Department of the Attorney General & of Justice NSW Bureau of Crime Statistics & Research

Research Report 1

Bail

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PREFACE

The conditions under which a person is held in custody are of critical importance in the administration of justice. Prior to the conviction of a person found guilty of a criminal offence there are many stages at which a decision is made whether an accused person is held in custody or not. On each occasions where a person is released "on bail", conditions may be set to insure that the person appears before the court at the next stage.

This report contains the details of two studies conducted into the operation of bail in N.S.W. The studies were conducted by the Bureau of Crime Statistics and Research in association with the Bail Review Committee formed by the Attorney General on the 14th July 1976. That Committee reported to Parliament on the 30th September 1976. At that stage it had the advantage of only preliminary findings from this study. However the Committee and the Staff of the Bureau have met frequently since that date and drafts of the current report have been read and discussed by members of the Committee and Bureau staff.

The project was planned in consultation with the Bail Review Committee by members of the Bureau staff including Ken Searle and Roseanne Bonney. They designed the Statistical report forms and arranged the first stages of the data collection. Subsequent Stages including the interpretation of results and report writing were carried out by Rosemary Leonard,Research Officer to the Bureau. At each stage of the research she was assisted in discussions with other members of the Bureau research staff and with Kevin Anderson, S.M. and Susan Armstrong,members of the Bail Review Committee. Computer analysis was carried out by Cheryll Meakins and the typing of the report by Alis Daly.

The Bureau has been pleased to be able to assist in research which has immediate relevance to the formulation of policy on bail in N.S.W. The research has been conducted within a time limit which enables the material gathered to be discussed and used where appropriate by those who are drafting the legislation on Bail. Further,it is hoped that publication of the report will be a contribution to informed public discussion on this important matter.

A.J. Sutton,
Director,
Bureau of Crime Statistics and Research.

INTRODUCTION

"Every bail decision involves balancing the right to liberty of someone who is legally presumed to be innocent, against the need of society to ensure that accused people are brought to trial". Report on the Bail Review Committee 1976.

The loss of liberty resulting from an adverse bail decision can be quite prolonged for some defendants. The maximum period of remand noted was as long as 150 days and the average period is 29 days according to a study carried out by P.G. Ward using a census of remand prisoners at Long Bay Gaol in 1969.

Of equal importance for the liberty of the accused are the conditions of his release. A defendant who is unable to fulfill the conditions set out by the court is often at a greater disadvantage than a person who is denied bail. This is because the court feels no pressure to fix an early hearing date as it is unaware that the defendant is not at liberty. Ward found that those unable to pay their bail money spend an average of 36 days imprisoned.

Police, magistrates and judges vary in their powers to impose conditions on a person's release, although at all stages the legislation emphasises bail on financial recognizance i.e. the defendant is usually obliged to either lodge a sum of money which he forfeits if he fails to appear, or enter into an agreement to pay a sum of money if he fails to appear.

Proceedings for a criminal offence may commence by summons or by arrest. A summons case does not usually involve any decisions on bail. If the person is arrested, the police may take three alternatives. Firstly they may release him on recognizance. By entering into a recognizance the defendant either pays over cash which will be forfeited if he fails to appear in court, or alternatively promises to forfeit the specified sum in the event of non-appearance. Police almost invariably require the payment of cash when granting bail. Alternatively the police may ask for a person (or persons) to be a surety (or sureties). The surety guarantees the defendant's appearance at court by depositing or guaranteeing a sum of money. Thirdly and finally the police may hold the accused in custody at the police station until his first court appearance. This is usually the next week-day but in country areas the court may only sit once a week, or even once a month. In those cases the accused is usually taken to the nearest large town.

If the case is not completed on his first court appearance the magistrate must make a decision on bail. There are four different types of bail decisions that may be made at this stage. He may let the defendant be allowed at large ie. he is free to go with only a tacit agreement that he will appear at court, or require that he enter into a recognizance with or without sureties, or lastly, refuse bail.

Sureties may be allowed to enter a recognizance for the specified sum without having actually to deposit any money. In addition to the financial aspect of the recognizance, the magistrate may impose conditions such as the surrender of passport, or that the defendant report regularly to police.

To avoid wasting time and paperwork the bail decision made at the first court appearance may bind the defendant to all subsequent court appearances until the case is determined, but that decision will be reviewed from time to time by the court at the request of the defendant.

When a defendant does not appear when required, the bail may be forfeited by the court. When the sum deposited does not exceed $300 it is paid into revenue, subject to the right of a defendant or surety to apply within 21 days for a refund of the forfeited bail. If the cash deposit exceeds $300, or no cash was deposited,

the forfeited recognizance is forwarded to the Estreat Court. The defendant and surety have the right to apply to that Court for return of cash to them or relief from the obligation to pay the amount of bail.

If the police still wish to bring the person for trial they cause a warrant for his arrest to be issued. In trivial cases the police may consider that the forfeiting of recognizance is sufficient punishment or that it is a waste of police time chasing up the defendant.

It must be emphasized that the above description is only a brief outline of the bail system of N.S.W. Even at this superficial level two aspects clearly stand out, the complexity of the system including the terms used and the emphasis of the defendant's ability to pay.

Despite the relative simplicity of the concept of bail its implementation is difficult. It requires that the judge, magistrate or policeman make a subjective judgement weighing the defendant's fear of conviction and punishment against all his incentives to appear such as family ties, property ownership, employment and the financial consequences of his absconding. Bail should be set at an amount that will tip the scales in favour of his appearing without being so high that the defendant cannot afford it. Decisions about bail are often at least as difficult as those concerning the guilt of the accused or the type and severity of sentence to impose. There is little risk of recrimination if the police or magistrate is too severe but it only takes one case such as that of Phillip Western who is alleged to have murdered a bank manager during an attempted armed robbery while on bail to instigate a government enquiry into the bail system.

