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Alternatives to pre-trial detention

Dr Bernhard Ripperger

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About the author



Dr Bernhard Ripperger is the Assistant Commissioner, Community Corrections with Corrective Services NSW and previously worked for over 25 years in the Department of Communities and Justice (and its predecessors). He is a lawyer with extensive experience in providing legal and strategic advice to Ministers and Senior Executives. His doctorate examined the relationship between preventive detention legislation and principles of rehabilitation, and he has published and presented at conferences on related subjects.

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Authorship

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For further information, Dr Bernhard Ripperger, Assistant Commissioner, Community Corrections at Bernhard.ripperger@correctiveservices.nsw.gov.au.

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Executive summary

Pretrial detention has long been a part of the criminal justice system in NSW. Although the principles of the presumption of innocence and the right to liberty are fundamental aspects of our system of criminal justice, there are circumstances in which it is considered necessary to hold a person in custody while awaiting trial (that is, to keep them 'on remand').

However, the current number of people on remand in NSW is at its highest level ever and has increased by almost 60 per cent in the last ten years.¹ The remand rate in NSW is now one of the highest in the developed world.²

In June 2025, there were 6,081 people (or 46.3 per cent of the total NSW adult prison population) on remand.³

Prison is an expensive option when compared to other forms of restriction and control used in the criminal justice system. It costs around \$1.8 million *per day* to house all inmates on remand. There are also other substantial indirect costs of imprisonment.

A high remand population has serious financial and other impacts on the effective operation of the correctional and broader criminal justice system and on the accused persons. *Around half* of the people currently on remand will be released from custody without having received a prison sentence and up to 20 per cent will not receive a prison sentence even if convicted.

In the context of steadily increasing numbers of people on remand, and the high costs of custody, there is an urgent need to consider whether there are alternatives to pretrial detention that could be established in NSW.



Currently, there is no option in NSW for community-based supervision by a correctional agency as an alternative to pretrial detention.

The paper proposes opportunities for developing and implementing a system of bail supervision in NSW that would likely provide significant long-term cost savings and other benefits to the criminal justice system.

Scotland and South Australia have, for many years, been successfully using *bail supervision* as an alternative to pretrial detention.

Drawing on case study learnings, this paper also considers a calibrated model for managing a cohort of carefully selected, suitable long-term remand inmates in a community setting. This approach, while innovative in the context of pretrial detention, would be similar to existing schemes for the management of sentenced inmates in a community setting and would complement any bail supervision system.

Given the complexity and sensitivity of policy issues relating to bail and remand, an appropriate approach could be to test the feasibility of a community-based pilot program. Initially, the pilot could focus on two key vulnerable population groups who are overrepresented in the remand population: women and Aboriginal people. A rigorous monitoring and evaluation process as part of the pilot would provide important additional evidence to consider before undertaking the investment needed to expand community-based supervision as an alternative to remand.



Policy opportunities

1 Explore introducing bail supervision into NSW

Consideration could be given to amending the *Bail Act 2013* to allow a court to grant bail subject to a condition that the person comply with supervision by Corrective Services NSW (CSNSW).

The court should either be required or permitted to consider a suitability assessment of the accused person by Community Corrections before the matter of bail is determined.

The option should include home detention and electronic monitoring provided by CSNSW as discrete conditions of bail, or simply as components of the condition of supervision.

2 Develop a program of community-based remand

CSNSW could develop a program in which people on remand can be managed in a community setting rather than in a correctional centre.

The scheme would operate by way of CSNSW making an administrative decision to manage a remand inmate in a community setting.

The person will technically remain in custody while in a community setting and would be subject to stringent conditions. CSNSW remains responsible for managing all aspects of the person's compliance.





Background

The criminal justice system in New South Wales (NSW) has always included a system of pretrial detention for some people accused of crimes. Although the presumption of innocence is a cornerstone of the criminal justice system, it is widely accepted that a person may be held in custody before trial where necessary. This may occur to prevent an accused person from absconding, from interfering with witnesses or the trial process, or for the protection of society, for example from the risk the accused will commit other criminal offences while on bail.⁴ In NSW, these reasons, or factors, are known as “bail concerns”.

In 2025, people on remand made up 46 per cent of the adult prison population in NSW.⁵

This represents a 39 per cent increase since 2015, despite an overall decline in the total number of people imprisoned.⁶

There are many, complex and interconnected factors that have contributed to an increase in the remand population, such as

- legal and policy settings established by the government of the day;
- changes in policing practices, such as increased activity in relation to certain types of offending or compliance with bail conditions;
- attitudes held by those within the criminal justice system and the general community about the risk of people committing offences;
- socioeconomic factors affecting those charged with criminal offences; or
- the time taken for matters to come to trial.⁷

In October 2021, the Productivity Commission observed in its report “Australia’s prison dilemma” that:

As a policy, imprisonment serves multiple objectives – deterring crime, removing dangerous individuals from the community, punishing and rehabilitating offenders, and supporting the rule of law. But it is also expensive. This raises a key economic question for policymakers. Is the current policy of increased use of imprisonment producing benefits for Australia that outweigh the costs? And what, if any, are the alternatives?⁸

In its approach to addressing these questions, the Commission identified the need to consider both the direct and indirect costs of imprisonment.

Direct costs are usually calculated by reference to an average cost per day for housing an inmate in a correctional facility. The most recent Report on Government Services estimates the cost per day of housing an inmate in NSW at \$316.90. This means that the cost of housing NSW remand inmates is around \$1.8 million *per day*.



In terms of indirect costs, three primary domains are affected by a high remand population:

- CSNSW operations – the operational and administrative impact on the management of correctional centres.
- Broader criminal justice system impacts – including implications for access to justice, as well as the effects on public confidence in the system
- Impacts on the accused – individuals held on remand detention experience significant disruption, affecting their ability to maintain support networks and address reintegration or rehabilitation needs.

This paper explores policy options that address the challenges posed by an increasing remand population. In particular, it considers practical, cost-effective alternatives to pretrial detention that are consistent with existing policy settings around bail and remand.⁹

Bail and remand in NSW

The legislation governing bail and remand in NSW is the *Bail Act 2013*. The Act provides that pretrial detention is permissible if there are bail concerns in relation to an accused person that pose an ‘unacceptable risk’. In relation to certain serious offences, or whether other specified circumstances exist, an accused person may also need to ‘show cause’ before bail can be granted. In these cases, the accused person is required to satisfy the bail authority that their detention is not justified.

The Act provides a structured approach to decision-making. It sets out a range of factors that a bail authority must consider when determining if there are bail concerns. These include conduct of the accused directly related to bail concerns, such as previous non-compliance with bail (including offences committed and conduct towards a victim or victims’ family) as well as matters seen as indicative of risk. Consideration must also be given to any impacts if the person is remanded, including delay, the need for the person to effectively prepare a defence and any ‘special vulnerabilities’, including age, Indigenous status, or a cognitive or mental health impairment.

Although the goal of the legislation is to establish a structured decision-making process, each bail decision involves an evaluative judgement based on the interplay of a multitude of factors particular to an individual case.¹⁰

In addition to the inherent complexity of decision-making in this context, in the Local Court (where most bail matters are determined) decisions have to be made quickly, very early in the criminal process (if police refuse bail they must bring an accused person before the court as soon as practicable, and no later than 24 hours after bail has been refused) and often in circumstances of limited information on many of the factors set out in the legislation.

