

# Custodial Transitions: Are We Meeting the Needs of Young Adults in the Criminal Justice System?

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**Summary:** This article provides an overview of a three-year research project undertaken in fulfilment of the PhD Law Programme in University College Dublin and co-funded by the Irish Research Council and the Probation Service. As this co-funded programme is part of a wider initiative that links the researcher with workplace experience, the author has dual status as an employee of Deonach<sup>1</sup> and as a PhD candidate. The aim of the research is to identify the needs of young adults as they transition from Youth Justice services and agencies to custodial and non-custodial settings. Findings from the research should inform specific and tailored approaches for the management of this group as identified in the *Irish Youth Justice Strategy 2021–2027* strategic objectives 2.13 and 2.15, which state that protocols will be developed ‘for the management and care of young adult offenders aged 18–24 in the prison system’ and provision made for enhanced services upon their ‘release from prison’. This paper draws from the activities in the first year of this project. It details the provenance and purpose, the literature underpinning the research, the approach taken by the researcher, and the structure of the project.

**Keywords:** Young adults, custodial transition, youth justice, penal reform, detention, probation.

## Introduction

Coined by Arnett (2000) as ‘Emerging Adulthood’, the period when young adults are aged 18 to 24 years is widely considered to be a unique one, concerning a cohort distinct from both adolescents and adults. This ongoing research project will establish what this cohort needs to facilitate a transition to a custodial or non-custodial setting. This ‘cliff-edge’ effect that can occur when reaching the age of majority in the criminal justice system was summarised by the Irish Penal Reform Trust (IPRT) as a time when ‘he or she

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<sup>1</sup> Deonach (Tallaght Probation Project) is a community-based organisation, funded by the Probation Service, that provides a range of activities to support the desistance of children and young adults.

loses access to age-appropriate interventions, entitlements and supports overnight – both in the criminal justice system, and in services provided in the community’ (IPRT, 2015, p. 6). With a recent increase in the attention given to policy pertaining to this cohort, this research seeks to fill that gap in the academic literature, with a view to informing imminent and future governmental strategies.

## **Context**

Between 2008 and 2017, the Irish Government approved the proposal to develop a single National Children Detention facility; St Patrick’s Institution was abolished, and all juveniles who offended were housed in the new Oberstown Children Detention Campus. Pursuant to Articles 155 and 156 of the consolidated Children Act, 2001, when a person held in a children detention school reaches 18 years of age before the period of detention expires, that person will serve the remainder of the sentence in a place of detention provided under section 2 of the Prison Act of 1970 or a prison. Alternatively, the young adult will transition to a non-custodial setting; ‘this mechanism can be used to prevent an 18-year-old being transferred to prison if certain conditions are met, and as such it minimises or delays exposure to the prison environment where possible’ (Kilkelly and Bergin, 2021, pp 57–8 ). Placement Planning Meetings occur for children detained in Oberstown Children Detention Campus, in accordance with the CEHOP (care, education, health, offending and preparation for leaving) Model of Care, to ‘consider what measures are required to facilitate the child’s successful return home or transfer to prison’ (Kilkelly and Bergin, 2021, p. 101). Goal 5 of the *National Policy Framework for Children and Young People 2014–2020* (Department of Children and Youth Affairs, 2014) identified this as a problematic process. This interdepartmental ‘transitional process’ from Irish youth justice services and agencies to either a prison or a non-custodial setting is the basis for this research project.

The project focuses on young adults, aged 18 to 24 years – a cohort that accounted for 21 per cent of those committed to prison in 2020 (Irish Prison Service, 2020), with probation statistics reporting a reoffending rate of 36 per cent for males and 30 per cent for females in 2017 (Central Statistics Office, 2021). This group is identified by the Irish Prison Service in the *IPS/ETB Prisons Education Strategy 2019–2022* (Irish Prison Service and Education Training Board Ireland, 2019) as a distinct group that requires general services to be tailored to their specific developmental, psychological and

educational needs. There is a distinct lack of research into the 'transition' from detention to custody and from detention to non-custodial settings, a pivotal time of change for the young adults, a 'critical point' requiring research (Irish Penal Reform Trust, 2015).

