

# **What do we know about children deprived of their liberty? An evidence review**

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**This report summarises what we know about children and young people deprived of their liberty across welfare, youth justice and mental health settings in England and Wales from national administrative data and recent research studies.**

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# Abbreviations

CAMHS	Child and adolescent mental health services
DfE	Department for Education
MoJ	Ministry of Justice
YCS	Youth Custody Service
SWCU	Secure Welfare Coordination Unit
YJB	Youth Justice Board



# Executive summary

Drawing on national administrative data and research from the past 10 years, this report aims to bring together what we know about children deprived of their liberty across welfare, youth justice and mental health settings in England and Wales. It summarises what we know about the number of children held in different settings, who the children are, where they are placed, their experiences of secure care, and what happens to them afterwards.

It follows widespread concern in the child welfare system about a shortage of placements in registered secure children's homes, the increasing numbers of children being deprived of their liberty in unregistered placements because there is nowhere else for them to go, and the capacity and capability of the system to meet the complex needs of this group of children.

## Key messages – what do we know?

### How many children are deprived of their liberty?

- The largest group of children deprived of their liberty are living in the youth justice secure estate. The next largest group of children deprived of their liberty are those detained under the Mental Health Act (1983). A smaller number of children are detained in secure children's homes under section 25 (s.25) of the Children Act 1989. We do not have comparable, up-to-date information about the number of children deprived of their liberty under the inherent jurisdiction of the high court, or under the Mental Capacity Act 2005.
- Many more children are referred for a place in a secure children's home on welfare grounds than can ultimately be placed. In 2020, just one in two children referred for a place in a secure children's home were found one (National Youth Advocacy Service (NYAS) n.d.).
- There is some evidence that there is a cohort of children with particularly complex needs who are seen as too 'challenging' to be suitable for a secure children's home. This includes children with very complex mental health needs but who do not meet criteria for detention under the Mental Health Act. This has led to a significant increase in the use of the inherent jurisdiction of the high court to deprive children of their liberty in alternative placements. In 2020/21, 579 applications were made under the inherent jurisdiction in England – a 462% increase from 2017/18 (data provided by Cafcass). In 2020/21, for the first time, applications made under the inherent jurisdiction outnumbered applications under s.25 of the Children Act 1989. This is a major cause for concern given that we do not know where these children are placed, what restrictions are placed on their liberty, or what their outcomes are.

## What is secure care?

When children are deprived of their liberty, they may be sent to live in one of several different types of setting, depending on the legal authorisation for the placement.

- **Secure children's homes** accommodate children aged 10–17 placed for welfare reasons, or in youth custody (on remand or serving a custodial sentence).
- **Young offender institutions** accommodate boys aged 15–17 in youth custody.
- **Secure training centres** accommodate children aged 12–17 in youth custody.
- **Mental health in-patient wards** accommodate children of any age detained under the Mental Health Act 1983.<sup>1</sup>

Children can also be subject to restrictions on their liberty in other settings, such as non-secure residential homes, unregulated placements, or residential schools through the inherent jurisdiction of the high court and the Mental Capacity Act 2005.

## What is a deprivation of liberty?

The term 'deprivation of liberty' comes from Article 5 of the European Convention on Human Rights, which provides that everyone, of whatever age, has the right to liberty. A deprivation of liberty occurs when restrictions are placed on a child's liberty beyond what would normally be expected for a child of the same age. This may include them being kept in a locked environment that they are not free to leave, being kept under continuous supervision, and subject to restraint or medical treatment without consent. The United Nations Convention on the Rights of the Child states that the restriction of a child's liberty should be used only as a measure of last resort and for the shortest appropriate period of time.

For more information about what constitutes a deprivation of liberty for children see: Parker, C. (2022). *Deprivation of liberty: Legal reflections and mechanisms*. Briefing. Nuffield Family Justice Observatory. [www.nuffieldfjo.org.uk/resource/deprivation-of-liberty-legal-reflections-and-mechanisms-briefing](https://www.nuffieldfjo.org.uk/resource/deprivation-of-liberty-legal-reflections-and-mechanisms-briefing)

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<sup>1</sup> Children can also be admitted to hospital for treatment for a mental health condition informally, on the basis of their consent.

## How many children are deprived of their liberty? (continued)

- It is not yet clear how the COVID-19 pandemic has impacted the number of children placed in secure settings and there is need for further research in this area. During this time many secure children's homes have been operating at reduced capacity, which has placed further strain on the system.

## Who are the children?

- A growing body of evidence shows that children entering welfare and youth justice secure settings have a high level of complex needs. This includes experiences of trauma and disadvantage from early childhood, such as exposure to neglect, abuse, family dysfunction, bereavement, abandonment and loss, relationship difficulties, domestic violence and parental problematic substance use, as well as associated experiences of socioeconomic disadvantage, poverty, and discrimination that persist throughout childhood. At the point of being deprived of their liberty children are likely to face multiple difficulties and risks arising from mental health problems, challenging and offending behaviours, problematic substance use, self-harm, educational needs, and risk of sexual and criminal exploitation.
- There are marked similarities in the early life experiences and current circumstances and needs of children deprived of their liberty for welfare and youth justice reasons.
- Children from racialised communities are overrepresented across all types of secure setting.<sup>2</sup> This is most stark in the youth justice secure estate, where children of Black, Asian and Mixed ethnic backgrounds make up just over half (51%) of the total population and disproportionality is increasing. Children from Black and Mixed backgrounds are also overrepresented among children referred to secure children's homes for welfare reasons and those detained under the Mental Health Act. There is some evidence that children from racialised groups receive disproportionate and unequal treatment within secure settings but there is a need for further research to better understand the drivers of this disproportionality and the experiences of children from racialised communities in secure settings.
- We know comparatively little about children detained under the Mental Health Act.
- Although there is a lack of research about children's experiences prior to entering secure care, a handful of studies have highlighted a lack of early intervention and support in the community for this group. We know that children in welfare placements tend to enter care late, and once in care, experience the repeated breakdown of arrangements made for their care in the community. There is a clear lack of suitable placements, including specialist foster care and

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<sup>2</sup> When describing ethnicity we use the categories recorded in the data sources that we are using. We recognise that terminology used to describe race and ethnicity in research is often imprecise (including the term 'Black, Asian and minority ethnic').

residential provision, that can support children with complex needs both before and after a secure placement.

### **What is the purpose of secure care?**

- Although there is a clearer rationale for the detention of children in mental health settings (i.e. to provide treatment for a mental health problem), there is a lack of clarity around the main purpose of depriving a child of their liberty for welfare reasons and in youth custody (i.e. to punish or to rehabilitate), and therefore what an 'ideal' system should look like. This includes a lack of clarity around the extent to which these settings should go beyond temporarily keeping children 'safe' or 'punishing' them, and support children to address underlying needs and promote their resilience and recovery – and what changes to the system may be necessary to achieve this.

### **Where are children placed?**

- The size of the secure estate in England and Wales has declined over the past two decades, in particular with the closure of 16 secure children's homes since 2002.
- The limited number of secure settings in England and Wales means that children are likely to be living far away from home. In 2019/20, 74% of children in youth custody were placed more than 24 miles from home (Youth Justice Board (YJB) 2021). The median distance from home for children placed in secure children's homes for welfare reasons was 132.3km (range 0–399km; children placed between 1 October 2016 and 31 March 2018) (Williams et al. 2019). Equivalent data is not available for children detained under the Mental Health Act.
- In addition, over 50 children, on average, have been placed in secure children's homes in Scotland by English and Welsh local authorities each year over the last five years. From 2022, Scottish secure children's homes will no longer accept cross-border placements, which will place additional pressure on the availability of welfare secure placements in England and Wales.
- There is a need for further research to explore how distance from home impacts children's experience of a secure placement and their outcomes, including the experiences of English and Welsh children who are placed in secure children's homes in Scotland.
- We know very little about where children refused a place in a secure children's home go on to be placed, including the use of the inherent jurisdiction to deprive them of their liberty in alternative placements.
- The number of children placed in adult in-patient wards while detained under the Mental Health Act is concerning. The most recent data suggests that this practice has increased in the past year (NHS Mental Health Dashboard 2021).

## What are children's experiences of secure care?

- We know more about children's experiences of youth custody compared to other settings. Serious concerns have been raised about the ability of young offender institutions and secure training centres to keep children safe.
- Children report mixed experiences of living in secure children's homes and there is a need for further research in this area. For some children, the placement is a positive experience and they benefit from the sense of routine and security the home provides, and positive and nurturing relationships with staff.
- Concern has also been raised about incidents of violence, restraint and self-harm in secure children's homes. There is evidence of increasing incidents of self-harm among children in these settings, and concern about the ability of secure children's homes to manage this – including for reasons such as insufficient staff training and resources.
- There is a lack of research about children's experiences of being detained under the Mental Health Act.
- We know little about the types of intervention and models of care provided in secure settings. The Framework for Integrated Care (SECURE STAIRS), a whole system trauma-informed therapeutic approach, is currently being developed and evaluated in welfare and youth justice secure settings. This aims to provide more joined-up services, coordinated around a child's needs.
- There is a lack of research about how the COVID-19 pandemic has affected children's experiences of living in secure settings, although reports suggest that children in youth justice settings in particular have been subject to further restrictions, including spending significant time in their cells, visiting restrictions and disruption to education.

## What do we know about children's outcomes?

- There is a lack of systematic and longitudinal research about children's outcomes following secure care. The use of a consistent set of outcome measures – which would follow on from an agreed set of aims/statement of purpose for settings – would help.
- The evidence available does not allow any firm conclusions to be drawn about the impact of a secure placement on children's short and long-term outcomes.
- We know that reoffending rates for children placed in youth custody are high. There is a lack of data on other outcomes.
- There is very little data on outcomes following detention under the Mental Health Act.
- Some children placed in secure children's homes on welfare grounds reportedly benefit, but for others the placement is ineffective or makes things worse. In the long term, evidence suggests that a placement in secure care is unable to fundamentally transform children's outcomes. This is also the result of a lack of coordinated support and suitable placements for children when they leave secure care.

## Recommendations for further research

- Information about the number of children deprived of their liberty in different settings and via different legislative routes is collected and published by different government bodies, with varying levels of detail (see Appendix A for an overview). Greater alignment of these data sets would enable a better understanding of the number of children placed in different settings, their characteristics, experiences and outcomes. For each setting and legislative 'route', data should include:
  - the number of children deprived of their liberty each month, and the total number each year
  - where children are placed, as well as placement type and distance from home
  - demographic characteristics including ethnicity, gender, age and disability
  - children's needs at the point of admission (including information about mental health problems, physical health needs, problematic substance use, previous offences, behaviours, special educational needs and disabilities, school attendance and exclusion, family contexts, previous placements and children's services involvement)
  - behaviour management, including use of restraint and separation, and incidents of self-harm and assault in each setting
  - standardised outcome measures (e.g. mental health, education, relationships and well-being)
  - children's own views about their care.
- Regularly updated, publicly available data about the number of children deprived of their liberty under the inherent jurisdiction of the high court (held by the Ministry of Justice (MoJ) and Department for Education (DfE)), the Mental Capacity Act (MoJ) and the Mental Health Act in Wales (NHS Wales) is not available. Given the significant increases in the use of the inherent jurisdiction, this data should be published regularly, including information about the outcomes of applications, the children involved (number and demographics), and where they are placed.
- There is a need for further research about the barriers local authorities experience finding a place in a secure children's home, including whether children with a specific set of more challenging needs are less likely to be found a place, and where they go on to be placed.
- There is an absence of research about the characteristics, needs and early life experiences of children detained under the Mental Health Act – and any similarities or differences with children detained in different settings – as well as their experiences of in-patient treatment.
- There is a need for more research exploring children's experiences of secure settings, including the impact of the COVID-19 pandemic.
- Given the overrepresentation of children from racialised communities in secure settings, all research should seek to consider differences in children's journeys, experiences and outcomes according to their ethnicity and other intersections

of identity (e.g. gender and disability), as well as the drivers of this disproportionality.

- There is a need for more research exploring children's journeys before and after secure care, including the types of placements, involvement with services and access to support or care in the community, including health and mental health services.
- There is a need for more research on short and long-term outcomes for children placed in all settings, including outcomes relating to mental health, well-being, education, training, health, relationships, contact with services and any further deprivations of liberty. This could be achieved in part by data linkage.
- There is little research exploring the factors associated with positive outcomes in secure settings, including comparison with international systems and alternative types of non-secure provision.

## Reflections

There is a growing body of evidence that points to the complex and overlapping needs of children in secure settings, which stem in part from experiences of complex trauma and adversity.

At the same time, the secure estate in England and Wales is struggling to adequately meet children's needs.

There is therefore a need to rethink how we meet the needs of this group of children, based on a better understanding of their journeys, strengths and needs, what a 'positive outcome' would look like, and the type of trauma-informed, therapeutic and integrated care that would support children's resilience and recovery, both in secure settings and in the community before, after or instead of depriving them of their liberty.



# Introduction

Within the family justice system, increasing concern has been raised about the small but highly vulnerable group of children who are deprived of their liberty, and the capabilities of the system to meet their complex needs. This includes widespread concern about the lack of available placements in registered secure children's homes – residential children's homes that are authorised to place restrictions on a child's liberty – and subsequent increases in the use of the inherent jurisdiction of the high court to place children with very high levels of need in unregistered secure placements, including caravans and holiday lets where restrictions are placed on their liberty, because the local authority cannot find anywhere else for them to go.

Children can also be deprived of their liberty under mental health and youth justice legislation. These children, although often having very similar vulnerabilities and needs to those placed on welfare legislation, are sent to different settings, under the responsibility of different government departments, with different rationales for their deprivation of liberty, and different cultures of care. Children placed in secure settings could end up living in a mental health hospital under the Mental Health Act to receive treatment for a diagnosed mental illness (managed and commissioned by the NHS), in youth custody to serve a criminal sentence or when remanded to youth detention (managed and commissioned by the Ministry of Justice (MoJ)), or in a secure children's home on welfare grounds to prevent risk of harm to themselves or others (secure children's homes are mostly run by local authorities; children can also be placed in secure children's homes under justice legislation).

Despite the similarities in the profiles of children living in different settings, there is a lack of comprehensive understanding of the whole picture of children in secure care. This includes a lack of up-to-date information and data about who these children are, where they are placed, for how long, their experience of secure care, the type of care or support received, and short and long-term outcomes.

The purpose of this report is to bring together what we know about children deprived of their liberty across welfare, youth justice and mental health settings from national administrative data and research studies from the past 10 years. It also highlights key gaps in the research and data. While our primary focus is on the experiences of children deprived of their liberty under welfare legislation, we also aim to provide an overview of the population of children in secure care across settings, and compare the characteristics and profiles of all children.



