



Recent trends in legal proceedings for breach of bail, juvenile remand and crime

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Between 2007 and 2008, the juvenile remand population in New South Wales (NSW) grew by 32 per cent, from an average of 181 per day to 239 per day. This bulletin examines two factors that may have influenced the upward trend: police enforcement of bail laws and changes to the Bail Act 1978 that restricted the number of applications for bail that can be made. It also examines the question of whether the upward trend in the number of juveniles on remand is helping to reduce property crime. The findings show that both factors are contributing to the growth in the number of juveniles remanded in custody. There is no evidence, however, that the growth in the size of the juvenile remand population is helping to reduce property crime.

Key words: remand, juvenile, bail, crime, police

INTRODUCTION

Between 2007 and 2008, the juvenile remand population in New South Wales (NSW) grew by 32 per cent, from an average of 181 per day to 239 per day. Over the same period, the annual recurrent financial cost of keeping juveniles on remand rose by 29 per cent from approximately \$36.7 million to \$47.2 million (NSW Department of Juvenile Justice 2009). The increase in juvenile remand is a matter for concern, not only for reasons of cost, but also because of the potential impact of being held in custody on a young person's family relationships, education and work (Stubbs 2009).

The size of any custodial population is a product of the average rate of new entrants to custody and the average length of stay. This bulletin examines two factors that may have influenced the growth in juvenile remand in NSW. The

first is a growth in the number of juveniles proceeded against by police for breach of bail. The second is a reform to the *Bail Act 1978* in December 2007 (see Appendix 1) restricting the number of applications for bail that can be made. These two factors have been chosen as the subject of investigation because their influence is relatively easy to test. It should be noted, however, that a large number of changes have been made to the *Bail Act 1978* since 1986 (see Appendix 1), any or all of which could have influenced the proportion of juvenile defendants refused bail (Fitzgerald & Weatherburn 2004). There are two reasons we do not examine these changes here. The first is that it is impossible to obtain consistent data on the proportion of juvenile defendants refused bail any earlier than 2006. The second is that the changes to the *Bail Act 1978* have been so frequent and close in time that it is impossible to disentangle their separate effects.

The present bulletin also examines the question of whether the growth in remand has had any impact on crime. The traditional function of bail is not to control crime but to ensure that persons charged with criminal offences appear in court (Freiberg & Morgan 2004). There is no provision under the *Bail Act 1978* that permits police or courts to refuse bail on the grounds that it may help to reduce crime. Section 32 of the Act, however, does permit police and courts to refuse bail to a person considered likely to commit any further offences and police might well view bail refusal as one way of preventing crime. In looking at the causes and costs associated with the growth in juvenile remand, therefore, it would be remiss not to examine its impact on crime. The present report therefore examines three issues of importance to the question of bail:

A. Is the juvenile remand population growth attributable in whole or in

part to an increase in the rate at which juveniles are being arrested for breaching bail? If so, are the breaches occurring because of non-compliance with bail conditions or because the defendant has been arrested for further offences?

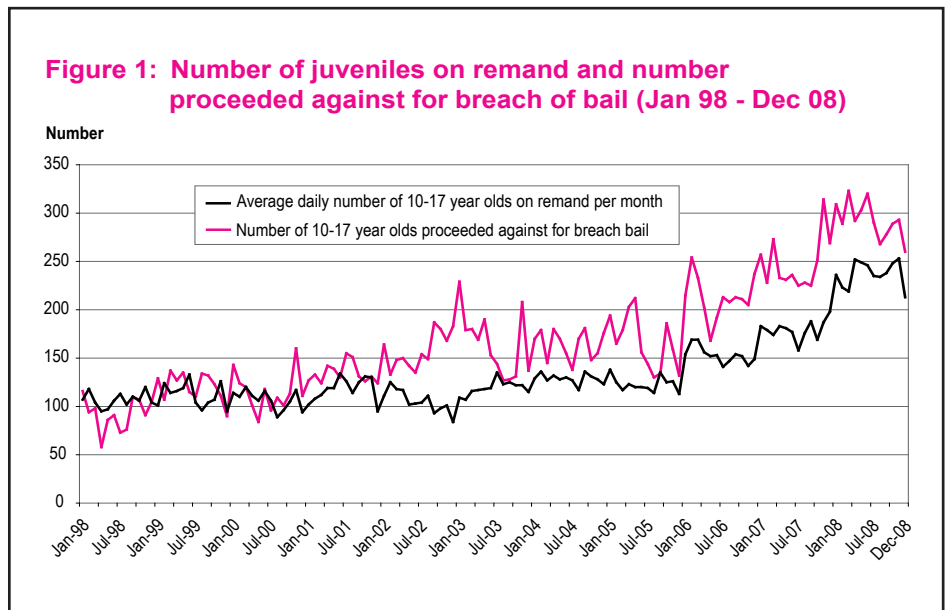
- B. Is the juvenile remand population growth attributable in whole or in part to an increase in the average length of stay?
- C. What impact, if any, has the growth in the juvenile remand population had on levels of crime?