The Bail Review Committee was established on the 14th July, 1976, by the New South Wales Attorney General, Mr. F.J. Walker, LL.M., M.L.A., to examine and report on the existing system of bail in New South Wales and to propose any necessary changes. In particular the Committee was asked to report on:-

(i) what matters should be considered in the determination of bail;

(ii) what alternatives to the present bail system, are available and appropriate;

(iii) should the bail provisions of the Justice Act 1902 be amended;

(iv) whether to eliminate bail altogether or the need for sureties for minor offences, and if so for what offences, and on what conditions, if any;

(v) whether the justice of the peace should still require affidavits of justification or the deposit of cash or title deeds by a surety, and what other alternatives are available.

A major difficulty facing the Committee was lack of data. The subject of bail has been widely discussed, but it is still impossible to estimate how many unsentenced people are imprisoned in New South Wales each year, or for how long they remain in gaol. Little is documented concerning court practices in granting bail: the only study ever carried out in New South Wales is now four years old, and was confined to Sydney Central Court of Petty Sessions.(*) Statistics on absconding from bail

(*) Armstrong and Neumann, Bail in New South Wales (mimeo, 1972).

for the superior courts are published by the Australian Bureau of Statistics,(*) but no information at all has been available on the far greater number of people who appear before magistrates. It has not been known how many people are imprisoned before trial simply because they cannot pay bail rather than because bail is refused.

To answer some of these questions two studies were carried out by the Committee and the Bureau of Crime Statistics and Research.

AIMS OF THE SURVEYS

The Court Records Survey

Court records were examined for first appearance in court. Information was gathered concerning bail decisions and offences involved; characteristics of defendants; legal representation and bail; the number of people granted bail who remain in custody, their offences and the levels of bail set which are not met; those granted bail who do not appear and their offences; and cases where forfeiture of bail was not followed by issue of a warrant for arrest of the defendant.

The Bail Census

A census was conducted of those held in custody on a particular day because of refusal of bail or their inability to pay the amount set. Information was sought on the: number affected, their characteristics, their offences, levels of bail set and their perceptions of why bail was refused.

(*) These figures indicate that the rate of absconding for people due to appear before the superior courts has risen from 1.2% of committals in 1968 to 6% in 1974.

	1968	1969	1970	1971	1972	1973	1974
Absconders	51	81	111	188	227	200	316
Total committals	4116	4661	4871	5257	5773	5439	5300
% Absconders	1.2%	1.7%	2.3%	2.6%	3.9%	3.7%	6.0%

See generally Ward, An Analysis of the Higher Court Statistics 1968-1971 (Institute of Criminology, Sydney University, 1972). It has been suggested to the Committee that this increase could almost be entirely due to an increase in the number of rearrests of people on bail, who are held in custody and thereby become technical absconders when they fail to answer bail on the first charge.

COURT RECORDS SURVEY

The particulars obtained in this survey were taken from court records of magistrates' bail decisions on defendants' first appearances at court after arrest. Court cases from two months, November 1975 and May 1976, were used; the cases reviewed related to all offenders including juveniles whose cases were completed or who were committed for trial during these months. The month of May 1976 was chosen as the latest when court papers would be readily available; the month of November, 1975 was chosen to make allowance for any seasonal influence.

Eleven courts were surveyed; these were Wollongong, Newcastle, the Sydney Central Court of Petty Sessions, two suburban courts, Campsie and North Sydney, two large provincial cities, Tamworth and Orange, two country towns with some itinerant or seasonally fluctuating population, Coffs Harbour and Leeton and two towns with an appreciable aboriginal population, Moree and Brewarrina.

At each of these courts for cases referred to above, the Clerk of Petty Sessions completed a return for each defendant involved in a bail decision on his first appearance at court after arrest. Juveniles ordered to remain in a shelter were treated as if they had been refused bail; those allowed home were treated as allowed at large. A copy of the questionnaire issued can be found in Appendix I.

To examine the extent to which generalization can be made from this sample, the age and offence distributions for 1349 adult cases in the Court Records Survey were compared to those for the 1975 Petty Sessions returns for the whole of New South Wales.

TABLE 1 - AGE

	Court Record Survey		% Petty Sessions Returns 1975
	No.	%	%
18-24	504	37.4	35.2
25-29	230	17.0	13.6
30-34	149	11.0	9.0
35-39	117	8.7	7.3
Over 40	341	25.3	25.9
Unknown	8	0.6	8.9
	1349	100.0	100.0

The 178 juvenile cases were excluded from this tabulation.

It can be seen that the two distributions are similar.

TABLE 2 - TYPES OF OFFENCE

	Court Records Survey		P.S. '75 N = 56611
	No.	%	%
Offences against person	89	6.0	11.9
Sexual and related offences	54	3.7	5.2
Fraud	48	3.2	2.6
Offences against property	445	30.2	22.6
Driving	350	23.7	6.1
Enforcement of order	65	4.4	4.3
Offensive behaviour and related offences	186	12.6	14.4
Unlawful possession of weapons	18	1.2	0.9
Drug offences	144	9.7	7.1
Betting and Gaming	3	0.2	1.0
Drunks	76	5.1	23.2
Miscellaneous	-	0.0	0.5
	1478	100.0	100.0

Whereas the two age distributions are highly comparable, there are obvious differences in the offence distributions. The low porportion of the driving offences in the Petty Sessions Statistics is due to the fact that the Bureau of Crime Statistics and Research does not collect many minor driving offences. The second major discrepancy is in the proportion of drunks. As cases of drunkenness are usually finalised at the first court appearance, a relatively small proportion require a bail decision by a magistrate. Apart from these two categories the two distributions are fairly similar. These results suggest that the court records survey provides a reasonable basis for generalisation.

BAIL DECISION

Of the defendants in respect of whom a bail decision is made one in four (378/1527) leaves the court in custody, either because they are refused bail or cannot meet the conditions.

Table 3 shows the distribution of the different types of bail decisions, that were found in the Court Records Survey.