Research by NSW Bureau of Crime Statistics and Research (BOSCAR) shows that there are substantial variations in bail decisions by police and courts in NSW.¹¹ However, matters like the type and severity of the accused offence, any concurrent offences and prior criminal history are the most common factors referred to in bail hearings and are most associated with bail refusals.



Matters going to the ‘special vulnerabilities’ of accused persons featured less prominently. BOCSAR suggests that this may be because accused persons are unable to obtain the necessary evidence in the short time available before a bail hearing. However, it may also be due to a concern that raising vulnerabilities is a ‘double-edged sword’: in the absence of evidence of how those needs would be addressed in the community if the person was granted bail, this may paradoxically lead to bail being refused.¹²

Where conditions are imposed on bail, they are typically few.¹³ The most frequently used conditions require a person not to associate with others, to reside at a nominated address and to report to the police.

Research conducted by BOCSAR suggests that some magistrates have concerns that the restrictive nature of bail conditions, especially when used in combination, can have a significant impact on the accused’s life.

In some cases, bail conditions can set the accused up to fail as they can make daily tasks difficult, cut the accused off from their support networks and set unrealistic expectations.¹⁴

This last point also emerged strongly from the lived experience forum that was conducted as part of this study. The discussion in that forum repeatedly highlighted how the combination of restrictions and the *absence of support* can create high levels of stress for those on bail, as well as posing a significant challenge when strict compliance with conditions is required over an extended period.



Impacts of the high remand population in NSW

The NSW prison population continues to grow, with the remand population accounting for a larger share of the total prison population than in previous years (see below).

NSW prison population is rising

In the last 10 years (June 2015 – June 2025)...



12% increase in overall prison population.*

51% increase in Aboriginal people in custody.*

5% increase in women in custody.*

but the rate of IMPRISONMENT IS DOWN



194 / 100,000

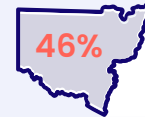


222 / 100,000

compared to a high of

The remand (unsentenced) population now makes up a higher proportion of the total prison population than in previous years.

In 2025, **PEOPLE ON REMAND** make up 46% of NSW adult prison population (Dec 2025).[▲]



of NSW prison population are **people of remand**

Almost **9 IN 10 PEOPLE** received into a correction centre on any given day are **on remand**.*



43% increase since 2015.*

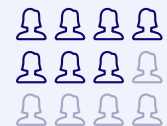
Since December 2015...

Remand prison population has risen by 57%.*

57%



59% OF WOMEN in custody were on remand. **Increase of 63%** since 2015*

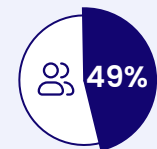


Sentenced prison population has declined by 16%.*

16%



49% OF ABORIGINAL PEOPLE in custody were on remand. **Increase of 142%** since 2015*



* NSW Bureau of Crime Statistics and Research, *Adult Custody Report*, 2025

▲ NSW Bureau of Crime Statistics and Research, *NSW Custody Statistics Quarterly update* December 2025, 2026



A key contributor to the increasing remand population is the greater number of bail revocations, which may be reinforced by the number of technical breach matters that are brought before the court where revocation is sought (see below).

What is driving the increase in the remand population?

1 Time on remand may be a driving factor

40-45% people received on remand are released within 1 month (same as 2015).*



Median time on remand is now 5.9 months (versus 3.1 months in 2015).

2 Revocation of bail could be driving increase in remand population

TWO MAIN FACTORS

1 The rate at which the Court is revoking bail is declining. Falling from 36% in June 2015 to 24% in June 2025.^o

2 The number of breaches submitted to the court where revocation is sought is increasing. 300% increase in number of breaches submitted to court seeking revocation of bail (since 2015). The absolute number of revocations of bail has doubled in the last 10 years.^o

3 Underlying nature of the breaches of bail

| | | | |
|---|-----------------------|-------------------------|--|
| Small change in the number of people held in custody for REOFFENDING . | 882 in 2015 | 948 in 2025 | |
| Number of people held in custody for TECHNICAL BREACHES OF BAIL has tripled. | 880 in 2015 | 2,507 in 2025 | |

* NSW Bureau of Crime Statistics and Research, *Adult Custody Report*, 2025

^o NSW Bureau of Crime Statistics and Research, *Bail*, 2025



Operational impacts

The high remand population poses significant operational challenges for CSNSW in the areas of reception, classification and placement, and general management of this cohort.

The reception process is labour-intensive, involving information gathering and assessments of the inmates, and is often undertaken when inmates are experiencing poor mental and general health. The high level of remand receptions places significant stress on CSNSW's capacity to manage demand and leads to a reallocation of resources towards services addressing immediate issues, away from other, longer-term interventions designed to promote safety and rehabilitation.¹⁵

Once received into CSNSW custody, an inmate must be placed in an appropriate facility. This is a two-step process of classification and placement.

As remand inmates often present with higher levels of clinical needs and distress, they are typically classified to and housed in facilities with higher levels of security. Around 65 per cent of inmates with a maximum-security classification are on remand. Further, 97 per cent of male inmates on remand with a minimum-security classification and 78 per cent of male remand inmates with a medium-security classification are housed in more secure environments than their classification requires.¹⁶ This means that remand custody is frequently both more resource-intensive for the system and more restrictive for the inmate.

In terms of placements, CSNSW is required, as far as practicable, to keep remand inmates separate from other inmates. With the remand population at such a high level, this can be challenging, especially when other factors relevant to placement of inmates are taken into account, such as proximity to family and impact on their ability participate in the court process (for example, the ease with which they can appear in court or meet with their legal representatives).

Currently, the demand for metropolitan remand beds outstrips supply. Accordingly, many remand inmates are housed in regional areas away from both their support networks and their legal representatives. Frequent movements are required to enable them to access court, presenting a cost to CSNSW operations and the inmate's wellbeing.

In general terms, the remand population is considered to be more volatile and so more resource-intensive for the agency to manage.¹⁷ Compared to sentenced inmates, people on remand:

- are more than twice as likely as sentenced inmates to be involved in assaults on other inmates;
- have significant rates of serious self-harm;
- require more unscheduled hospital visits; and
- have higher rates of unnatural death in custody.¹⁸

These incidents represent serious and sensitive matters within custodial settings.

Integrity of criminal justice system

The legitimacy of pretrial detention depends on an appropriate balance between the public interest in protecting individuals and the broader community from harm (including offending), and the public interest in fundamental principles such as the presumption of innocence and the right to liberty.



Unfairness

In May 2025, the Chief Justice of NSW made a public statement on this issue. In part, he said:

*“The decision to grant bail to any person charged with a serious offence is not risk free. The Bail Act does not allow a grant of bail if the risks, as assessed, on the evidence before the judge, are unacceptable. In some circumstances additional tests apply. The Act necessarily accepts that there will be some risk. Over time, having regard to the significant volume of decisions being made, that risk will, on occasion be realised. On the other hand, there is a risk of doing irreparable harm to individuals ultimately found to be not guilty of any crime by imprisoning them for long periods whilst on remand at what is often a formative time in their life. This assists neither the individual nor the protection of the community”.*²⁰

Two features of the current remand population highlight this concern.