A. ENFORCEMENT ACTIVITY AND THE GROWTH IN JUVENILE REMAND

Figure 1 shows the average daily number on remand per month (black line) and the number of juveniles proceeded against in court for breach of bail (pink line) between 1 January 1998 and 1 December 2008. There is a fairly close correspondence between the two lines: which is what one would expect if police bail enforcement activity were responsible for the increase in remand.

Breach of bail, however, is not itself a criminal offence and courts do not have to refuse bail to someone whom police allege has breached a condition of their bail. This raises the possibility that some other factor or factors might be causing both the upward trend in breach of bail and the upward trend in remand.

To address this issue we conducted two tests. First, we subtracted each observation in Figure 1 from the observation preceding it. This removes the trend and produces two series that show (respectively) the monthly *change* in proceedings for breach of bail and the monthly *change* in the size of the remand population. We then examined the relationship (at various lags) between these changes. Second, we examined a random sample of 102 police narratives



relating to juveniles (drawn from a population of 3,306 juvenile persons of interest) proceeded against in court for breach of bail, to see what proportion were subsequently remanded in custody for breaching their bail order. We also took the opportunity to examine the types of breaches that resulted in police enforcement activity.

If police activity in relation to bail is responsible for the growth in juvenile remand, we would expect to find a correlation over time between changes in the number of juveniles proceeded against for breach of bail and changes

in the size of the remand population. We would also expect to find a significant proportion of those juveniles proceeded against for breach of bail to be placed on remand following the breach. Table 1 below shows the results of the time series analysis of the relationship between changes in the number of juveniles proceeded against for breach of bail and changes in the size of the juvenile remand population.

The p-values in the final column of Table 1 show that there was a significant correlation between the size of the monthly change in the number of

Table 1: The relationship between juvenile breach of bail and juvenile remand

Juvenile Remand	Coefficient	Standard error	T - Statistic	p - value
Breach of bail	0.095	0.039	2.460	0.014
Breach of bail (lag1)	0.102	0.046	2.240	0.025
Breach of bail (lag2)	0.035	0.048	0.730	0.468

Notes: The regression estimation technique used is maximum likelihood estimation for natural logs of differences for the series containing an autoregressive error structure with terms ar(1,2,3,12). The Log likelihood for this regression is 135.5. The monthly data goes from January 1998 to March 2008 and the remand series are average daily populations on remand for the given month. The breach of bail incidents are a count of incidents recorded by NSW Police in which the alleged offender was proceeded against to court. Phillips-Perron unit root test on the residuals returned a MacKinnon approximate p-value for Z (t) = 0.000. The p-value for the Box-Ljung Q(24) on the regression errors = 0.571.

juveniles proceeded against for breach of bail and the size of the monthly change in the juvenile remand population, both simultaneously and a month later. The results suggest that each additional five to seven juveniles proceeded against for breach of bail results in one extra juvenile being placed on remand.

The analysis of the random sample of 102 police narratives provides further confirmation of this relationship. Of the 102 juveniles sampled, 76 (75%)¹ were remanded in custody within three days of breaching their bail. Of the 76 juveniles remanded in custody for breach of their bail order, 26 (34%) had committed a further offence while on bail. The remainder (66%) had breached bail by some means other than the commission of a further offence. To describe it differently, 81 per cent of juveniles who had breached their bail order by committing an offence were subsequently remanded in custody and 71 per cent of juveniles who had breached their bail order only through not complying with bail conditions were subsequently remanded in custody. The 50 young people who

were remanded for not complying with their bail conditions were alleged to have committed the following breaches:

- did not comply with curfew (35)²;
- was not in company of parent (29)²;
- associated with co-offenders (7);
- found at banned location (5);
- did not report to police station (5);
- did not reside at address as directed (3);
- did not follow directions of parent/guardian (3);
- consumed alcohol (2).