TABLE 3 - BAIL DECISIONS

	No.	%
Allowed at large	581	38.0
Bail without surety	356	23.3
Bail with surety(ies)	357	23.4
Refused Bail	233	15.3
Total	1527	100.0

Of the 1294 persons that were granted bail 145 (11.2%) were not released. In 142 of those 145 cases a surety (or sureties) was required. So it appears that the finding of people willing and able to act as sureties is a problem in almost two out of five cases (39.6%) where a surety is required.

OFFENCE

TABLE 4 - OFFENCE AND BAIL GRANTED

	Bail Granted		Bail Not Granted	
	No.	%	No.	%
Offences against the person	85	95.5	4	4.5
Sexual and related offences	50	92.6	4	7.4
Fraud	38	79.2	10	20.8
Offences against property	376	84.7	69	15.3
Driving	334	95.4	16	4.6
Offences against enforcement of order	51	79.7	13	20.3
Offensive Behaviour	205	77.9	58	22.1
Betting and Gaming	3	100.0	0	-
Unlawful possession of weapons	15	83.3	3	16.7
Drug	126	87.5	18	12.5
(Neglected /uncontrollable child,etc) Child Welfare Act	10	20.4	39	79.6

Of the 1527 cases examined 15.3% (233 persons) were not released on bail; and yet only 5% of people appearing before Courts of Petty Sessions ultimately received prison sentences.

An extreme example of this is the Offensive Behaviour category where 22.1% were not released, compared to the 1975 Petty Sessions Statistics where only 2.0% of this offence were finally sentenced to imprisonment.

The 233 people that were refused bail were followed up to determine the final outcome. Of these cases, 4 were later committed for trial at a higher court and 2 were extradited to other States. Of the remaining 227 finally dealt with at the magistrates courts: 66 (29%) received a custodial sentence 31 (13.7%) were committed to hospital under the Inebriates Act, and 130 (57.3%) did not receive any kind of custodial sentence! (1)

FACTORS INFLUENCING BAIL DECISIONS

In the light of the research done by the Bureau of Crime Statistics and Research* showing the relationship between legal representation and the outcome of court hearings, it seems likely that legal representation could affect the outcome of the bail hearing.

TABLE 5 - BAIL GRANTED AND LEGAL REPRESENTATION

Legal representation	Bail Granted		Bail Not Granted		Total		1975 Petty Sessions
	No.	%	No.	%	No.	%	%
Yes	496	38.5	56	24.2	552	36.3	36.9
No	793	61.5	175	75.8	968	63.7	63.1
	1289	100.0	231	100.0	1520	100.0	100.0

(1) Report of the Bail Review Committee 1976, page 12.

(*) Legal Representation and Outcome Bureau of Crime Statistics and Research, Feb.1973.

There were seven cases in which it was not known whether there was legal representation or not.

Note that 75.8% of those refused bail were not legally represetned, compared with 63.1% of all Petty Sessions cases. From the above table it is evident that there is a marked similarity between the relation of legal representation to outcome in the Court Records Survey and in the 1975 Petty Sessions statistics.

The difference between bail being granted or not being granted while legally represented is 14.3%. This difference seems to suggest that legal representation is a factor in the determination of bail decisions.

To test this, the effect of legal representation was examined for three categories of offence: Summary (983 cases), Summary/Indictable (528 cases), Indictable (14 cases), in increasing order of seriousness. The summary offences are heard at a Magistrate's court, while the summary/indictable may be heard at the Magistrate's court if the offender consents, otherwise the case will be heard at a Higher Court. Indictable offences are heard at a Higher Court.

TABLE 6 - LEGAL REPRESENTATION AND SUMMARY OFFENCES

Amount of bail	Legally represented		Not legally represented	
	No.	%	No.	%
Allowed at large	195	56.2	268	42.1
$1 - $99	12	3.4	83	13.1
$100 - $199	51	14.7	82	12.9
$200 - $299	35	10.1	50	7.9
$300 - $399	4	1.2	6	0.9
$400 - $499	8	2.3	14	2.2
Over $500	14	4.0	10	1.6
Refused Bail	28	8.1	123	19.3
	347	100.0	636	100.0

From Table 6 we can establish that, those persons legally represented and accused of summary offences, were most likely to be allowed at large, (56.2%), while for those not legally represented the percentage was only 42.1%.

We may also conclude that legal representation makes a difference in the granting of bail for summary offences as 92% of those legally represented were released, whereas only 81% of these not legally represented received bail.

There was no difference evident in the Summary/Indictable category and so few cases in the Indictable category that no conclusions could be made.

Another variable to be considered in influencing the determination of bail decisions is a person's occupation.

If the occupation scale is divided into two groups: 1. Professional, managerial and skilled, and 2. Unskilled, domestic, students, pensioners and unemployed, we find that only 5.2% of group 1 as compared to 17.2% of group 2 are not released. Thus the unskilled and the low income categories are disadvantaged.

TABLE 7 - OCCUPATION AND TYPE OF BAIL DECISION

	Group 1				
	Professional	Semi-Professional middle management	Clerical Skilled Trades	Total	
				No.	%
Allowed at large	3	32	152	187	44.1
Bail set	4	31	180	215	50.7
Refused bail	1	2	19	22	5.2
Total	8	65	351	424	100.0

	Group 2						
	Unskilled	Student	Pension	Domestic	Unemployed	Total	
						No.	%
Allowed at large	153	75	27	48	64	367	36.6
Bail set	256	15	38	47	107	463	46.2
Refused bail	69	37	12	3	51	172	17.2
Total	478	127	77	98	222	1002	100.0

Note that occupation was not known in 101 cases.

The factor that is most likely to determine a bail decision is whether the police decide to contest the bail application.

