely common among youth justice populations (Beyond Youth Custody, 2016; Jacobson et al., 2010). Research indicates that multiple adverse life experiences, such as physical/sexual abuse and neglect, can have lasting impacts and increase the risk of future justice involvement (Baglivio et al., 2015; Fisher, 2015; Fox et al., 2015; Zettler et al., 2018). There is a growing body of research that correlates Adverse Childhood Experiences (ACEs) with later negative outcomes, although the validity and usefulness of the ACEs framework is debated (House of Commons Science and Technology Committee, 2018).

Studies suggest that adversity may have a greater impact on both care and justice involvement for girls and women compared to boys and men. For example, girls in care may have experienced greater levels of adversity than boys (Lipscombe, 2006), be more likely to have experienced sexual abuse and/or exploitation (Shrifter, 2012) and have higher rates of extreme and complex trauma than boys (Chamberlain & Moore, 2002; O'Neill, 2001). The Edinburgh Study of Youth Transitions found that girls' engagement in violence is predicted by vulnerabilities and adversities that are not shared by boys, such as early sexual intercourse and family turbulence (McAra & McVie, 2010). Furthermore, research from the USA indicates that maltreatment is strongly associated with offending behaviour in girls, such that they appear to "catch up" with boys in their levels of offending (Postlethwait et al., 2010: 319).

It may be that it is the cumulation of adversities that is key here. An analysis of adult arrest records found that traumatic family events, such as familial breakdown and domestic violence, have a greater impact on girls' likelihood of arrest in adulthood than boys; while each additional childhood risk factor increased the probability of arrest by 21% (Rhoades et al., 2016). Evidence also suggests that adversity may be more influential for Black girls than other ethnic groups. Zettler and colleagues (2018) found that multiple adverse experiences were associated with youth justice placements for Black girls, but not for White and Hispanic girls. Similar patterns were found by Wolff and others (2017) in relation to recidivism. It is apparent that trauma and adverse life experiences, which are common among girls and women with care experience, may elevate the risk of justice system involvement.

4.2 Mental Health and Related Support

The over-representation of care experienced girls and women in youth and adult criminal justice systems may also be associated with increased rates of mental ill health. Studies have shown that mental health problems are common among looked after children and care leavers (Butterworth et al., 2017; McAuley & Davis, 2009; Pilowsky & Wu, 2006). Similarly, young offender cohorts have greater mental health needs than the general population, and this is especially acute in secure settings (Berelowitz, 2011; Chitsabesan & Bailey, 2006). Mental health issues are also common among adult prisoners (HMPPS, NHS England and Public Health England, 2017), and adult women prisoners in particular (Bartlett & Hollins, 2018; Corston, 2007).

A comprehensive study of the mental health of children in England shows that, in the general population under the age of 16, boys are more likely to have a diagnosable mental health disorder than girls, although this changes after the age of 16 when girls are much more likely to have a disorder (Sadler, 2018). However, the type of mental health difficulty experienced differs between genders, with girls being more likely to have emotional disorders while boys are more likely to have behavioural disorders; this may be reflected in statistics that show girls are more likely to be detained in mental health settings, whereas boys are more likely to be detained under youth justice legislation (Sadler, 2018). More specifically, girls involved in offending behaviour tend to have significantly greater mental health needs than boys involved in offending behaviour, being at increased risk of depression, self-harm and post-traumatic stress (Chitsabesan & Bailey, 2006).

A systematic review of the literature regarding youth offending and mental health indicated that girls in juvenile detention have higher rates of depression than boys (Fazel et al., 2008). Research has also found that the link between depression and delinquency in child welfare involvement is more critical to understanding girls' offending than boys' (Postlethwait et al., 2010). A quantitative analysis of children in secure residential care in Sweden found that poor psychological well-being was more common among girls than boys (Hjern et al., 2018). Higher rates of mental ill health among girls in secure foster care may be the result of them being "short changed" by other systems of support (Chamberlain & Moore, 2002: 81). Research indicates that some of the most vulnerable care leavers in England are being failed by mental health services (Innovation Unit, 2019). In a High Court judgement in 2017, Sir Justice Munby criticised the "disgraceful and utterly shaming lack of proper provision" for looked after

children with acute mental health needs⁹. Such failings place care experienced girls and women at a greater risk of justice system involvement.

4.3 Educational Engagement and Outcomes

There are also similarities between the educational outcomes of girls and women who have experienced care, and those who enter youth and adult justice systems. Research in England has found that as a group, looked after children lag behind their peers in educational attainment, a gap which only grows as children become older (Sebba et al., 2015). While looked after girls generally have better educational outcomes than looked after boys, they still have poorer outcomes than non-looked after girls (DfE, 2019). A systemic review of the literature found that adverse pre-care experiences and characteristics of birth parents play a role in predicting educational outcomes for children in care (O'Higgins et al., 2017). The study also indicated that the ways in which maltreatment manifests itself through children's behaviour, for instance through engagement and effort, can affect educational outcomes.

Furthermore, looked after children are four times more likely to have a special educational need and five times more likely to be excluded from school than other children (DfE, 2019). Girls account for roughly a fifth of permanent and fixed term school exclusions; however, this may be influenced by the relative 'invisibility' of girls in the classroom (Osler et al., 2002). Girls can become 'over-shadowed' by boys, which can result in their needs not being addressed, as well as other types of educational exclusion which are less formal, such as 'self-exclusion' and internal exclusion (Osler et al., 2002). The link between poor educational engagement and youth justice involvement is well established (McAra & McVie, 2010; 2016; YJB, 2005): "school exclusion is a key moment impacting adversely on subsequent conviction trajectories" (McAra & McVie, 2010: 201). Schofield and colleagues' (2015) study of 100 young people found significant differences between offending looked after children and non-offending looked after children in terms of special educational needs, exclusion, attendance and qualifications. They contend that the relationship between offending, care and education is likely to be mediated by other factors such as behavioural issues which may be linked to adverse pre-care experiences or disadvantage, such as the experience of poverty.

⁹ [2017] EWHC 2036 (Fam) *In the matter of X (A Child)* (No 3) s. 30

4.4 Socioeconomic Status

The socioeconomic status (SES) of girls and women with care experience may also contribute to their over-representation in justice systems. The Child Welfare Inequalities project has shown that “socioeconomic conditions are a central dimension in a child’s chances of experiencing a very difficult childhood” (Bywaters et al., 2019: 151). Children living in neighbourhoods with the highest levels of deprivation are more likely to be subjected to social services intervention (Bywaters et al., 2019). Bywaters and colleagues (2017: 1899) indicate that ethnicity is also a relevant factor and that there is “subtle but powerful interaction” between socio-economic circumstances and racial structures which disadvantage Black individuals in particular. Poverty and deprivation are significant predictors of looked after status (Bywaters et al., 2014), and may also be associated with anti-social behaviour – although there may be an expectancy effect, whereby parents and teachers consider children from low SES families as being more likely to commit anti-social behaviour than those from higher SES families (Piotrowska et al., 2015).

