

Bail Research in South Australia

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For researchers, bail as a topic of investigation can be both rewarding and frustrating. On the positive side, bail is a good subject with which to examine the benefits of conducting applied criminological research. Research from other countries (most particularly the United States of America) has shown that it is possible for the bail process to be reformed, and to do so without an increase in rates of absconding or re-offending. Bail encompasses all three main agencies of the criminal justice system: the police, the courts and the prisons; thus any improvements that may eventuate from applied research cannot only be seen from within each agency, but the interactions between the agencies can also be studied. There are also good monetary incentives to find ways to reduce unnecessary remands in custody while still protecting the public from re-offenders.

Bail, however, can be a difficult topic to research. Changes to practice and legislation leave the system in a state of flux and relatively recent research is in danger of becoming outdated. Even though the latest study conducted by the South Australian Office of Crime Statistics into bail was in 1986, amendments passed in 1987 put these results in some jeopardy. Data relating to the bail process is time-consuming and sometimes difficult to collect as studies and forms specifically designed for the task need to be established. Hopefully when the Justice Information System is fully operational, data collection problems will not be as difficult as they have been in the past.

The Office of Crime Statistics has been researching bail since 1983 where, together with the Attorney-General's Office, it participated in a review of bail in South Australia. Overseas and interstate bail systems were examined and empirical evidence was collected from police, prisoners, summary and higher criminal courts to determine how bail was then being administered. One of the recommendations made by this review was for the establishment of a Bail Act and also for another research project to be undertaken to evaluate the new Act's implementation.

In July 1985, South Australia's first *Bail Act* was enacted and a research project for its evaluation began six months later. Similar data as the first study was collected to allow before and after comparisons to be made. The initial results of the 1986 study were such that it was recommended a working party be established to examine improvements that could be made. Since that time, there have been several changes, most notably amendments to the Bail Act passed in October 1987.

Review of Bail, 1983

Of particular note to researchers, both at the Office of Crime Statistics and elsewhere, was South Australia's high rate of prisoners that were on remand. In 1983, the average national remand rate per 100,000 adult population was 8.4, but in South Australia during the same period it was 9.8.

During a census conducted by the research team of unsentenced prisoners at Adelaide Gaol, a scoring system was used to try and identify defendants in custody who were good 'bail risks' and could have been recommended for release on bail. The scoring system (which covers items such as prior criminal record, employment status, residence) was similar to that developed and used successfully in the United States in their bail reform programs. On the basis of this, it was found that a third of the prisoners in Adelaide Gaol on that day had scores which could have warranted a recommendation for pre-trial release. During the course of the interviews and examination of prison records, it also emerged that 16 per cent of the prisoners were in custody due to being unable to meet conditions of their release set by the bail authority, most notably being unable to arrange sureties.

Only basic information about police bail determinations was collected from the South Australia Police Department. This involved bail decisions made for one month throughout the Adelaide metropolitan region. Police refused bail in 10 per cent of cases, one half of these were subsequently granted bail by the courts.

From the Office of Crime Statistics regular reports, bail status in Courts of Summary Jurisdiction was examined. At their final lower court hearing, 91.4 per cent of defendants in Courts of Summary Jurisdiction were on bail and 8.6 per cent were in custody. Bail conditions given to defendants varied according to the complexity of hearing. For a simple matter, that could be heard in a single appearance, 87.7 per cent of defendants were on unconditional bail. This percentage had dropped to 26 per cent for multiple hearings and for indictable offences where the defendant was committed for trial or sentence only 7.4 per cent received unconditional bail. On average, people who had more than one lower court hearing and were also in custody spent 32 days in gaol with 63 per cent of these eventually receiving non-custodial sentences. This last finding, in particular, led researchers to conclude that the majority who were refused bail received worse treatment before being found guilty than afterwards.

A main result to emerge from the analysis of Supreme and District Criminal Court data was that a half of all those appearing in the higher courts were remanded in custody for some of the proceedings—usually prior to sentencing. Like the situation in the Summary Courts, a significant proportion (40 per cent) received non-custodial sentences indicating that perhaps remand in custody was inappropriate for those cases.