TABLE 8 - BAIL GRANTED AND BAIL CONTESTED

Bail Granted	Bail contested					
	Not contested		Contested		Not known	
	No.	%	No.	%	No.	%
Yes	1176	95.5	85	32.8	33	89.2
No	55	4.5	174	67.2	4	10.8
	1231	100.0	259	100.0	37	100.0

In examining this table we can see that when police contested bail applications only 32.7% of the persons were granted bail. When the police did not contest bail, 95.5% of the persons concerned were given bail. It suggests that Magistrates generally give bail unless the police object to it.

LIKELIHOOD OF THE ACCUSED APPEARING

Central to the issue of bail is the likelihood of the accused appearing in court to face the charges laid against him. The following table shows the number of persons granted bail who forfeited their recognizance.

TABLE 9 - RECOGNIZANCE FORFEITED

	No	%
Yes	62	8.7
No	651	91.3
Total	713	100.0

Excluded from the table were 814 persons who did not have a recongnizance; this figure comprises 233 persons who were not released and 581 persons who were allowed at large, which is not a form of recongizance (see Table 3).

The table above enables us to ascertain that only one in eleven persons granted bail failed to appear after their first court appearance.

The non-appearance rate for those allowed at large (28.4%) is higher than that for people released on bail however it must be taken into account that in many cases the person allowed at large is not expected to reappear. To illustrate the general nature of these cases the charges were examined of the 113 persons who failed to reappear at Central Court of Petty Sessions after being allowed at large.

TABLE 10 - PERSONS WHO FAILED TO REAPPEAR AT CENTRAL COURT OF PETTY SESSIONS AND AND THE OFFENCES WITH WHICH THEY WERE CHARGED

Vagrancy	43
Prostitution	25
Begging	5
Drunkenness	24
Unseemly words	2
Enter building without permission	2
Minor traffic offences	2
Not pay taxi fare	1
Apprehended violence	1
Goods in custody	1
Resist arrest	1
Driving with over the prescribed level of alcohol	1
Stealing	4
Attempt act of indecency on male	1
	113

In the vagrancy and begging cases the defendants had undertaken to accept accommodation and other assistance from a social welfare agency; in the prostitution cases, it was usually the defendants first charge and she had undertaken to take other employment or return home; in all of these cases and in all of the rest of the 113 except for the 1 P C A the 4 stealing and the 1 attempted act of indecency, no evidence was offered by the prosecution and the charge was dismissed.

Table 11 shows the numbers of forfeitures of recognizance for the various categories of offence.

TABLE 11 - RECOGNIZANCE FORFEITED AND TYPE OF OFFENCE

	Recognizance forfeited	Recognizance not forfeited
Offences against the person	4	60
Sexual offences	2	16
Fraud	5	30
Offences against property	24	243
Driving offences	10	125
Offences against enforcement of order	-	10
Offensive behaviour	9	69
Betting and Gaming	-	1
Possession or use of unlawful weapons	-	8
Drug offences	8	89
Child Welfare Act (Neglected/ uncontrollable child etc.)	-	-
	62	651

There was no simple relationship between the seriousness of the offence and the forfeiture of recognizance.

There was also no clear relationship between the amount of bail and the likelihood of absconding - this is contrary to expectation, as one might predict that absconding could be expected to increase with the seriousness of offence due to harsher penalties imposed.

The numbers that absconded was too small to establish any complex relationship between amount of bail and severity of sentencing in establishing the likelihood of absconding.

When a person does not appear in court, the police have the option whether to have a warrant issued for the person's arrest or not to, if they believe that forfeiture of his bail is a sufficient punishment for his crime, or do not think the case serious enough to follow up.

Of the 165 persons who were allowed at large and then failed to reappear only 6 cases (4%) were considered serious enough to have a warrant issued. Although the issuing of warrants is more common in cases where the accused is released on a recognizance warrants were still only thought necessary in half the cases. Therefore in only 5% of the 713 cases where the accused was released was further action needed by the police.

TABLE 12 - WARRANT ISSUED AFTER FORFEITURE OF RECOGNIZANCE

	Yes	No
Summary	9	6
Summary/Indictable	20	25
Indictable	2	0
Total	31	31

From the Table 12 it appears that the seriousness of offence was not the criterion use, in the issuing of warrants. For example a warrant was issued for one offender who was charged with unseemly words and had absconded. On the other hand one was not issued for an absconder charged with a brea, enter and steal offence.

BAIL CENSUS

A census was taken of all persons being held on remand in New South Wales at 10 a.m. on Sunday morning the 22nd August 1976. Sunday morning was chosen for the census as it is the time when this population is most stable. No prisoners would be at court, few would be in transit or just being arrested, and anyone likely to be allowed out on bail by police before court on Monday would already have been released. However it is also a time of week when the number arrested may be high especially for drunken driving, prostitution, drunkenness and other offences likely to be more prevalent on Saturday night.

Three different questionnaires were distributed. Form B obtained information with respect to each prisoner on remand and was completed by the wing officer. all 443 prisoner received Form A which sought the prisoner's view of his position with regard to bail and was completed by 78% of the prisoners on remand. Both forms are reproduced in Appendix II. Appendix III shows the questionnaire which was completed by clerical staff for each person held at a juvenile remand centre (192 cases). In those cases the form was filled out from records not by the juveniles themselves but each was asked why he thought bail was refused and his answer recorded verbatim. To collect data from the police stations, forms (Appendix III) were distributed through Police Headquarters and Divisional offices, with an explanatory circular. Police were required to return completed forms to Police headquarters. On the Monday following the census, a comparison was made between the number of persons shown by census as being in custody at most metropolitan police stations and the numbers who appeared in court in custody. A high degree of correspondence was found.

SETTING BAIL

There were 738 cases included in the study. Of these cases 507 (68.9%) were refused bail and 229 offenders could not find bail or did not want it in 2 cases the bail circumstances were unknown. Table 13 shows this distribution for the three types of places of detention.