## Definitions and terminology

In this report we use the term ‘children’ to refer to all those under the age of 18. While we recognise that older children and teenagers – who are the focus of this report – may prefer the term ‘young person’ to describe themselves, we have opted to use ‘children’ in recognition of their legal status and the specific rights accorded to them under the Children Act 1989 and the United Nations Convention on the Rights of the Child (UNCRC).

## What is a deprivation of liberty?

The term ‘deprivation of liberty’ comes from Article 5 of the European Convention on Human Rights (ECHR), which provides that everyone, of whatever age, has the right to liberty. A deprivation of liberty occurs when restrictions are placed on a child’s liberty beyond what would normally be expected for a child of the same age. This may include them being kept in a locked environment that they are not free to leave, being kept under continuous supervision, and subject to restraint or medical treatment without consent. The UNCRC states that the restriction of a child’s liberty should be used only as a measure of last resort and for the shortest appropriate period of time.

For more information about what constitutes a deprivation of liberty see: Parker, C. (2022). *Deprivation of liberty: Legal reflections and mechanisms*. Briefing. Nuffield Family Justice Observatory.

[www.nuffieldfjo.org.uk/resource/deprivation-of-liberty-legal-reflections-and-mechanisms-briefing](http://www.nuffieldfjo.org.uk/resource/deprivation-of-liberty-legal-reflections-and-mechanisms-briefing)

## Secure care and secure settings

In this report we use the terms ‘secure care’ and ‘secure settings’ to apply to all children deprived of their liberty in different settings and via different legislative routes.

# What are the different legislative ways children can be deprived of their liberty?

There are three main ways that children can be deprived of their liberty in England and Wales, depending on the legislative reason for the placement.

- **Welfare:** the family courts can authorise a deprivation of liberty under section 25 (s.25) of the Children Act 1989 (and section 119 (s.119) of the Social Services and Well-being Act (Wales) 2014), which places a looked-after child (age 10–17) in a registered secure children's home, or via the inherent jurisdiction of the high court, which can be used when none of the other statutory mechanisms apply, and authorises the placement of a looked-after child in an alternative, unregulated secure placement.
- **Youth justice:** children (age 10–17) can be placed in youth custody on remand (under chapter 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) or as a result of a custodial sentence (under s.230 of the Sentencing Act 2020) by the youth courts.<sup>3</sup> They will be placed in a young offenders institution, secure training centre or secure children's home.
- **Mental health:** children can be detained (or 'sectioned') under section 2 and section 3 of the Mental Health Act 1983 for assessment and treatment for a mental disorder in an in-patient psychiatric unit.<sup>4</sup> There is no lower age limit and there are no specific provisions for children in the act.

Children aged 16 and 17 who lack capacity to make decisions about their care arrangements (for example because of a learning disability) can also be detained under the Mental Capacity Act 2005. This is authorised by the court of protection

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<sup>3</sup> The main custodial sentence for children aged between 12 and 17 is a detention and training order (DTO), which lasts between 4 months and 2 years. Extended sentences can also be given under s.250 and s.254–257 of the Sentencing Act 2020 for more serious offences. Detention at Her Majesty's pleasure is a mandatory sentence for children convicted of murder under s.259 Sentencing Act 2020.

<sup>4</sup> Section 2 allows a young person to be detained for 28 days for assessment. Those admitted for treatment under section 3 of the Mental Health Act can be detained for up to 6 months, which can be renewed for another 6 months and thereafter every 12 months.

and can apply to any setting – for example residential schools, children’s homes, hospitals as well as care arrangements in the family home.

For more information about these multiple legislative routes used to authorise the deprivation of a child’s liberty see: Parker, C. (2022). *Deprivation of liberty: Legal reflections and mechanisms*. Briefing. Nuffield Family Justice Observatory.

[www.nuffieldfjo.org.uk/resource/deprivation-of-liberty-legal-reflections-and-mechanisms-briefing](http://www.nuffieldfjo.org.uk/resource/deprivation-of-liberty-legal-reflections-and-mechanisms-briefing).

**Figure 1: Overview of the secure system in England and Wales**

	Welfare		Youth justice	Mental health
<b>Legislative framework used to authorise the deprivation of liberty</b>	s.25 of the Children Act (1989)	Inherent jurisdiction of the high court	Custodial: Sentencing Act (2020) Remand: Legal Aid, Sentencing and Punishment of Offenders Act (2012)	Mental Health Act (1983)
<b>Setting where the child is placed</b>	Secure children’s home	Unregistered secure placement	Young offender institutions, secure training centres, secure children’s homes	Mental health hospital
<b>Funder</b>	Local authority		Youth Custody Service	NHS England, NHS Wales
<b>Government department</b>	Department for Education		Ministry of Justice	Department for Health and Social Care

# How many children are deprived of their liberty?

Information about the number of children deprived of their liberty in different settings and via different legislative routes is collected and published by different government bodies, with varying levels of detail. This makes direct comparison of the number of children held in each setting and under different legislative routes difficult. An overview of the available data sources is provided in Appendix A.

## Key findings

- The largest group of children deprived of their liberty are living in the youth justice secure estate. The next largest group are detained under the Mental Health Act. A smaller number of children are detained under welfare legislation.
- We do not have comparable, up-to-date information about the number of children deprived of their liberty under the inherent jurisdiction of the high court, or under the Mental Capacity Act 2005.
- As at 31 March 2021, 142 children were living in secure children's homes (80 on welfare grounds, 62 on justice grounds). This is the lowest number recorded since 2010 and may be the result of multiple factors including staff availability, bed availability, the complexity of needs of children being placed, and the impact of the COVID-19 pandemic.
- Many more children are referred for a place in a secure children's home on welfare grounds than can ultimately be placed. In 2020, just one in two children who were referred for a place in a secure children's home found one.
- There is some evidence that there is a cohort of children with particularly complex needs who are seen as too 'challenging' to be suitable for a secure children's home.
- At the same time, we have seen a significant increase in the use of the inherent jurisdiction of the high court to deprive children of their liberty in alternative placements. Data provided by Cafcass revealed that in 2020/21, 579 applications were made under the inherent jurisdiction in England – a 462% increase from 2017/18. In 2020/21, for the first time, applications made under the inherent jurisdiction outnumbered

applications under s.25 of the Children Act 1989. We do not know the outcome of these applications or any information about the children concerned.

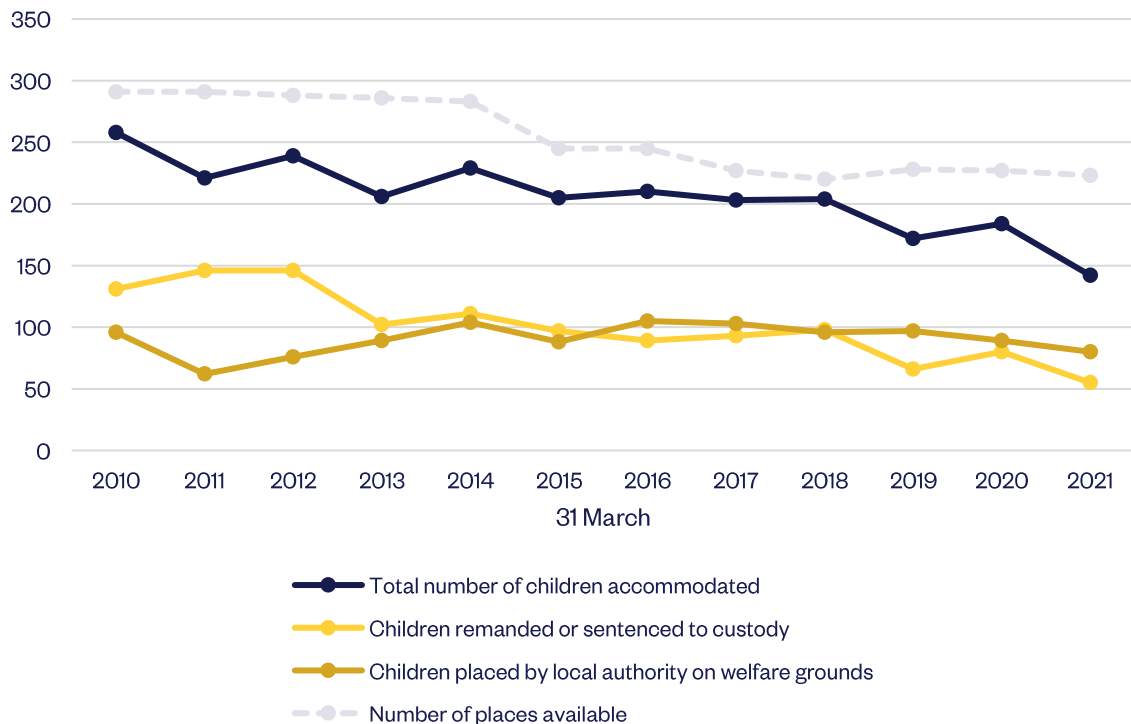
### Research and data gaps

- There is a need to harmonise the recording of information about the number of children deprived of their liberty across different settings and legislative routes.
- Information about the number of children deprived of their liberty under the inherent jurisdiction is not regularly published by the Department for Education (DfE) or Ministry of Justice (MoJ). As use of the inherent jurisdiction has become more frequent, there is an urgent need to remedy this. At the very least, information about the number of applications made, the number of children involved, and outcomes of application should be published annually.
- Information about the number of children deprived of their liberty under the Mental Capacity Act is not regularly published by the MoJ; this should also be published annually.
- We do not know how many children are detained under the Mental Health Act in Wales as this information is not published by NHS Wales.

## How many children are placed in secure children's homes?

DfE publishes data relating to the number of children accommodated in secure children's homes as at 31 March each year under welfare and youth justice legislation (Figure 2). This tells us the number of children accommodated at that point in time rather than the total number of children accommodated each year – data relating to the total number of children accommodated each year is not publicly available.

**Figure 2: Number of children accommodated in secure children's homes as at 31 March, England and Wales**



Source: DfE 2021a.

The overall number of children placed in secure children's homes, and capacity within secure children's homes, has declined in the last decade. As at 31 March 2021, a total of 142 children were living in secure children's homes – 80 on welfare grounds, 62 on justice grounds. This is the lowest number recorded since 2010 (see Figure 2).

This is partly due to a reduction in the number of children placed – and beds commissioned – by the Youth Custody Service (YCS), which reflects wider trends in the overall reduction of the number of children placed in custody across all justice settings (see below). Demand for welfare placements, however, remains high and it is widely acknowledged that current secure children's home provision is unable to meet demand, with approximately one in two children not found a place in a secure children's home following referral (explored further below).

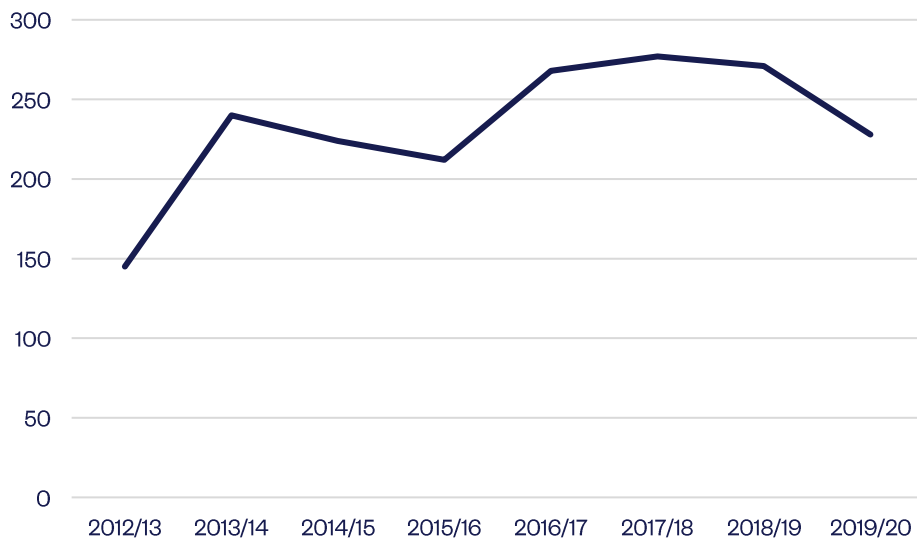
As can be seen from Figure 2, the total number of places available has consistently been higher than the number of children accommodated, with occupancy rates at around 80% since 2010. In the last two years the number of children living in secure children's homes for welfare reasons has fallen – from 97 as at 31 March 2019, to 89 in March 2020, and to 80 in March 2021. However, looking solely at occupancy rates is misleading as a number of factors – including staff availability, and the mix of children living in the home and their needs – will impact the ability of secure children's homes to operate at 'full' capacity. In the last year in particular, the Secure Welfare Coordination Unit (SWCU) – the unit responsible for administering welfare placements in secure children's homes – reports that the COVID-19 pandemic has meant that many secure children's homes have been operating with lower staffing

levels, therefore resulting in them being unable to declare beds (Secure Welfare Coordination Unit (SWCU) n.d.; Ofsted 2021).

### Secure accommodation orders made under s.25 of the Children Act 1989

DfE data tells us how many children are accommodated in secure children's homes at 31 March each year, but it does not tell us how many children have spent time in a secure children's home over the course of the year. Analysis of Cafcass and Cafcass Cymru data provides an indication of the number of children made subject to a secure accommodation order under s.25 of the Children Act 1989 each year.<sup>5</sup>

**Figure 3: Number of cases that ended with a secure accommodation (s.25) order, England and Wales**



Source: Cafcass and Cafcass Cymru data; Roe et al. 2022.

As can be seen from Figure 3, the number of children subject to a secure accommodation order increased sharply from 2012/13 (where 145 cases ended with a secure accommodation order), and has remained above 200 for the last 7 years.<sup>6</sup> In 2019/20, there was a slight drop in the number of cases; the family court authorised the placement of 228 children in a secure children's home that year.

However, DfE and Cafcass figures do not include the number of children who are referred to SWCU by a local authority and for whom a place in a secure children's home cannot be found.

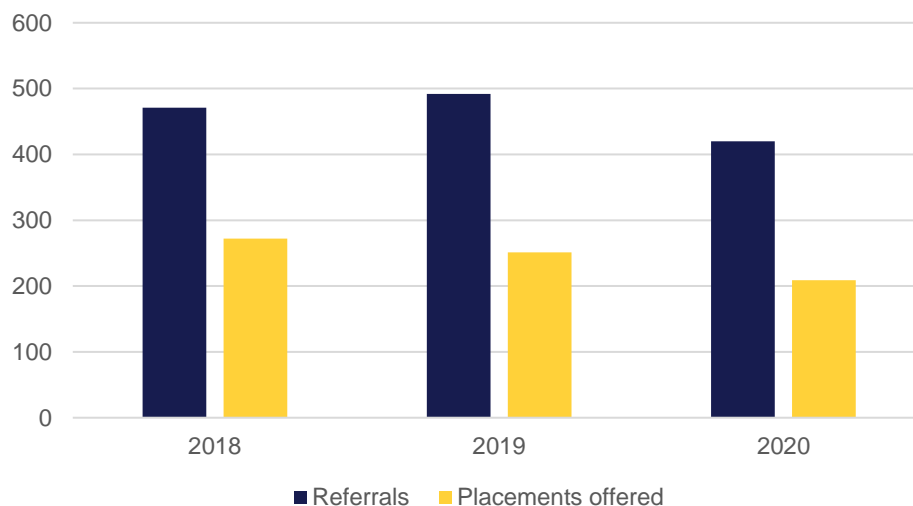
<sup>5</sup> The family court must authorise the placement of a child in a secure children's home and an order should not be made unless a placement is available (see Roe et al. 2022 for further discussion).