Using both self-report measures and official data for approximately 4,300 young people transitioning to adulthood, the Edinburgh Study of Youth Transitions found that poverty is significantly associated with youth justice involvement. In particular, poverty is strongly predictive of violence in adolescence, even when controlling for other factors such as past convictions, victimisation, peer relations, caregivers and education (McAra & McVie, 2010; 2016; 2019). The study reveals that coming from a socially deprived background is associated with violent behaviour, and that this is especially the case for girls (McAra & McVie, 2010; 2016). Similarly, the association between poverty and criminal justice involvement among women more generally, has long been documented (Carlen, 1988; Sharpe, 2011).

4.5 Ethnicity

The ethnicity of care experienced girls and women may also influence their likelihood of justice involvement. BAME children are over-represented in looked after cohorts in England and Wales (DfE, 2018; Office for National Statistics, 2011; StatsWales, 2018), while ethnic disproportionality is a persistent feature of both youth and adult justice systems (Lammy Review, 2017; PRT, 2017; Webster, 2019). Certainly, evidence suggests that many care experienced children in the youth justice system also identify as BAME (Hunter, 2019; PRT, 2016). Moreover, the contraction of overall numbers entering the youth justice system has not been evenly distributed amongst BAME children, who continue to be overrepresented at ever increasing rates (Hunter, 2019).

In the Laming Review, BAME young people expressed that their ethnicity had compounded their disadvantages as looked after children in the youth justice system (PRT, 2016). A national study of youth justice and children's services professionals also suggested that BAME looked after children experience a "double whammy" effect (Hunter, 2019: 153). Studies from the USA indicate that African American children in child welfare systems have higher rates of juvenile justice involvement and incarceration than all other ethnic groups (Goodkind et al., 2013; Jonson-Reid & Barth, 2000; Ryan et al., 2010; Williams-Butler, 2018; Yi & Wildeman, 2018). Similar findings are apparent in the Australian research whereby Indigenous children in the child welfare system have higher levels of youth justice involvement than their non-indigenous peers (Doolan et al., 2012; Malvaso, et al., 2017; McFarlane, 2010).

Studies which consider the impact of both gender and ethnicity on child welfare and youth justice involvement are few in number and the findings are more mixed, as is discussed further in section 5.2. What evidence there is suggests a complex relationship between gender, ethnicity and involvement in systems of welfare and justice, which warrants further investigation.

4.6 Secure Care: Blurring the Lines Between Welfare and Justice

There appears to be an overlap in the biographies of girls and women with care experience and girls and women within adult and youth justice systems. Perhaps the clearest expression of this overlap can be found in the use of secure accommodation. Under Section 25 of the Children Act 1989, looked after children may be placed in a Secure Children's Home (SCH) if they are deemed to be at risk of harm or absconding (Goldson, 2002; Hart et al. 2015). Such children are placed alongside others who are remanded or sentenced to custody as a result of a criminal conviction. When it comes to girls, there is a particular blurring of the boundaries between welfare and justice issues (Ellis, 2018; O'Neill, 2001). O'Neill's classic works indicate that girls are more likely than boys to be placed in secure care due to their sexual behaviour, and to be labelled 'at risk' rather than 'a risk' (O'Neill, 2001; O'Neill et al., 1995).

However, Ellis' (2018) ethnography of girls in secure care suggested that they are viewed by practitioners as vulnerable and troublesome simultaneously, regardless of the reason for their admission. Girls admitted to secure care on welfare grounds actually felt more punished, since they did not have a release date and were subject to frequent detention extensions (Ellis, 2018). A study of youth in a Midwestern juvenile detention facility in the USA highlighted that "boys are detained as a response to public safety issues, whereas girls are detained because of problems in the home" (Gavazzi et al., 2006: 608). Furthermore, a recent report by the Children's Commissioner (2019) indicated that girls are more likely than boys to be detained for reasons relating to

mental health and welfare. The research indicated that girls constituted 33% of children in SCHs compared to 56% of children detained on welfare grounds. Girls also accounted for 66% of all children detained under the Mental Health Act in 2017/18. It is clear that there is a complicated relationship between welfare needs and justice involvement which is particularly acute for girls and women.

5. What Happens in the Care System?

5.1 The Importance of Having Someone Who Cares

The overlapping characteristics outlined above are important in understanding the care-crime connection, however, they do not tell the full story. The routes between care and justice are extremely complex (Bateman et al., 2018; Schofield, et al., 2015; Staines, 2016; Taylor, 2006) and this is particularly true for girls (Fitzpatrick, 2017). Individualised explanations have tended to take precedence in discussions about looked after children in trouble and, as a result, have minimised the structural factors that contribute to the disproportionate criminalisation of individuals with care experience (Fitzpatrick, 2017; Shaw, 2017; Staines, 2017; Stanley, 2016a). Indeed, issues associated with pre-care factors can be exacerbated by the care experience itself, which also influences the numbers of girls and women within justice systems who have been, or are currently, looked after.

There is compelling evidence that sustained, consistent, and nurturing relationships are key to promoting the wellbeing of children in care (Bazalgette et al., 2015; Wood & Selwyn, 2017). Corporate parents¹⁰ are vital in this regard since stable placements with sensitive caregivers and appropriate professional support can reduce the risk of justice involvement (Schofield et al., 2014; Schofield, et al., 2015; Taylor, 2006). Despite this, many children are exposed to traumatising instability and disruption (Children's Commissioner, 2018a; McElvaney & Tatlow-Golden, 2016). History shows us that, in the worst cases, children have been abused and neglected in the very state care institutions intended to protect them (e.g. see Waterhouse, 2000), and this has occurred across many jurisdictions. Moreover, recent scandals of abuse highlight that we must resist the temptation to assume that this is simply an 'historic' issue (see Jay et al., 2019).

Being in care can also put children at risk of exploitation more broadly. The Jay Report (2014) highlighted children in care as vulnerable to grooming, with perpetrators targeting children's residential units. Meanwhile, Berelowitz et al (2012) found that a disproportionate number of children are living in residential care at the time their abuse begins. Such experiences can lead to children being criminalised as a result of their victimisation (see Jay, 2014). Certainly, evidence suggests that failing to adequately address children's vulnerabilities can contribute to their youth justice involvement (Bateman et al., 2018; Day, 2017; PRT, 2016; Waterhouse, 2000). Fleeting, non-

¹⁰ Under the Children and Social Work Act 2017, the local authority becomes the 'corporate parent' for any child taken into care; the corporate parent has responsibility for acting in the child's best interests, and promoting their physical and mental health and wellbeing.

existent, and/or superficial relationships with caregivers and/or professionals can stimulate feelings of anger and alienation, which may manifest themselves as challenging behaviour (Day, 2017; PRT, 2016). A study of 75 girls in foster care found that aggression against peers was negatively associated with levels of caregiver support (Pears et al., 2012). Moreover, a study of older children in foster care in the USA, found that positive relationships, whether they be with biological parents, foster parents, and/or peers, can protect girls from developing aggressive behaviours (Farruggia & Geramo, 2014).

The impact of care experience may vary according to placement type, length of time spent in care and the age and ethnicity of girls. A MoJ study, linking family court data with police data, showed that girls in contact with the public law system in their early teenage years had a greater likelihood of offending and violent offending than males (Forty & Sturrock, 2017). Similarly, a study of administrative data in the USA found that girls' likelihood of juvenile justice involvement increased as their level of child welfare involvement increased, whereas there was no difference for boys (Jonson-Reid & Barth, 2000). Goodkind and colleagues (2013: 250) purported that "we know definitively that child welfare-involved youth are more likely than youth in the general population to become involved with the juvenile justice system". The evidence is less clear cut about how this might vary by gender and ethnicity.