TABLE 13 - BAIL SET AND PLACE OF DETENTION

	Juvenile		Prisons		Police Stations	
	No.	%	No.	%	No.	%
Bail set	14	7.3	131	29.7	84	81.6
No Bail set	178	92.7	310	70.3	19	18.4
	192	100.0	441	100.0	103	100.0

There was a tendency for people that were confined in police stations to be there because they could not pay the bail fixed whereas prisoners and juveniles had been denied bail. As it was Sunday, those held in police stations had possibly not had the opportunity to get the bail money. The system of money bail means that some people can spend 65 hours imprisoned simply because the banks are not open.

OFFENCES WITH WHICH THOSE ON REMAND WERE CHARGED

The major concern in the granting of bail must be the likelihood of the person's attending court and the seriousness of the offence is an important factor in estimating that likelihood.

TABLE 14 - OFFENCES BY PLACE OF DETENTION

		Total	Prisons	Juveniles	Police
Offences against person	%	13.0	19.0	3.6	4.9
	No.	96	84	7	5
Sexual offences	%	5.6	9.0	0.5	0.0
	No.	41	40	1	-
Robbery/Extortion	%	6.9	9.3	5.2	0.0
	No.	51	41	10	-
Fraud	%	4.3	6.1	0.0	4.9
	No.	32	27	-	5
Offences against property	%	40.1	39.3	54.2	17.5
	No.	296	174	104	18
Driving Offences	%	2.7	1.1	1.0	12.6
	No.	20	5	2	13
Enforcement of order	%	3.8	2.3	5.7	6.8
	No.	28	10	11	7
Offensive behaviour	%	9.5	3.8	1.0	49.5
	No.	70	17	2	51
Unlawful Weapons	%	0.5	0.9	0.0	0.0
	No.	4	4	-	-
Drug Offences	%	5.8	7.5	3.1	3.9
	No.	43	33	6	4
Child Welfare Act (Neglected/uncontrollable child etc.)	%	5.8	0.0	22.4	0.0
	No.	43	-	43	-
Not known	%	1.9	1.8	3.1	0.0
	No.	14	8	6	-
Total	%	100.0	60.0	26.0	14.0
	No.	738	443	192	103

Only 22.4% of juveniles were being held in remand centres for Child Welfare matters. These cover the cases where the child has been ill treated or the parents cannot cope so that it is inappropriate to return the child home. However in the other 77.6% the young person was being held on the same terms as an adult. This treatment seems unnecessarily harsh especially in the 87.0% of cases where the young person is a dependent.

Almost half of those being held in police stations were there for offensive behaviour which includes drunkenness. By 10 a.m. Sunday morning the drunks have probably sobered up so there seems little reason for detention. However this is not the only category of offences for which persons are being held on minor charges. A detailed break-down of offences (Table 15) shows that 111 people were being held in custody for offences for which it is unlikely that they would be imprisoned. The reason for saying that imprisonment is unlikely is that less than 6% of persons appearing in courts of Petty Sessions in 1975 on those charges were sentenced to imprisonment.

Unless there is ample evidence that the accused is not likely to attend the court hearing or is incapacitated by drugs or alcohol it seems unreasonable to imprison the accused on these minor charges.

TABLE 15 - MINOR OFFENCES

	Number in Census N= 111	% imprisoned in 1975 for these offences
Minor assault on female	4	1.7
Carnal knowledge (10-16 years)	5	4.8
Misappropriation	4	4.3
Damage to property	10	4.7
Dangerous driving	1	2.7
Resisting arrest	4	3.2
Drunkenness	41	5.4
Indecent exposure	1	3.5
Unseemly words	6	1.5
Offensive behaviour	5	2.3
Unlawful import/export	1	3.2
Use drug	7	2.5
Possess drug	6	3.5
P.C.A.	11	2.3
D.U.I.	3	4.6
Aid and Abet Drunken Driver	1	1.7
Refuse Breathalyser test	1	4.2

DEMOGRAPHIC CHARACTERISTICS

TABLE 16 - AGE OF DETAINEE

	Bail Census*		1975 Petty Sessions
Age	No.	%	%
18-24	242	44.3	35.2
25-29	94	17.2	13.6
30-34	68	12.4	9.0
35-40	44	8.0	7.4
40+	95	17.4	25.9
Not known	3	0.7	8.9
	546	100.0	100.0

* Excluded from the total are 192 juvenile offenders.

The major difference between the two age distributions is in the category 18-24 year olds and those over 40. There is a large proportion of young people amongst those on remand. This supports the findings of a report on bail made to the Australian Law and Poverty Commission*. While this group have fewer social and economic ties to ensure that they do not abscond, they are also likely to be poorer and less able to find the bail money.

* Armstrong, Unconvicted Prisoners - The Problems of Bail, Report to the Commission of Inquiry into Law and Poverty, A.G.P.S. 1977.

TABLE 17 - SEX OF DETAINEE

	Bail Census		1975 Petty Sessions
	No.	%	%
Male	674	91.3	89.2
Female	64	8.7	10.8
Total	738	100.0	100.0

There was little difference in the proportion of males on remand from that for the total appearing before Courts of Petty Sessions in 1975. There is only a slight trend for more females than males to be released.

TABLE 18 - BAIL SET FOR ABORIGINES

	Aborigine		Non-Aborigine	
	No.	%	No.	%
Not given bail	43	50.0	376	70.9
Could not afford it	43	50.0	154	29.1
	86	100.0	530	100.0

In 122 cases it was not known whether the person was an Aborigine or not.

Half the Aborigines on remand were being held because they could not afford the bail whereas less than a third of the non-aborigines were being held for that reason. The two possible reasons for this difference are that Aborigines are much poorer than others and/or that Aborigines have higher bail set such as in the case of drunkenness offences. Some evidence for the latter is given in Table 19.

TABLE 19 - BAIL SET FOR DRUNKENNESS OFFENCES

Amount of Bail	Aborigine	Non-Aborigine
$1	3	22
$5	5	-
$10	8	1
Unknown	-	2
	16	25

It is also worth noting that 25 'drunks' were detained because of inability to provide $1 bail. For lack of $1 cash a person charged with drunkenness can spend the week-end in a police cell.