B. LENGTH OF STAY AND THE GROWTH IN REMAND

As noted earlier, the size of the juvenile remand population is a product of the rate of arrival on remand and the average length of stay on remand. Under section 22A(1) of the *Bail Act 1978*, except in certain special circumstances, courts must refuse to entertain an application for bail by a person accused of an offence if an application by the person

in relation to that offence has already been made and dealt with by the court. It has been suggested that, following the introduction of s.22A, many young people who would have spent just a few days on remand (until mounting a successful bail application) are now staying on remand until the charges against them have been finalised by a court. If this conjecture is true, we should expect to see a growth in the average length of stay on remand following the introduction of s.22A. Figure 2 shows exactly this. The discontinuity is so abrupt it would be superfluous to test its statistical significance. Figure 2 suggests that s.22A of the *Bail Act 1978* is another important factor putting upward pressure on the juvenile remand population.

C. THE EFFECT OF JUVENILE REMAND ON CRIME

In this section of the report we examine the impact of police activity in relation to juvenile bail on recorded rates of property crime (including robbery). We focus on property crime rather than violent crime because, whereas the former has been falling over the last few years, the latter has not (Moffatt & Goh 2009). One of the challenges in examining the impact of police activity in relation to breach of bail, however, is how to control for the influence of extraneous factors.

There are two ways of solving this problem. The first is to construct a model of crime that includes all relevant factors in the analysis (e.g. Moffatt, Weatherburn & Donnelly 2005). The second is to try and remove their influence by de-trending the relevant series and examining the correlation over time between changes in the number of juveniles proceeded against for breach of bail and changes in the size of the juvenile remand population. Although this is a conservative approach to testing causal relationships, it does greatly reduce the risk of spurious inference.

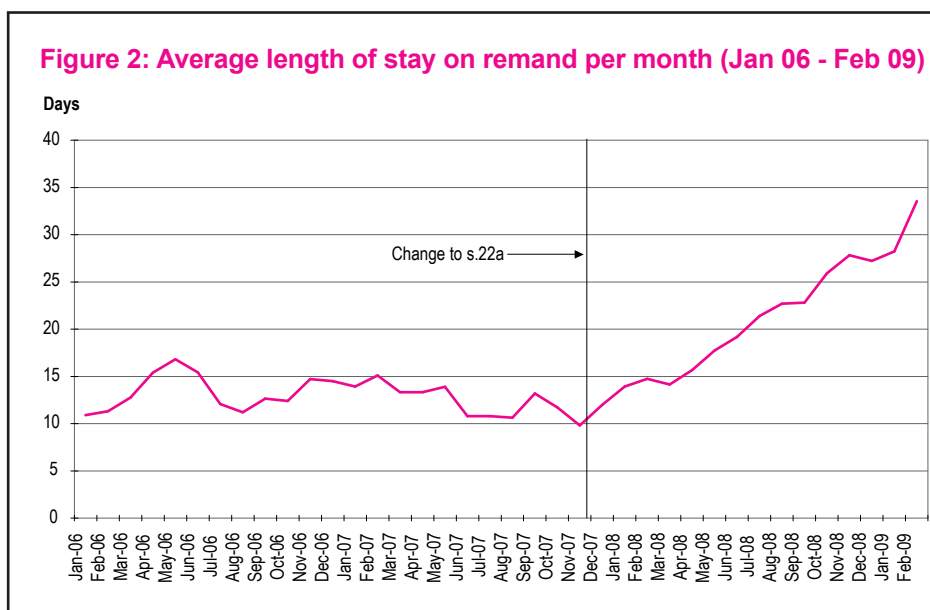


Figure 2: Average length of stay on remand per month (Jan 06 - Feb 09)

Source: DJJ RPELive Database. Extracted 4 March 2009. As this is taken from a live database, figures are subject to change.

1. This graph counts remand periods active within each month and calculates length of stay from the beginning of each remand period. If the remand period ends within the month, the discharge date is used. If the remand period continues beyond the end of the month, the last day of the month is used.
2. Control order periods are excluded.