The *Irish Youth Justice Strategy 2021–2027* (Department of Justice, 2021) follows the parameters set by the 2014 *Better Outcomes, Brighter Futures* framework (Department of Children and Youth Affairs, 2014) and sets forth ambitious goals for the advancement of provisions involving young adults (Kilkelly and Bergin, 2021). The strategy addresses the situation of children and young people in relation to offending from early childhood to early adulthood – defined as aged 24 years. It specifically addresses the need for distinct approaches for the young adult cohort. Custodial transitions from Oberstown to the prison system are acknowledged as an area requiring continued attention and reform (strategic objective 2.13.1) and transitions from custodial institutions to non-custodial settings are also addressed through the enhancement of 'effective services for young adults (18–24 years) on release from prison' (strategic objective 2.15). Of central importance is strategic objective 2.15.2 which supports a 'multiagency service framework ... designed around the needs of young adults rather than Departmental responsibilities and funding lines ... responding to the particular needs and situation of the young adults involved'.

## **Literature review**

The following is a synopsis of the literature review carried out as part of this research project, presented under four thematic areas/headings: young adult development; young adults in the criminal justice system; speech, language, and communication needs; and transition between services.

### ***Young adult development***

The review includes a thematic analysis of the extensive array of literature on the development and psychology of the young adult cohort. A particular focus is given to Arnett's (2000) theory of 'Emerging Adulthood', which recognises this additional phase of development as distinct from both adolescence and adulthood. The literature review, conducted as part of this study, reviews literature which questions the presumption that upon reaching the age of majority, 'capacity' is reached (Edwards, 2009). The idea that developmental maturity is a continuous process that may extend up to the

age of 24 years is supported by longitudinal neuroimaging studies (Johnson, Blum and Giedd, 2009; Prior *et al.*, 2011); 10 to 24 years corresponds more closely to adolescent growth and popular understandings of this life phase. Edwards (2009) discusses this development in the context of capacity, finding that the law may fail adolescents who are older than 18 years by expecting them to have full capacity. Although many legal systems, including Ireland's, recognise that a person reaches the age of majority upon their eighteenth birthday, 'capacity' should not be viewed in the same predictive manner. This medico-legal intersection sees a great disconnect between policy and reality; the system under which an individual is governed changes overnight, but their maturity does not.

With a plethora of research supporting the developmental psychology concept that adolescence may extend up to the age of 24, there has been a recent increase in international research into the legal treatment and culpability of 18- to 24-year-olds. It has been argued that young adults are not 'adequately developed to "deal" with adult systems' (Brewster, 2020, p. 226), and provisions offered to children should be extended to include the young adult cohort. In the USA, Farrington, Loeber and Howell (2012) conducted a leading study into the cognitive functions of 18- to 24-year-olds, highlighting the need for young adults to be recognised as a distinct category, developing upon Arnett's theory of 'Emerging Adulthood'.

### ***Young adults in the criminal justice system***

Most recently in the USA, Jäggi, Kliewer and Serpell (2020) researched the importance of schooling for the desistance, rehabilitation, and re-entry of young adults. Australian researchers including Edwards *et al.* (2019) have researched the distinct needs of young adults in terms of the prevalence of mental health issues requiring multifaceted and comprehensive attention and assessment. Pruin and Dünkel (2015) produced a report on European responses to young adult offending, identifying the need for a tailored approach, and research produced by Judd and Lewis (2015) supported the need for individualised assessment tailored to the diverse needs of this group. Most recently, the Howard League for Penal Reform (2020) in the UK has conducted research into young adults in prison during COVID-19. This report identified their distinct needs under the categories of education, activities, therapy, health, and mental health support.

## **Case law**

Much of the recent case law involving youth detention revolves around actions taken in terms of the existing 'separation' policy in place and its potential infringement on the detainee's human rights – *M.G. v The Director of Oberstown Children Detention Centre*, where Simons J held that the decision to separate the supplicant from his peers was proportionate, in the pursuit of safety and security, given the nature of his behaviour; *Greene v The Director of Oberstown Children's Detention Centre*, where the applicant sought the discovery of documents relating to the Goldson/Hardwick Operational Review of Oberstown Children's Detention Campus. As a result of the 2017 centralisation of the system, the relevant case law is limited to the timeframe of 2017 to the present.

In the case of *M v Director of Oberstown Children's Detention Centre*, Whelan J. acknowledged the inherent difference between adults and children:

...the difference in treatment under consideration as between adult and child offenders serves a legitimate legislative purpose (i.e. the rehabilitation of young adults and the need to reflect the special physical, psychological, emotional and educational needs of children), is relevant to that purpose and treats both classes fairly.