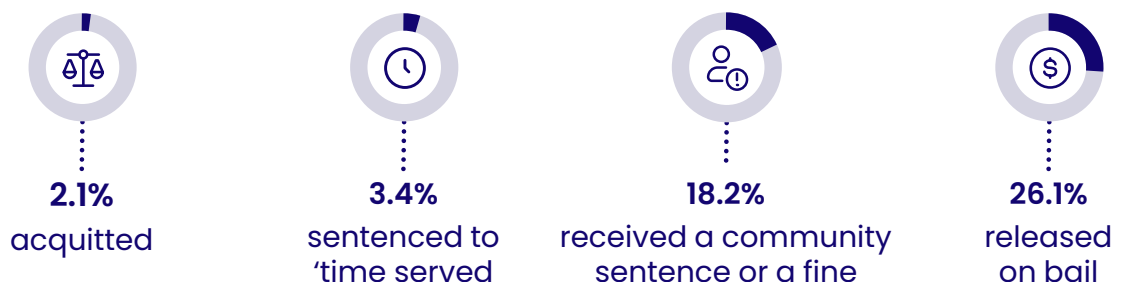
First, a significant percentage of people received into custody on remand do not end up receiving a custodial sentence, even if convicted.

In 2012, the Law Reform Commission stated that:

“It is a matter of concern that people who are found not guilty...are imprisoned for even a short period of time, let alone until the proceedings are finalised. While this is undoubtedly an inevitable feature of even the most fair and reasonable system of pre-trial detention, in individual cases it is hard to see it as anything other than unjust (5.26) ...

“[C]ases of time in custody on remand which are found not to warrant a custodial sentence...are again a matter of concern...While the criminal justice system must recognise situations where pre-trial detention is justified, it is also important to minimise detention of people whose offending is ultimately found not to warrant imprisonment as a sanction (5.31).”

In the period 2022–2024, **only 42.6 per cent of people received into custody on remand were sentenced to further time in custody.** Of note, a significant proportion received a community sentence or were released on bail:



As noted by the Law Reform Commission, it is hard to describe the experience of a person held on remand who is ultimately not sentenced to custody as anything other than, from that individual’s perspective, unjust. Further, given that a feature of the management of the remand population is that they do not have access to rehabilitative programs (and limited access to work and education) but are exposed to the broader criminogenic environment of prison, the experience of remand may not only be unjust but one that escalates the person’s risk of subsequent reoffending.²¹



Overrepresentation

The second feature of the remand population that may affect the integrity of the criminal justice system is overrepresentation.

The rate of remand of Aboriginal people and of women exceeds that of the overall population (45.8 per cent and 56.3 per cent respectively). The rate of Aboriginal people being refused bail by police and courts, and the rate of revocation for breach of bail (other than for reoffending) for Aboriginal people also exceeds that of the general population.²²

There are more women in custody on remand than there are sentenced, and an increasing number of those are likely to be in custody because of technical breaches of bail.²³ The Inspector of Custodial Services in her 2020 Report entitled “Women and Remand”, recommended that a different approach be taken for women in remand custody.²⁴ It has been demonstrated that women in custody have significantly higher rates of trauma and prior victimisation, and that many of the negative impacts of remand (including mental health and family disconnection) are identifiable to a greater extent in the women’s population than in the general population.

Issues of overrepresentation also exist for those with other forms of disadvantage. Research consistently demonstrates that there is a higher representation of people in custody with the following characteristics:

- experience of out-of-home care as a child (including having a parent who has been imprisoned);
- limited school education;
- early contact with police;
- unsupported mental health and cognitive disabilities;
- problematic alcohol and other drug use;
- homelessness and unstable housing;
- unemployment; and
- residence in a socioeconomically disadvantaged area.²⁵

Although these statistics relate to the prison population as a whole, it is almost certain that similar characteristics are also prevalent in the remand cohort.

Preparation for trial

In addition to broader issues of principle, there are also more mundane challenges to the criminal justice system caused by a high remand population.

In his statement in May 2025, the Chief Justice of NSW noted:

“Because of finite resources in the criminal justice system, including the number of judges, prosecutors and public defenders as well as the limited number of courtrooms in which jury trials may be held, it is not possible to ensure that an accused person held in prison on remand will receive a quick trial, despite the best efforts of all concerned. A person charged with a serious offence may have to wait up to three years before their trial comes on for hearing...”²⁶

In the criminal justice system, the right to a fair trial includes the entitlement to adequate time and facilities to prepare a defence and to communicate with counsel. What constitutes adequate time depends on the circumstances of each case, including the complexity of the case and access to witnesses and evidence.



The requirements for adequate facilities mean that the accused must be given access to documents and other evidence necessary for the preparation of their defence. The accused should have the opportunity to be represented by a lawyer and to communicate with them freely in conditions that allow for confidentiality. These are all matters that can be negatively impacted if a person is in custody.

It has been acknowledged that someone on remand is often at a disadvantage during a trial. For example, the logistical arrangements required to ensure a person attends court may result in them being woken very early in the morning, spending many hours on escort before reaching the court and being placed in court cells. As a result, 'tiredness' is frequently reported by inmates, which impacts their ability to fully engage in the proceedings and the conduct of their defence. In addition to increased levels of stress and uncertainty, this can contribute to delays in court processes, leading to people spending longer periods on remand.

There are also real challenges in relation to limitations in existing technology and infrastructure within the correctional system. Demand for access to audiovisual links within correctional centres has doubled in the last five years and, despite some infrastructure investment, meeting increasing demand remains an ongoing problem. Concerns have also been raised about limited confidentiality available for inmates using audiovisual link and other forms of communication when talking with their legal representatives.²⁷

Impacts on the accused

There is an existing and relatively extensive body of research that has highlighted the negative impacts of incarceration on individuals.²⁸ These are both immediate, impacting the person during the period of custody and, in the longer term, persisting after the person is released.²⁹

Although most of this research does not discriminate between persons held in custody on remand or those serving a sentence, the following impacts of imprisonment apply to both:³⁰

- Physical and psychological hardship;
- Barriers to exercising legal and civil rights, including participating in Family Court proceedings;
- Disruption to employment, education and training;
- Loss of income and associated financial hardship arising from an inability to meet financial commitments;³¹
- Damage to significant relationships and disconnection from support networks;
- Adverse impacts on children (up to 40 per cent of prison entrants reported having one or more dependent children);
- Poorer health and wellbeing outcomes (people leaving prison are at a higher risk of death than the general population, particularly in the first month after release);³²
- Increased likelihood of further incarceration or other adverse contact with the criminal justice system; and
- Impaired access to social services upon release, housing, employment and alcohol and drug rehabilitation services (a history of incarceration can either disentitle or deprioritise a person from accessing these services).³³

These impacts are proven to be even more pronounced for Aboriginal and Torres Strait Islander people, particularly women. Loss of culture and disconnection from Country and community due to imprisonment may have adverse impacts on the social and emotional wellbeing of Aboriginal and Torres Strait Islander people who experience incarceration.³⁴



Alternative approaches from international and Australian case studies

An increasing remand population is a global problem. Case studies were conducted in two comparable jurisdictions – Scotland and South Australia (SA) – that have implemented systems of bail supervision as a supplement to bail and as a direct alternative to remand.

CASE STUDY Bail supervision in Scotland

What is bail supervision?

The aim of bail supervision is to reduce the use of remand by giving confidence to the court and broader community that people on bail will be supported to comply with the conditions of bail, and that any non-compliance will be robustly managed.

Bail supervision operates through an optional additional condition of bail that can be imposed on an accused person by a court.

In reaching this decision, the court is provided with a report prepared by Justice Social Work (the Scottish equivalent of Community Corrections in NSW) that assesses whether the accused person requires a level of supervision, monitoring and support to adhere to bail conditions.

Supervision can only be imposed if the court considers the person would otherwise be held on remand.