In an additional analysis it was found that there was no apparent difference in the amount and type of bail given to Australians as opposed to people born in other countries.

SOCIAL STABILITY

Data was collected on the marital status, dependants, dwelling place and employment of the persons charged as this information can be used to help police and Magistrates estimate the likelihood of the accused's appearing in court.

Of the five hundred and forty-six adults in the bail census population, one hundred and thirty-two were married or living in defacto relationships while, perhaps more significantly, one hundred and sixty three had dependants and of these 163, twenty had more than three dependants. In cases in which the accused has dependants it seems that not only does the person's family commitment deter him from absconding but that great hardships could be caused for the dependants.

TABLE 20 - TYPE OF ACCOMMODATION

	No.	%
Owned	56	12.8
Rent House	83	18.9
Rent Flat	102	23.3
Board	143	32.6
Other	54	12.3
Total	438	100.0

The juveniles and 108 cases where type of accommodation was not known, have been excluded.

While the home owners are the most financially committed to remaining in the area, those renting houses or flats are also likely to have substantial ties in the area. These three groups account for 55.1% of dwellings in the sample. It should be noted that 106 people had lived at their present address for over five years.

The last common indicator of a person's stability to be considered is their employment status.

TABLE 21 - EMPLOYMENT

	No.	%
Unemployed	265	57.1
Domestic	8	1.7
Pensioner	26	5.6
Student	4	0.8
1-6 month in job	88	19.0
7 months - 1 year	30	6.5
1 year, 1 month - 3 years	16	3.4
3 years, 1 month - 7 years	17	3.7
Over 7 years	10	3.2
Total	464	100.0

The juveniles and 82 cases where employment was not known, have been excluded from the table.

Relatively few people (9.3%) of those being detained had been employed for the full year prior to the date of the Census. It would seem to need exceptional circumstances to jeopardize people's jobs by detaining them. Also the chance of domestics or pensioners absconding seems slight. However they account for a small fraction of those held when over half of those detained were unemployed.

INCOME AND AMOUNT OF BAIL

The large proportion of unemployed persons reflects the disadvantages of this group in a bail system centred on money. They are considered less stable because they do not have a regular job and so they are less likely to be allowed at large. When they are granted bail they are not able to pay for it as they have so little income. It is not only the unemployed who are at a disadvantage under the present system Table 22 shows the amounts of bail set for the 229 persons who were still imprisoned because they could not afford that amount.

TABLE 22 - AMOUNT OF BAIL

Amount	No	%
$1-$50	54	24.1
$100-$200	64	28.6
$250-$500	67	29.9
$550-$1000	21	9.4
$1200-$20000	18	8.4
	224	100.0

It was not known how much bail had been set in five cases.

Almost a quarter the amounts set were under $50 and over half were under $200. Table 23 showing the incomes of the 229 for whom bail was set gives some explanation of why they could not afford even these relatively small amounts and illustrates the number of low income earners disadvantaged by the system of money bail.

TABLE 23 - TAKE HOME PAY

	No.	%
None	54	33.3
$1-$50	51	31.5
$55-$100	28	17.3
$105-$150	21	12.9
$155-$200	6	3.7
$205-$250	2	1.3
Total	162	100.0

Take home pay was not known in 67 cases.

A third (33.3%) had had no take home pay in the week prior to their being charged and another 31.5% had earnt less than $50. A total of over 80% are low income earners.

DETAINEES' PERCEPTIONS

An attempt was made to discover the views of the accused on the bail decisions.

TABLE 24 - DETAINEE'S PERCEPTION OF WHY BAIL WAS REFUSED

1.	Likelihood of turning up	
	Failed to reappear before	31
	No family ties	3
		34
2.	Criminality	
	Previous record	23
	Seriousness of crime	42
		65
3.	Physical or mental states	
	Psychiatric reasons/testing	26
	Considered violent/suicidal	4
		30
4.	Police	
	Not Australian/N.S.W.	10
	Not liked by police	4
	Wouldn't pay police	2
	Police/prosecutor objected	48
		64
5.	Administration	
	Didn't apply for bail	42
	On bail then refused	7
	Court not finished/committed for trial	11
		60
6.	Other	59
7.	Don't know	78
8.	No reason stated	93

Only 34 persons gave reasons associated with their likelihood of turning up at court, though perhaps those from interstate should be included in this figure. Seventy-eight said that they didn't know why bail was refused while another 93 didn't answer. Some of the 'no answer' cases could be classified in the 'don't know' category and some possibly just could not be bothered filling in the answer. Sixty-four attributed the decision simply to the police or crown prosecutor, some with implications of prejudice. Only 27.5% gave reasons which could be acceptable ones for having bail refused. It appears that some people detained are vastly ignorant of the purpose and processes of bail decisions and that in others there are feelings of persecution.

The views of those who had been granted bail but were still in custody were also tabulated to find the reason why they could not take advantage of the system.

TABLE 25 - DIFFICULTIES ENCOUNTERED IN MEETING BAIL

Could not afford bail or could not raise the money	94
Bail too high	25
On social services	3
	122
Difficulty in contacting people	19
No friends/relatives in New South Wales	17
	36
None	28
Did not want bail	6
Other	29
Not stated	119
	182

Despite the large number who did not state a reason, it appears that the main reasons that those granted bail are not freed are their inability to find the bail money and their inability to contact friends and relatives who could provide the money or stand surety for them.

DISCUSSION

The data collected from the Court Records Survey and the Bail Census support the recommendation of the Bail Committee that reform is needed in the bail system.

A quarter of the defendants leave court in custody after a bail hearing but only one in twenty leave the court in custody after sentence is passed. In fact at least 130 people in the Court Records Survey received more severe punishment before the court had passed sentence than afterwards. The outcome of the bail hearing can therefore be vital for the defendant. Considering the importance and difficulty of the bail decision the short duration of the bail hearing,referred to by the Bail Committee, is rather surprising. It results perhaps from the small amount of information presented. In only a little over a third of cases was the defendant legally represented and police contested bail in only 17.0% of cases. The magistrates'lack of relevant information for a bail decision could be a reason for the overreliance on the surety system.