5.2 The Interplay between Gender and Ethnicity

There is a dearth of research on the relationship between ethnicity, care experience and justice involvement in the UK, and none that we could find in our review which also considers the role of gender. It is therefore necessary to consider the international research, notwithstanding the limitations of extrapolating findings from different political and cultural contexts. McFarlane's (2010) study of justice involved girls in New South Wales (NSW) found that 60% of girls in the care cohort identified as Indigenous Australian, almost twice the rate found in the non-care cohort. An earlier study of adult prisoners in NSW found over half of the female Indigenous prisoners had experienced care compared to a third of male Indigenous prisoners (Egger & Butler, 2000). Meanwhile, a study of administrative data in Illinois showed that both girls and boys who spent longer in care were more likely to become justice involved (Williams-Butler, 2018). The research found that girls had fewer protective factors than boys, and concluded that this might make desistance more difficult. The authors argued that African American girls in care may fare worse, experiencing unique forms of oppression, due to the impacts of both racial discrimination and sexism (Williams-Butler, 2018).

The research is mixed in this regard. In a birth cohort study of child welfare involved youth in the USA, African American girls were twice as likely as White girls to have spent time in a juvenile justice facility (Goodkind et al., 2013). However, another study suggested that the risk of incarceration among child welfare involved girls was lower for non-white girls than for White girls (Jonson-Reid, 2002). A further study based in the USA found that minority ethnic children in the child welfare system were more likely to be justice involved than their White counterparts, although racial differences were more pronounced for boys (Bright & Jonson-Reid, 2008).

Moreover, Ryan et al (2007) found that at the first time of arrest, maltreated youth are “younger, more likely to be African American, more likely to be female and more likely to be arrested for sexual, threat related and violent crimes” (2007: 1045). Interestingly, Ryan et al (2010) examined the link between kinship care and risk of delinquency in their study of official arrest data provided by the Los Angeles County Department of Probation. They found that, for Hispanic males and females, kinship care placements are associated with a significant decrease in the risk of juvenile delinquency. However, they found no kinship placement effects associated with African American or White girls. A useful focus for future research in the UK would be on how far kinship care (as well as other placements) might offer girls from different ethnic backgrounds an environment that protects against offending.

5.3 Instability and the Impact of Placement Moves

There is a wealth of research which demonstrates that looked after children engaged with youth justice systems are likely to have experienced repeat placement breakdowns (Baskin & Sommers, 2011; Jonson-Reid & Barth, 2000; Ryan & Testa, 2005; Schofield et al., 2014; Staines, 2016). Placement instability can exacerbate feelings of anger and rejection (Howard League, 2017a) and some children may resort to difficult behaviour as a method of coping with their feelings of disempowerment and mistrust (Day, 2017; PRT, 2016; Shaw, 2014). Some children experience very high levels of placement breakdowns, often moving without warning and under very stressful circumstances (HM Inspectorate of Probation, Ofsted & Estyn, 2012; PRT, 2016).

In the few studies that distinguish between girls and boys, the strength of the association between placement moves and justice system involvement varies. Ryan and Testa’s (2005) study of administrative data found that placement instability had an impact on justice involvement for both boys and girls, but that it was stronger for boys. Meanwhile, Goodkind et al (2013) found the association between placement instability and juvenile justice involvement to be significant for boys only. By contrast, research at an American juvenile justice facility demonstrated that justice involvement

was significantly associated with girls' number of homes prior to entry (McLeer & Dehart, 2013). Furthermore, a study of 100 girls in foster care in the USA concluded that developing prosocial skills and placement stability are key for reducing delinquency (Kim & Leve, 2011).

Analysis of Australian longitudinal data revealed higher numbers of placements were associated with more convictions among both boys and girls, but that placement moves had a greater likelihood of conviction for girls than boys (Malvaso et al., 2017). The authors observe that "disruptive behaviour may be both a cause and consequence of placement instability" and that girls may be more sensitive to disruption than boys (2017: 58). Similarly, a study in the USA found that placement instability had a greater effect on girls than on boys with regard to externalized behaviour problems, such as aggression and delinquency (Aarons et al., 2010).

Coy's (2009) study of care experienced young women who had engaged in prostitution found that multiple placement moves evoked feelings of disempowerment and a lack of control, and as a consequence some girls asserted that they had turned to sex work as a way of reclaiming their agency. Similarly, research conducted in Canada found that the number of placement moves had the greatest effect on girls' likelihood of being drawn into sex trade activities (Hébert & Lanctôt, 2016). It is worth noting here that the 'choice' to engage in sexual activity is often not a choice at all, and entails complex processes of coercion (Berelowitz et al., 2012; Coy, 2009; Pheonix, 2012).

Instability not only affects the ability of the care system to provide consistent, meaningful and supportive relationships, but also education. In 2016/17, 1 in 10 looked after children moved schools during the school year (Children's Commissioner, 2018a). O'Higgins and colleagues' (2017) systematic review of educational achievement for children in care found that levels of support and involvement of caregivers play an important role in supporting children's academic success. Interestingly, the review noted that research tended to focus on the impact of children's care histories, rather than examining "associations with broader structural factors or policies" (2017: 200). The review identified male gender and ethnic minority status as having the greatest negative impact on educational achievement among children in care.

Educational engagement has been found to reduce the risk of youth justice system involvement (McAra & McVie, 2010), as well as the risk of recidivism among girls in care (Lee & Villagrana, 2015). Meanwhile, sustained education and employment can act as a protective factor for children remanded to foster care (Lipscombe, 2006). Taylor's (2006) research found that secure attachments with caregivers along with

strong educational engagement may have acted as a protective factor against youth justice involvement among girls in her sample. Evidence from the US suggests that the transition to middle school is a crucial period for girls in foster care; decreased school adjustment was associated with detrimental outcomes including aggression and youth justice involvement (Pears et al., 2012). Furthermore, a study of formerly incarcerated women found that experience of care during early teenage years and low educational achievement increased the likelihood of reincarceration (Jung & LaLonde, 2016).

5.4 Out of Area Placements

The issue of instability is further complicated by the prevalence of out of area placements for children. Recent figures show that two fifths of children are placed outside of their council boundary in England, whilst a quarter are placed over 20 miles from home (DfE, 2018). Children placed further away from home can find it difficult to maintain relationships with family and friends, which can contribute to youth justice involvement (Blades et al., 2011). Out of area placements can lead to poor communication and a lack of support for looked after children (HM Inspectorate of Prisons (HMIP), 2011; HM Inspectorate of Probation, Ofsted & Estyn, 2012; Ofsted, 2014), which can make them feel isolated, lonely and abandoned by their local authority (Shaw, 2014). We found no studies which focus specifically on girls and out of area placements; this area warrants further investigation.