Where a person is released subject to a bail supervision condition, they are required to meet with a bail supervisor (or a nominated person from a third sector agency) on a regular basis and to engage with a range of activities designed to support the person. This can include direct interventions by the bail supervisor and referrals to relevant support services such as accommodation, employment, drug and alcohol services or mental health support. Progress reports are provided to the court at each appearance of the accused.

Electronic monitoring can be included part of a supervision condition (in Scotland it is also available as a standalone condition).

The evolution of bail supervision in Scotland

In Scotland, although criminal justice policy is developed at the national level, its implementation is largely dependent on the approach taken by local authorities. This approach is often shaped by the size of the authority and resources available locally. As a result, significant variation can arise across different local authorities and between the operationalisation of an initiative and the national policy framework.

In July 2008, the Scottish Prisons Commission published a report entitled “Scotland’s Choice”. Many of the same features of the prison population in Scotland in 2008 are experienced in NSW in 2025.



The report described the following features of the prison system in Scotland:

- ⦿ One of the **highest rates of remand inmates** as a percentage of the prison population in **Western Europe**, at around **20 per cent**;
- ⦿ An **unprecedented growth in the remand population** (an increase of nearly 70 per cent in the previous 20 years);
- ⦿ The **number of remand receptions exceeded those for sentenced inmates** (at around 55 per cent);
- ⦿ **Remand receptions** comprised around **67 per cent of total women** receptions; and
- ⦿ **Higher death in custody rates, high incidence of mental health problems, higher rates of self-harm and increased violence in the remand population.**

It was also noted that of those remanded in custody on 30 June 2006, between 21 per cent to 47 per cent did not end up serving gaol sentences.³⁵

In response, the Commission made a range of recommendations including increasing the use of bail supervision and electronically monitored bail supervision. There had been various forms of bail information and supervision piloted across Scotland since the mid-1990s, largely in the metropolitan areas of Edinburgh and Glasgow. To support the widespread uptake, they also called for enhancements to court-based social work units.

In 2012, an evaluation of bail supervision by the Scottish Government found that although there was a significant variation across local authorities in terms of the cohort that was subject to bail supervision, as well as the frequency and nature of contacts between bailees and supervisors, there was a high level of successful completion and breach rates were low.³⁶ Despite concerns about 'net-widening' (where people were made subject to supervision even if it was not necessary to avoid remand) there was little evidence found of the practice being widespread. Indeed the Commission found that, at least in part, the success of the scheme in ensuring higher levels of compliance (including among those with a history of previous non-compliance) was that it was seen as a *genuine* alternative to custody and not simply as an additional condition of bail.³⁷ A cost-benefit analysis of supervised bail found that the scheme produced significant savings, with a cost-benefit ratio of between 1.7 and 6.6.

In 2018, a Scottish Parliamentary Inquiry into the Use of Remand heard that despite its potential, bail supervision remained underutilised and that the availability of bail supervision remained inconsistent across the country.³⁸ Although the Committee received evidence that questioned whether greater availability of bail supervision would result in a reduced use of remand (which remained a key policy objective of bail supervision), it also heard that supervised and supported bail programmes were effective in helping people comply with conditions of bail and had a positive impact on such issues as addiction and housing problems.³⁹ The Committee recommended that the Scottish Government provide further funding to support bail supervision and that a national approach to bail supervision be developed.

Following the Parliamentary Inquiry, the Scottish Government undertook a wide-ranging consultation on 'bail' as part of a broader consideration of the use of custody in Scotland, noting that since 2008, although the overall prison population was in decline, the rate of imprisonment remained high (by then 146.6 per 100,000) and that the remand rate had continued to increase. The consultation process identified strong support for community-based interventions for accused as an alternative to remand, including enhanced use of electronic monitoring as a means of the accused remaining in the community.⁴⁰



At the same time, the Scottish Government developed and published National Guidance for Bail Supervision that set out minimum standards and expectations for those involved in providing bail supervision.

In 2022, the government provided an additional 3.2 million GBP in funding to local authorities to support bail supervision, as well as revising and reissuing the Bail Supervision National Guidance.

“

The level of supervision and nature of activities included in the management plan is determined by the strengths and areas of need of the bailee and is flexible and adaptive.

Is it working?

A consistent theme in the evolution of bail supervision in Scotland is that it seems to promise more as a policy solution than it delivers. However, this appears to be largely because of difficulties in ‘mainstreaming’ bail supervision into the broader bail and remand system. This challenge highlights the need for clear policy and guidance as well as adequate resourcing for any such scheme.

In addition to the detailed policy analysis undertaken between 2018 and 2022, the Scottish Government also commissioned an independent research study into bail decision-making in Scotland. The aim of the research was to explore how decision-making works in practice and gather key stakeholder perceptions on bail options. The review findings, published in 2023, provides some qualitative assessment of the effectiveness of bail supervision in Scotland.

The review found that there was a high degree of variation between geographic areas both with regards to understanding, uptake and use of bail supervision. The level of confidence in, and support of, bail supervision was found to vary in relation to the level of information and knowledge of the justice system participants (e.g., police, judiciary, prosecutors, defence lawyers).

Some bail authorities were strongly supportive of bail supervision and its potential, describing it as an ‘invaluable resource’ that could help to reduce the use of remand ‘if it could be resourced to accommodate even higher numbers of orders’. Of note, these views were held in locations where there was regular and ongoing contact between the court and Justice Social Work staff to help promote and explain the scheme. The existence of clear frameworks for bail supervision supported the court’s confidence, as they knew exactly what it would entail for each individual. However, in some locations, the courts had little or no knowledge of what it entailed despite being aware of the existence of bail supervision. Unsurprisingly, uptake was limited in those locations.

Despite a wide range of views, many participants thought that supervised bail was a useful and valuable service.

The limitations of bail supervision were noted, in that its effectiveness was largely dependent on the accused person’s ability and motivation to engage and desist from further offending. There were some concerns that the system for dealing with breaches was confusing and difficult (noting breach of bail is a criminal offence in Scotland).⁴¹

Despite some misgivings, all stakeholders agreed that there was a need for more proactive support and more protective measures to assist accused (especially vulnerable accused) and to prevent the cycle of reoffending including immediate support for people released on bail, and that apart from a massive and probably unrealistic increase in expenditure on social infrastructure (especially around housing, mental health, alcohol and drugs and other social work supports), there were no real alternatives to remand other than bail supervision.



Even though the qualitative assessment set out in the 2023 review is perhaps best described as cautiously or conditionally supportive, available quantitative information provides a potentially more positive picture.⁴² This includes:

- The use of supervised bail has increased dramatically in the three years prior to 2023–2024.
- Bail supervision is at its highest level ever, at 1,302 cases.
- In 19 per cent of cases, bail supervision was ordered alongside an electronic monitoring order (up from 11 per cent the previous year).

Although the statistics do not directly allow the calculation of ‘successful’ bail completions (as the reported figures may include cases that commenced in a previous year/s), in 2023–24, there were 830 bail supervision cases completed successfully. Given the overall number of cases with bail supervision, it is fair to estimate that a relatively high percentage of cases – around 80 per cent – are completed successfully. In support of this view, it should also be noted that only 120 bail supervision breach reports were submitted in the same period.⁴³

Given there are multiple factors impacting the makeup of the prison population,⁴⁴ it is reasonable to infer that bail supervision has made a positive impact on the volume of the remand population (even if only to stem the growth).