Sureties were required in over a quarter (27.6%) of cases in which bail was granted. As 142 of the 145 cases where people given bail were not released required sureties, it seems that it may be possible to release many more people if alternatives to the surety system were used more frequently. The Bail Committee suggested that the use of sureties be reduced to a non-financial role because it is unjust to punish the surety if he simply misjudges the person whose appearance he is guaranteeing. The Bail Census showed that many of the people on remand are of low occupational status or unemployed. It is possible that their friends and relatives are also poor and therefore not acceptable sureties.

It is unlikely that magistrates can decrease their reliance on the surety system until they are given sufficient information to make an informed judgement about the accused himself. The Committee suggested two ways in which the Magistrate could obtain more information relevant to the bail decision. The first is an increase in legal aid for bail hearings. The second is the introduction of a statutory declaration signed by the accused which would contain details relevant to the bail decision such as his income, family ties, employment status, financial commitments and the amount of time he has lived at his present address or in the area. The data on social stability obtained from the Bail Census showed that in many cases people with substantial reasons for not absconding were not released.

If the statutory declaration was obtained by the police just after the defendant was arrested it would have the advantage of providing information which the police could use for their own bail decision.

It is important that the police be well informed about the defendant as they may exercise their discretion at three different stages of the bail system. At the first stage involving the granting of bail prior to the first court hearing the police appear to be over cautious and set too high a bail. 81.6% of the people being held in police stations had been granted bail but could not pay it. This situation could be alleviated by stricter guidelines for the setting of police bails such as the introduction and encouragement of the use of non financial conditions for release; upper limits on the amount that can be set for certain offences with compulsory release for minor offences. These guidelines could limit discriminatory practices such as the setting of higher bails for Aboriginal drunks.

The second stage at which police opinion is important is at the first court hearing, at which they may contest bail. Table 8 suggests that whether or not police contest bail could be a crucial factor in the magistrate's decision to refuse bail.

The third stage at which the police are involved is in the decision to issue a warrant if the defendant forfeits his recognizance. Table 12 shows that the issuing

of warrants is not simply related to the seriousness of the offence.

The juveniles, as a particularly vulnerable group need a separate mention. Most are unlikely to abscond as they are usually dependants (87% in the Bail Census).

When the risk of their absconding is low, the young person should usually be held in remand only to protect him from himself or others. Only 21 of the 192 juveniles in the bail census were cases of neglect or similar offences. In cases of uncontrollability there is no evidence that the young person will be illtreated or even that he will harm others. The fact that the parents may find it inconvenient to keep the child at home until the court hearing finishes should not be a good enough reason for holding the child on remand.

Forty-eight of the juveniles on remand in the Bail Census were being held for physical or psychological testing. A bail system emphasizing non-financial conditions of release could ensure that the young person took the required tests without having to imprison him.

In general the same criterion should be used for making a bail decision for a juvenile as for an adult. i.e. the likelihood of the defendant absconding, the seriousness of the offence, the mental or physical health of the defendant and the likelihood of the defendants interfering with witnesses or evidence.

The present bail system, discriminates not only against the specific groups juveniles and aborigines but against the poor generally. To take advantage of most Police bail decisions the defendant needs to have ready money while at the Magistrates courts he often needs friends or relatives with substantial assets.

APPENDIX I

COURT RECORDS SURVEY

Case No.

(1) Date..... ☐☐☐☐☐☐

(2) Age..... ☐☐

(3) Occupation..... ☐

(4) Address (Suburb or Town)..... ☐☐☐

(5) Main Offence..... ☐☐☐☐

(6) Other offences 1 Yes..... ☐
2 No
3 Not known

(7) Whether legally represented..... ☐

1 Yes
2 No
3 Not known

(8) Bail contested..... ☐
1 Yes
2 No
3 Not known

(9) Bail applied for..... ☐
1 Yes
2 No
3 Not known

(10) (a) Bail granted..... ☐
1 Yes
2 No

(10) (b) If no was there subsequently (i) a commital for trial..... ☐
1 Yes
2 No
3 Not known

(ii) custodial sentence..... ☐
1 yes 4 inebriate
2 No 5 extradited
3 Not known

(11) Amount (total) $..... ☐☐☐☐☐

(12) Type of bail: 1 Allowed at large ..... ☐
2 Without surety
3 With surety(ies)
4 Not relevant

(13) Released..... ☐
1 Yes
2 No

(14) Recognizance forfeited
1 Yes
2 No
3 (Not relevant)

(15) Warrant issued 1 Yes..... ☐
2 No
3 Not relevant

ESTABLISHMENT: ..... Form B. - Record Data Sheet

Name: .....

Bail Census Questionnaires: obtain from records only

All unconvicted prisoners including appellants

Court remanded to ..... Date remanded to ...../...../.....

If Appellant, specify Court appealed from .. ..

3. Offence or Complaint (most serious offence: give value of goods if Property offence, if information availabla) .....
.....

5. Has bail been set Yas ☐ No ☐
If 'Yes': (a) Was it by, Police ☐
Magistrate ☐
J.P. ☐
Judge ☐
(b) Total amount of bail set $..... .....
(c) Was cash deposit required Yes ☐ No ☐
(d) Was surety required Yes ☐ No ☐

6. Date received on current charge ...../...../.....

7. Is prisoner awaiting initial court appearance:
On Petty Sessions ☐
Awaiting Trial:District or Supreme Court ☐
Awaiting Sentence: Magistrates Court ☐
District Court ☐
Supreme Court ☐
Appeal pending ☐

9. Date of birth ...../...../..... or Stated age ..... years

Form A

Establishment .....