Furthermore, Simon J noted that the difference in capacity which informs the difference in treatment accorded to young persons under the Children Act, 2001 was 'relevant' to the legislative purpose as it reflected the 'special physical, psychological, emotional and educational needs of children' and 'the specific educational and emotional needs of a child as compared to an adult'.

## **Speech, language and communication needs**

To truly participate in a criminal justice system, a young person must be able to communicate with the process.

Interventions within the youth justice service tend to rely heavily on the medium of language, and weak language skills may preclude young people from deriving the full benefit of the rehabilitation on offer. (Winstanley, Webb and Conti-Ramsden, 2021, p. 401)

Speech, language, and communication difficulties affect an individual's expressive and receptive language skills. Often referred to as a 'hidden disability', Developmental Language Disorder (DLD) is frequently undiagnosed. According to the Irish Association of Speech and Language Therapists (IASLT), young people with DLDs account for 6 per cent of the population but an estimated 60 per cent of the criminal justice system (IASLT, 2017). This project considers the impact of a DLD at four stages of the criminal justice process, three of which are identified by Sowerbutts *et al.*, 2021: pre-conviction; peri-conviction; post-conviction; and post-release (additional stage). Two issues arise from this process: compliance with legislation and dialogic legitimacy, i.e. the fair, moral, and ethical use of conversation and dialogue between multiple parties to understand or explore the meaning of something. This project suggests four mechanisms that may enhance the process: systematic screening/assessment; training of actors; an official provision for speech and language therapists; and registered intermediaries.

### ***Transition between services***

Pertinent to this project is the research conducted by Gough (2017), which culminated in the report, *Secure Care in Scotland: Young People's Voices*. This identified elements of effective transitions from secure care: relationships, purposeful planning, preparation, timing/readiness, and resources. In 2019, Gonçalves *et al.* conducted a longitudinal study into the self-reported prison adjustment among young adults in Portugal. The study identified three main factors for the success of prison adjustment as external, internal, and physical. Gonçalves specifically highlights the gap in the research of young adults, a cohort 'with special risks and needs, and they may require a differentiated treatment'.

Much of the research that assesses 'transitions' uses the concept in a very narrow sense, focusing on the structural and literal transition from children's to adults' services, omitting to address the deeper issues at play during a transition (Brewster, 2020). Conducting a literature review specifically on the issue of custodial transitions is limited, there is a distinct lack of research and knowledge internationally, let alone in the Irish context. With such a lack of research, we must rely on the following studies to inform the current research: Signorini *et al.*'s (2020) study of transitions from child to adult mental health services; Price's (2020) study into the experience of young people transitioning between youth offending services and probation services; Kerr *et al.*'s (2017) study into the transition from children's to adult services for

young adults with life-limiting conditions; and Hughes, Trimble and O'Rourke's (2021) interpretative phenomenological analyses to assess the experiences of young adults (aged 18–21) on protection in an Irish prison.

## **Theoretical framework**

This research project is underpinned by a commitment to ontological research. This has been used to elect and shape the methodology of the study – a mixed-methods approach. Ontological studies are concerned with questions pertaining to the kinds of things that exist within society, the study of 'being'. It is under this assumption that the research project elects to adopt a mixed-methods approach, combining document analysis with qualitative research methods, where qualitative methods are dominant.

The research paradigm adopted is interpretive phenomenological analysis (IPA) – inquiring into human experiences by collecting data and developing a composite description and interpretation of the data collated. By choosing a phenomenological design, this research focuses on what it means to be/how things manifest themselves, with the aim of understanding the human experiences from the actor's perspectives, i.e. trying to understand the needs of young adults in the criminal justice system through interviews and surveys. The researcher is practising a phenomenological reduction by setting aside preconceptions to allow a deeper understanding of the issue in the eyes of the participants. The researcher will strive to delineate their positionality to the best of their ability at all stages of this project.

This project has elected a constructivist research approach. Rooted in Lundy's Model of Participation, the constructivist approach relies on meaning constructed by social actors in a particular context, i.e. young adults in Deonach, Oberstown, prison, or a non-custodial setting. Although Lundy's Model was developed to apply solely to children, I have extended this model to apply appropriately to both the children and young people involved in this research project. The data collected through surveys and interviews will allow the concept to be explored and understood by focusing on meaning. The constructivist approach was elected to afford the participants with each of the four elements of Lundy's Model (2007): space, voice, audience, and influence.