In the Financial Memorandum prepared in support of the Bail and Release from Custody (Scotland) Bill of 2022, an attempt was made to quantify the costs involved in expanding bail supervision. It was identified that a reduction in the demand for remand beds of just 118, even with the additional cost impacts to Justice Social Work, courts and other justice sector entities being taken into account, could realise a cost saving of around GBP 1.7 million per annum.

CASE STUDY Bail supervision in South Australia

The background

Bail supervision has a long history in SA. As part of its reform of bail laws in 1985, bail supervision was identified as a possible policy solution to address three interrelated problems:

- The high remand population in SA (at that time, one of the highest in Australia);
- Overrepresentation of ‘the poor’ in the remand population; and
- Concerns that people on remand were not ultimately given a custodial sentence.



1985 ... The **Bail Act 1985 (SA)** included specific provisions that allowed a court to impose supervision as a condition of bail in circumstances where an accused may have difficulties in complying. Supervision was to be provided by the SA Probation Service (the equivalent of Community Corrections in NSW).⁴⁵

1986 ... In 1986, a review was done of the operation of the legislation.⁴⁶ It found that bail supervision was rarely used and recommended that both the courts and the probation service make greater efforts to expand its use.

In response, the SA Department of Correctional Services established the Courts Unit, comprising two probation officers who were permanently based at the Adelaide Magistrates Court. The Unit was established to provide the Court with real-time reports, including pre-sentence, community service work and bail assessments. This was expanded in 1988 following consultation with the magistrates in the court, the police prosecutors, and the Legal Services Commission solicitors. Broadly speaking, the objectives of the expansion was to:

- Provide verified information to the court to enable the court to make a more informed decision in relation to bail;
- Provide support to bail applicants, which may increase their likelihood of securing release on bail;
- Reduce the number of defendants held in custody, with refused bail or unable to meet the conditions of bail, where the penalty for the alleged offence was unlikely to result in a sentence of imprisonment;
- Reduce the number of defendants held in custody, charged with serious offences, where the time between arrest and trial was likely to be lengthy;
- Provide supervision of the bailee in the community.⁴⁷

1987 ... In 1987, amendments were made to the Act that introduced an option of home detention where a person on bail is obliged to remain at a specified address for the period of bail, with monitoring and surveillance provided by officers of SA Corrections.⁴⁸

The current system in SA operates in two tiers: 'bail supervision' and 'intensive bail supervision':

- 'Bail supervision' is a condition that requires a bailee to submit to supervision by Community Corrections. It may be imposed by a court without an assessment or other report being provided by Community Corrections. However, a court may request a report on the suitability of a person for supervision (and whether resources are available to effect supervision).
- 'Intensive bail supervision' involves a combination of bail conditions that effectively impose home detention and the use of electronic monitoring to ensure compliance. Where intensive bail supervision is being considered, the court will order an assessment report. This report is undertaken by the Intensive Compliance Unit of SA Corrections.

There is little publicly available analysis of the operation of bail supervision in SA, though information in Departmental Annual Reports suggests it has met its stated policy goals.

2021 ... In 2021, SA's Intensive Bail Supervision won a 'silver award' at the Australian Institute of Criminology 'Australian Crime and Violence Prevention Awards'. At that time, it was reported that close to 1,000 offenders were subject to electronic monitoring, and more than 600 of those were on Intensive Bail Supervision.



In 2023–24 the rate of successful completion of both bail supervision and intensive bail supervision to be 83 per cent, well above the goal of 70 per cent.

Although there has been no formal evaluation of bail supervision or intensive bail supervision, in March 2019, an evaluation of Home Detention in SA was published by UNSW. This report provides valuable insights into key areas of commonality between the home detention scheme and intensive bail supervision.⁴⁹

The evaluation examined changes made in SA to increase the use of home detention as an alternative to custody for sentenced inmates. Like intensive bail supervision, home detention for sentenced people requires participants to remain at home (unless absence is authorised), be subject to electronic monitoring, and to comply with various other conditions.

One form of home detention involves an administrative decision by Corrections SA to release eligible and suitable sentenced inmates to serve their sentence by way of home detention. The evaluation found that a reduced return-to-custody rate among people who completed their sentence on home detention ordered by Corrections SA, and no increase in breach numbers despite significantly longer home detention sentences. The report surmised that this demonstrated the effectiveness of the assessment processes used by Corrections SA in selectively targeting those more likely to manage home detention conditions.

The evaluation also included an economic analysis. It found significant demonstrable cost offsets for the government, as well as non-costed positive outcomes such as an increased ability to retain housing and therefore reduce the risk of homelessness or reliance upon homelessness services.⁵⁰ In terms of direct costs, the evaluation noted that home detention sentences had an annual cost of around \$21,694, which represents less than 22 per cent of the annual cost of prison in SA.⁵¹ Further, the study was able to estimate 'custodial cost offsets', by reference to a reduced rate of return to custody for this group, which increased the overall cost benefit from 1:4 to 1:7.

The study also noted that home detention also presented "a wide range of implicit positive outcomes ... such as increased ability to obtain and sustain appropriate housing and reduced risk of homelessness, management of drug and alcohol abuse, improved community and workforce participation, improved education and job skill training, improved and sustained physical and mental health, as well as improved outcomes for families, partners and children of offenders".⁵²

Taking a similar approach, it is possible to estimate the direct costs savings of 'normal' bail supervision. Based on the Report on Government Services data, a day in custody in SA costs \$240.19, whereas a day under community supervision costs \$22.57. Given that there are over 2,000 people subject to some form of bail supervision in SA,⁵³ where it is functioning as a direct and real alternative to remand custody, the cost savings are potentially in the order of \$400,000 - \$500,000 per day.

Although the costs of intensive bail supervision would likely be higher than the normal community-based supervision (and are not reported on in Report on Government Services data), given that the structure of the program is essentially the same as the home detention program, and success rates for bail supervision are comparable with those for home detention, it is likely that intensive bail supervision would have a similar 1:4 cost benefit compared to remand custody. Additionally, it is likely that some of the custodial cost offsets seen in home detention could accrue in respect of persons subject to bail supervision.



A NSW policy agenda for alternatives to pre-trial detention

There are many complex factors that are contributing to the increase in the remand population. Accordingly, there are many policy challenges that, if addressed, could mitigate the need for remand custody. These include issues related to:

- The overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system;
- Limited access to appropriate housing;
- Limited access to mental health and alcohol and drug treatment;
- Gaps in service delivery across multiple sectors in regional and remote areas;
- Inadequate information-sharing between agencies in contact with people involved in the criminal justice system, including to support transitions from remand to bail; and
- Insufficient support to assist individuals in understanding and complying with bail conditions.

Examples from other jurisdictions demonstrate the value of integrated service models to support people accused of a criminal offence. In Victoria, the Court Integrated Services Program offers a coordinated approach to the assessment and treatment of defendants at the pretrial or bail stage, through case management referrals to support services such as drug and alcohol treatment, crisis accommodation, disability services and mental health services.⁵⁴

There are also a range of initiatives in NSW that are being planned or underway that tackle some of these challenges. For example, the Aboriginal Legal Service is piloting a bail advocacy service to help people on remand access bail. Justice Health is expanding its Statewide Community and Court Liaison Service that diverts eligible defendants living with mental illness away from the criminal justice system by connecting them with local mental health care and support services.

The policy proposals considered below, however, look to provide alternatives to pretrial detention that are not currently available in NSW.

The goal is to provide cost-effective alternatives to full-time custody that meet the objectives of the Bail Act as well as community expectations around safety and protection.