Bail Census - 21.8.76

(Bail Review Committee set up by the N.S.W. Government)

On the night of 21.8.76 a census of all unconvicted persons (including appellants) will be held in all gaols, police lock-ups and Youth and Community remand centres in New South Wales.

The purpose of this census is to determine ways and means of improving the bail system.

Accordingly your co-operation in completing this questionnaire, on a voluntary basis, is greatly appreciated. It is not intended to identify persons by name in the final report. Your name is only needed in the initial stages in order to ensure that every unconvicted person is included in the census. As soon as the forms are collected your name will be destroyed.

Thank you for your co-operation.

Commissioner of Corrective Services.

SURNAME: .....

Other names: .....

Wing: .....

ESTABLISHMENT: .....

(Place a tick in the appropriate box or write on the dotted line as applicable)

8. Sex: Male ☐ Female ☐ Name: ....

3. Place of residence:
(usual address; no street number necessary) Street: .....
Suburb: ....

15. What type of accommodation were you in:

Owned/Buying	☐	Board	☐
Rented House	☐	Other	☐
Rented Flat	☐	please specify	

16. How long did you spend at present home address: .....
(years and months)

17. How long did you spend in that area: .....
(years and months)

18. Where did you live before you moved to the present area:

Elsewhere in N.S.W.	☐
Elsewhere in Australia	☐
Outside Australia	☐

10. Marital Status:

Married	☐	Seperated	☐
Single	☐	Defacto	☐
Divorced	☐	Not known	☐

11. Number of dependents you support: .....

12. (a) Country of birth: .....
(b) Are you an Australian Aborigine: Yes ☐ No ☐
(c) If you were born outside Australia what year did you arrive: 19....

13. What is your usual occupation: .....

14. Were you employed during the weak before coming into custody:
Yes ☐ No ☐
If 'yes' how many months were you in that job: ..... months

19. Do you have any of the following:

Insurance:	Yes ☐	No ☐
Cheque Account	Yes ☐	No ☐
Savings Account	Yes ☐	No ☐
Life Insurance	Yes ☐	No ☐
Building Society and Credit Union	Yes ☐	No ☐

20. Where did your income come from the week before you came into custody

No income ☐

Job ☐

Social Security ☐
(specify type of pension or benefit): .....

Other ☐
(specify e.g. rent, property, shares etc.): .....

21. What was your take home pay during the week before coming into custody: $.....

22. (a) Was bail refused: Yes ☐ No ☐

If 'Yes': Why do you think bail was refused? .....

.....

.....

(b) If bail has been granted what difficulties have you had in raising it?

.....

.....

.....

BAIL CENSUS

PLEASE ASK PRISONER FOR INFORMATION WHERE NECESSARY EXCEPT LAST THREE QUESTIONS

1. Place of detention..... [ ][ ][ ]

2. Place of residence (street & suburb only)..... [ ][ ][ ]

3. Offence or Complaint (most serious offence: give value of goods if property)..... [ ][ ][ ][ ]

4. Other offences or complaints:
   Indictable: Yes, No..... [ ]
   Summary: Yes, No..... [ ]
   Neglected or uncontrollable, Yes, No..... [ ]

5. Has bail been set? Yes, No..... [ ]
   IF YES TO QUESTION 5
   (a) was it by police, magistrate, J.P. Judge..... [ ]
   (b) amount (total) $..... [ ][ ][ ][ ]
   (c) cash deposit required: Yes; No..... [ ]
   (d) surety required: Yes; No..... [ ]

6. Length of time in present custody:.....Days.....Hours..... [ ][ ][ ]
   (If exceeds 2 days, hours not required)

7. Whether: Awaiting initial Court appearance..... [ ]
   ôn Petty Sessions/Children's Court remand
   Awaiting trial District or Supreme Court
   Awaiting sentence - Children's Court
   - Magistrate's Court
   - District Court
   - Supreme Court
   Appeal pending

8. Sex: Male, Female..... [ ]

9. Date of birth (or stated age) (.....years)..... [ ][ ][ ][ ][ ][ ]

10. Marital status: Married, single, divorced, separated, de facto, Not known..... [ ]

11. Supporting dependents - state number..... [ ][ ]

12. (a) Country of birth..... [ ][ ]
    (b) Australian Aborigine? Yes, No, Not-known..... [ ]
    (c) If born outside Australia, year of arrival..... 19[ ][ ]

13. Usual occupation (specify fully)..... [ ]

14. Currently employed (week before coming into custody)? Yes, No..... [ ]
    If yes to Q. 14, length of time in that job (in months)..... [ ][ ][ ]

15. Accommodation: Owned/Buying, rented house, rented flat, board..... [ ]
    Other (specify).....

16. Length of time at present home address..... [ ][ ][ ]

17. Length of time in area..... [ ][ ][ ]

18. Where lived before moved to present area?
    Elsewhere N.S.W., elsewhere in Australia, outside Australia..... [ ]

19. Which of the following does the prisoner have?
    Insurance, cheque account, saving account, life insurance, building society or credit union..... [ ]

PLEASE COMPLETE BACK ——————————

20. Source of income last week? None; Job; Social security (specify type of pension or benefit).....[ ]
Other (specify) (eg. rents, property, shares).....

21. Take home pay week before coming into custody..$.....[ ][ ][ ]

PLEASE ASK THE PRISONER THE FOLLOWING QUESTIONS AND RECORD ANSWERS

22.(a) If bail refused, why do you think bail was refused?
(Record fully and in prisoner's own words).....
.....
.....[ ][ ]
.....

22. (b) If bail has been granted what difficulties have you had in raising it?.....[ ][ ]
.....

PLEASE ANSWER WITHOUT QUESTIONING PRISONER

23. Does the prisoner have a criminal record?.....[ ]
If answer not known from your existing records, circle "not known"

Yes, Indictable 1 Summary 1
1+ 1+

No , Not known

24. Does the prisoner have apparent language difficulties? Yes, No..... [ ]

25. Why do you think bail was refused?.....
.....[ ][ ]
.....