Out of area placements tend to lead to poorer life outcomes, which include greater risk of youth justice involvement (HM Inspectorate of Probation, Ofsted & Estyn, 2012). However, in the context of the 'care crisis', when resources of all kinds are stretched to the limit, such placements may sometimes be the only option available. The problem of inadequate provision was raised by Mr Justice Hayden in the Matter of M (A Child), whilst making a secure accommodation order for a teenage girl with a history of experiencing abuse, multiple placement moves, and being violent. "I find myself, once again, in a position of considering the needs of a vulnerable young person in the care of the State where the State itself is unable to meet the needs of a child which they themselves purport to parent"¹¹.

5.5 Going Missing

A joint report by the All Party Parliamentary Group (APPG) for Runaway and Missing Children and Adults and the APPG for Looked After Children and Care Leavers (2012)

¹¹ [2017] EWHC 3021 (Fam) M (A Child - secure accommodation order) s. 20

indicated that children who are placed far away from their home area in poor quality and unsuitable placements are more likely to go missing, which further increases their risk of youth justice involvement. Many calls made to the police regarding looked after children relate to missing incidents, rather than any offending behaviour, which can lead to children becoming known to the authorities (Howard League, 2016; 2017a; 2017b; 2019; PRT, 2016).

Colvin and colleagues' (2018) qualitative study of welfare and justice professionals in NSW found that missing incidents are frequently conflated with criminality, which pushes children into the youth justice system. Similarly, a study of administrative data in the USA indicated that girls are more likely to run away than boys, and to be criminalised as a result (Sarri et al., 2016). Further research suggests that African American girls are particularly at risk of absconding (Baynes-Dunning & Worthington, 2013).

When children go missing from care, they are at serious risk of being physically and/or sexually abused and exploited, although they are likely to be criminalised when they encounter the police rather than be recognised as victims (The APPG for Runaway and Missing Children and Adults and the APPG for Looked After Children and Care Leavers, 2012). Of current concern, is the risk of exploitation through 'county lines' drug dealing gangs, who use children to courier and distribute drugs in more rural areas due to the saturation of inner-city drug markets (Windle & Briggs, 2015). Such groups reportedly use "coercion, intimidation, violence (including sexual violence) and weapons" to maintain compliance (HM Government, 2018: 48) and there is a growing concern about the involvement of girls, who may become trapped in a cycle of intimidation and violence (Children's Commissioner, 2017).

Phoenix's (2012) study of sexually exploited girls, of whom many were looked after, indicated that girls were likely to be criminalised for offences that were directly related to their victimisation. In a study of girls in care in the USA, girls who were being sexually exploited were more likely to run away and to be criminalised (Hickle & Roe-Sepowitz, 2018). A recent inquiry into child sexual exploitation (CSE) in Rotherham found that girls from 'chaotic' backgrounds, including those who had been in care, were blamed for their own victimisation, labelled as "teenagers out of control" and treated as such (Jay, 2014: 104). Of serious concern is that these girls may be at greater risk of having their own behaviour unnecessarily criminalised, whilst their experiences of victimisation are minimised or ignored.

5.6 Behaviour Management in Care

Despite the limitations of official data, there is growing evidence to suggest that looked after children are exposed to excessive levels of youth justice intervention (Blades et al., 2011; Howard League, 2016; 2019; Hunter, 2019; McFarlane, 2018; PRT, 2016; Taylor, 2006). In 2004, the Home Office recognised that children are unnecessarily criminalised as a “punitive or control measure” in some residential homes (Home Office, 2004: 1). A decade later, the House of Commons Justice Committee (2013: 10-11) reiterated these concerns calling police involvement in trivial incidents “completely disproportionate”. More recently, the Review of the Youth Justice System concluded “it is likely that the way care homes and police respond to minor offending by [looked after children] contributes to their over-representation” (Taylor, 2016: 23), with formalised responses to behaviour that would not elicit a youth justice intervention if it had occurred in a family home. A joint inspection of YOTs found that “placement staff and other agencies often failed to work together to deal with challenging behaviour in the children’s home and prevent it becoming criminalised” (HM Inspectorate of Probation, Ofsted & Estyn, 12: 32). The inspection team found “no consideration of the context of ‘normal’ teenage behaviour” and little recognition of the hardships that looked after children may have faced (2012: 31).

When the police intervene during an incident regarding a looked after child, minor offences are likely to be recorded as a crime. This may be in part due to previously inflexible Home Office counting rules (Howard League, 2016, PRT, 2016) but also may relate to the stigma surrounding looked after children¹². Evidence suggests that looked after children are disproportionately exposed to police detention (HM Inspectorate of Constabularies, 2015). Through consultation with the police, the Howard League (2016: 4) discovered that police detention was sometimes used as “respite care” to cover staff shortages as well as compensating for a “social care deficit” when children should be receiving welfare interventions. Moreover, police sometimes felt that children would be safer in overnight custody than in the children’s home. In some cases, children’s homes would refuse to allow the child to return after an incident at least for a period of time (Howard League, 2016)¹³.

Despite recent efforts to reduce unnecessary police involvement, and evidence of good practice in some areas of England, the Howard League found the police are

¹² In 2016, the Home Office introduced ‘Outcome 21’ for police recording which allows officers to record that “Further investigation, resulting from the crime report, which could provide evidence sufficient to support formal action being taken against the suspect is not in the public interest”.

¹³ The Home Office has published a concordat with the aim of reducing the number of children spending the night in police custody which may alleviate some of the tensions outlined above (Home Office, 2017).

regularly called out to children's homes, particularly to private providers, with some children's homes contacting the police over 200 times in 2018. Shaw (2014:136) highlights that police intervention is more related to the frequency of incidents rather than the seriousness. Moreover, care home staff may resort to police intervention as a way of asserting authority and maintaining control when they lack empowerment (Shaw, 2012; 2014), resulting in the disproportionate criminalisation of looked after children.

When girls in care receive a formal sanction, it can affect them for the rest of their lives. A report found that England and Wales had the most punitive childhood criminal records system when compared to 15 other jurisdictions (Sands, 2016). In England and Wales, all cautions and convictions are stored until an individual is 100 years old, and are extremely difficult to erase. Moreover, research suggests that the criminal records filtering system is not working effectively, and that relatively minor youth convictions are routinely and widely disclosed (Sands, 2016). In addition, the 'multiple conviction' rule means that children who experience phases of justice system contact, for instance girls committing minor offences in residential care, suffer as a result (Sands, 2016; Stacey, 2018).

Whilst we found no specific research on looked after girls and behavioural management in England and Wales, McFarlane's (2010) study in NSW highlighted that the over-representation of care experienced girls and women in NSW justice systems is linked to inappropriately harsh responses to challenging behaviour. In her sample of justice involved girls, over half of girls in the care cohort had been sanctioned for criminal damage committed in a children's home whereas no girls in the non-care cohort had been processed for criminal damage.

5.7 Care and Criminalisation: Placement Type

Much of the research on criminalisation in care has been focused on children's homes. The evidence on the impact of other types of placement is far more limited. Residential children's homes are often characterised as 'last resort' placements in England (Hayden, 2010) and consequently hold some of the most vulnerable children in the system (Berridge et al., 2012). However, it is important to note that there will be children who have experienced different types of placement prior to entering residential care, such as foster placements or kinship care. Therefore, the impact of different types of placement can become quite difficult to unravel.