<sup>6</sup> Note that analysis is at the case level. Results indicate the number of cases that ended with a secure accommodation order each year.

### Number of welfare referrals for secure children's homes

Data from SWCU indicates that the number of referrals received is far higher than the number of children placed, and that the number of children not found a place following referral is increasing. In 2020, almost twice as many children were referred for a place in a secure children's home compared to the number of placements offered (National Youth Advocacy Service (NYAS) n.d.). This echoes findings from Hart and La Valle (2021), who found that, of the 130 children referred to SWCU between July and September 2019, 56% were not offered a placement. Further, Williams et al. (2020) found that, of the 527 children referred to SWCU between 1 October 2017 and 31 March 2018, 39% (319) were not offered a place.

**Figure 4: Number of referrals to secure children's homes per year and placements offered**



Source: SWCU (n.d.); NYAS (n.d.).

In addition, Ofsted reports that, at any one time, around 25 children each day are waiting for a secure children's home place (Common 2020, 9 June). SWCU data shows that in June 2020 there were 54 open referrals – the highest number since May 2016 (SWCU n.d.).<sup>7</sup>

There is little research about the process of – or barriers to – securing a secure children's home placement, although the evidence available suggests that the characteristics of the children concerned, the current mix of children living in the secure children's home, and the capacity of the home to meet the child's needs – including resource, skills and resilience of staff – are key factors (Williams et al. 2020; Hart and La Valle 2021). Secure children's homes are able to decline a place to a child if they 'risk destabilising the placement mix in the home' and there is some evidence that finding a place for children with complex needs and challenging behaviours is increasingly difficult. Williams et al. (2020) analysis of SWCU data found that children refused a placement in a secure children's home were significantly more likely to be older and have a history of challenging, offending or

<sup>7</sup> SWCU acknowledges that this was likely impacted by the COVID-19 pandemic, with a reduction in the number of available beds (e.g. due to staffing issues).



sexually harmful behaviours compared with those placed in secure children's homes, who were more likely to have been female, younger, and victims of sexual exploitation. One child had been turned down by nearly every secure children's home across England and Wales, with comment that they posed too great a risk to staff and other residents to be considered (Williams et al. forthcoming).

This reinforces concern about the lack of capacity within secure children's homes, which cannot at present offer a place to all members of the small, complex and vulnerable group of children referred to them, and suggests that there is a growing group of children whose needs are seen as too 'challenging' to be suitable for a secure children's home.

## How many children are deprived of their liberty under the inherent jurisdiction of the high court?

There is no routinely published information about the number of children deprived of their liberty under the inherent jurisdiction provided by DfE or MoJ. Cafcass data provides the best estimate of the number of applications made each year.<sup>8</sup> Individual data requests to Cafcass by the Children's Commissioner for England and Nuffield Family Justice Observatory tell us the number of applications received each year – although, as some children will be involved in multiple applications, this does not tell us how many children these applications concern (see Table 1).

Equivalent data from Cafcass Cymru for Wales is not available.

**Table 1: Number of applications under the inherent jurisdiction (Cafcass data) and number of secure accommodation applications (MoJ data) each year**

	2017/18	2018/19	2019/20	2020/21
Deprivation of liberty applications under the inherent jurisdiction (England)	103*	215*	332*	579*
Number of secure accommodation applications (England and Wales)	518*	499*	502*	392*

Note: As the data comes from different sources, it is not directly comparable. The figures reported here differ from those published in a recent BBC article about the number of deprivation of liberty applications recorded by Cafcass, which counted applications where the deprivation of liberty was the 'lead application' only (i.e. not accompanied by any other application, for example, s.31 care proceedings) (Berg 2021, 12 November). The figures reported here, and in reports published by the Children's Commissioner for England, refer to *all* unique applications where the court was asked to use the inherent jurisdiction to authorise the deprivation of liberty of a child.

Source: \* Children's Commissioner for England 2020a; † Data provided by Cafcass; \* MoJ 2021.

<sup>8</sup> This only includes applications where Cafcass is made party to a case.

The number of applications to deprive a child of their liberty under the inherent jurisdiction has increased substantially over the last four years. In 2020/21, there were 579 applications – a 74% increase on the previous year (322 applications) and a 462% increase from 2017/18 (103 applications).

In 2020/21, the number of applications made under the inherent jurisdiction outnumbered applications under s.25 of the Children Act 1989 for the first time (see Table 1). This is likely due to widespread difficulties in finding a place in a registered secure children's home, both due to a shortage of capacity within secure children's homes and the complex needs of children for whom a placement is sought (e.g. *Re Q* [2021] EWHC 123 (Fam); *Re X* [2017] EWHC 2036 (Fam); *Re W* [2021] EWHC 2345 (Fam)).

In addition, following a ban on placing children aged under 16 in unregulated accommodation, which came into force in England in September 2021, local authorities can also apply to the high court to authorise the placement of a child in an unregistered placement if no suitable regulated placement can be found (see *Tameside MBC v AM and others* [2021] EWHC 2472 (Fam)), which will likely result in continued increases in the use of the inherent jurisdiction in 2021/22.<sup>9</sup>

The lack of proper safeguards and reviewing mechanisms under the inherent jurisdiction is a major cause for concern. Unlike the provisions set out in s.25 of the Children Act 1989, there are no required review mechanisms for orders under the inherent jurisdiction, unless set out by the judge, and often the placements used to deprive children of their liberty are not registered or are not authorised as secure settings. We also lack comprehensive information about the number of children subject to these arrangements each year, who the children are, where they are placed, the type of care received, what restrictions are placed on their liberty, and their outcomes. If the use of the inherent jurisdiction to deprive children of their liberty continues at current levels, these are urgent questions that will require investigation.

## How many children are detained under the Mental Health Act?

NHS England annual Mental Health Act statistics tell us the total number of children subject to the Mental Health Act each year in England. In 2020/21, 1,134 children were detained. This is a slightly lower number than reported in 2019/20 (1,172 children), 2018/19 (1,241) and 2017/18 (1,177) (NHS Digital 2021a).

NHS England monthly mental health statistics provide the most up to date estimate of the number of children currently detained under the Mental Health Act. It shows that in September 2021, 460 children were detained (NHS Digital 2021b). However, the published data is incomplete and likely to be an underestimate.

Data provided by NHS England to the Children's Commissioner for England suggested that, on 31 March 2020, there were 944 children living in in-patient

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<sup>9</sup> Under the Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021.

children's mental health wards, with 544 of those children formally detained (Children's Commissioner for England 2020a). This number was around a fifth higher than reported in the official published statistics (414 children detained). It is not clear why the published data is incomplete.

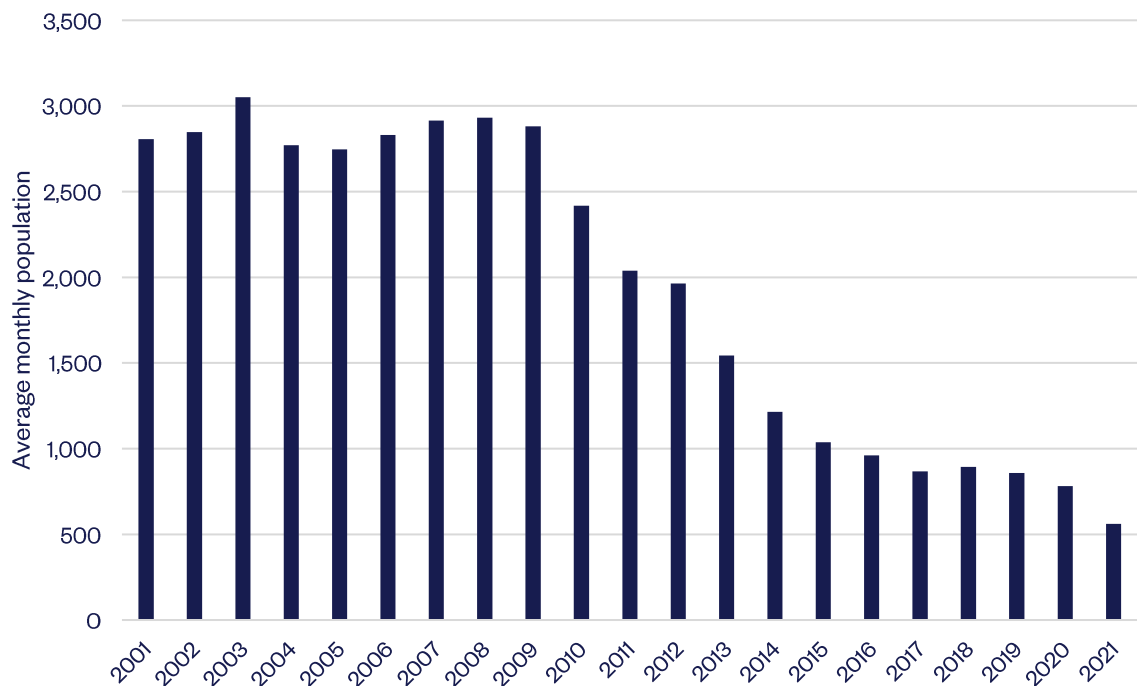
The data request also provided some information about the legal basis for detention. Most (68% of the 544 children detained) were detained under section 3, which allows a child to be detained for treatment for up to 6 months (and can then be renewed), and 26% were detained under section 2, which allows for a child to be detained for up to 28 days for assessment (Children's Commissioner for England 2020a). However, legal status was not known or not recorded for 104 children (15%) living in in-patient child and adolescent mental health services (CAMHS) wards. This data is not made publicly available or regularly updated.

Equivalent data for Wales is not available.

## How many children are detained in youth custody?

The MoJ and the Youth Justice Board (YJB) publish the youth justice annual statistics, which outline the number of children placed in youth custody each year and where they are placed. The Youth Custody Service (YCS) also publishes monthly statistics on the population of children in custody.

**Figure 5: Average monthly youth custody population (under 18s only), England and Wales**



Source: YCS 2021.

As can be seen from Figure 5, the overall size of the youth custody population has fallen significantly in the last two decades. In 2020/21, the average monthly youth custody population was 560, a decrease from 781 in the previous year. The most recent data shows that the population size is continuing to fall; in October 2021, 449 children were living in custody.

It is of note that this decrease has mostly been driven by a reduction in the number of custodial sentences. The number of children remanded to the secure estate has a fallen at a lower rate and has even increased over the past two years (see Bateman 2021 for further discussion). As at September 2021, children on remand made up 41% of all children in the youth custody secure estate (YJB 2021). This suggests that an increasing number of children are remanded to youth custody but do not ultimately receive a custodial sentence.

It is not clear what impact the ongoing COVID-19 pandemic has had on the size of the youth custody population. Between March 2020 and October 2021, the population of children in youth custody fell from 737 to 449 – a decline of 39% – and the courts were encouraged not to impose custodial sentences on children during this time. However, it is not clear if this decline is a consequence of more lenient sentencing or an artefact of a growing backlog in the court (Bateman 2020).

## **How many 16 and 17-year-olds are detained under the Mental Capacity Act?**

There is no official information published about the number of 16 and 17-year-olds deprived of their liberty under the Mental Capacity Act. Data provided to the Children's Commissioner for England by the MoJ for the three years 2017–2020 shows that in 2019/20, 59 young people were detained under the Mental Capacity Act (England and Wales) (Children's Commissioner for England 2020a). This is an increase on the previous year (43 children) and a decrease on the figure reported in 2017/18 (89 children).

We do not have any further information about the characteristics or circumstances of the young people subject to these orders – although the very fact that the Mental Capacity Act has been used indicates that these are young people who do not have the capacity to consent to their deprivation of liberty (for example because of a learning disability) – or where they were placed.

## **Comparison of the number of children detained across settings**

Different data collection methods make it difficult to directly compare the number of children detained under the different legislative pathways and in different secure settings each year, and to identify the total number of children who are being deprived of their liberty. We know that the largest group of children deprived of their liberty are living in the youth justice secure estate, followed by those detained under

the Mental Health Act. A smaller number of children are detained under welfare legislation.

Based on the most recent data available for each setting, we know that there were:

- 6,725 children living in youth custody (on remand or serving a custodial sentence) at some point in 2020/21 (YCS 2021)
- 1,134 children subject to detention under the Mental Health Act in 2020/21 (NHS Digital 2021a)
- 209 children placed in secure children's homes for welfare reasons in 2020 (NYAS n.d.).

We do not have comparable, up-to-date information about the number of children deprived of their liberty under the inherent jurisdiction of the high court, or under the Mental Capacity Act per month. Recent data from Cafcass suggests that a significant number of applications are made under the inherent jurisdiction each year (579 in 2020/21; see Table 1) – however it is not clear what the outcomes of these applications are, or how many children are subject to restrictions on their liberty under the inherent jurisdiction each year (as some children will be involved in multiple applications).

# Who are the children?

This section summarises what is known about the characteristics of children deprived of their liberty in different settings, their histories prior to admission, and identified needs at the point of admission to secure care. Where available, it draws on data from or research using national data sources.

## Key findings

- Children from racialised communities are overrepresented in all types of secure setting. Future research into children's journeys into and experiences of secure care should therefore consider differences according to their ethnicity and other intersections of identity (e.g. gender and disability), and the drivers of this disproportionality.
- Children's gender varies by type of provision. Boys make up the majority of those in youth justice settings, there is an equal split of boys and girls in welfare settings, and girls are more likely to be detained under the Mental Health Act than boys.
- There are marked similarities in the early life experiences and current circumstances of children placed in welfare and youth justice settings. This includes experiences of complex trauma, neglect and abuse, relationship difficulties, poverty and adversity, ongoing behavioural and mental health difficulties, unmet educational needs, and risk of sexual and criminal exploitation.
- We know far less about the characteristics of children detained under the Mental Health Act.
- We know relatively little about children's experiences in care prior to placement in a secure children's home. A handful of studies have shown that these children tend to enter care relatively late in adolescence and, once in care, experience a fairly rapid progression into secure care following the repeated breakdown of arrangements made for their care in the community. This suggests a lack of early intervention and in particular, a lack of suitable placements that can meet children's needs in the community, before, or possibly even preventing, the need for a secure placement.
- At the point of admission to youth custody and welfare secure settings, children often have multiple and complex needs. These might include: high prevalence of mental health problems, risk of self-harm, offending and challenging behaviours, problematic substance use, and risk of criminal and sexual exploitation.