The recommendations that emerged from this quantitative analysis and review of other systems indicated that although South Australia did not compare unfavourably with the other states and territories, nor was any systematic discrimination found, there were areas where improvements could be made. Basically, these recommendations were to

- improve the type of bail conditions offered to defendants, to be determined along the lines of the Australian Law Reform Commission recommendations which played down the importance of monetary conditions in favour of unconditional release;
- reduce the number of prisoners on remand who were there unnecessarily, hopefully by having more information about applications for bail made available for authorities to make informed decisions, and
- reduce pre-sentence custody if the ultimate sentence did not involve a prison term.

The central recommendation was for the creation of a *Bail Act*. This would bring together the diverse measures then contained in a variety of legislation that had evolved in a piecemeal basis over time. Researchers emphasised though that unless administrative procedures were altered to back up the intended spirit of the new legislation, any change in the practice of bail in South Australia would be minimal. It was thought, however, that at least the new legislation would be a chance to state clearly one consistent set of principles.

On 7 July 1985, South Australia's *Bail Act* was enacted and six months later the Office of Crime Statistics began research into the effect this legislation was having on the way bail was being given and administered in South Australia. The basic format of the study was to collect the same type of data that was collected in 1983 and make before and after comparisons. Interviews were also conducted with people who administered the new Act such as police, magistrates and judges to discover their response to the Act as well as any problems they may have experienced.

Evaluation of Bail, 1986

Remand rates were re-examined and although there was a noticeable decline in the figures shortly after the introduction of the new Act, the rates soon returned to their normally high level. Findings from the 1986 census of Adelaide Gaol's remand prisoners indicated that on the basis of scores obtained from the pre-trial release scoring system, a quarter of the remand population could have been classified as 'good risks' and recommended for release. There was a reduction by more than half of defendants in gaol through being unable to meet conditions of bail set by the authorities.

The same proportion of people arrested by police in 1986 were granted bail as were in 1983, that is 90 per cent. In examining defendant characteristics in connection with bail decisions by police the following results emerged. Unemployed defendants were refused bail 12.9 per cent of the time whereas employed people were refused bail only 4.3 per cent of the time. Those defendants who had been previously imprisoned were also refused bail at a greater rate than those who had not. As would be expected, a third of the people accused of sexual offences were refused bail compared to the one in ten average; but interestingly those accused of damage property, larceny and fraud, were also refused bail at a higher than average rate. Police were asked to give their reasons for refusing bail. The most common reasons for refusing bail were: having no fixed place of abode, the defendant being from interstate or overseas, having insufficient community ties or unable to obtain a guarantor. The above results conform roughly to predictions of good and bad bail risks as described in the research. Monetary bail conditions were popular with police bail authorities, 76.2 per cent of cases were on personal monetary recognisance or had to find a guarantor willing to go surety. Other conditions available to police established by the Act, such as residing at a specified address, non-contact with a specified person, reporting to police, or supervision by probation officers, were infrequently used.

Statistics from Courts of Summary Jurisdiction show more defendants allowed at large at their final court appearance than compared to 1983 figures. Just as in the 1983 study, the pattern of bail varies depending upon the complexity and seriousness of the case. Of cases that were finalised in one court appearance, the majority were allowed at large and only 2.3 per cent were in custody. For two or more court appearances, however, there were nearly as many defendants on some type of conditional bail as unconditional. The trend continues for those committed for trial with nearly three-quarters of this group being on some type of conditional bail and the percentage in custody increasing to nearly eight times the proportion of cases disposed of in one day, that is 16.5 per cent in custody for committal hearings as opposed to 2.3 per cent if required for only one hearing.

The types of conditions imposed by magistrates in the Courts of Summary Jurisdiction vary slightly from conditions imposed by police. There was less reliance by magistrates on

monetary recognisance, although this condition was still applied to 48 per cent of cases. Bail conditions used with greater frequency by magistrates than by police were residing at a specified address, non-contact with a specified person and reporting to police while on bail.

There were 375 cases where a defendant failed to appear at some stage in their court case. One in five defendants known to be on bail at their first scheduled court hearing absconded, while for people known to be on bail at the end of their first court hearing (and having no subsequent change of bail status) a quarter absconded before a further court hearing.

Only 22.6 per cent of people in custody at some stage of their case received a prison term as a penalty when their case was finalised. Furthermore, 17 per cent were not convicted of any charge but had their cases dismissed or withdrawn. The time spent in custody for those who were in custody from their first to last court hearing ranged from a third being incarcerated for less than a month to 12 per cent being in custody for six months to a year. Of the twenty-seven cases in custody for all their summary court case, there were ten (or over a third) who were eventually imprisoned. There were seven cases, however, which were eventually not convicted of any charge but who had spent between two and forty weeks in custody. To put such numbers in perspective, the following case, detected by researchers when conducting a census on remand prisoners in Adelaide Gaol, illustrates the problems of defendants for whom custodial remands may not be appropriate.