Notwithstanding the above comments, analysis of data in England found children in residential care aged between 13 and 15 were six times more likely to be criminalised than children in other placements, whereas children aged between 16 and 17 years were twice as likely to be criminalised (Howard League, 2016). Moreover, a meta-analysis of studies from North America and Western Europe found that children in residential placements have higher rates of justice involvement than children in home placements (Strijbosch et al., 2015). There are also a number of international studies which suggest that placement in residential care may be particularly relevant to understanding girls' justice involvement (DeGue & Spatz Widom, 2009; Goodkind et al., 2013; Malvaso et al., 2017; Ryan & Testa, 2005, Ryan et al., 2010).

A study of administrative data in the USA found that out of home care was associated with increased risk of justice involvement for girls regardless of placement stability (DeGue & Spatz Widom, 2009). The authors concluded that "even stable experiences with [residential] care may have negative consequences for maltreated girls" (2009: 346). Likewise, another study of data from the USA found that being placed in out of home care doubled girls' risk of juvenile justice involvement (Ryan & Testa, 2005). Interestingly, one study of Swedish data which included only children who had spent time in foster care found no association between care experience and adult criminality in women (Lindquist & Santavirta, 2014).

The increased levels of youth justice involvement in children's homes may be the result of issues that existed prior to the residential placement as outlined earlier in this review. Darker et al (2008: 146) suggest that local authority care may be unable to help children to "overcome deep-seated and long-standing difficulties which they have already begun to experience before entry". Equally, the impact of earlier adversity may then be exacerbated for girls by the nature of care settings that may reinforce gendered behavioural roles and expectations (Coy, 2009). In addition, negative peer influence may contribute to higher levels of youth justice involvement found in residential settings (Hayden, 2010; Sinclair & Gibbs, 1998; Stanley, 2016b; Taylor, 2006). In such cases, residential placements may act as "universities of crime" (Taylor, 2006: 88) in which children can "learn the ropes" from other children who have already offended (Stanley, 2016b: 65).

Hayden (2010) followed 46 children admitted to residential care in England and found that two thirds had criminal records at the end of a one year period. Her research highlighted aggressive and highly problematic behaviour amongst residents, with the concentration of "high risk" individuals resulting in some residential homes becoming "criminogenic" environments (2010: 471). More specifically, Goodkind and colleagues (2013) argue that girls might be forced to develop coping skills and behaviours in residential environments which are common among boys because of masculinity. In

addition, children in residential care are more likely to have become looked after at an older age which puts them at a greater risk of youth justice involvement (Baskin & Sommers, 2011; Farruggia & Geramo, 2015; Goodkind et al., 2013; Jonson-Reid & Barth, 2000; Malvaso et al., 2017).

Some studies have shown that many looked after children who are convicted of an offence have been in trouble before (Darker et al., 2008; Shaw, 2012; 2014; Sinclair & Gibbs, 1998). However, an inspection report concluded that a substantial minority of children (30%) who were prosecuted in residential care had no previous youth justice system contact and had probably not offended before (HM Inspectorate of Probation, Ofsted & Estyn, 2012). Taken together, the research evidence suggests that there is a complex relationship between residential care and youth justice involvement which requires nuanced understanding of the interactions between existing vulnerabilities, peer influence and the care experience of girls.

6. What Happens to Care Experienced Girls and Women in the Youth and Criminal Justice System?

6.1 Professional Perceptions and Stigma

The labelling of children in care as “mad or bad” (Morris, 2000:3) is a persistent problem that may not only contribute to their youth justice system involvement, but may also be compounded by it. Stigmatisation and negative labelling are common concerns among looked after children, particularly those in residential care (Children's Rights Director for England, 2009; Coram Voice, 2015), and those from BAME backgrounds (PRT, 2016). Such stigma can lead to a range of injustices (Birch & Taylor, 2003) and may also be experienced differently by girls. Staines (2016) highlights that a reluctance amongst some foster carers and residential care staff to work with girls has been identified in some studies due to fear of allegations of abuse and gendered stereotypes about girls' challenging behaviour.

Research in secure accommodation in England found girls are simultaneously labelled as “vulnerable” and “troublesome” (Ellis, 2018: 162), regardless of whether they had offended. Meanwhile, an ethnographic study of secure care in Denmark found staff generally perceived girls to be complex and more demanding than boys, with more socio-psychiatric disorders, such as anxiety, self-injury and suicide risk (Henriksen, 2018). Moreover, concerns about girls' sexual behaviour and gender deviance were a key focus for institutional practices. Challenging negative stereotypes of girls in care is crucial, not least to recognise the diversity of individual care careers and that many children do very well (Taylor, 2006). Meanwhile, highlighting some of the complexity underpinning professional perceptions of girls in care provides some context for making sense of institutional responses to those who do find themselves in conflict with the law.

6.2 Punitivity in Sentencing

Care experienced girls and women may be escalated through justice systems precisely because of their gender and care status. A significant body of research suggests that girls and women in general are treated more punitively for their transgressions because they are deemed unfeminine as well as delinquent (Carlen, 1988; Gelsthorpe & Worrall, 2009; Sharpe, 2011; Sharpe & Gelsthorpe, 2009). Girls' offending behaviour is often linked to their experiences of violence and victimisation; their survival strategies, such as running away and not attending school, can influence magistrates' decisions and result in more punitive outcomes (Chesney-Lind, 1999; Gelsthorpe & Worrall, 2009). The research regarding girls indicates a frequent

confusion between 'risk' and 'need' among practitioners, which can result in higher sentencing tariffs (APPG for Women in the Penal System, 2012; Sharpe & Gelsthorpe, 2009). These issues are likely to be compounded for BAME girls and women who are punished more severely than White girls and women, at all stages of the justice process (Cox & Sacks-Jones, 2017; Feilzer & Hood, 2004; Lammy Review, 2017).

Moreover, it is likely that care status can lead to differential treatment which accelerates criminalisation, with some evidence to suggest care experienced girls and women may be drawn into justice systems for minor offending (Taylor, 2006). This is particularly problematic when considered alongside the low age of criminal responsibility in England and Wales (Goldson, 2019), as well as our punitive childhood criminal records system which can have life-long impacts (Sands, 2016).

A recently retired magistrate told the Laming Review (2016: 18) that looked after children had appeared before the court for "kicking doors, squirting shower gel on carpets, [or] using abusive language to staff". As such, the lack of tolerance for 'normal' teenage behaviour which leads to increased police intervention is also reflected in the court room. Shaw's (2012; 2014) work suggests that looked after children are accelerated through the system because of frequent court appearances for low level offences simply because magistrates have no other option. Lord Laming recommended that in cases where children appear before the court unnecessarily, magistrates should be able to "stand the case down" and resolve the matter without having any formal court proceedings (PRT, 2016: xiii).

Care status can also impact children in court through a lack of advocacy and support. Looked after children attending court are not always accompanied by someone who knows them well (Carlile, 2014; HMIP, 2011; HM Inspectorate of Probation, Ofsted & Estyn, 2012; PRT, 2016). This can negatively impact decision making and make the use of custody "more difficult to avoid" (HM Inspectorate of Probation, 2012: 32). As such, children can appear to be "abandoned to the youth justice system" (Shaw, 2014: 148) and thus in need of stricter interventions which inadvertently accelerate their criminalisation (Hunter, 2019). Research conducted in NSW, which focuses on care experienced girls, also found that child welfare officers very rarely attended court, justice officials were frequently unable to speak with welfare officers, and that limited information was provided about care status (McFarlane, 2010).