- In particular, research shows that a majority (70%) of girls placed in secure children's homes for welfare reasons are at risk of self-harm. However, concern has been raised about the ability of secure children's homes to manage these behaviours.

### Research and data gaps

- There is lack of research about the experiences and needs of children detained under the Mental Health Act.
- Department for Education (DfE) secure accommodation annual statistics include information about the ages, ethnicity and gender of children accommodated in secure children's homes. However, the data does not currently differentiate between welfare and justice placements. Future releases should seek to do this.
- There is a need for more research to map children's journeys prior to secure care, including time spent in care, types and length of previous placements, and contact with different services.
- Some data about children's needs at the point of referral to secure children's homes is collected by the Secure Welfare Coordination Unit (SWCU). However, this data is not regularly published. Regular publication of this data would enable a better understanding of children's needs at the point of referral, and any changes in children's profiles over time.
- Furthermore, the alignment of needs assessments and data recording across secure settings would enable more in-depth comparison of the needs of children in different pathways. This should include information about mental health diagnosis or suspected diagnosis, school exclusion, special educational needs and disability, and physical health problems, which is currently poorly recorded.

## How old are children deprived of their liberty?

Children in secure settings are usually in their teenage years. Over half of children in youth custody are aged 17, and just 4% are aged 10–14 (YJB 2021).<sup>10</sup>

DfE data shows that the majority of children in secure children's homes (for both welfare and justice reasons) are aged 14–16 (DfE 2021a). This data is not broken down by reason for admission, but separate analyses of SWCU and Cafcass data suggest that children referred for welfare reasons are of a similar age range (Williams et al. 2020; Roe et al. 2022).

Most children detained under the Mental Health Act are aged 16 and 17 years old (NHS Digital 2021a).

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<sup>10</sup> Note that this only includes children under 18.



## What is their gender?

The overwhelming majority of children in youth custody are boys (96% in 2020) (YJB 2021).

The majority of children living in secure children's homes are also boys (62% in March 2021) (DfE 2021a). The data is not broken down by reason for admission.

SWCU referral data suggests that a roughly equal number of boys and girls were referred to secure children's homes for welfare reasons in recent years, although girls were twice as likely to be found a place (SWCU n.d.; Williams et al. 2020). Analysis of the number of applications for a secure accommodation order received by Cafcass and Cafcass Cymru between 2011/12 and 2019/20 shows a shift in the gender distribution of children. In 2011/12, far more girls than boys were the subject of applications (69%). Over time this gender difference has narrowed, with an equal number of boys and girls being subject to applications for secure accommodation orders in England in 2019/20. The reasons for this shift are unclear, although may reflect increased understanding of children's risk of criminal exploitation, with victims more likely to be boys, and more children who would have previously been criminalised being referred through welfare pathways (see Roe et al. 2022 for further discussion).

Many more girls (70%) than boys (30%) are detained under the Mental Health Act (NHS Digital 2021a).

### Sexuality and gender identity

There is a dearth of research on the sexuality of children in the secure estate. International studies suggest LGBTQ+ girls may be overrepresented in secure care (Irvine-Baker et al. 2019 cited in Khan et al. 2021).

## What is their ethnicity?

Children of Black, Asian and mixed ethnic backgrounds are overrepresented in the youth justice secure estate, making up over half (51%) of the total population of children in custody (YJB 2021).<sup>11</sup> Black children in particular make up 28% of the youth custody population, but just 5% of the general population (YJB 2021). Ethnic disproportionality has also worsened significantly in recent years, with the overall reduction in the size of the youth custody population disproportionately benefitting White children: between 2005 and 2019, the number of White children in the youth justice secure estate declined by 80%; the equivalent reduction for Black, Asian and minority ethnic children was just 38% (Bateman 2021).

There is evidence of children from racialised groups receiving disproportionate and unequal treatment within the youth justice system, including being more likely to receive harsher levels of punishment and longer sentences (see Bateman 2021 for

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<sup>11</sup> When describing ethnicity we use the categories recorded in the data sources that we are using. We recognise that terminology used to describe race and ethnicity in research is often imprecise (including the term 'Black, Asian and minority ethnic').



further discussion). A gendered analysis of youth custody data found that girls from racialised communities were more likely to be placed in larger justice settings than their White peers (secure training centres compared to secure children's homes) and were less likely to have their needs identified at admission (Khan et al. 2021). The authors highlight that secure children's homes have the ability to decline referrals if it 'risks destabilising the placement mix in the home', and suggest that the overrepresentation of minoritised girls in large institutions may be the result of unconscious bias in decision-making and the 'adultification' of Black girls from an early age, 'underestimating their vulnerability and overestimating their risk and 'agency'" (Khan et al. 2021, p.14).

Data on the ethnicity of children in secure children's homes (both welfare and justice placements) was first collected by DfE in 2021. It shows an overrepresentation of children from Black or Black British and Mixed ethnic groups living in secure children's homes (DfE 2021a).

We do not have national data on the ethnicity of children living in secure children's homes for welfare reasons only. SWCU referral data suggests an overrepresentation of children from mixed and Black African, Black Caribbean and Black British ethnic groups in the number of children referred for a welfare placement (Williams et al. 2020; SWCU n.d.). One study has suggested that a Black child may be less likely to be found a place in a secure children's home following referral compared to a White child (Williams et al. 2020); this requires further exploration, including whether Black and minority ethnic children are more likely to be placed in unregulated settings under the inherent jurisdiction than White children, and potential discrimination or unconscious bias in decision-making.

NHS England data for children detained under the Mental Health Act in 2020/21 suggests a slight overrepresentation of Black (8%) and Mixed (6%) ethnic children. Analysis by the Children's Commissioner for England for England found that Black children were less likely to be admitted to an in-patient mental health setting informally (i.e. not under Mental Health Act detention) compared to White children (Children's Commissioner for England 2020a).

Given the overrepresentation of children from racialised communities across different secure settings there is a need for further research to better understand the drivers of this disproportionality and the experiences of children from ethnic minority backgrounds in secure settings.

## **What do we know about children's experiences prior to being placed in secure care?**

### **Early life experiences**

There is a growing body of research that indicates that the early lives of children placed in secure care for both welfare and youth justice reasons are, for many, characterised by experiences of trauma, including exposure to neglect, abuse, family dysfunction, bereavement, abandonment and loss, relationship difficulties, and exposure to domestic violence and problematic substance use (Khan et al. 2021; Andow and Bryne 2018; Pates et al. 2018; Justice Studio 2014; Hart and La Valle

2016; Williams et al. 2019; Barron and Mitchell 2018), as well as associated experiences of socioeconomic disadvantage, poverty, and discrimination that persist throughout childhood (Day et al. 2020; Bateman 2021). A number of studies highlight the high prevalence of attachment disorders, complex trauma, post-traumatic stress disorder (PTSD) and neurodevelopmental difficulties among children in secure care (Khan et al. 2021; Hart and La Valle 2021; Pates et al. 2018; Justice Studio 2014).

Analysis by Andow and Bryne (2018), based on a review of case files of children in Surrey who entered secure care between 2010 and 2017, found significant overlaps in the characteristics and background experiences of children entering secure settings on welfare and justice orders. This included high prevalence of socioeconomic disadvantage (measured by eligibility for free school meals: 80% of 'welfare' children and 75% of 'justice' children), family drug or alcohol problems (72% of 'welfare' children and 66% of 'justice' children), and witnessing domestic abuse as a child (63% of 'welfare' children and 72% of 'justice' children).

Williams et al. (2020) found that, among children placed in secure children's homes who had a child in need assessment in the three years prior to referral, many had identified concerns during assessment relating to neglect and abuse at home:

- 41% at risk of emotional abuse
- 36% at risk of neglect
- 34% at risk of physical abuse
- 32% had concerns relating to domestic violence (parent/carer as subject)
- 27% had concerns relating to domestic violence (child as subject)
- 30% had concerns relating to the mental health of parent/carer.

There is a comparative lack of information about the early life experiences of children detained on mental health grounds. Andow and Bryne (2018) highlight key differences in the family histories of children detained under the Mental Health Act compared to children in youth justice and welfare secure settings. They found that they were more likely to come from families where the parents remain together, were less likely to be eligible for free school meals, and were less likely to have witnessed domestic abuse as a child than children on welfare and justice orders. This research is based on a small sample of children from one area in England only and may not be representative of all children detained under the Mental Health Act. Nonetheless, it suggests that children's socioeconomic status may influence the setting where they are placed, which requires further investigation.

## **Social care histories**

### **Children subject to secure accommodation orders (welfare)**

Under the Children Act 1989 a secure accommodation order can only be made if the child is subject to a care order or 'looked after' under s.20 – therefore all children placed in a secure children's home under welfare legislation will be 'looked after' at the time of placement. Most children, however, are already in care before the application for a secure order is made (i.e. an application for a care order is not made at the same time). Analysis of Cafcass data found that, in around 20% of cases, a

care order is granted at the same time as the secure accommodation order, suggesting 80% of children were already in care at the time of placement (Roe et al. 2022).

Research suggests that children who end up in secure settings enter care relatively late. Once in care, they experience a fairly rapid progression into secure settings following the repeated breakdown of arrangements made for their care in the community. Williams et al. (2020) linked referral records received by SWCU to children in need and looked-after children data routinely collected by DfE between 1 October 2016 and 31 March 2018 to explore the care histories of children referred to secure accommodation (Williams et al. 2020). The majority (72.9%) entered care for the first time or re-entered care after a period of not being looked after in the three years prior to referral. This suggests that many of these children come into care late or had experiences of coming in and out of care. Similarly, a case review of 16 children placed in secure children's homes found that, while children were generally known to children's services, often from birth or pre-school age, they tended to enter care at a later stage—in their early to mid-teens (Hart and La Valle 2016). SWCU data also shows that most of the children referred in 2020 were in care for just one year prior to the referral (SWCU n.d.). Despite longstanding concerns, the research highlights a lack of long-term, consistent support for families (Williams et al. 2019; Hart and La Valle 2016).

Once in care, children are subject to multiple placement moves and disruption, with a relatively quick progression to secure children's homes. Children's initial placement was often in foster care but arrangements tended to break down quickly and were followed by a variety of residential provision, most very short-term (Hart and La Valle 2016). SWCU data shows that 40% of children referred in 2020 were living in residential settings at the point of referral, compared to just 4% in foster care (SWCU n.d.). Williams et al. (2020) found that, on average, children experienced 5.5 placement moves in the 3 years prior to secure children's home referral. These arrangements often broke down due to children's challenging behaviours, and risk of exploitation and absconding, suggesting a lack of appropriate placements and care in the community to support children at risk of entering secure care.

### **Other settings**

A large proportion of children in youth custody have also been in care. It is estimated that between 37% and 52% of children in custody have been in care at some point in their lives (Simmonds 2016; Prison Reform Trust 2016; HM Inspectorate of Prisons 2021). Official statistics suggest that of all children sentenced in the year 2019/20 (including those who did not receive a custodial sentence): over half (57%) were a current or previous child in need; 36% had a current or previous child protection plan; and 15% were subject to a care order (YJB 2021). It has been estimated that children in care who come into contact with the justice system are about seven times more likely to be given a custodial sentence than their non-care peers (Day et al. 2020).

There is much less information about the care histories of children detained under the Mental Health Act. A census of all children in secure settings in September 2016 found that 44% of children detained under the Mental Health Act were 'looked after', and a further 19% had a social worker (Hales et al. 2018). This suggests that a similar

proportion of children detained in mental health and youth justice settings are looked-after children.

## What do we know about children's needs at the point of admission to secure care?

Children in secure care are likely to have multiple, cross-cutting and complex needs. Evidence shows that there are many similarities in the risk profiles of the children detained in various settings, suggesting that the behaviour profiles and needs of children are very similar despite their different routes into secure care.

SWCU data (in Hart and La Valle 2021) shows that the most common presenting needs of children referred to secure children's homes for welfare reasons between September 2016 and March 2019, based on information provided by the local authority, included:

- absconding/physical needs (99%)
- challenging behaviour (92%)
- substance misuse (drugs, alcohol and tobacco) (85%)
- offending behaviour (82%)
- sexual exploitation (53%)
- self-harm (52%)
- mental health issues (51%).

Children in the youth justice secure estate are there because of a custodial sentence or because they have been remanded to custody for an offence. On top of this, they have a high level of other mental health and behavioural needs. Data from the Youth Justice Board (YJB) shows the most common needs identified among children who received a custodial sentence between April 2019 and March 2020, based on practitioner assessments (YJB 2021):<sup>12</sup>

- safety and well-being (98%)<sup>13</sup>
- risk to others (97%)
- behaviour (85%)
- substance misuse (86%)
- mental health (81%)

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<sup>12</sup> Data comes from the AssetPlus – an assessment and planning framework for use with children by youth offending teams. Data is from the assessment of a child that is closest to the date of their sentencing outcome, and this captures only those who had an assessment. Concern types refer to factors that practitioners judge to be affecting the child and practice around use of AssetPlus may vary across different youth offending teams.

<sup>13</sup> Relates to concerns about behaviours/situations within the family that may impact on the child's safety and well-being.

- concern about the child's significant relationships (77%)
- speech, language and communication (77%)
- learning and education (76%)
- lifestyle (76%)
- parenting (71%).

Children given custodial sentences tended to have a higher prevalence of identified needs than all children sentenced, and were more likely to present with multiple needs: 43% were assessed as having between 10 and 14 concerns and 40% had between 15 and 19 concerns.

## Mental health needs

### Prevalence across settings

Different methods of measuring mental health concerns (i.e. based on a specific diagnosis or 'general' concern) makes comparison across different settings and datasets difficult. Nonetheless, it is clear that a significant number of children across secure settings have identified mental health needs.

The most comprehensive information about mental health needs comes from a census of all children in secure care in September 2016 (Hales et al. 2018). **It found that, overall, 57% had at least one mental health or neurodevelopmental diagnosis.** This included:

- all children detained under the Mental Health Act
- 59% of children on welfare placements
- 41% of children in youth custody.<sup>14</sup>

Among children detained in hospital, the most common primary diagnosis was either psychosis (28%) or emotional dysregulation/emerging personality disorder (29%).

The most common primary diagnosis for children detained in welfare and custodial settings was attention deficit hyperactivity disorder (ADHD) (20% and 12% respectively). The study also raised concern about the number of boys with severe mental health problems (including psychosis) who were placed in young offender institutions (Hales et al. 2018; see also Bartlett et al. 2021).