These alternatives would provide significant benefits to the criminal justice system, including supporting existing initiatives aimed at facilitating access to bail.

In 2012, the New South Wales Law Reform Commission (NSWLRC) recommended that consideration be given to establishing a pilot scheme for the release of people already detained and likely to spend a substantial amount of time on remand, subject to the use of electronic monitoring and supervision by CSNSW. The government accepted that further consideration be given to such a pilot, and although it appears that some preliminary work was done within CSNSW, no such pilot has ever been implemented. Given that the remand population has almost doubled in the 13 years since that report was written, it is both timely and critical that further consideration be given to this recommendation.



Two options present themselves for consideration: bail supervision, which has been implemented in Scotland and SA, where 'supervision' is a special condition of bail; and 'community remand', an innovative approach where persons on remand are managed by CSNSW in a community setting.

1 Explore introducing bail supervision into NSW

Bail supervision in NSW could take the form of a special condition of bail that could be imposed by a court in appropriate circumstances. Key features of the scheme could be adapted from the case studies in SA and Scotland:

1. A Community Corrections officer would prepare an assessment or suitability report for the court.
2. If bail supervision is imposed, the person would be required to comply with case management by Community Corrections or risk revocation of bail and return to custody.
3. Bail supervision would involve a range of interventions to ensure the accused person complied with the other conditions of bail (which could include reporting requirements, curfews, place restrictions and non-associations).⁵⁵ However, supervision may also involve engagement with other interventions such as attending for alcohol and drug rehabilitation, continuity of employment or participation in other programs and activities designed to support the accused in day-to-day living (and addressing any underlying vulnerabilities or risks).
4. Electronic monitoring would be an available option.
5. Breaches of bail (including the supervision condition) remain a matter for police and are managed in the same way as other breaches of bail.

Advantages

In the last 10 years, there has been a remarkable consistency in the percentage of people received into remand who are discharged within one month. Bail supervision, if properly targeted, could reduce the number of people received into custody or those who spend short periods on bail (or further reduce the time spent on remand for those who are granted bail within a short period).

Ideally, bail supervision should be structured in a way to avoid any period on remand, thereby limiting the impacts of custody on the accused as well as the costs associated with the 'churn' of short-term remands for CSNSW. However, this would require either (or both) a process enabling a court to impose a supervision condition without a report from Community Corrections (as occurs in SA) or a significant investment to allow Community Corrections to provide such a service to the court on the same day as a matter is determined (as in Scotland).

At an individual level, bail supervision could ameliorate the negative impacts of remand. It would facilitate a person's ability to prepare for trial and minimise the criminogenic effects and disruption to their connections to the economy and society that comes with incarceration.

For individuals, bail supervision in community settings could address a range of specific concerns raised by persons with lived experience. These include:

- Building real and meaningful engagement between individuals on supervision and service providers which could offer enduring benefit, irrespective of the criminal justice outcome. This could include providing information and support to family members who are impacted.



- Providing a safe environment for those under supervision (particularly individuals with significant trauma histories and individuals who themselves are victim-survivors), including identifying mental health issues and potential self-harming behaviours that may otherwise be undetected.
- Supporting people to navigate a complex criminal justice system including by providing information on what is happening and what the expectations on the person are (for example when they are required to appear in court, what to do in preparation for sentencing in case a term in custody is imposed).
- Enabling access to drug replacement therapy and structured support to address problematic drug and alcohol use.

Secondly, in terms of operational benefits, this would assist CSNSW by suppressing the demand created by the number of remand receptions and related management challenges arising from the increased volatility of this cohort. On a budgetary level, each day of remand custody avoided would deliver \$294.68 in savings based solely on the difference between the average cost per day of custody and the average cost per day of community supervision. This saving would be reduced to \$236 per day if the person was also subject to electronic monitoring.

At a system level, bail supervision would facilitate access between a person and their legal representatives when attending court.

Barriers and risks

There are several barriers to implementing a bail supervision system. The first is that the scheme would almost certainly require legislative change.⁵⁶ For example, the Bail Act might need to be amended to provide for a bail authority to impose supervision as a conduct condition, along with provisions supporting the exercise of functions by Community Corrections to monitor compliance with such a condition.

The second is that it would require additional investment in community corrections.⁵⁷ Although the direct cost comparison incorporates a cost for community supervision, there would also need to be an allocation towards staffing (and associated capital and operational expenditure) for those required to undertake assessments and prepare reports for the court.

Additionally, less significant barriers would include the need to develop protocols and procedures to support what would be 'new business'. For example, how and when Community Corrections staff could raise concerns with police about the conduct of a person subject to bail supervision.

There are also risks involved in the bail supervision model.

One of the key risks is 'net widening'. This would arise where people are made subject to bail supervision where they would otherwise have been granted bail anyway. This is a significant risk for two reasons. The first is that evidence from Scotland has shown that, unless the accused perceives the condition as a genuine alternative to remand (rather than merely an extra layer of monitoring and control), compliance significantly reduces. The second is that, noting the rate of reported breaches on technical grounds and given the additional obligations that come with a supervision condition, net widening would likely expose more people to the risk of remand custody for a technical violation of bail conditions.



A further risk exists in community expectations. Currently, there is a high degree of community concern about the risk posed of a person committing an offence while on bail. This concern is typically heightened following an incident in which a person on bail commits a high-profile offence. Irrespective of the quality of assessments undertaken and supervision that could be provided, it is almost inevitable that at some time a person subject to bail supervision (even intensive bail supervision) will commit an offence.

From a policy perspective, this risk is unavoidable. No arguments derived from principle (for example, the public interest in maintaining the presumption of innocence) or even from evidence as to the positive effects of supervision and the negative effects of incarceration can do justice to the experience of a person harmed by serious crime.

However, an evidence-based, carefully designed and managed program, subject to rigorous and ongoing monitoring and evaluation, can clearly articulate the high cost and negative impacts of a growing remand population (in dollar terms as well as impacts on the broader criminal justice system).⁵⁸ SA has demonstrated the possibility of implementing an effective scheme that improves outcomes and reduces costs.

In this respect, it is also notable that, over the last 10 years, the most common bail conditions breached do not involve reoffence but rather relate to reporting, residence, alcohol and drug use and curfew. These are matters that supervision can both better identify and address than the current enforcement system.

2 Develop a program of community-based remand

Community remand could operate through CSNSW who would make an administrative decision to manage a remand inmate in a community setting. This would be facilitated by a permits system that allows the Commissioner to grant leave to an inmate to be absent from a correctional centre for certain purposes. A grant of leave may be subject to any conditions the Commissioner considers appropriate and does not formally change the person's custodial status. While on leave, the person could be subject to electronic monitoring and supervision by Community Corrections officers. As with bail supervision, community remand would involve a range of appropriate support and intervention designed to build strengths and continue engagement with any existing community supports (for example, employment or education) as well as target vulnerabilities (for example, alcohol and drug treatments).

Advantages

Unlike bail supervision, this scheme could be operationalised within existing legislative frameworks.

There are precedents for CSNSW to manage people in community settings who would otherwise be in custody (albeit because of a judicial decision or one made by the State Parole Authority). These include:

- Intensive Corrections Orders – a sentencing option that involves the imposition of a custodial penalty to be served in the community.
- Reintegration Home Detention – an option allowing a person to complete up to 6 months of home detention prior to eligibility for release on parole.

Reference could also be made to the scheme in SA for home detention by way of an administrative order rather than a court-imposed order.