Furthermore, looked after children are sometimes accompanied by adults who experience a conflict of interest; for example, the child may be accompanied by a residential care worker who is supposed to support them, yet also represents the children's home where the offence was committed (PRT, 2016). Reports from

residential workers can negatively impact sentencing, perhaps due to a lack of understanding about the ways in which trauma manifests itself: Shaw (2014: 145) contends that the perceived ingratitude of children displaying difficult behaviour and the desire to help “beleaguered” staff might lead to harsher sentencing.

There is some evidence that care experienced girls may be treated more punitively in court. A study of court administrative data in New York found that child welfare involved youth had a greater likelihood of receiving the harshest sentences, but that girls faced a larger care status bias than males (Conger & Ross, 2001). Tam and colleagues’ (2016) study of administrative data in Los Angeles County presents a more complex picture. They found that child welfare involved girls were more likely than child welfare boys to be sentenced to a restrictive placement (e.g. a supervised group home) than to a probation sentence, regardless of the charge type. The authors posit that girls may be removed from the community because of a misguided desire to protect them. However, girls were less likely than boys to be placed in a corrections facility (Tam et al., 2016).

Taken together, the evidence implies that care experienced girls may be escalated through the court system (APPG for Women in the Penal System, 2012), where legal professionals can struggle to contextualise behaviours and therefore doubt the appropriateness of a community sentence.

6.3 Youth Custody

The lack of support from corporate parents outlined above can become an even greater problem for looked after girls who are sentenced to custody. When a looked after child becomes involved with the youth justice system, the local authority sometimes takes a step back from their duties to that child (Blades et al., 2011; HMIP, 2011; Taylor, 2016; Willow, 2015). This is particularly acute for children in custody: there is a longstanding contention that some social workers view youth detention as a form of respite (Carlen, 1988), resulting in those with care experience being effectively abandoned by their local authority (Coyne, 2015). The Laming Review found that many looked after children in custody were not receiving adequate emotional, financial and practical support from their parent local authority (PRT, 2016). In a short thematic review of looked after children in custody, significant barriers to effective ongoing communication between institutions and local authorities were identified including “...a perception that [some] social workers discharged their duties towards looked after children when they entered custody” (HMIP, 2011: 35).

With respect to girls, an ethnographic study of a female juvenile justice facility in the USA found that child welfare involved girls spent more time locked up and were poorly treated because of their dual status (Flores et al., 2018). The authors concluded that “the juvenile justice and [...] care system work in tandem to dole out punishment to young people” (2018: 153). An alternative perspective is provided by the Children’s Commissioner (2018b) in a report describing interviews with nine girls held in a Secure Training Centre (STC), the majority of whom had been in care and/or spent time living away from their family. Many of the girls felt a sense of relief about being in the secure unit, away from the chaos of their usual lives; with some reporting that the unit was the only time they had ever felt cared for (2018b:1). This is of course a damning indictment of the lack of support available to them in the community.

Despite this, there is much evidence to suggest that youth custody in England and Wales is in crisis. Indeed, the United Nations (2016: para 79) has called for the UK to bring youth justice fully in line with the United Nations Convention on the Rights of the Child, drawing attention to several areas of concern including: mandatory life sentences for children; the use of segregation and isolation in child detention facilities and the lack of statutory support for the principle of imprisonment as a last resort (United Nations, 2016).

Following allegations of mistreatment at a STC in Kent, the Medway Improvement Board (2016) found evidence of falsification of records, bullying of children and a lack of boundaries. Medway holds both boys and girls, although the report did not include discussion of any gender differences. There is also mounting concern about conditions in the wider juvenile secure estate. In his annual report, HM Chief Inspector of Prisons detailed significant failings in the system:

“By February 2017, we concluded that there was not a single establishment that we inspected in England and Wales in which it was safe to hold children and young people. The speed of decline has been staggering” (HM Chief Inspector of Prisons for England and Wales, 2017: 9)

Furthermore, the Youth Custody Improvement Board (2017: 1) has determined that the juvenile secure estate is no longer “fit for purpose” given the deterioration in the quality of provision and increases in violence. Cunneen et al (2018: 430) argue that reductions in the use of youth custody “have ultimately failed to displace continuities in the form of systemic human rights violations” including the disproportionate incarceration of looked after children. Such injustices are certain to impact upon care experienced girls in conflict with the law, who may be especially disadvantaged (Fitzpatrick, 2017).

6.4 Resettlement and Leaving Care Support

The effective resettlement of children after custody is reliant on careful preparation, engagement and collaboration, robust networks of support and partnership working between a number of agencies (Bateman, 2015; Bateman et al., 2013). Poor communication and a lack of support from corporate parents, including inadequate after-care support for those leaving care, is yet another example of the ways in which looked after girls are disadvantaged because of their status. More generally, care leavers in custody are a group who require specific and specialist support in the criminal justice system, yet their needs are frequently overlooked (Fitzpatrick & Williams, 2017). Research indicates that justice professionals lack knowledge and understanding of care leavers and are consequently unable to address their needs (Fitzpatrick & Williams, 2017).

This is particularly likely to impact care experienced girls and women in custody because they are relatively few in number, and their specific resettlement needs have received little attention in policy and practice (Bateman & Hazel, 2014; Goodfellow, 2019). Greater levels of trauma and victimisation found among justice involved girls is often linked to their offending behaviour, which further complicates their resettlement. Jung and LaLonde (2016) have posited that care experienced women are more likely to be reincarcerated because they lack support from family and social networks. Certainly, research suggests that care experienced girls have weaker relationships with both their biological and care networks than do boys (Perry, 2006). Thus, they may require greater resettlement support to help them transition into the community.

The experience of leaving care adds a further dimension to understand, as regardless of how the care experience is viewed by individuals, making the transition to independent living represents an important turning point in itself. Baker's (2017) rapid review of evidence based on 80 UK studies exploring care leaver's own views noted that insufficient preparation for adulthood was reported by a significant group of those leaving care. Having 'no space to get it wrong' was a particular theme highlighted by those leaving care without wider networks of support or a family home to fall back on (Baker, 2017).

With the leaving care age set at 18, girls leaving the care system in England continue to have a compressed and accelerated transition to independence, when compared to their peers in the general population. Whilst 'staying put' arrangements have been

in place for those leaving foster placements beyond this time, these are not available to those leaving residential care settings, which effectively creates a two-tier system¹⁴.

6.5 Women in Prison: Understanding the Care-crime Connection Across the Life-course

It is clear that youth justice involvement can affect girls into adulthood. It is therefore imperative then to consider the impact of care experience for women in the criminal justice system, particularly those in prison. Figures for 2017-18 in the Bromley Prison Briefings (PRT, 2018) show that:

- 8 in 10 women in prison (79%) reported that they had mental health issues compared with 7 in 10 men (71%).
- Rates of self-harm amongst women are at the highest level for eight years, and women account for a disproportionate level of self-harm in prison— in 2017/18 19% of all self-harm incidents in prison were by women, despite making up only 5% of the total prison population.
- Nearly 2 in 5 women (37%) left prison without settled accommodation.
- Around 1 in 7 women (14%) were homeless and nearly 1 in 20 (4%) were sleeping rough on release in 2017-18.