Table 2: The relationship between juvenile remand and property crime

<i>Property crime</i>	<i>Coefficient</i>	<i>Standard error</i>	<i>T - Statistic</i>	<i>p - value</i>
Juvenile remand (lag 5)	-0.080	0.043	-1.840	0.066
Juvenile control orders	-0.054	0.062	-0.870	0.385
constant	-0.005	0.003	-1.400	0.163

Notes: The regression estimation technique used is maximum likelihood estimation for natural logs of differences for the series containing an autoregressive error structure with terms $ar(1,12)$. The Log likelihood for this regression is maximised at lag 5 of the juvenile remand series, at a value of 209.3. The monthly data extends from January 1998 to March 2008 and the remand and control orders series represent daily populations on remand or control averaged over the given month. The property crime series is an aggregate of major property offences. Phillips-Perron unit root test on the residuals returned a MacKinnon approximate p-value for $Z(t) = 0.000$. The p-value for the Box-Ljung $Q(24)$ on the regression errors = 0.165.

Table 2 shows the results of this analysis over the period January 1998 to March 2008. Because the number of juveniles sentenced to custody grew over the same period that the remand population rose, it has been included as a control.

The final column of Table 2 shows that there is no statistically significant relationship between juvenile remand and property crime, although the p-value for remand at lag five (0.066) does come close to being significant.

CONCLUSION

Police activity in relation to breach of bail and the introduction of s.22A are both putting upward pressure on the juvenile remand population, the first by increasing the number of juveniles placed on remand, the second by increasing the average length of stay on remand. The initial increase in remand (from 2006) was probably a result of increased enforcement activity. The acceleration in remand after 2008 was probably due to the combined effects of enforcement and the introduction of s.22A. Although their influence was significant, it should not be assumed that these are the only factors behind the growth in the juvenile remand population. As noted earlier, we were unable to examine changes in the willingness of courts to grant bail at first instance.³

It is relevant to note that most juveniles proceeded against in court for breach of bail were not picked up for further offences. Among those juveniles who were remanded solely for not meeting bail conditions, the most common bail condition that was breached was a failure to adhere to curfew conditions and not being in the company of a parent. The imposition of curfew conditions and conditions requiring juvenile defendants to remain in the company of their parents may well be designed, at least in part, to reduce the risk of further offending. No significant association was found, however, between the growth in juvenile remand and the fall in property crime.

NOTES

1. We can be 95 per cent confident that the true percentage lies between 0.61 and 0.79.
2. Curfew conditions were often coupled with directions to be accompanied by a parent/guardian when out of the house. Of the 35 juveniles who were remanded for not meeting the conditions of their curfew, 29 had also breached their bail by not being in the company of their parents.
3. If the adult courts are any guide, the proportion of juveniles refused bail by the courts has undoubtedly increased (Fitzgerald & Weatherburn 2004, Lulham & Fitzgerald 2008).

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APPENDIX 1:

Major amendments to the *Bail Act 1978* since 1978

Amending legislation	Commencement	Summary of provision
<i>Bail (Amendment) Act 1986</i>	25-05-1986	Added possession or supply of commercial quantities of prohibited drugs to the list of exceptions to the presumption in favour of bail (these offences were later transferred to s.8A: see <i>Bail (Amendment) Act 1988</i> below).
<i>Bail (Personal and Family Violence) Amendment Act 1987</i>	29-10-1987	Introduced an exception to the presumption in favour of bail in the case of a domestic violence offence, where the accused person has previously failed to comply with any bail condition imposed for the protection and welfare of the victim. This presumption is restored only if the relevant officer or Court is satisfied that those bail conditions will be observed in the future.
<i>Bail (Amendment) Act 1988</i>	21-08-1988	Inserted s.8A, creating a presumption against bail for certain drug offences.
<i>Bail (Domestic Violence) Amendment Act 1993</i>	2-12-1993	Included murder in the s.9 exceptions and added s.9A, an exception to the presumption in favour of bail for domestic violence offences.
<i>Criminal Legislation Amendment Act 1995</i>	1-07-1995	Introduced new exceptions to the presumption in favour of bail for conspiracy, threats and attempts to murder. It also inserted s.22A(2) and s.48(7A) which provide that the Supreme Court can refuse to deal with a bail condition review that could be dealt with by the District Court or a magistrate under s.48A.
<i>Drug Misuse and Trafficking (Ongoing Dealing) Act 1998</i>	7-08-1998	Introduced further exceptions to the presumptions in favour of bail to include supply drug on an ongoing basis, of an amount between traffickable and commercial quantity: ss.25A, 26, 27 or 28. It also includes aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence under s.25A.
<i>Bail (Amendment) Act 1998</i>	11-08-1998	Amended s.9(1) to include certain offences under the <i>Crimes Act 1900</i> for which there will be no presumption in favour of bail. These include manslaughter (s.18); wounding etc with intent to do bodily harm or resist arrest (s.33); aggravated sexual assault (s.61J); assault with intent to have sexual intercourse (s.61K); sexual intercourse – child under 10 years (s.78H); and kidnapping (s.90A). The amending Act also introduced an addition to the s.32 criteria requiring the court, when determining whether to grant bail for an offence that is serious, to take into consideration whether at the time the person is alleged to have committed the offence, the person had been granted bail or released on parole in connection with any other serious offence.
<i>Police Powers (Drug Premises) Act 2001</i>	1-07-2001	Added another exception to the presumption in favour of bail, being an offence under the <i>Firearms Act 1996</i> relating to the unauthorized possession or use of a firearm that is a prohibited firearm or a pistol: s.9(1)(e) and (e1). The legislation also amended s.32 to include possession or use of an offensive weapon or instrument in the criteria to be considered and upon finding this circumstance, any prior criminal record of the person in respect of such an offence.
<i>Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001</i>	1-10-2001	Added aggravated sexual assault in company (s.61JA <i>Crimes Act</i>) to the list of exceptions to the presumption in favour of bail, and the <i>Crimes (Gang and Vehicle Related Offences) Act 2001</i> , which included the offence of kidnapping in the exceptions: s.86 <i>Crimes Act</i> .