The use of permits with conditions provides a high degree of flexibility for staff in administering the scheme, noting that non-compliance with conditions can be dealt with as an administrative decision, including providing warnings, written directions, addition or variation of conditions, revocation of leave and even the power to arrest without warrant for a breach of conditions, and so requires no involvement of police.⁵⁹

The conditions attached to leave permits could also provide supervising officers with an extensive range of options to assist in monitoring compliance, such as the ability to search the person and their property, inspect phones and computers, drug and alcohol testing and to make inquiries with relevant third parties concerning the person's conduct in the community. This goes well beyond the scope of the enforcement powers available to the police in respect of a person on bail.

As with bail supervision, the scheme would involve a cost shift from custody to community, but remaining within the broader remit of the overall CSNSW budget. Additionally, it is likely that the assessment of eligibility and suitability of people for participation in the scheme could reasonably be absorbed into the existing custodial case management process, noting there is no requirement for a report to the court. Accordingly, given the identified cost savings from avoiding remand custody, it is likely that no additional resourcing is required for CSNSW.

As the person remains an inmate, it would also be possible for appropriate persons to be housed in residential facilities managed by CSNSW, at least for a transitional period.

Barriers and risks

A key challenge to the operationalisation of community remand is defining the appropriate cohort. Unlike bail supervision, this scheme would not focus on those likely to be released on bail within 30 days but would instead target those 'long-term' remands whose custody extends beyond that period (around 60 per cent of the remand population).

Given that the decision to manage someone in the community appears, superficially, to contradict a judicial decision that a person needs to be kept in custody on remand, careful consideration would need to be given to how eligibility and suitability would be determined. This may include, for example, excluding certain people by reference to the nature of the offence they are alleged to have committed (such as serious violent, sexual or domestic and family violence related offences).

There would also be a need to develop appropriate information-sharing protocols with the courts, police and prosecuting authorities to ensure that all relevant information is available when the option of community remand is being considered, though it is anticipated that this would involve enhancement of existing arrangements for the exchange of information between these agencies and CSNSW.

There would need to be consideration of whether collaboration with other agencies is required to ensure service provision, such as housing and health care (noting the status of the person is formally 'in custody'). There may also be requirements to consider the impacts of this status on social security or similar entitlements.

Importantly, this system of remand would require consideration of appropriate protocols to ensure that alleged victims are informed that the person will be in a community setting.



A key risk of this system relates to the perception by both the judiciary and the broader community that CSNSW's decision to manage a person remanded into custody might be seen as 'second-guessing' the court's decision. In this regard, it would be important to note that:

- CSNSW's decision is based on a careful assessment of information that is unlikely to have been available to the court when bail was determined. By the time CSNSW undertakes its assessment, additional information has usually been gathered that the court did not have access to when making the bail decision.
- The decision by CSNSW is made on the basis that strict controls, monitoring, and supervision will be imposed that go beyond what a court could reasonably take into account when determining whether bail conditions adequately address identified bail concerns. When determining bail, a court must consider what measures could be put in place to manage risk, but these are generally limited to bail conditions and their enforcement by police. In contrast, the controls available under this scheme are significantly more extensive and allow CSNSW to implement a higher level of monitoring and supervision.

The second key risk is the same as that for bail supervision: reoffence. The most significant difference between the two models is that, under the community remand scheme, accountability for including a person in the scheme rests with CSNSW. Although the same mitigations noted above apply, there is an additional heightening of risk due to the concentration of responsibility in a single decision-maker, specifically where that decision-maker is not a member of the judiciary.



Conclusion

Bail and remand are highly sensitive public policy issues. Government faces an almost impossible task of reconciling the need to address the negative impacts of a growing remand population with community expectations and concerns. The options of bail supervision or community remand (or a combination of both) offer realistic alternatives that could potentially address this challenge.

The purpose of this study is to identify alternatives to pretrial detention in NSW that can mitigate some of the negative impacts and reduce the burgeoning number of those on remand.

In view of the above analysis, a priority policy choice would be to invest in developing a pilot for community-based remand, which would continue to support the objectives of the system of bail and the integrity of the criminal justice system overall

The key reasons for prioritising this model are that it:

- can be operationalised within existing legal framework and implemented within existing resources in CSNSW;
- provides greater control over who enters the program and would be a real alternative to remand (and so avoids net-widening);
- allows for the development of necessary protocols and procedures for community supervision of unsentenced persons; and
- provides an opportunity to develop a robust evaluation framework.

Should the pilot prove to successfully address identified bail concerns and mitigate the negative impact of remand (including clearly identifying cost savings), consideration could be given to undertaking the more extensive work that would be involved in developing a bail supervision model.

A pilot scheme targeting those who are disproportionately affected by remand – , women and Aboriginal and Torres Strait Islander peoples – could be a useful basis for this scheme. There are more women in custody on remand than there are sentenced, and an increasing number of those are likely to be in custody because of technical breaches of bail.⁶⁰

The Government has committed to taking steps to meet Closing the Gap targets. Data shows an even higher rate of over-representation of Aboriginal people in the remand population than the overall prison population. Any pilot program of community-based remand should be co-designed with Aboriginal communities to ensure a model of supervision in accordance with the principle set out in the Closing the Gap agreement.

A cautious approach using a pilot that would allow careful testing an evaluation of approaches and evidence offers a way of balancing significant fiscal and policy benefits of alternatives to remand with risks around community perceptions.



Annex A | Consultations

Advice and data were provided by the following in addition to publicly available information:

- **NSW Corrections Research Evaluation & Statistics directorate**
- **Community Justice Division, Scottish Government**
- **Court Social Work team, Glasgow Criminal Justice Services, Glasgow City**
- **Sacro (Glasgow)**
- **Department for Correctional Services (South Australia).**

Several people and organisations also contributed to the research for this paper through discussion of the background and key themes. The policy positions set out in the Policy Insights Paper are those of the author and may not represent those of the individuals and organisations listed here.

- **Professors Fergus McNeil and Sarah Armstrong, Scottish Centre for Crime and Justice Research, Glasgow**
- **Dr Emma Russell, Associate Professor, La Trobe University**
- **Members of the NSW Bail Act Monitoring Group**
- **Keeping Women Out of Prison (KWOOP) Coalition**
- **Participants in a Lived Experience Forum convened by Tina McPhee, PhD Candidate, Teaching Fellow, Lived Experience Criminologist.**

Aaron Lutter-Wood and Maddison George of CSNSW also provided input and advice on data and analysis of information.



Annex B | Bail supervision in Scotland

How does it work?

Although Scotland's National Guidelines set out standards and expectations on how bail supervision is to be implemented, there are still differences across local jurisdictions.

What is outlined below describes the Justice Social Work team's practice at the Glasgow Sheriff Court.⁶¹ Glasgow has the highest number of accused persons subject to bail supervision in Scotland in recent years, and the largest growth rate in the use of supervision.

Every morning, the Justice Social Work team receive a copy of the custody list from the police. The team liaises with the prosecutors who provide an annotated list by email that identifies those accused persons where bail will be opposed. The Justice Social Work Team Leader allocates accused persons to team members, who then visit the cells to interview them.

The focus of the interview is to ascertain the accused's views on the offence and their criminal history to assess their attitudes and motivations, as well as the likelihood of compliance. The interview also addresses practical matters such as accommodation, employment, substance abuse, mental health and other health concerns, and details of relationships, including any professional supports that may be in place.