Imprisoned women are also more likely to be locked up further from home because of the lack of provision for them, making maintaining contact with family and friends a particular challenge. Paradoxically, whilst research indicates that “multiple layers of services are likely critical for incarcerated women with foster care records” (Jung & LaLonde, 2016:47), a recent report in England found that there are not enough resources to meet the needs of care leavers exiting prison, and that social care and rehabilitation support services are fragmented and uncoordinated (Innovation Unit, 2019). Furthermore, care leavers may be viewed as a particularly ‘risky’ client group in some justice settings, with professionals reluctant to enquire about care status due to fear of ‘opening a can of worms’ (with prior experiences of abuse being revealed for example) that overstretched professionals have little time to deal with (Fitzpatrick & Williams, 2017).

In addition, criminal records obtained in youth have long-lasting implications for women’s employment, education and housing which are compounded for those brought up in care (Stacey, 2018). We found no specific research on the impact of criminal records on care experienced women; however, more general research

¹⁴ In 2016, the government piloted ‘staying close’ arrangements that are designed to “enable young people to live independently, in a location close to their children’s home with ongoing support from that home” (HM Government, 2016: 3.46). However, there has yet to be a date set for the introduction of such arrangements across England (Roberts et al., 2019).

suggests that the stigma of a criminal record may be felt particularly acutely by young women (Sharpe, 2011), and especially those who are mothers (Sharpe, 2015). In January 2019, the Supreme Court criticised the disclosure of youth cautions and ruled that the ‘multiple conviction’ rule is disproportionate for some since it applies “irrespective of the nature of the offences, of their similarity, of the number of occasions involved or of the intervals of time separating them”¹⁵. It remains to be seen how the government will respond.

There is very little research that has specifically focused on care experienced women in the criminal justice system. This reflects a failure to appreciate the impact of care experience across the life-course for those with justice system involvement, and a lack of focus on how challenges within state care and control systems may be experienced across the generations. Pioneering work by Pat Carlen in England during the 1980s was significant in highlighting the routes taken between care and custody for a predominantly working-class group of women¹⁶. During her interviews with women who were, or had been, in penal custody, she discovered that 22 of the 39 women had previously been in residential care. She contended that inequalities stemming from class, gender and racism combined to determine the women’s “almost certain criminalization” (1988: 11) and that women with care experience were particularly at risk of institutionalisation.

In 2007, the Corston Report recommended a far-reaching, radical, ‘women-centred’ approach to women’s imprisonment in England and Wales, including the development and implementation of a decarceration strategy. However, work published a decade on reveals slow progress in meeting the reforms proposed and identifies significant barriers to change (Moore et al, 2017). Indeed, Clarke and Chadwick (2017) call for a narrative shift that entails a move away from focusing on ‘troubled’ women who need to ‘turn their lives round’ towards a focus on ‘failing institutions’. This fits with Stanley’s (2016b) analysis of 105 New Zealanders who spent time in residential care between the 1950s and 1990s. Although based on a predominantly male sample, Stanley’s work highlights how children’s routes from care to custody “were determined and enhanced by the response they received from state institutions and workers” (2016b: 62). It further stressed that such routes “are embedded in the interconnected, and often life-long, processes of victimization and criminalization” (2016b: 69), the impact of which are often felt well into adult life.

These processes are further complicated by the issue of motherhood and incarceration. In a large-scale study in England and Wales, 61% of women in prison

¹⁵ *R (on the application of P, G and W) (Respondents) v Secretary of State for the Home Department and another (Appellants)* [2019] UKSC 3

¹⁶ Whilst presented as only one part of a larger study, Carlen’s (1988) analysis of care is not only illuminating with its exclusive focus on women, but also with its rich qualitative focus on individual accounts which gives a voice to those with lived experience.

had children under the age of 18 (Beresford, 2018). Furthermore, a small-scale study found that 17 incarcerated women had 50 children between them (Baldwin & Epstein, 2017). Women are more likely to be the primary caregivers of children, and so when a mother enters prison her children are often cared for by relatives, taken into the care system or adopted (Corston, 2007). Furthermore, the impact of incarceration is more acute for Black mothers, of whom 50% are single parents (Cox & Sacks-Jones, 2017). Of serious concern however is that it is unknown exactly how many care experienced women in prison lose their own children to the care system (Fitzpatrick, 2017).

What is known is that separation can lead to anxiety and distress for both mothers and children, and may contribute to intergenerational cycles of offending (Lord Farmer, 2019; MoJ, 2018b), although we urge caution against any sense of inevitability about this. Minson (2018) found that maternal incarceration can negatively affect children in two ways. Firstly, it exposes them to 'secondary prisonization' which can include changes in home, caregiver and education, as well as impact their relationship with their mother. Secondly, it can lead to 'secondary stigmatisation' whereby they risk being labelled as a problem child (Minson, 2018). Thus, mothers' criminal justice involvement can make it more likely that their children are taken into care, and increases the likelihood that their children are perceived as troublesome. Moreover, many women may lose their homes on entry to prison, and the challenges of finding adequate accommodation on release may compound the likelihood of them being reunited with their children (McMahon, forthcoming). This is one of a number of reasons why there have recently been calls, by the Magistrate's Association amongst others, to end short prison sentences (Bowcott, 2019) which have more than doubled for women since 1993 (PRT, 2018).

Previous research has shown that incarcerated women with care experience may be reluctant to seek support for their children because of their own negative experiences of being in care (Beresford, 2018). Furthermore, women in prison going through care proceedings struggle to access legal assistance which can lead to them losing their children (Beresford, 2018). A recent study found that 40% of women subjected to repeated care proceedings were looked after as children, while 27% had a criminal record (Broadhurst et al., 2017). The research outlined child removal as a deeply distressing experience that is seldom met with appropriate support. As such, women can experience an escalation of problems and 'collateral consequences' which include criminal behaviour (Broadhurst & Mason, 2017). There are clearly complex and intersecting relationships between care experience, child removal and criminal justice involvement at play here which warrant additional exploration. Further research could usefully explore the impact of care experience across the life course which could add a much needed intergenerational perspective on our understanding of the care-crime connection for girls and women.

7. Conclusion

This review has explored what is known about the pathways between care and custody for girls and women. We have also considered the neglected interplay between gender, ethnicity, care status and offending. There are clear knowledge gaps in relation to what we can say with confidence, based on the limited official data available. Improvements in data collection and recording are urgently needed if we are to gain a fuller understanding of the key issues. At present, we have a number of different pieces of the jigsaw, but only a partial picture is provided. This serves to obscure a fuller understanding of the care-crime connection for girls and women.

Our targeted and interdisciplinary review of literature, based on firm inclusion and exclusion criteria, reveals a sparse amount of research evidence that is directly focused on care experienced girls and women in justice systems. One interesting observation is the relative lack of discussion on this particular issue in the discipline of Law, as opposed to in Criminology and Social Work journals. Yet a socio-legal lens would be important here given the relevant cases in the court room. Based on our searches of five key databases across the last 20 years, in combination with a consideration of the 'grey' literature in other databases, and relevant policy documents and reports, we identified just 12 pieces of 'very relevant' literature that were specifically focused on our topic of interest. All 12 were based on research conducted outside of the UK. Findings from different jurisdictions are weaved throughout our narrative, often echoing similar findings, although we recognise that systems of care and justice inevitably vary across international borders, and operate in different cultural contexts.

