

Research, Policy and Bail

Adam Sutton
Director
Office of Crime Statistics
South Australia

For many years, the rate at which adults have been imprisoned in South Australia has been lower than for the country as a whole. However, the state's figures on unsentenced prisoners (that is people awaiting a final court hearing or for a sentence to be imposed) consistently have been higher. In September 1988, South Australia had the third highest rate in Australia for remand prisoners and the percentage of its total prison population not under sentence also is significantly higher than in many other parts of the country.

That South Australia tends to have more unsentenced prisoners per head of population is not, by itself, reason to conclude that bail practices need to change. It might well be the other states that are wrong. Nonetheless, such figures do provide prima facie grounds, at least, for assessing whether there is a case for reform. Since 1983 the Office of Crime Statistics has been involved in a number of projects and working groups aimed at identifying whether, in fact, aspects of this state's bail procedures should be changed and how improvements could be effected. The following comments outline some of the lessons we have learned.

Lessons from Bail Research

No evidence of overt or systematic bias by bail authorities

Despite occasional argument to the contrary, there is no convincing evidence that the administration of bail in South Australia is arbitrary or unfair. In 1983, the Office made an extensive study of bail decisions by police, Summary and Higher Criminal Courts, and also conducted a census of prisoners in custody on remand. The published conclusion was that 'generally speaking, both police and courts put emphasis on such factors as offence charged, previous record and defendant's community ties-factors which always have been accepted as relevant' (Attorney General's Department 1984). However, bail authorities did at times tend to use financial conditions, or a requirement for guarantors, as a way of 'further safeguarding' their decisions. This could unintentionally disadvantage defendants who were poor or socially isolated.

Legislation, by itself, is not the answer

Legislation, by itself, cannot resolve all difficulties. Often, in Australia, people tend to see the law as some 'magic wand' which only needs to be waved at a problem for it to go away. One of the Office's first tasks, in researching bail, was to compare Australian states' provisions and try to find the relationship between their laws and rates of custodial remands. We could find none. Some

states whose legislation seemed designed almost to persuade authorities not to grant bail had low rates of remand, while others with relatively 'liberal' legislation were among the highest.

We also noted that one of the most successful experiments in pre-trial release-New York's Manhattan Bail Project-initially had involved legislative reform. When this initiative was launched in the early 1960s the emphasis simply was on ensuring that courts were provided with comprehensive and verified information on defendants who would be good bail risks. It was access to this information, not to legislative guidelines, that enabled courts both to reduce the numbers of defendants remanded in custody and to lower breach-rates by those granted bail.

Problems not resolved, simply by blaming one agency or authority

Problems with bail never will be resolved simply by searching for 'scapegoats'. Very often, when a problem occurs in the criminal justice system, the instinct is to find someone **to** blame. Recently, for example, sections of South Australia's media have been trying to hold magistrates responsible for overcrowding in the Remand Centre and the City Watch-house. Whenever the Office has looked at these issues, we have tended to find that they are system problems, rather than the fault of any particular agency or group. Magistrates can hardly be blamed for being conservative in granting bail if they are not being given access to sufficient information about some defendants. However, police and legal Aid bodies in turn can't be blamed for failing to provide such information if they lack the resources or the powers to collect it; and so on. Generally, the Office's research has convinced us that there are few problems in the bail system that can be resolved through unilateral action by one agency.

Effecting bail reform not a 'one off process

The final major lesson from bail research and reform in this state is that change will be effected incrementally, rather than on a 'one off basis. Along with other representatives of the Attorney-General's Department, the Office of Crime Statistics now has been associated with quite a series of bail reviews, committees and working parties. From the research and statistical data it seems clear that each one of these initiatives starting with South Australia's first *Bail Act*, in 1984- has had some effect. However, the criminal justice system can be remarkably resilient, and not all changes have been lasting.

Any state that wants to bring about lasting improvement to its bail procedures will have to be prepared to make this a long term commitment, and not become disillusioned immediately one or two of the most 'obvious' reforms prove ineffective.

Reference

Attorney-General's Department and Office of Crime Statistics 1984, *Review of Bail in South Australia*, Attorney-General's Department, Adelaide.