Major amendments to the *Bail Act 1978* since 1978 (continued)

Amending legislation	Commencement	Summary of provision
<i>Bail Amendment (Repeat Offenders) Act 2002</i>	1-07-2002	Inserted s.9B into the Act. The section provides for an additional exception to the presumption in favour of bail for persons who have been accused of committing an offence while: on bail, or on parole, or serving a non-custodial sentence, or subject to a good behaviour bond.
<i>Bail Amendment Bill 2003</i>	7-07-2003	<p>Inserted s.9C, which provided that bail will not be granted to a person charged with murder unless exceptional circumstances proven.</p> <p>Inserted s.9D, which provides that a person who is accused of a serious personal violence offence and who has previously been convicted of a serious personal violence offence should not be granted bail except in exceptional circumstances. A "serious personal violence offence" includes a personal violence offence with the same meaning as that in the <i>Crimes Act 1900</i> that carries a maximum penalty of 10 years imprisonment. The definition includes offences that relate to domestic violence offences, murder, manslaughter, kidnapping, sexual assault and serious assaults.</p> <p>Inserted s.25A, which allows for a stay or deferral of a defendant's release pending review by a Supreme Court Judge in certain circumstances.</p>
<i>Bail Amendment (Firearms and Property Offenders) Act 2003</i>	5-12-2003	<p>Inserted s.8B into the <i>Bail Act 1978</i>, which provides for a presumption against the granting of bail for persons accused of certain firearm and weapons offences.</p> <p>Inserted s.8C, which provides for a presumption against bail for a 'repeat property offender'. This amendment also removed the right of police officers to grant police bail to persons arrested on a warrant to bring them before the Court for sentencing, except in exceptional circumstances.</p> <p>Deleted s.52, which provided that there was no offence under s.51 where a matter was dealt with in the accused's absence. When a person is convicted of failing to appear, any bail money agreed to be forfeited is forfeited (s.53AA). An objection to the forfeiture order can be made and must be heard by the Local Court (s.53DA). The Local Court may reduce the amount of bail money to be forfeited if it is satisfied that the guarantor took all reasonable steps to ensure that the accused person complied with their bail undertaking.</p>
<i>Bail Amendment (Terrorism) Bill 2004</i>	4-06-2004	Added terrorism related offences under the Commonwealth Criminal Code to s.8A – presumption against bail for certain offences.
<i>Bail Amendment (Lifetime Parole) Bill 2006</i>	27-10-2006	Inserted s.8E into the Act. The Bill introduced a presumption against bail for persons on lifetime parole who commit offences carrying prison terms.
<i>Bail Amendment Act 2007</i>	14-12-2007	Amended s.22A that prevents a defendant from making an additional application for bail unless: he/she can show new facts or circumstances or, was not represented by a legal practitioner at first application.

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