A number of other studies have highlighted the prevalence of mental health problems among children placed in secure care for youth justice and welfare reasons that may arise from experiences of trauma and adversity in early childhood. This includes post-traumatic distress disorder (PTSD), complex trauma, attachment disorders, emerging personality disorder and neurodevelopmental problems (Khan et al. 2021; Hart and La Valle 2021; Pates et al. 2018; Hales et al. 2018; Justice Studio 2014).

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<sup>14</sup> A diagnosable mental health conditions is a requirement under the Mental Health Act, so this is not surprising.

### Welfare settings

Recent analyses of SWCU data suggest that **around half of children referred to secure children's homes for welfare reasons have identified mental health needs** (Hart and La Valle 2021; Khan et al. 2021; Williams et al. 2020). Girls were slightly more likely to have such needs identified than boys (Khan et al. 2021). In 2020, 35% of children placed in secure children's homes had a mental health diagnosis and 44% had a suspected mental health condition (NYAS n.d.). Further information about the type of diagnosis and/or need is not available.

Concern has been raised about the barriers this group of children face accessing mental health support in the community, including: long waiting lists; issues with child and adolescent mental health services (CAMHS) only offering treatment to those who quickly engaged or who were in a safe, secure environment; and difficulty getting a specific diagnosis (Williams et al. 2019).

### Youth justice settings

Information about the prevalence of mental health needs among children in youth custody varies depending on the data source. Published Youth Justice Board (YJB) data (2021), which covers all concerns that youth offending teams judge to be affecting the child at the point of sentencing, and relates to general mental health concerns rather than specific diagnoses, suggests that **81% of children who received a custodial sentence in 2019/20 were assessed as having mental health 'concerns'**. By contrast, analysis of Youth Custody Service (YCS) data, which is used by the YCS to determine a child's custodial setting, by Khan et al. (2021) found that 17% of girls and 15% of boys admitted to youth custody between January 2018 and May 2020 were identified as having mental health 'concerns' upon admission. YCS data covers information provided by the child's youth offending team to support the YCS in placing the child. Differences between the two datasets may suggest that mental health concerns are underreported here, although this requires further investigation.

### Risk of self-harm

A high proportion of children in secure settings are at risk of self-harm, especially girls and those detained for welfare reasons.

Analysis of SWCU referral data suggests that **around half of the children referred to secure children's homes for welfare reasons are considered at risk of self-harm** (Williams et al. 2020; Hart and La Valle 2021). Girls are much more likely to be at risk than boys (70.4% compared to 27.6%) (Khan et al. 2021), as are those detained for welfare reasons.

**Within youth custody, 55% of girls and 19% of boys are at risk of self-harm at the point of admission** (Khan et al. 2021, analysis of YCS data 2018–2020). The YJB/MoJ also publish annual data about incidences of self-harm within the youth justice secure estate. The **latest data for 2019/20 shows that there were 24.2 incidents of self-harm for every 100 children per month across all settings – an increase from 9.8 in 2014/15** (YJB 2021). Rates of self-harm were at their highest in secure children's homes (at a rate of 50.1 incidents per 100 children per month), followed by secure training centres (47.2 incidents per 100 children per month). This may reflect the particular vulnerabilities of children placed in secure children's



homes or potentially the better recording of incidents in these settings. Data about incidents of self-harm among children placed in secure children's homes for welfare reasons is not available; it is not clear if DfE collects this data.

Concern has been raised about the ability of secure children's homes to manage the high prevalence of self-harming behaviours among children in their care. An ethnographic study of one secure children's home in England found that the home was poorly set up to manage incidents of self-harm and staff were not sufficiently trained (Andow 2018, 2020; see also Khan et al. 2021). Frequent incidents of self-harm caused significant disruption to other children and to the delivery of other services.

Equivalent data about the risk of self-harm among children detained under the Mental Health Act is not available; a census carried out in 2016 found that 80% were considered a 'risk to self' (Hales et al. 2018).

## Sexual exploitation

SWCU data suggests that just over half of children referred to secure children's homes for welfare reasons are considered at risk of or are victims of sexual exploitation (52%, Hart and La Valle 2021; 55.6%, Williams et al. 2020). Girls are more likely to be considered at risk than boys: **a significant majority of girls (88%) admitted to secure children's homes for welfare reasons were identified with concerns relating to sexual exploitation, although it also notable that a quarter (25%) of boys were considered to be victims** (Khan et al. 2021). This suggests that sexual exploitation is one of the main identified concerns for girls admitted to secure children's homes for welfare reasons. Furthermore, Williams et al. (2020) found that children were more likely to be found a place in a secure children's home if sexual exploitation was identified as risk factor during referral.

Analysis of YCS data by Khan et al. (2021) found that, **among children admitted to custody between January 2018 and May 2020, 43% of girls in justice placements were identified as being at risk of sexual exploitation and 16% of boys.**

Comparative data is not available for children detained under the Mental Health Act.

## Prevalence of offending and challenging behaviours

All children in youth custody will have been sentenced or are awaiting sentencing (on remand) for a criminal offence. SWCU referral data also suggests **that a majority of children (between 77% and 82%) referred to secure children's homes for welfare reasons have a history of offending behaviour(s), including charges, previous offences and ongoing investigations** (Williams et al. 2020; Hart and La Valle 2021).

- Boys referred to secure children's homes are more likely to have previous offences (95%) compared to girls (65%), reflecting gendered patterns in contact with the youth justice system more broadly (Khan et al. 2021).
- Children in justice and welfare settings are also likely to display a range of complex and challenging behaviours, including aggressive and violent behaviour, damage to property, risk-taking and absconding (Khan et al. 2021; Hart and La Valle 2021; Williams et al. 2020; Hales et al. 2018).

- Among children referred to secure children's homes for welfare reasons, we also know that a significant minority (25% of girls and 35% of boys) are considered to be at risk from 'gang'-affiliations (Khan et al. 2021) and trafficking (Williams et al. 2020).

Much less information is available about the types of behaviours displayed by children detained under the Mental Health Act, and prevalence of previous offending behaviours.

Hales et al. (2018) found that 18% of those detained under the Mental Health Act on 16 September 2016 had had previous contact with their local youth offending teams, and 58% were considered a 'risk to others', although it is not clear how this was defined.

### Problematic substance use

A very similar proportion of children referred to **secure children's homes for welfare reasons (85%) and those placed in youth custody (86%) are identified as having 'substance' (alcohol, tobacco and drugs) misuse problems upon admission** (YJB 2021; Hart and La Valle 2021). This data is not broken down further by type of substance use.

Analysis of DfE data by Williams et al. (2020) found that 46% of children referred to secure children's homes over an 18-month period had an identified drug or alcohol problem.

In a survey of children in young offender institutions and secure training centres, only 5% self-reported having a problem with alcohol and 20% a problem with drugs (HM Inspectorate of Prisons 2021). Children who reported having been in care reported significantly higher rates of drug problems compared to those not in care (26% compared to 13%).

Substance misuse treatment data shows that, among children receiving treatment for drug and alcohol problems in secure settings (young offender institutions, secure training centres, secure children's homes) in 2019 to 2020, most (93%) had a problem with cannabis, followed by alcohol (40%) and nicotine (24%) (PHE 2021). 63% were identified with polysubstance misuse problems.

Comparative data is not available for children detained under the Mental Health Act.

### Education and special educational needs and disabilities

We know that children detained in youth justice settings are much more likely to be assessed as having special educational needs or disabilities compared to children in the general population. **Between 2018 and 2020, 29% of girls and 30% of boys were identified as having special educational needs or disabilities, compared to around 15% in the general population** (Khan et al. 2021).

Equivalent data for children detained in welfare or mental health settings is not available. **Over half (55%) of looked-after children have special educational needs and disabilities – a rate almost four times higher than among all children** (DfE 2021b). It is therefore very likely that there will be an overrepresentation of children with special educational needs and disabilities in secure children's homes and other secure settings.



More generally, children in secure care are likely to have enhanced educational needs, lower-than-average attainment, and will have often spent periods outside mainstream education before being admitted to secure care (Khan et al. 2021; Andow 2020; Shafi 2019; Justice Studio 2014).

YJB data shows that 77% of children in custody have identified speech, language and communication needs, and 76% have concerns around their education, training or employment (YJB 2021). Interviews with four head teachers at secure children's home schools explained that most children in secure children's homes (welfare and justice) had very negative experiences of the education system prior to admission (Pates et al. 2018).

Other research has highlighted school exclusion as a significant risk factor for children at risk of criminalisation and future placements in youth custody or secure welfare settings (Children's Commissioner for England 2019, 27 March; Youth Safety Taskforce 2018; Parker and Tunnard 2021). **In 2017/18, 89% of boys in young offender institutions reported that they had been excluded from school** (Green 2019).

## Physical health

Evidence suggests that children in secure settings may have poor overall physical health or specific physical health needs, although administrative data about children's physical health needs is not routinely published (Khan et al. 2021; Justice Studio 2014; Odgers et al. 2010; Mooney et al. 2007).

An annual survey by HM Prison Inspectorates (2021) asks children living in secure training centres and young offender institutions if they consider themselves to have any health problems (including mental and physical health):

- 36% in 2019/20 reported having health problems
  - of these, 63% reported that they had received help managing their health problem
- a quarter (25%) of children reported having a disability
  - just half of those with a disability indicated that they were receiving required support.<sup>15</sup>

Hales et al.'s 2016 census (2018) found that around a quarter (22%) of children across all secure settings had a physical health problem (including asthma, diabetes, epilepsy, physical disability).

The highest prevalence of physical health problems was recorded among children placed for in secure children's homes for welfare reasons (32%). Directly comparable data for the general population is not available, although around 8% of children in the UK have a physical disability (SCOPE n.d.).

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<sup>15</sup> Defined as physical, mental or learning needs that affect day-to-day life.

## Similarities between children placed in different settings

Overall, the evidence reported above points to the significant similarities in the early life experiences, risk profiles, current circumstances and future prospects of children detained in different settings and through different legislative routes, particularly among children placed in secure welfare and youth justice settings. Children from both groups are highly likely to have experienced familial neglect and abuse, family breakdown, trauma and other adversities, and have similar complex and multiple needs at the point of entering secure care.

These similarities have led some to comment on the ‘arbitrary’ nature of legislative routes into secure care, with factors other than the child’s offending behaviour sometimes determining whether they end up in a youth justice or welfare placement (Hart and La Valle 2021). Respondents interviewed as part of Hart and La Valle’s study reported that different practices in individual local authorities may influence decision-making; for instance, in some local authorities, efforts to avoid criminalisation of children and increased understanding of exploitation risks may mean children are more likely to be given a ‘welfare response’, while in other areas, a lack of welfare beds and the high cost of these placements may mean that some high-risk children are left until they are ‘picked up’ by the justice system. Concern has also been raised about gender or race biases in professional decision-making and the treatment of children from marginalised groups – for instance, that boys and children from racialised communities are at increased risk of being criminalised, while girls, and victims of sexual exploitation, may be more likely to be seen as victims, and provided a welfare response. There is a need for further exploration of professional decision-making processes and potential biases in how the system responds to marginalised and racialised groups.

The shared profiles of children referred to secure settings for welfare and justice reasons is further supported by evidence that the same children move between different settings, with 12% of children referred for a welfare placement having previously been in a custodial placement (Hart and La Valle 2021). In Ellis’ ethnographic study of girls living in one secure children’s home in England (2018), girls sometimes ‘changed’ legal status while inside the unit; two girls originally placed under welfare legislation were sentenced for crimes that they had committed before their placement started, and one girl serving a custodial sentence remained in the home after her sentence ended under welfare grounds.

Much less is known about the profiles of children detained under the Mental Health Act, although existing evidence suggests that there may be some key differences in this population (Andow and Byrne 2018; Hales et al. 2018). There is a need for much more research in this area.

Better data linkage of mental health, welfare and youth justice data would enable a fuller exploration of children’s pathways across settings.

# Where are children placed?

## Key findings

- The size of the secure estate has declined across all settings in the last decade.
- We know very little about where children refused a place in a secure children's home go on to be placed, including the use of the inherent jurisdiction to deprive them of their liberty in alternative placements.
- The number of children placed in adult in-patient wards while detained under the Mental Health Act is concerning. The most recent data suggests that this practice has increased in the past year.
- Information about how far children are placed from their home settings is not consistently recorded in administrative data – but we know that children are likely to be moved to secure settings far away. This includes a significant number of children from England and Wales being placed in secure children's homes in Scotland.

## Research and data gaps

- We do not know where children deprived of their liberty under the inherent jurisdiction are placed, or the type of accommodation, and how far from home these placements are.
- We do not know where children who cannot be found a place in a secure children's home go on to be placed.
- NHS England does not publish up-to-date information about where children detained under the Mental Health Act are placed (i.e. secure or non-secure ward). Although this data is published for all children in in-patient mental health settings, including those not subject to the Mental Health Act, this data should be disaggregated for Mental Health Act patients.
- Information about the distance from home of secure placements should be routinely published by DfE (separated for welfare and justice placements), SWCU and NHS England to allow comparison across settings.
- There is a need for further research to explore how distance from home impacts children's experiences of secure placements and outcomes – including the experiences of English and Welsh children who are placed in secure children's homes in Scotland.

## Secure children's homes – welfare placements

There are 13 registered secure children's homes in England. Six provide welfare placements only, two provide justice placements only, and five are mixed capacity. There is one secure children's home in Wales, which provides accommodation for 22 children (with 6 places contracted to the Youth Custody Service (YCS)).

As at 31 March 2021, when operating at capacity, secure children's homes offer just 231 places, of which 130 are for children placed on welfare grounds and the remaining 101 are for children on remand or serving a custodial sentence (Ofsted 2021).

The number of places in secure children's homes has declined significantly since 2002, with the closure of 16 homes (Common 2020, 9 June). This is due in part to the decommissioning of youth justice placements. However, it is now widely acknowledged that there is a lack of welfare placements available to meet demand (see 'How many children are deprived of their liberty?').

We know very little about where children refused a place in a secure children's home go on to be placed, including the use of the inherent jurisdiction to deprive them of their liberty in alternative placements (see Williams et al. 2020; Williams et al. forthcoming).