Due to the very limited research evidence on our specific topic, we inevitably draw on broader categories of literature to expand our discussion. In particular, we consider some of the general literature on the care-crime connection (that may not have a gendered focus), and on girls and women in the justice system (that may not have a focus on care experience). We have sought to be as focused as possible in the time available, but are aware that we have not covered everything, and that there are important issues, such as disability and sexuality for example, that do not feature in our discussion.

What the available evidence does highlight is the overlapping biographies of girls who enter systems of care and justice. In other words, those in need of care and protection, and those in conflict with the law often share very similar backgrounds. Understanding early disadvantage is of course important but it does not tell the whole story, despite

the tendency in official discourse to focus on pre-care experiences as a dominant explanation in understanding the care-crime connection. Equally important (if not more so when we consider potentially positive points to provide support in individual lives) is what happens in the care system itself.

Whilst certain types of care experience may protect against offending behaviour, there is also compelling evidence that other types of care experience may exacerbate existing difficulties and contribute directly to youth justice system involvement. Behaviour management in residential placements is a particular issue of concern which can lead to girls being unnecessarily criminalised. This may go some way to explaining why girls in care have a particularly elevated risk of justice system involvement compared to those who are not looked after. For those in the justice system, research highlights how the stigma attached to being in care and negative stereotypes associated with care experience may play out in very particular ways for girls and women, and is often linked to concerns around sexual behaviour and gender deviance. Such stigma needs to be addressed, not least because of its potential impact on institutional responses to girls' challenging behaviour.

Amongst those in custody, the numbers of care experienced girls locked up at any one time may be small, but there is evidence to suggest that there may be many more care experienced women in adult prisons. However, we found very little specific research on this topic. Furthermore, with no national data collection on what happens to the children of women in prison (including how many of these children go into the care system themselves), it is not possible to understand the extent of how the pathways between care and custody may or may not be reproduced across the generations.

The lack of attention to the impact of care experience over time for girls and women in the youth and criminal justice system clearly warrants further exploration. Based on the evidence to emerge from our targeted literature review, we conclude that it is particularly important that the voices of those with first-hand experience of state care and control systems are a central part of this future research agenda. The next stage of our project is to interview care-experienced women in prison, girls in care and the youth justice system, and professionals who work within systems of care and justice.

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Appendices

Appendix A

Table 1: Search terms employed in database searches

Gender	Care Experience	Justice Involvement
Girls	In care	Delinquency
Women	Residential care	Offending
Females	Foster care	Crime
	Care leavers	Youth justice
		Juvenile justice
		Antisocial behaviour
		Anti-social behaviour
		Antisocial behavior
		Anti-social behavior
		Criminalisation
		Criminalization

Appendix B

Table 2: Summary of ‘very relevant’ literature

Author/s	Jurisdiction	Study Type	Methods
Farruggia & Geramo (2015)	Los Angeles, USA	Quantitative	This paper utilizes children’s services case file data and structured interviews with 188 youths in foster care (45% male, 55% female). It examines the associations between clinical and non-clinical indicators of problem behaviour, risk factors and protective factors for males and females. The sample is aged between 17 to 20 years and is 40% African American, 36% Latino, 11% White and 13% other ethnicities.
Flores et al. (2018)	Texas, USA	Qualitative	This study explores the struggles of child welfare involved girls held in a juvenile justice facility. It draws on 15 in-depth interviews collected during a 24-month ethnographic study of incarcerated girls. The sample includes girls aged between 14 to 19 years, and two thirds are Hispanic.
Goodkind et al. (2013)	Pennsylvania, USA	Quantitative	This paper investigates the relationship between juvenile justice involvement, child welfare experiences and mental health and substance abuse service receipt. It focuses on racial and gender differences. It is a birth cohort study of 17,471 youth involved with child services which draws on administrative data. The sample is 44.2% African American, 42.7% White, 7.7% other ethnicities with 5.4% of ethnicity data missing.
Hébert & Lanctôt (2016)	Quebec, Canada	Quantitative	This longitudinal study examines the impact of stability on the delinquent behaviour of adolescent girls in foster care. It draws on self-report

			questionnaires of 249 girls in residential units and measures several placement configurations including: number of official placements, number of exits from placement (returns to family), cumulative duration of placements, number of types of residential settings, and number of social workers.
Jung & LaLonde (2016)	Illinois, USA	Quantitative	This study draws on matched state administrative records from the Department of Corrections and the Department of Children and Family Services. It investigates whether incarcerated women with foster care experience during their teenage years have better or worse reincarceration rates than incarcerated women with no foster care experience. The sample covers 3,240 women released from prison in Illinois 1995 to 1999.
Kim & Leve (2011)	Pacific Northwest, USA	Quantitative	This research evaluates a middle school intervention program for reducing substance use and delinquency among girls in foster care. It uses self-report assessments with 100 girls in foster care before and after their transition to middle school. It examines differences between girls assigned to regular foster care and girls receiving the intervention program. The sample is 63% European American, 9% African American, 10% Latino, 4% Native American, and 14% multiracial.
Malvaso et al. (2017)	Unspecified state, Australia	Quantitative	This study uses linked child protection and youth justice data to investigate the effects of gender and ethnicity on the association between maltreatment, placement in out-of-home care and youth convictions. The sample

			consists of 17,671 youths (47% male, 53% female) in which 14.7% identify as indigenous.
McFarlane (2010)	New South Wales, Australia	Mixed-Methods	This study draws on a mixed-methods analysis of 111 Children's Court criminal files (74% male, 26% female). It focuses on the impact of child welfare involvement on outcomes for girls in court. The majority of the females in the sample are indigenous (60%).
Postlethwait et al. (2010)	USA (National)	Quantitative	This paper examines gender differences in delinquency for youth reported and investigated as maltreated. It utilises longitudinal data from the National Survey of Child and Adolescent Well-being and covers 1,134 youth (43% male, 57% female). The survey sample was 51% European American, 28% African American, 15% Hispanic and 6% other ethnic origins.
Shrifter (2012)	Oregon, USA	Quantitative	This study draws on welfare and juvenile justice administrative data to compare juvenile offenders that have been in the child welfare system, to juvenile offenders who have not been in the child welfare system. The research examines 151,860 juvenile referrals (64% male, 36% female) and also compares race and gender among other characteristics. The sample is 74.7% White, 4.1% African American, 1.6% Asian, 12.6% Hispanic, 1.8% Native American and 5.2% other/unknown.
Tam et al. (2016)	Los Angeles, USA	Quantitative	This research utilizes administrative data to investigate the effects of gender and child welfare statuses on sentencing for young people arrested for the first time. The sample consists of 5,061 juveniles (80% male, 20% female) aged between 12 and

			17. The majority of the cohort were Hispanic (71%), and the remaining youth were Black (19%) or White (10%).
Williams-Butler (2018)	Illinois, USA	Quantitative	This study explores individual, caregiver, and system level factors that influence offending among child welfare involved African American youth. It includes quantitative analysis of Adolescent Needs and Strengths assessment data for 534 African American adolescents (69% male, 31% female). Results are compared across genders.