## **Conceptual framework**

### ***Research design***

The research is underpinned by a constructivist research paradigm, with an individual-focused approach. The aim is to inquire subjectively into human experience by conducting semi-structured interviews with children and young adults, to gain insight and understanding of their experiences. This research project comprises a mixed-methods approach. The project has a strong research design underpinned by a definitive topic, research problem, purpose statement, and research questions. The topic of research is young adults in the criminal justice system; the research problem is the high number of young adults in the criminal justice system; and the purpose statement is to study whether young adults' needs are being met when they transition from Irish youth justice services and agencies to custodial and non-custodial settings. By designing the research in such a way, the research questions for this project are clear and precise:

1. What does the Irish criminal justice system identify as the needs of young adults?
2. What do young adults in the criminal justice system believe their needs are?
3. How can a convergence of these needs be addressed during the custodial transition process?
4. How do other jurisdictions address young adults' needs during custodial transitions?

### ***Methods of data collection***

1. A systematic document collection and subsequent literature review has been conducted, which includes: a document analysis of reports regarding young adults' custodial transition process in Ireland; an examination of relevant statutes and case law; and a critical review of academic literature. By electing a doctrinal and thematic literature review, this project will establish reliable and meaningful evidence-based results and conclusions to inform the development of the sector.
2. Semi-structured interviews with up to 90 participants will facilitate focused interviews with comparable transcripts to ensure consistency in the topics covered and the wording of the questions.



- 2b. A survey will be conducted four times over a two-year period in Deonach to probe the accuracy of the needs that are identified by psychologist Peggy Kern's EPOCH Measure of Adolescent Well-being – five positive psychological characteristics: Engagement, Perseverance, Optimism, Connectedness and Happiness (Kern *et al.*, 2016). To accommodate varying literacy levels, the survey will be administered in small groups with assistance available if required.
3. Reports will be utilised to establish the practical and procedural mechanisms of custodial transitions in Ireland. Reports including the following will be utilised for this phase: the Office of the Inspector of Prisons annual reports; Dóchas annual reports; Oberstown annual reports; Probation Service annual reports; and *Youth Justice Strategy* progress reports.
  4. A comparative study of the transition process in the Republic of Ireland and two other jurisdictions will be conducted. This phase will utilise legislation, policy documents, official statistics, and existing research from each jurisdiction to conduct the comparative study.

### ***Methods of data analysis***

1. Doctrinal and thematic analysis – *What does the Irish criminal justice system identify as the needs of young adults?* Existing data and legislation, underpinning the origins of the newly centralised Oberstown Campus, published by the Irish Youth Justice Service, the Probation Service, Department of Children and Youth Affairs, Irish Prison Service, Irish Qualitative Data Archive, and the Economic and Social Research Institute (ESRI) have been analysed, with a focus on the policies to divert children and young adults away from custody.
2. Interpretive phenomenological analysis (IPA) – *What do young adults in the criminal justice system believe their needs are?* This analytic process is dynamic and dual, requiring the researcher to interpret how the participant makes meaning of their world as well as decoding that meaning-making. It is primarily descriptive and becomes interpretive as the analysis deepens. This analysis will study the participants ideographically, focusing on the particular rather than the universal, through in-depth analyses of each participant.
3. Critical analysis – *How can a convergence of these needs be addressed during the custodial transition process?* This analysis will endeavour to contribute to the understanding and conceptualisation of young adults

in a criminal justice system, by synthesising the findings of the two aforementioned analyses: the doctrinal and thematic analysis, and the IPA. By integrating the qualitative data findings with the existing procedures and literature, this analysis will critically assess the practice-based policies in place and may make recommendations based on the findings of the research.

4. Comparative data analysis – *How do other jurisdictions address young adults' needs during custodial transitions?* The frame of reference for this comparison is the treatment of young adults within each criminal justice system. Consideration will be given to the institutions and sectors that are separate from the criminal justice systems and their role in the treatment of young adults, i.e. education system, NGOs. This analysis will identify and assess the differences and similarities in the treatment of the young adult cohort in terms of the custodial transition process, locating the findings of this study in a wider context, and potentially informing best practice in the Irish system.