## Deprivation of liberty under the inherent jurisdiction

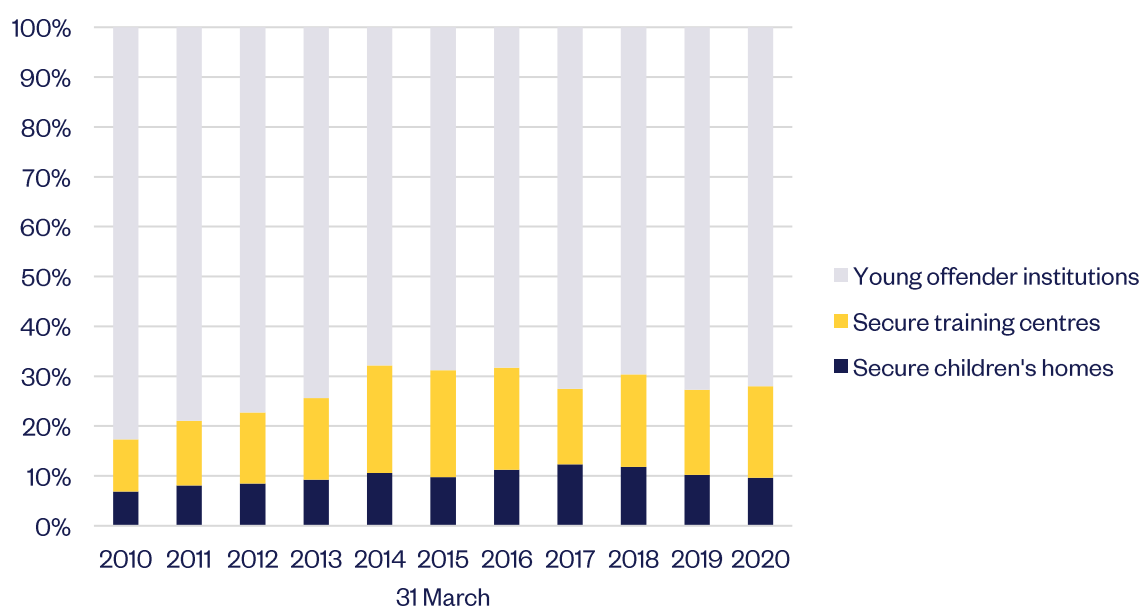
There is no national data about where children deprived of their liberty under the inherent jurisdiction are placed.

## Youth custody

When a child is remanded or sentenced to custody, the YCS decides where they should be placed – in a young offender institution, secure training centre or secure children's home.

Young offender institutions are the largest youth custodial setting (with capacity in excess of 300 beds in some cases). They accommodate boys aged 15–17. Secure training centres are the second largest youth custodial setting and accommodate boys and girls aged 12–17 in large groups (50–80 children per secure training centre). Secure children's homes are the smallest setting (with capacity ranging from 7 to 38 beds) and have a high staff-to-child ratio of around 1:2. Children are placed in a secure children's home if they are under the age of 12 or considered to be particularly vulnerable.

The majority of children in youth custody are placed in young offender institutions (see Figure 6). In 2019/20, on average, 72% of children in custody were placed in young offender institutions, while 18% were in secure training centres and 10% in secure children's homes (YJB 2021).

**Figure 6: Average monthly youth custody population by setting, England and Wales**

Source: YJB 2021.

Across England and Wales, there are five youth offender institutions and six secure children's homes that take children on a youth justice basis. There is currently only one secure training centre in operation (Oakhill). There are no children currently living at Rainsbrook secure training centre after the Ministry of Justice (MoJ) ordered their removal in June 2021, and Medway secure training centre was closed in March 2020.

Concerns have repeatedly been raised about conditions within the youth justice secure estate, particularly within young offender institutions and secure training centres (Taylor 2016; Wood et al. 2017). In 2020, the Children's Commissioner for England reported that no young offender institution was judged to be 'Good' across the board. Secure children's homes were more likely to be highly rated, although two were still rated as 'requires improvement'. In the last year, serious concerns have been raised following inspections at Rainsbrook and Oakhill secure training centres. Urgent notifications were issued to the Secretary of State for Justice about Rainsbrook secure training centre in January and July 2021 and for Oakhill secure training centre in November 2021.

In response, the government has committed to replacing young offender institutions and secure training centres with 'secure schools' – smaller, more local, custodial establishments that place greater emphasis on education. The first 'secure school' is expected to open on the old Medway secure training centre site. However the site opening has been repeatedly delayed and is now not expected to open until 2023.

## Detention under the Mental Health Act

Children detained under the Mental Health Act can be placed in secure wards (medium secure and low secure units), psychiatric intensive care units, or in wards that are not designated as secure wards (e.g. general adolescent wards, specialist wards for children with eating disorders, learning disabilities and autism). They can also be placed in adult wards, although the Mental Health Act sets out that this should only happen in an emergency or in 'atypical' circumstances.

There is no up-to-date, comprehensive, publicly available list of the number of children's secure wards. The most recent list was provided to the Children's Commissioner for England in 2020 by NHS England (Children's Commissioner for England 2020a), which tells us that a total of 28 secure wards and psychiatric intensive care units were available at that time, with 296 beds available. This was down from the 355 beds reported in March 2019 figures, as a result of the closure of several hospitals or wards.

Accessing in-patient mental health beds has reportedly become much more difficult in the last decade. In a survey of child and adolescent psychiatrists carried out by the Royal College of Psychiatrists in 2013, over 70% of respondents reported that they experienced frequent difficulties accessing beds, and over 50% said the situation had worsened in the last year (Royal College of Psychiatrists 2015).

Data provided by NHS England to the Children's Commissioner for England in 2020 indicates that on 31 March 2020, of the 544 children detained under the Mental Health Act in child and adolescent mental health services (CAMHS) in-patient settings, most (53.8%) were in general adolescent wards (including specialist eating disorder wards), followed by low secure (19.4%), psychiatric intensive care units (17.4%) and medium secure wards (6.6%) (Children's Commissioner for England 2020a).

### Children placed on adult wards

Although children receiving in-patient mental health treatment should generally not be placed on adult wards, data suggests that a significant number are placed in these settings each year. However, the exact number is difficult to quantify, and the data does not distinguish between children sectioned under the Mental Health Act and those admitted voluntarily.

Mental health services are required to notify the Care Quality Commissions (CQC) when a person under 18 years old is placed in a psychiatric ward or unit intended for adults for a continuous period of more than 48 hours. In 2018/19, CQC reported 152 such incidents – a reduction from previous years (CQC 2020). This is currently the latest available data.

NHS Digital data shows that, in 2019/20, 592 children (including those not detained under the Mental Health Act) were placed in adult mental health wards – a threefold increase from the previous year (NHS Mental Health Dashboard 2021). The data does not distinguish between children admitted to hospital under the Mental Health Act and those admitted informally, and may include incidences where children are placed in adult wards temporarily (less than 48 hours), but is nonetheless



concerning. These wards are inappropriate settings for children, and the practice is prohibited in welfare and youth justice secure settings.

## How far are children placed from home?

Attempts to map the number of secure settings (across all types of provision) have shown the regional variation in provision of secure placements across England and Wales (see Children's Commissioner for England 2019; Warner et al. 2018). For example, there are no secure training centres in the north or south-west of England, and the south-west is poorly served with hospital units. There are no secure children's homes in London or the West Midlands, and just one in Wales. Due to the small number of settings, it is therefore highly likely that children in these settings are living some distance from home.

The most detailed official statistics on how far children are placed from home is provided by the Youth Justice Board (YJB), which show that, on average, 74% of children in youth custody were placed more than 24 miles away from their homes, and 36% were living more than 50 miles away in 2019/20 (YJB 2021). Girls in youth custody are, on average, placed further from home than boys (Goodfellow 2019; Khan et al. 2021).

DfE publishes some limited data on the distance from home of placements of all looked-after children, as part of the 'children looked after' returns. This tells us that 38% of children living in secure units, children's homes or semi-independent accommodation are living more than 20 miles from home but the data is not broken down further by placement type (DfE 2021b).

A census of all children living in secure settings on 14 September 2016 carried out by NHS England provides the most comprehensive data on how far from home children were living, however it is now a number of years out of date. Hales et al. (2018) found that the overwhelming majority of children in secure care were placed outside their home local authority: 91% of those in secure children's homes, 89% of those in mental health wards and 78% of children in youth custody.

With regard to children placed in secure children's homes for welfare reasons, analysis of SWCU data by Williams et al. (2020) found that the median distance from home was 132.3km (range 0–399km). The study also found that a significant minority of children are placed cross-border, with 12% placed in Scotland and 9% in Wales (Williams et al. 2020). Another study found that most children in Wales were sent to secure homes in England (Williams et al. 2019).

Scottish Government statistics indicate that in 2020, 48 children placed in Scottish secure children's homes were from outside Scotland – a slight decrease from 2019 (50 children) and 2018 (75 children) (Scottish Government 2021). In addition, censuses of all children resident in secure accommodation in Scotland on one day in 2018 and 2019 found that 37% of children were from England, and 36% from England and Wales respectively (Gibson 2020; 2021). 69% of these children were over 300 miles from their families, and 23% were over 500 miles away (Gibson 2021). Children placed in Scotland may have particularly challenging needs and will often have been refused placement by secure children's homes in England and Wales (Williams et al. forthcoming; Gibson 2021); it is not clear why secure children's homes appear better

able to accommodate these children. However, as part of the recommendations following the Scottish Independent Care Review ('The Promise'), by 2022, Scottish units will only accept children from local authorities in Scotland (Independent Care Review 2020).<sup>16</sup> The need to find alternative placements for the 50+ children placed in Scotland each year will place additional pressure on the availability of welfare placements in England and Wales.

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<sup>16</sup> It is of note that the section 10 of the Children and Social Work Act 2017 legalised this practice for English and Welsh local authorities in recognition that it was already occurring without legal authorisation.



# What is the purpose of secure care?

## Key findings

- There is a lack of clarity around the purpose of depriving a child of their liberty for welfare reasons and in youth custody – in particular, around the extent to which secure settings can and should seek to address children’s underlying needs – and what can realistically be achieved during the placement. Lack of clarity around the purpose and aims of secure care makes it difficult to plan what an ‘ideal’ secure estate should look like.

Although there is a clearer rationale for the detention of children in mental health settings (i.e. to provide treatment for a mental health problem), there is less clarity around the purpose of depriving a child of their liberty for welfare reasons and in youth custody.

Although all children in youth custody are placed there because of concern around offending behaviour (i.e. either on remand or sentenced), and intention to punish children for these behaviours is one ‘reason’ for placing children in these settings, there is less clarity about other intentions to also rehabilitate children and reduce further offending – and therefore how custodial settings should be set up to achieve that (see Hart 2015 for further discussion).

With regard to welfare placements, interviews with professionals have highlighted confusion about the purpose of – and what can be realistically achieved through – such placements. Hart and La Valle’s (2016) interviews with senior local authority managers in 12 local authorities in England highlight differing opinions on what secure placements could be expected to do. At the most basic level, secure children’s homes were thought to provide an opportunity to ‘hold’ children and to keep them (temporarily) safe. There was less consensus, however, about the purpose and ability of secure children’s homes to address the underlying needs behind a child’s admission. Some felt that the placement should support the identification of a child’s needs, and to support them to engage in more in-depth treatments or interventions in a stable setting. In particular, the relatively short amount of time children spend in secure children’s homes has led some to question the ability of a secure placement to support any meaningful change for the child

(Hart and La Valle 2016; Held 2006).<sup>17</sup> There is also a lack of comprehensive understanding about the types of intervention and treatment models offered in secure settings, although research has highlighted significant variation within the same ‘type’ of setting (Warner et al. 2018).

Other research has highlighted the considerable professional anxiety that exists in children’s services when responding to the complex needs of children, particularly when there are concerns around extrafamilial harm and exploitation. This can lead to decisions being made at points of crisis, and a preoccupation with immediate safety through secure placement and relocation, at the expense of approaches that place children’s voices and well-being at the centre, and address the underlying risks children face in the community from exploitation (Wroe 2021, 13 September; Wroe and Lloyd 2020; Khan et al. 2021). Research has also highlighted the lack of community-based responses, including provision of specialist foster placements and residential children’s homes, and integration with other services – particularly community mental health services – that could support professionals to better manage risk in the community (Khan et al. 2021).

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<sup>17</sup> Welfare placement should be for the shortest amount of time possible and end when the child no longer meets the criteria set out in s.25 of the Children Act 1989. The majority of placements last less than six months (SWCU n.d.).

# What are children's experiences of secure care?

## Key findings

- We know more about children's experiences of youth custody than of other secure settings. Numerous reports have raised serious concerns about the ability of young offender institutions and secure training centres to keep children safe.
- Children report mixed experiences of living in secure children's homes and there is a need for further research in this area. For some children, the placement is a positive experience, and they benefit from the sense of routine and security the home provides, and from positive and nurturing experiences with staff. At the same time, however, there are concerning reports of violence and self-harm within secure children's homes that staff struggle to manage.
- We know relatively little about the types of intervention and models of care provided in secure settings. Concern has been raised about the ability of youth custody settings and secure children's homes to meet children's mental health and behavioural needs, and the provision of trauma-informed and child-centred therapeutic care in these settings. The SECURE STAIRS model, which is currently being developed and implemented across secure settings, aims to provide joined-up services coordinated around the child's needs.

## Research and data gaps

- There is a scarcity of research about children's experiences of being detained under the Mental Health Act.
- There is a lack of data about the occurrence of serious incidents, including self-harm and use of restraint, in secure children's homes and mental health settings. This data is published by the Youth Justice Board (YJB) for children in youth custody. Comparative data should be recorded and published by the Department for Education (DfE) and NHS England.
- There is a lack of information about the types of intervention and treatments provided in secure settings.

There is a lack of research and information about children's experiences of secure care, and the type and quality of care and support they receive in secure settings. Experiences of children detained in youth custody settings has received more attention, based on individual research studies, inspection reports and government-commissioned reviews (e.g. HM Inspectorate of Prisons 2020, 2021; Wood et al. 2017; Taylor 2016, 2020; Gyateng et al. 2013; Soares et al. 2019), and the YJB/Ministry of Justice (MoJ) publish annual data about restraint, and assault and self-harm incidents in the youth justice secure estate. An overview of the most recent research is provided by Bateman (2021). Bateman highlights continuing concerns about the ability of the secure estate to keep children safe – with incidences of restraint, assault, self-harm and single separation (where a young person is locked alone in a room during the day and against their will) increasing substantially over the last seven years – and to meet children's basic needs, including provision of food, hygiene, and access to health and mental health care. The report raises particular concern about the treatment of children from Black and minority ethnic groups, and children in care in youth custody.

By contrast, there is a scarcity of research on children's experiences of being detained under the Mental Health Act in hospital. A recent report by the Children's Commissioner for England, based on visits to four different child and adolescent mental health services (CAMHS) in-patient wards, found that some children were confused and disorientated at the time of admission, had a very mixed understanding of what being sectioned meant, and reported feeling 'voiceless' and uninvolved with their care planning (Waldegrave and Roffe 2020). In particular, the study raised concern about children's experience of being restrained and witnessing restraint as being both traumatic and re-traumatising.

