

THE CASE FOR BAIL SUPERVISION

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Recent government measures will almost certainly increase the use of custody because there will be more remands and more custodial sentences for offenders who have breached bail. However, many of these remands would be unnecessary if an effective bail supervision service was available to every court in Scotland.

Part 1 of the Criminal Proceedings etc (Reform) (Scotland) Act 2007 contains significant changes to bail and remand provisions in Scotland. They flow primarily from a Sentencing Commission report published in 2005. The then Scottish Executive wanted to strengthen public confidence in the system by making it more fair and transparent. They also wanted to deter offending by a tougher and more consistent response to bail breaches and "failures to appear". The result is a statute that contains much more codification of the factors that are to be considered in bail decisions, and increased penalties for breach of bail conditions and failure to appear. The Act also requires that where an accused re-offends on bail the court must give an explanation if it chooses not to pass an aggravated sentence – there is now virtually a presumption that a more severe penalty should be imposed.

We should see the implications of the new provisions in the context of Scotland's use of imprisonment. The Scottish prison population has been increasing for the last fifteen years, with the 2005/06 average daily prison population recorded as 6,857, a 1% increase from the previous year and a 14% increase from the figure ten years previous (Scottish Executive, 2006). The Scottish prison population stood at 7,261 at 27 July 2007, which is 114% of the official design capacity, and Scotland had an imprisonment rate of 142 people per 100,000 general population, making it one of the highest in Western Europe (International Centre for Prison Studies, 2007). It also had the highest reported annual rate of prison receptions in Europe per head of population (Aebi et al., 2006). The Chief Inspector of Prisons in Scotland has outlined the 'evils' of the resulting overcrowding of prisons, including the reduced ability for prison officers to do their jobs effectively, meaning that less resources for risk assessment and monitoring could lead to higher chances of suicide and violent acts among prisoners, increased availability of drugs, as well as less resources available for addressing needs that are related to further offending (McLellan, 2006). The Scottish Prison Service (2006) has projected that the average daily prison population will continue to increase to 8,200 in 2015-2016, and has also stated that the main reason for the record prison numbers in 2006 was due to the increase in the remand population.

Of the 39,227 Scottish prison receptions in 2005/06, half of these were for remand (Scottish Executive, 2006). The increasing remand population - up 22% in the last two years (Scottish Executive, 2006) - has had a notable impact on the prison population (Tombs, 2004; SCCCJ, 2005). It has been stated that an increase in the use of bail supervision would lower the number of people on remand (Ministerial Group on Women's Offending, 2002). The Sentencing Commission for Scotland (2005) recommended that the Scottish Executive gather detailed evidence about the effectiveness of bail supervision services and extend these if the evidence was supportive.

It has been pointed out that while the issue of bail and remand is often seen as a managerial issue or a 'prison problem', the arguments around this issue can be based on diverse grounds (Jones, 1988). Some of the key arguments revolve around issues of justice procedure and public protection; the main reasons for remanding someone relate to their likelihood of re-offending, absconding or interfering with the course of justice. With regard to offending on bail, it was found that 7% of the 120,000 convictions in 2001 resulted in a bail aggravated sentence, indicating they occurred while the person was on bail; statistics indicate that of the 30,000 people bailed in a year, approximately 30% will offend while on bail (Sentencing Commission for Scotland, 2005). For people granted bail from the courts in 2001, based on a

sample of six Scottish courts, rates of offending on bail ranged from 19% to 36%, with an overall rate of 29% (Brown, Leverick & Duff, 2004), indicating that a portion of bailees do offend while on bail.

Beyond these issues are the 'due process' arguments that it is unjustified to remand someone who is later found to be not guilty or does not receive a custodial sentence (Jones, 1988). It has been estimated that only half of those remanded go on to receive custodial sentences (Sentencing Commission for Scotland, 2005) implying that remand is sometimes used unnecessarily. Furthermore, on humanitarian grounds it is argued that remand prisoners suffer greatly from being in custody; for instance, their families may be unable or unwilling to visit, employers may be unwilling to hold their jobs open, loss of reputation may damage their job prospects, and the lack of income can harm their domestic situation, including a loss of secure housing (Jones, 1988). Research has shown that remand prisoners are at even greater risk than sentenced prisoners in terms of committing suicide, they tend to have worse mental and emotional well-being, they are at increased risk of being bullied, and they have less access to meaningful activities, leading to increased boredom and despair (Scottish Executive, 2000). It is also worth remembering that people do not receive compensation for any time spent on remand if they are then found not guilty (Jones, 1988). Given that this is an ethical issue, and not simply a managerial issue, it is important to keep in mind the basic assumption that a person should not have their liberty taken away unless for very good reason (Jones, 1988; Sentencing Commission for Scotland, 2005).

Bail Supervision Services offer an alternative to remand that addresses these issues. These services are intended to reduce the number of people going to prison on remand, thereby reducing the associated work involved in processing them through the prison system and holding them in establishments that are already beyond capacity. The supervision aspects allow monitoring of the bailee in the community, thereby working in the interests of the justice process and public protection. Furthermore, people can be diverted from the potentially harmful impact of being in prison on remand, allowing them to maintain family, social and work connections that act as protective factors in helping them to further avoid involvement in the criminal justice system (Social Exclusion Unit, 2002), as well as affording opportunities to provide support to improve their well-being and reduce their risk of re-offending.

At the end of 2007 Bail Supervision services were not widely available across Scotland. Some local authorities do have schemes and Includem have provided an intensive service to young bailees appearing in the youth Court in South Lanarkshire. Sacro is a main provider with services to courts in Ayrshire, Lanarkshire, Edinburgh and Midlothian. Sacro staff have at least 3 contacts per week with the bailees. They work in partnership with court social workers to provide a responsive duty system for referrals of bail clients. They monitor the bailee's adherence to the conditions of bail, support the bailee's efforts to seek the kind of help and services (including other Sacro services) that will reduce the risk of re-offending and provide a written report to the court on the bailee's response to supervision. Data for 2006-07 shows that 80% of those completing their bail supervision period did not receive a custodial sentence which strongly suggests that the bail supervision met the objective of restricting the use of custody.

We should strike a balance between making the bail system credible and avoiding the unnecessary use of remand in custody. The Scottish Government appears to acknowledge the need to move away from the addiction to prison as the default response to crime. The Justice Department has updated its guidance for bail supervision and in late January announced an additional £500k for development. This is welcome because without the widespread availability and use of bail supervision the balance may shift further towards a wasteful and destructive reliance on custody, which would be detrimental to the aim of a safer Scotland. Procurators fiscal, defence agents and sheriffs should all make sure that they know about local bail supervision services and, where they do not exist, exert their considerable influence to ensure they are introduced.

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