### **Qualitative semi-structured interviews**

A sample of up to 90 participants for the semi-structured interviews over an 18-month period will be preferred. The pool size will aim to secure 15 participants for cohorts 1a and 1b and 30 participants for cohorts 2a and 2b, reflecting the feasibility of access to the various participant pools. The interview process and schedules were designed pursuant to Lundy's Model of Participation. This model was adopted to optimise engagement with the participants, to gather the richest set of data possible. Lundy's Model is a conceptualisation of Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), which affords children the right to have their views accounted for in matters that affect them.

1. Prospective-view participants:
  - a. Children [aged 16 to 18] engaged in Deonach's Link Programme (accessed through Deonach)
  - b. Children [aged 16 to 18] either sentenced or remanded by the courts, prior to a custodial transition to Wheatfield Prison/Dóchas Centre or to a non-custodial setting (accessed through Oberstown)<sup>2</sup>

<sup>2</sup> It should be noted that this aspect of the research project has not yet received ethical approval.

2. Retrospective-view participants:
  - a. Young adults who experienced a transition from Irish youth justice services and agencies to Wheatfield Prison/Dóchas Centre (identified and accessed through the Irish Prison Service)
  - b. Young adults who experienced a transition from Irish youth justice services and agencies to a non-custodial setting (identified and accessed through Deonach's Link, Target, and Access Programmes).

### ***Ethical considerations***

This study identifies four major ethical considerations: informed consent; trustworthiness; anonymity; and risk/benefit. To ensure that consent is informed and procedurally ethical, the participant information sheets and consent/assent forms have been written in accordance with the researcher's Program for Readability In Science & Medicine (PRISM) training in accessible language for researchers, to ensure that the language used is optimal and accessible to all, scoring a minimum of 60 on the Flesch Reading Ease Scale. To ensure trustworthiness and proper ethics in practice, involvement in the semi-structured interviews is strictly an opt-in process, with the option to opt-out at any point during the interview process and up to the submission of the thesis in August 2024. To ensure anonymity and ethics after practice are adhered to, the pseudonymised transcripts of the interviews are stored on the researcher's laptop, which is encrypted with BitLocker. A risk/benefit analysis is being utilised when conducting all interviews, to ensure that the safety and wellbeing of the participants are paramount and to eliminate the potential for any physical, psychological or social harm to the participants during the course of the project.

### **Conclusion**

With the systematic document collection, and the doctrinal and thematic analysis of the literature largely complete, the semi-structured interviews are underway within Deonach and Wheatfield Prison. Over the coming 12 months, the remainder of the semi-structured interviews will be conducted and transcribed, before being analysed using NVivo software. The IPA on the interview data will formulate a set of themes which have emerged from the insight gained from the participants' answers. This data will establish the identifiable issues among the lives of young adults in the criminal justice

system, with the aim of bringing about change to the lived experiences of this cohort. In addition, the survey, based in Kern's EPOCH measure, will be administered in Deonach four times within the coming 12 months. The anonymous data collected from the survey will be analysed in conjunction with the interview data to encapsulate the largest data set possible, maximising the voices heard and instituting more meaningful results.

Following this qualitative phase of the project, the critical analysis will commence. This step will synthesise the findings of the two aforementioned analyses: the doctrinal and thematic analysis, and the IPA, with the aim of impacting on evidence-based practice. By integrating the qualitative data findings with the existing procedures and literature, this analysis will aim to establish practical, applicable and meaningful results, with the optimum chance of having a positive impact on the young adult justice system in Ireland in the future. Finally, two suitable jurisdictions will be selected, and a variation-finding comparative analysis will be conducted on the custodial transitions processes in each jurisdiction. The aim of this last phase (for completion in 2024) is to locate the findings from this study in a wider context, potentially informing best practice, increasing confidence and competence to engage with young people and ultimately to progress the shared goal of their diversion from the criminal justice system

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### **Legislative instruments**

Children Act, 2001

Prison Act, 1970

United Nations Convention on the Rights of the Child

### **Case law**

*Greene v The Director of Oberstown Children's Detention Centre & ors* ([2019] IEHC 113)

*M (Suing by His mother and next friend J) v Director of Oberstown Children's Detention Centre & ors* ([2020] IECA 249)

*M.G. v The Director of Oberstown Children Detention Centre & ors* ([2019] IEHC 275)