With regard to secure children's homes, there is very limited national data collected about what happens in secure children's homes, including provision of therapeutic interventions, behaviour management and care. There have been a handful of ethnographic studies reporting on experiences and practices in individual homes (e.g. Andow, 2020, 2018; Shafi 2019; Ellis 2018, 2016; Philips 2021) and some more recent studies that have spoken to children directly about their experiences of living in secure children's homes (Williams et al. 2019; Khan et al. 2021). Some of these

studies have focused on children living in secure children's homes for welfare reasons, others on those placed in youth custody or on remand, and some on both groups of children. This research is summarised below.

## Experiences of secure children's homes

Overall, the research reports mixed experiences of secure children's homes.

Secure children's homes generally perform well in inspections, compared to young offender institutions and secure training centres, and other types of residential children's homes. At 31 August 2021, 23% of secure children's homes were judged 'outstanding' by Ofsted, 62% 'good' and 15% were identified as requiring improvement (Ofsted 2021). Ofsted reports positive examples of secure children's homes that are child-focused, with committed staff, and enable good and trusting relationships between children and staff (Ofsted 2021).

Both Khan et al. (2021) and Williams et al. (2019) identified issues with children's transitions into secure children's homes, including a lack of consultation prior to the placement, and traumatic journeys to the secure children's home, especially when the journey was unexpected, involved use of force, and involved individuals the child had never met before.

A handful of studies have suggested that some children report feeling safer in secure children's homes than they did in the community, benefit from the routine the home provides, and that a period of secure care provided them with an opportunity to (re-)engage with education and mental health provision (Andow 2020; Khan et al. 2021; Williams et al. 2019).

However, children have also reported feeling unsafe in secure children's homes and a number of studies have raised concern about the unpredictable and volatile nature of the environment, including children's exposure to and experience of restraint, violence and self-harm (Andow 2020; Khan et al. 2021). The only official data on incidences of restraint, assaults, self-harm and separation in secure children's homes comes from youth justice data, relating to children detained on youth justice grounds only (see Table 3). It shows relatively frequent incidents of restraint, assaults and separation in secure children's homes. DfE does not publish equivalent data and it is not clear if children on welfare grounds are more or less likely to be subject to such incidents. However, given increased risk of self-harm and mental health concerns among this group (see earlier chapter, What are the different legislative routes to deprivation of liberty?) it is likely that incidents of self-harm may be higher; Andow's (2020) ethnographic study of a mixed secure children's home found that children on welfare placements were frequently restrained to stop self-injury, more frequently assaulted staff compared to those on justice placements, and had many instances of separation. The data is therefore likely to significantly underestimate the occurrence of these incidents in secure children's homes.

**Table 4: Incidents reported in secure children's homes, children placed on youth justice grounds only, year ending March 2020**

Incident type	Average number of incidents per month	Proportion of children involved	Number of incidents per child involved
Restrictive physical intervention	97	43%	3.0
Self-harm	38	14%	3.6
Assault	40	Assailant: 30% Victim: 12%	Assailant: 1.8 Victim: 1.2
Separation	143	52%	3.6

Source: YJB 2021.

A consistent theme across the literature is that children report feeling like they were being 'punished' regardless of the reason for their placement (Coram 2017; Ellis 2016; Williams et al. 2019). This was related both to the oppressive environment (e.g. locks, noise), experiences of being 'locked up' and treatment by staff. A number of studies have highlighted the sense of injustice that children detained under welfare grounds report about being accommodated with children sentenced for committing a crime (Ellis 2016; Andow 2020; Khan et al. 2021; Williams et al. 2019). Khan et al. (2021) in particular highlight the confusion felt by girls in welfare placements, who were often referred due to concerns about sexual or criminal exploitation, about why they had been 'locked up' when their perpetrators had not.

Children's ability to maintain connections with friends and family while in secure care has received little attention, despite the importance of this for maintaining relationships and supporting transitions back into the community. Girls in both youth justice and welfare placements interviewed by Khan et al. talked about missing friends and family, and that they did not have as much contact as they wished (2021). Several girls talked about the frustration they felt at having their phones taken away from them and having a restricted numbers of calls per day that did not take into account the importance of their own relationships.

## Impact of the COVID-19 pandemic on secure settings

There is limited research about how children's experiences within secure settings have been affected by the COVID-19 pandemic and associated lockdowns. Inspection reports from HM Inspectorate of Prisons (for young offender institutions and secure training centres) and Ofsted (secure children's homes) provide some indication about how daily life has changed. Within young offender institutions and secure training centres in particular, concern has been raised about the increased restrictions placed on children during this time, and the impact on their mental health. This includes: increased time spent in cells, with reports of children spending more than 22 hours a day in their cell in some young offender institutions (HM Inspectorate of Prisons 2020); severe restrictions to education and other activities; and cancellation of all visiting arrangements (Bateman 2020; Howard

League 2020; Children's Commissioner for England 2020b). Some positive developments have been noted since the first lockdown in March 2020, with the Youth Custody Service (YCS) committing to maintaining education for children and prioritising face-to-face family contact. However, concern remains about inconsistent practice within settings and many children are still spending long periods locked alone in their cells (Children's Commissioner for England 2021). There is a lack of information about practice in secure children's homes, although Ofsted (2021) report that secure children's homes generally performed well in inspections during the pandemic and many were able to maintain an almost normal routine for children, including continuing to attend face-to-face education.

There is a lack of published information about mental health in-patient settings. A report from the Children's Commissioner for England, based on a survey of ward managers and interviews with staff on two wards, sheds some light about children's experiences during COVID-19. They found that, while on the whole staff did their best to manage children's anxieties and maintain a calm atmosphere on the wards, they also faced significant challenges, including visiting restrictions – 71% of wards stopped all family visits for at least some of the lockdown period – and disruption to education (Children's Commissioner for England 2020c).

## **Types of services and interventions provided in secure settings**

There is limited research about the type and quality of services provided in secure placements. There is more research focusing on the provision of education in secure children's homes and the youth justice secure estate (see for example Gallard et al. 2018), with some studies suggesting that these settings provide children with an opportunity to re-engage with their education and that the provision of tailored, adaptable education programmes was a key positive for children in secure settings (Andow 2020; Justice Studio 2014).

The most comprehensive overview of the types of intervention and treatment models offered by secure settings (across welfare, youth justice and mental health) is provided by Warner et al. (2018). They carried out a scoping exercise of all secure care providers in England between February and September 2016 and asked each whether they had an overarching theoretical treatment model, and if so, what this model was. Most hospitals (89%), some secure children's homes (71%), and a handful of secure training centres and young offender institutions (29%) were identified as having an overarching theoretical treatment framework. These included family therapy/attachment, mentalisation, and social learning-based approaches. Each unit was also asked about the range of interventions it offered. Hospitals offered the widest range of different types of intervention, and secure training centres the least. Overall, Warner et al. highlight significant variation in the approaches and models used across settings, and the range of interventions provided.

### **Provision of mental health support**

We know that children placed in secure settings are likely to have complex mental health needs, including multiple diagnoses or undiagnosed conditions. Concern has



been raised about the ability of welfare and justice settings to meet children's mental health and behavioural needs, through the provision of therapeutic, integrated and trauma-informed services, although there is a lack of systematic research on this (Khan 2010; Hart and La Valle 2016; Williams et al. 2019; Held 2006).

In addition, there is evidence of a growing number of children with very complex mental health needs – including severe self-harm and behavioural difficulties – that local authorities are struggling to find suitable placements for (Ofsted 2021). Many of these children have spent time as mental health inpatients but were deemed not to have a treatable disorder and released. Published judgments in the family court illustrate the difficulty finding suitable placements for these children that can support their recovery. Many cannot be found a place in a secure children's home and are left to spend significant amounts of time deprived of their liberty in inappropriate placements with no therapeutic support being provided (see for example *Nottinghamshire County Council v LH (A child (No. 1))* [2021] EWHC 2584 (Fam); *A Borough Council v E (Unavailability of Regulated Placement)* [2021] EWHC 183 (Fam)).

There is therefore a clear need to better understand and evaluate the type of therapeutic provision that can support the mental health needs of children across secure settings and promote their resilience and recovery. The Framework for Integrated Care and SECURE STAIRS model, which has been developed by NHS England and jointly funded by the NHS, DfE and MoJ, aims to increase multi-agency and therapeutic provision to support the psychological needs of children in secure children's homes, secure training centres and young offender institutions. It provides a framework for a new way of working that involves training staff to provide more developmentally-attuned, psychologically-informed care that is centred around comprehensive, co-produced assessments of young people's needs to ensure that all needs are identified. The framework is currently being rolled out across secure settings and its impact evaluated by the Anna Freud Centre (D'Souza et al. 2021).

## How long do children spend in secure settings?

The YJB publishes annual statistics about the length of time spent in youth custody for sentences ending that year. It shows that in 2019/20, the majority of episodes (60%) lasted less than 13 weeks (approximately 3 months). This was fairly consistent across settings, although children tended to spend longer in young offender institutions (YJB 2021). The median number of nights spent in each setting was 81 in secure children's homes, 88 in secure training centres and 91 in young offender institutions.

DfE publishes annual data on the length of stay in secure children's homes, although the data is not disaggregated for children placed on justice or welfare grounds (DfE 2021a). At 31 March 2021:

- 18% of children had been accommodated for less than 1 month
- 25% had been accommodated between 1 to 3 months
- 30% had been accommodated between 3 to 6 months



- 15% had been accommodated between 6 months to 1 year
- 13% had been accommodated for a year or more.

Information about the length of stay for children on welfare placements is not made publicly available. Analysis of SWCU data has shown that most children stay in secure children's homes for six months or less (NYAS 2021; Williams et al. 2020). Around a quarter of children are accommodated for up to a year, and there is some evidence that the proportion of children living in secure children's homes for over a year has increased in recent years (NYAS 2021).

In 2020, for the first time, NHS England published data about the length of time children detained under the Mental Health Act spent in hospital. It shows that in 2019/20 and in 2020/21, the median length of detention for children was 27 days (NHS Digital 2021a). This is a shorter length of time than that reported by the Children's Commissioner for England, using NHS England data, who found that the median length of stay on a CAMHS in-patient ward for all children in 2019/20 was 60 days, although this includes children not detained under the Mental Health Act. Children on medium-secure and low-secure wards stayed the longest – for an average of 11.7 and 9.3 months respectively. It is not clear if this difference is due to potential incompleteness of the published NHS England data or increased length of stay for children admitted to mental health wards informally (i.e. not under the Mental Health Act), who are included in the Children's Commissioner for England analysis.

**Table 5: Median number of days spent in secure settings**

	Welfare settings	Youth justice			Mental health settings		
	Secure children's homes – welfare*	Secure children's homes – justice†	Secure training centres†	Young offender institutions†	Low secure*	Medium secure*	Psychiatric intensive care units‡
<b>Median length of stay (days)</b>	129	81	88	91	280	352	60

Note: data comes from different sources and may not be directly comparable.

Source: \*Williams et al. 2020; † YJB 2021; ‡ Children's Commissioner for England 2020a.

# What do we know about children's outcomes following secure care?

## Key findings

- There is a lack of systematic research about children's outcomes following secure care. The evidence available does not allow any firm conclusions to be drawn about the impact of a secure placement on children's short and long-term outcomes.
- Research has raised issues about children's transitions out of secure settings, including the availability of accommodation and other support. For children leaving secure children's homes on welfare grounds, there is a particular lack of suitable placements in the community that can continue to provide a high level of care and support. This risks undoing any positive progress that may have been achieved during the secure placement.
- We know that reoffending rates for children placed in youth custody are high. There is a lack of data on other outcomes.
- Some children placed in secure accommodation on welfare grounds reportedly benefit – but for others the placement is ineffective or makes things worse. In the long term, evidence suggests that for most children the secure placement – and subsequent care – are ineffective in transforming children's outcomes.
- Around a third of children placed in secure children's homes for welfare reasons re-enter a secure children's home at a later date. This suggests their issues are unresolved. We do not know how many children re-appear in other parts of the secure system.
- There is a need to agree a consistent set of short and long-term outcome measures that should be implemented across secure settings. These measures should be determined by first agreeing a set of aims for secure care.

## Research and data gaps

- There is a clear need for more research to systematically measure outcomes for children placed in secure settings. This is true for all types of provision – but the lack of any outcome data on children detained under the Mental Health Act is particularly apparent.
- We know little about children’s journeys after they leave secure accommodation, including future placements and involvement with services. Data linkage – of looked-after children data, health data, education data and youth justice data, for example – would enable better tracking of longer-term outcomes, including any subsequent secure placements in different settings.
- There is a need for more research to explore what factors contribute to positive outcomes for children, including international comparisons and other types of residential provision.

## Where do children go?

When leaving custody, most children (78% in 2019/20) return to the community (i.e. a non-secure setting, such as the family home, independent living or other residential care), with smaller numbers moving to the adult estate (21%) or to a mental health unit (1%) (YJB 2021).<sup>18</sup> In the past five years, the number of children transitioning to the adult custodial estate has increased, from 13% of all children released in 2014/15 to 21% in 2019/20.

Among children living in secure children’s homes for welfare reasons, most (41%) are discharged to a children’s residential home, followed by independent (11%) and semi-independent living (11%) (Williams et al. 2020).

We do not have data about where children detained under the Mental Health Act are discharged to.

A number of studies have highlighted issues with children’s transitions out of secure settings – in particular difficulties finding suitable accommodation. A significant proportion of children do not know where they will be living when they leave secure settings:

- 43% of all children living in secure settings in September 2016 did not have a placement address ready for their move back into the community. This included 72% of children under welfare legislation (Hales et al. 2018).
- 24% of boys living in young offender institutions in 2017/18 thought that they would have a problem finding accommodation on release (HM Inspectorate of Prisons 2019). They also reported anticipated difficulties and anxieties around finding a job, education and finances.

<sup>18</sup> The data is not broken down further by type of community placement.

- In 2019/20 only 33% of children in young offender institutions and secure training centres reported that anyone was helping them to prepare for release (HM Inspectorate of Prisons 2021).
  - This is a particular problem for looked-after children in custody; Day et al. (2020) found that some children did not know where they would be living until a few days before their release, and some were placed in temporary accommodation, including bed and breakfast accommodation (see also HM Inspectorate of Prisons 2019). This instability impacted other planning arrangements, including education and employment.
- Lack of assurance around post-secure accommodation causes children considerable anxiety and stress, and can make transitions out of secure settings chaotic and confusing (Khan et al. 2021; Day et al. 2020; Williams et al. 2019; Bateman 2021).