The case involved a pensioner aged sixty-one, arrested during January 1986 in Adelaide for shop theft. The total value of goods stolen was a dollar and five cents. At his first appearance the defendant was granted bail on his own recognisance, but then failed to appear at a subsequent hearing. According to the defendant, the reason was that he had been in hospital undergoing surgery. Indeed, a subsequent medical assessment found that he was 'an extremely ill man and required long-term care in a geriatric environment'. However, in light of the failure to appear, the magistrate set new bail conditions, requiring recognisances of \$100 from both the defendant and a guarantor. The defendant was unable to find a surety, and as a result was remanded in custody until the next hearing, a month later.

Eventually, after 23 days in prison, a fellow inmate whose gaol term had expired agreed to go surety and the defendant was released. However, he then again failed to appear and an arrest warrant was issued. Nine days later, he appeared in court where \$50 from his own recognisance and \$100 of the guarantor's money were estreated. At this appearance, defendant was again granted bail on recognisances of \$100 for himself and one guarantor. However, no guarantor was forthcoming and the defendant was returned to custody for a further month. Eventually, after spending a total of forty-nine days in gaol, he was convicted of the original charge but no penalty was imposed.

The provisions contained in the Act for supervision of defendants by the Probation Service may have been a more appropriate condition of bail for someone like the above case who had difficulty in complying with simple requirements—yet poses no real threat to the community.

One objective in reviewing the Bail Act was to ascertain whether there had been any change in the method and type of bail being granted in the higher courts. Data on the Act's first six months of operation shows that there was a different pattern of granting bail than had previously been the case. In particular, the practice of remand in custody for pre-sentence reports appears to be a less common occurrence. In the Supreme Court, remands in custody after conviction decreased from 32 per cent in 1982 to 19 per cent in 1985. District Criminal Court figures were even more pronounced with a decline from 51 per cent in 1982 to 4.7 per cent in 1985. Although we have not collected any more data since early in 1986, there has been anecdotal evidence that this change in pre-sentence remand procedures is still a current practice and possibly one of the main achievements of the Bail Act.

The length of time people who had been denied bail for all their higher court appearances in custody was analysed. In 1985, nearly half those in custody throughout all

their court case spent three months or less in prison. There were a few remandees from 1986, however, who spent up to a year in gaol. Findings from the 1983 review found that more than four out of ten (43 per cent) of the accused in gaol for all or part of the higher court proceedings did not receive a prison sentence, either because they were found not guilty (4 per cent) or a non-custodial penalty was used (39 per cent). Findings from the 1986 study show half of the accused in gaol for all or part of the proceedings did not receive an immediate prison sentence.

After their committal from a Court of Summary Jurisdiction, the majority (81.3 per cent) of defendants appearing in the Supreme or District Criminal Courts had been on bail, of these a quarter were on unconditional bail. The main conditions of bail imposed by judges were for defendants to agree to forfeit a sum of money (69.5 per cent of cases, Mode \$1000) and nearly one in five were required to find a guarantor who would also agree to forfeit a specified sum. There was an increase in proportion of cases having other conditions set by judges than by other authorities, for example non-contact of a specified person was a condition of bail over 13 per cent of cases in the higher courts, only 10 per cent of cases in Courts of Summary Jurisdiction and only in 1 per cent of cases set bail by police.

Conclusion

As the first results emerged from the latest review into bail in South Australia, it was felt that not all the provisions built into the new legislation were being used to their best advantage, for example the provision for supervision of defendants by probation officers and the continued practice of setting monetary conditions. It was felt that the best way to address these problems was to reconvene a working party comprising representative administrators from the relevant justice agencies. This occurred and a new set of amendment emerged late in 1987 which hopefully corrected a few of the imbalances identified by the research. For example, there is now a provision to return a person to court within five days if they are remanded in custody due to being unable to meet bail conditions.

Recently, there have been further positive efforts by administrators of bail to tackle remaining shortcomings with bail procedures. Such initiatives will help to ensure that attempts to reform bail practices in South Australia will eventually succeed.