

What factors influence police and court bail decisions?

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SUMMARY

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BACKGROUND

There are two bail authorities in New South Wales (NSW): the police and the courts. These authorities are tasked with determining whether an accused person should be held on remand prior to the finalisation of legal proceedings. Remand is associated with adverse social, economic, legal and emotional outcomes for the individual and represents a significant financial burden to the state. It is, therefore, crucial for policymakers to understand what factors drive the bail decision-making process.

This bulletin seeks to understand the application of the current NSW bail laws (*Bail Act 2013* (NSW)). Specifically, it examines the relative importance of defendant (e.g., age, gender and Aboriginality) and case characteristics (e.g., prior offending, the number and nature of the offences to which the defendant is accused) in bail decisions. Consistency of bail decisions across police areas and courts is also considered.

KEYWORDS

Aboriginal people

Bail/remand

Children, juveniles and young people

Courts

Domestic violence

Police

KEY FINDINGS

Bail determinations in NSW between January 2015 and November 2019 are examined. The findings can be summarised as follows:

- Legal factors, including the number of concurrent offences, prior offences and prior prison sentences, strongly increase the likelihood of bail refusal by the police and court. Defendants accused of a Show Cause offence, which carries a presumption against bail, are far more likely to be refused bail than other defendants.
- Some extra-legal factors are also associated with a significant increase in the probability of being bail refused. Adult Aboriginal defendants are more likely to be bail refused by the police than non-Aboriginal defendants, while male defendants and those aged between 35 and 44 years are more likely to be bail refused by both the police and the courts.
- There is substantial variation in bail decisions across police jurisdictions and magistrates for matters with equivalent case characteristics. Moving between different police jurisdictions or magistrates may have a greater impact on the probability of bail refusal than many legal factors, including prior court appearances and bail breaches.
- The police and courts are largely influenced by the same factors in their bail decisions. However, there is evidence to suggest that police are imposing a higher risk threshold than the courts. Further, the police are more likely to refuse bail for domestic violence and/or alcohol related offences than the courts.
- Generally, factors influencing bail refusal are similar for adults and juveniles. However, breaches of bail have a larger influence on the probability of juveniles being refused bail compared with adults. Extra-legal factors (e.g., gender) also seem to be less important in bail decisions involving juveniles.

CONCLUSION

Legal factors, in particular offence type and prior offending, have the largest impact on both the police and court decision to refuse bail. The influence of certain extra-legal factors, including Aboriginality, in bail determinations and the substantial variation across police jurisdictions and magistrates warrants further research.