Particular issues have been raised in relation to finding suitable ‘step-down’ placements for children accommodated on welfare grounds – that is, placements that can provide a high level of support to manage ongoing behavioural or mental health issues without the need for further deprivations of the child’s liberty (Khan et al. 2021; Williams et al. 2019; Hart and La Valle 2016). Issues include a lack of sufficient placements (for example, specially trained foster carers or therapeutic residential homes) as well as some placements refusing to take children perceived to be ‘high risk’. This means that many children who continue to have a high level of need are placed in appropriate accommodation. For example, girls interviewed by Khan et al. (2021) were placed in caravans, holiday cottages or in hotel chains (sometimes under intensive supervision, sometimes not). Three children in Williams et al.’s (2019) study in Wales had their exit from the secure children’s home delayed by as much as three months because there was nowhere for them to go, meaning they continued to be subject to restrictions on their liberty throughout this time. This uncertainty and instability can undo any positive progress a child has made while in a secure children’s home, lead to further applications to deprive them of their liberty in other placements, and result in children becoming ‘stuck’ in the secure system (Williams et al. 2019; Khan et al. 2021). There is an urgent need to better understand what kind of placements can support children, both before and after a placement in a secure children’s home, and to develop and evaluate these.

Other research has highlighted a lack of joined-up planning between secure settings and community teams (e.g. social workers and youth offending teams) (Khan et al. 2021; HM Inspectorate of Prisons 2019).

## What information is collected about children’s outcomes?

There is a lack of systematic research on children’s outcomes following a secure placement. This includes both short and long-term outcomes. The only national publicly available data that specifically relates to outcomes is collected by the Youth Justice Board (YJB) relating to rates of reoffending, although this data has not been published since 2018. Although individual secure children’s homes may track changes in children’s outcomes pre- and post-placement (e.g. improvements to

well-being and education), no combined outcome measurements are coordinated or published by DfE.

There is a need to develop a shared set of outcome measurements for each setting, and ideally across the secure estate, to allow comparison between different types of provision. These measures should follow an agreed sets of aims and consensus around the purpose of secure care (see 'What is the purpose of secure care?'). As a starting point, national data collection should consider short-term outcomes relating to evidencing improvements in mental health, well-being, education, behaviour, health and relationships, as well as longer-term outcomes, including readmissions, reoffending, and children's pathways into adulthood, which could be tracked through data linkage of multiple datasets.

## What do we know about outcomes?

The evidence available does not allow any firm conclusions to be drawn about the impact of a secure placement on children's short and long-term outcomes.

We know that rates of reoffending following youth custody are high, which is often used to measure the 'success' of youth custody. In 2018, almost two-thirds of children (65.2%) who left custody went on to reoffend within 12 months (YJB 2021). This has fallen slightly from 70.1% in 2014, although the percentage remains high.

Findings from individual research studies looking at secure children's homes show a mixed picture, where some children reportedly benefit, but for others the placement is ineffective or makes things worse (Hart and La Valle 2016).

A review by Justice Studio (2014) of outcome data collected by individual secure children's homes (accommodating children on both justice and welfare grounds) and interviews with staff and children highlight some positive outcomes of children placed in a secure children's homes. They report improvements in educational outcomes – with children, on average, having increased their learning age in literacy and numeracy by at least one year – and some health benefits, including diagnosis of mental health issues and improved physical health. Out of the five secure children's homes that recorded well-being outcomes, four demonstrated noticeable improvements in children's well-being. However the report also illustrated significant variation in outcomes between homes, and poor and inconsistent recording of many (short-term) outcome measures by individual homes.

Others have raised concern about the ability of secure placements to effectively tackle contextual and extrafamilial risks faced by children (see for example Firmin, Wroe and Bernard 2021), and to address the underlying causal factors of children's behaviours (Williams et al. 2019). One study looking at outcomes for Welsh children accommodated in secure children's homes for welfare reasons found that while the placement provided containment and immediate de-escalation of risk, in many cases this was temporary, and children continued to be at risk upon return to the community.

There is no publicly available national data regarding outcomes following Mental Health Act detention. A meta-analysis of international studies measuring outcomes of adolescent mental health in-patient units (including four studies from the UK)

found some evidence that children's symptoms stabilised following a period of in-patient care (Hayes et al. 2018).

### **Longer-term outcomes**

There are only a handful of studies that have explored longer-term outcomes, and most are limited to a one-year follow-up. The evidence available for welfare secure placements suggests that many children continue to be at risk of poor outcomes following a secure placement.

In a review of the case files for 10 children placed in secure children's homes in Wales, Williams et al. (2019) found that just over a third were progressing well.<sup>19</sup> Although based only on a small number, a consistent factor in these cases was the availability of a post-secure placement with carers who were able to properly manage challenging behaviours. For the other children, although some showed evidence of short-term benefits during and immediately after secure care, in the long term, this progress was not sustained.

Other research that linked Secure Welfare Coordination Unit (SWCU) data to Department for Education (DfE) annual 'children looked after' returns found that, in the year after referral to a secure children's home, mental health outcomes worsened for over half of children (Williams et al. 2020). The same study found that around a third received a criminal conviction, and on average, children experienced three placement moves (Williams et al. 2020).

Moreover, a number of studies have shown that around a third of children placed in secure children's homes will go on to be re-referred or subject to further secure accommodation orders (Roe et al. 2022; Williams et al. 2020; Williams et al. 2019). There is lack of data about the number of children who may be subject to further deprivations of liberty via different legislative routes.

### **Factors associated with positive outcomes**

There is a lack of research about what factors within secure settings are more or less likely to support positive outcomes. Some factors identified in the research include (adapted from Hart 2015; Hart and La Valle 2016; Justice Studio 2014):

- staff (high staff-to-child ratio, specially trained staff and the commitment of staff to build relationships with the children in their care) (see also Ellis and Curtis 2020)
- small units of no more than 12 children
- located close to home
- how well the secure placement matched the needs of children
- a regime that promotes adolescent development, based on a theory of change
- availability of targeted treatments

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<sup>19</sup> The time period since release from secure children's homes ranged from two years to a matter of weeks.

- continued family engagement
- ongoing input of community teams and social workers
- the planning made for post-secure accommodation, both before and after the order is lifted
- a phased rather than abrupt return to the community.

There is a need for more systematic research to explore what factors contribute to positive outcomes for children in secure care. This could include making comparisons to international jurisdictions, to explore alternative arrangements for supporting children deprived of their liberty, and other types of residential provision.



# Recommendations for further research

This review has highlighted several areas where further research is needed.

- Information about the number of children deprived of their liberty in different settings and via different legislative routes is collected and published by different government bodies, with varying levels of detail (see Appendix A for an overview). Greater alignment of these datasets would enable a better understanding about the number of children placed in different settings, their characteristics, experiences, and outcomes. For each setting and each legislative pathway, data should include about:
  - the number of children deprived of their liberty each month, and the total number each year
  - where children are placed, including placement type and distance from home
  - demographic characteristics including ethnicity, gender, age and disability
  - children's needs at the point of admission (including information about mental health problems, physical health needs, problematic substance use, previous offences, behaviours, special educational and disabilities needs, school attendance and exclusion, family contexts, previous placements and children's services involvement)
  - behaviour management, including use of restraint and separation, and incidents of self-harm and assault in each setting
  - standardised outcomes measures (e.g. mental health, education, relationships, well-being)
  - children's own views about their care.
- Regularly updated, publicly available data about the number of children deprived of their liberty under the inherent jurisdiction of the high court (held by Ministry of Justice (MoJ) and Department for Education (DfE)), the Mental Capacity Act (MoJ) and the Mental Health Act in Wales (NHS Wales) is not available. Given the significant increase in the use of the inherent jurisdiction, this data should be published regularly by MoJ and DfE, including information about the outcomes of applications, the children involved (number and demographics), and where they are placed.
- There is a need for further research about the barriers local authorities experience securing a place in a secure children's home, including whether children with a specific set of more challenging needs are less likely to be found a place, and where they go onto be placed. Some of this information could be recorded and published by the Secure Welfare Coordination Unit (SWCU), for

example success rates and children's needs, and through linking SWCU data, Cafcass data and DfE's 'children looked after' returns.

- There is an absence of research about the characteristics, needs and early life experiences of children detained under the Mental Health Act – and any similarities or differences with children detained via different pathways – as well as their experiences of in-patient treatment.
- There is a need for more research exploring children's experiences of secure settings, including the impact of the COVID-19 pandemic.
- Given the overrepresentation of children from racialised communities in secure settings, all research should seek to consider differences in children's journeys, experiences and outcomes according to their ethnicity and other intersections of identity (e.g. gender and disability), and the drivers of this disproportionality.
- There is a need for more research exploring children's journeys before and after secure care, including the type and length of placements, involvement with services, and access to support or care in the community, including health and mental health services.
- There is a need for more research on short and long-term outcomes for children placed in all settings, including outcomes relating to mental health, well-being, education, training, health, relationships, contact with services and any further deprivations of liberty. This could be achieved in part by linking administrative data held by different government departments and tracking children's journeys over time.
- There is little research exploring the factors associated with positive outcomes in secure settings, including comparison with international systems and alternative types of non-secure provision.

# Reflections

There is a growing body of evidence that points to the complex needs of children in secure settings, and the similarities between children placed in different settings – particularly among those in youth custody and welfare placements. We know that children placed in secure care are likely to have experienced significant adversity in early childhood, including neglect and abuse, loss, instability, poverty and deprivation, and relationship breakdown – and the resulting complex trauma is highly likely to affect behaviours and vulnerability to risk that may lead to a child being placed in a secure setting. At the point of admission, children have a range of complex and overlapping needs and there is high prevalence of mental health problems, self-harm, problematic substance use, risk of sexual and criminal exploitation, challenging behaviours and educational needs.

At the same time, it is clear that the secure estate in England and Wales is struggling to adequately meet children's needs.

- There is a lack of early intervention to support children and their families before risk escalates, and once this occurs, a lack of suitable placements and support in the community that might prevent children needing to enter secure settings.
- There is a lack of clarity about the purpose of secure care for welfare and youth justice purposes – the current model is based on either punishment or risk reduction rather than fundamental input to support children's recovery and reduce risks in the community.
- Demand for welfare placements in secure children's homes, and the increasingly complex needs of children who are referred, exceeds capacity and capability within the system. Although there is a need for more research in this area, there is evidence of a growing group of children whose needs are too 'complex' to be met by the current system. Applications to use the inherent jurisdiction to place children in unregulated secure settings have substantially increased, and in 2020/21, even outnumbered applications under s.25 of the Children Act.
- There is a group of children with very severe mental health needs that do not meet criteria for in-patient mental health treatment. These children are often passed around different agencies with a lack of coordinated care planning between children's services and mental health services.
- There are widespread concerns about the safety of children in youth custody.
- Although there is a lack of evidence about children's outcomes, research to date suggests that while some children may benefit in the short term, in the long term a placement in secure care is unable to fundamentally improve children's outcomes. This is also the result of a lack of coordinated support and suitable placements for children when they leave secure care.

There is a therefore a need to rethink how we meet the needs of this group of children, based on a better understanding of their journeys, strengths and needs, what a 'positive outcome' would look like, and the type of trauma-informed, therapeutic and integrated care that would support children's resilience and recovery both in secure settings and in the community before, after or instead of a placement in secure care. There are some positive examples of models that aim to do this, including: the Framework for Integrated Care (SECURE STAIRS) currently being implemented across the youth justice secure estate; multi-treatment foster care, which places children at risk of offending with specially trained foster carers, supported by a multi-disciplinary team and ongoing family engagement; and models of therapeutic residential care, such as the Mulberry Bush School in Oxfordshire and Windmill Farm – a residential home that has been jointly commissioned by local children's services and child and adolescent mental health services in Wales. Building on what we know about children living in secure settings will enable the beginnings of a system that is better able to meet their needs.

# Case list

*A Borough Council v E (Unavailability of Regulated Placement)* [2021] EWHC 183 (Fam).

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# Appendix A:

## Administrative data sources

**Table A.1: Overview of administrative data sources**

Setting/type	Data source(s)	Information included	Availability
Secure children's homes – welfare and justice	<a href="#">DfE secure children's homes statistics (England and Wales)</a>	Provides information on the number of children accommodated in secure children's homes at 31 March each year, including occupancy rates, gender, age, length of stay and ethnicity.  Not all data is broken down by type of placement.	Published annually
Welfare legislation	<a href="#">Ministry of Justice Family Court Statistics Quarterly (England and Wales)</a>	Number of secure accommodation applications and orders made each year. Aggregated data for England and Wales only.	Data tables published quarterly
	Cafcass (England) and Cafcass Cymru	Number of secure accommodation applications made, case outcomes, gender, age, regional variation in applications. Data can be analysed at the application, case or child level.	Not routinely published. Data can be accessed for research purposes in the SAIL Databank. <sup>20</sup>
	<a href="#">Social Welfare Coordination Unit (SWCU) annual report (England)</a>	Information about the number of referrals received for placement in a secure children's home for welfare reasons, open referrals, placement at point of referral, time in care before referral, gender, ethnicity, discharge destination.	Report published annually

<sup>20</sup> The Secure Anonymised Information Linkage (SAIL) Databank brings together anonymised data from a variety of population-scale data sources for research. It is based at Swansea University.

Youth justice secure estate (secure children's homes, secure training centres, young offender institutions)	<a href="#">Youth justice statistics (YJB and Ministry of Justice) (England and Wales)</a>	Statistics about the flow of children (aged 10-17) through the youth justice system in England and Wales. Includes information about the youth custody population.	Report and data tables published annually
	<a href="#">Youth custody data (YCS and HMPPS) (England and Wales)</a>	Monthly statistics on the children and young people in custody within the secure estate.	Data tables published monthly
Mental Health Act	<a href="#">NHS Digital Mental Health Services monthly statistics (England)</a>	Includes the number of children subject to the Mental Health Act and number of children detained in mental health services per month.	Data tables published monthly
	<a href="#">Mental Health Act statistics, annual figures (NHS England)</a>	Official statistics about uses of the Mental Health Act in England each year. Limited data broken down by age. Shows number of under 18s subject to Mental Health Act and median duration of detention.	Data tables published annually.
Deprivation of liberty under the inherent jurisdiction	Cafcass and Cafcass Cymru	Number of applications made under the inherent jurisdiction where Cafcass is made party to the case.	Not routinely published. Data can be accessed for research purposes in the SAIL Databank.
Mental Capacity Act	n/a	n/a	Not routinely published. This data is held by the Ministry of Justice.



# Nuffield Family Justice Observatory

Nuffield Family Justice Observatory (Nuffield FJO) aims to support the best possible decisions for children by improving the use of data and research evidence in the family justice system in England and Wales. Covering both public and private law, Nuffield FJO provides accessible analysis and research for professionals working in the family courts.

Nuffield FJO was established by the Nuffield Foundation, an independent charitable trust with a mission to advance social well-being. The Foundation funds research that informs social policy, primarily in education, welfare, and justice. It also funds student programmes for young people to develop skills and confidence in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Ada Lovelace Institute and the Nuffield Council on Bioethics.

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