Following the interview, the officer will conduct various checks to confirm the information obtained from the accused, including by accessing social welfare data held (noting that the Justice Social Work team has direct access to a broad range of social welfare data in relation to the person, including child protection information, housing, domestic violence concerns), contacting family and other professionals and reviewing any previous reports. In respect of some issues, such as accommodation and where electronic monitoring is being considered, consent of any co-residents is sought.

A written suitability assessment is then prepared for the court's benefit. In addition, the report may also address the availability of electronic monitoring.⁶² The report will set out a provisional bail management plan, indicating the main areas of need and how these will be addressed by supervision.

The Justice Social Work team advised that, despite the range of matters to be addressed and the complexity of the issues to be assessed, the process for preparing a report typically takes around 1.5 hours.

The matter comes before the Court in the afternoon. If bail is granted with bail supervision, the bailee will be required to report to an identified Justice Social Work officer (at Glasgow, they attempt to allocate the supervision to the same person who prepared the report). The officer will then work with the bailee to identify specific needs that are to be prioritised, and a bail supervision management plan will be prepared jointly. The plan will also clearly establish expectations for compliance and how compliance concerns will be managed.

Supervision is provided during the bail period, as detailed in the management plan, which is a dynamic document and will be adapted as the bailee's circumstances change.



For example, reporting requirements will be adjusted to enable a bailee to work or engage in education. The Justice Social Work also has established networks of community support organisations that can provide assistance across domains, such as accommodation, employment and alcohol and drugs concerns.

Although no 'offence-based' interventions are included (as that is inconsistent with the presumption of innocence), supervision can include programs designed to assist the accused avoid or manage 'high-risk' situations (for example, anger management or ways of disengaging with anti-social peers). In some instances, such as when the bailee has a disability or cognitive impairment, the bail supervisor might assist the individual by attending appointments with them, including court appearances.



Annex C | Bail supervision in South Australia

How does it work?

The current system in SA operates in two tiers: 'bail supervision' and 'intensive bail supervision'.

'Bail supervision' is a condition that requires a bailee to submit to supervision by Community Corrections. Bail supervision may be imposed by a court without Community Corrections providing an assessment or other report. However, a court may request a report on a person's suitability for supervision (and whether resources are available to effect supervision).

Where a report is sought by the court, a community corrections officer will interview the accused and then verify the information obtained and conduct a comprehensive assessment (much as in Scotland).

The purpose of the report is to assist the court in determining the likelihood that the person will appear at the next court date, otherwise comply with conditions of bail and whether there is a risk the person will commit an offence whilst on bail (and the gravity of any possible offence). This process includes consideration of the accused's prior criminal history, history of compliance with bail and any orders administered by community corrections. Information will also be obtained as to the accused's current circumstances, especially the proposed living arrangements. The report will set out the information obtained, and, while the report will assess suitability, no recommendation is made as to whether the condition (or any other condition) should be imposed.

The SA Department of Correctional Services Courts Unit,⁶³ which performs this task in metropolitan courts, advises that a bail report will typically take 5 hours to prepare. The service standard for the timing of provision of reports is 3 working days. While a report is being prepared, the accused will be held on remand.

If supervision is imposed as a condition, the bailee will generally be directed to report to a Community Correctional officer within two working days of being granted bail. An initial interview will be conducted in which the conditions of bail are discussed, along with expectations for supervision.

The primary goal of supervision is to ensure that the conditions of the bail agreement are met and that the bailee attends their next scheduled court appearance.

Although no formal case plan or assessments are undertaken, regular meetings will be organised, and additional programs and counselling may be scheduled to help address the underlying issues of the bailee's offending behaviour. The bailee may also be subject to conditions such as urine and breath testing and to electronic monitoring or curfew.

'Intensive bail supervision' involves a combination of bail conditions that effectively impose home detention, along with electronic monitoring, to ensure compliance.



Where intensive bail supervision is being considered, the court will order an assessment report. This report is undertaken by the Intensive Compliance Unit of SA Corrections. The form of assessment undertaken is limited to the:

- willingness of the owner or lessee (resident) and any other residents at the nominated address to accommodate the applicant at that address;
- existence of an appropriate mobile service, if electronic monitoring is required;
- suitability and availability of the specified residence during the period of detention; and
- availability of adequate resources to facilitate the proper monitoring of the defendant on home detention.

The service standard for the timing of provision of reports is 3 working days (or up to 5 in non-metropolitan areas). While a report is being prepared, the accused will be held on remand.

Supervision of a bailee subject to intensive supervision is conducted in a similar fashion to other persons subject to home detention managed by SA community corrections (for example, those serving home detention as a sentence). The bailee must be at home unless there is a valid reason, such as attending legal or medical appointments or for employment (subject to verification with the relevant third parties). Absences for such purposes as shopping for food or other necessities and for exercise are strictly monitored. Accused persons with a good history of compliance may also be permitted to attend significant family, cultural or religious events on a case-by-case basis.

In terms of electronic monitoring, bailees are subject to providing schedules outlining movements in the community (for example, proposed times and routes of travel). Exclusion zones may be established that prohibit a person from entering or travelling through certain locations (for example, to assist in enforcing a condition prohibiting contact with a victim), which can include restrictions on entering licensed premises and enforcement of related Intervention Orders (the SA equivalent of an Apprehended Violence Order).

Persons subject to intensive bail supervision may also be provided with support through the Bail Accommodation Support Program. This program provides short-term accommodation for persons on bail who lack accommodation as an alternative to being remanded in custody. The program is based in a 30-bed, male-only facility run by a third-sector agency. The facility is designed to approximate normal community life, and its aim is to support residents to maintain links to family, employment and other services whilst transitioning to long-term accommodation.

Eligible persons may also receive support through the Home Detention Integrated Support Services Program. This is a service provided by a third sector agency that provides support in relation to matters such as housing, alcohol and drug misuse, mental health, independent living skills, domestic violence and community connectedness.



Endnotes

- ¹ NSW Bureau of Crime Statistics and Research, NSW Custody Statistics Quarterly update December 2025, <https://bocsar.nsw.gov.au/research-evaluations/2026/nsw-custody-statistics-quarterly-update-dec-2025.html> (accessed 16 March 2026).
- ² World Prison Brief, World Prison Brief data, <https://www.prisonstudies.org/world-prison-brief-data> (accessed June 2025).
- ³ NSW Bureau of Crime Statistics and Research, NSW Custody Statistics Quarterly update December 2025, <https://bocsar.nsw.gov.au/research-evaluations/2026/nsw-custody-statistics-quarterly-update-dec-2025.html> (accessed 16 March 2026).
- ⁴ United Nations, International Covenant on Civil and Political Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (accessed 17 March 2026); United Nations, United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf> (accessed 17 March 2026).
- ⁵ NSW Bureau of Crime Statistics and Research, NSW Custody Statistics Quarterly update December 2025, <https://bocsar.nsw.gov.au/research-evaluations/2026/nsw-custody-statistics-quarterly-update-dec-2025.html> (accessed 16 March 2026).
- ⁶ NSW Bureau of Crime Statistics and Research, *Adult custodial population* (Sydney: Department of Communities and Justice, 2026).
- ⁷ NSW Law Reform Commission, *Bail* (Sydney: NSW Law Reform Commission, 2012).
- ⁸ Productivity Commission, *Australia's prison dilemma* (Canberra: Productivity Commission, 2021).
- ⁹ Productivity Commission, *Australia's prison dilemma* (Canberra: Productivity Commission, 2021). Note the Commission said, "To the extent that there are barriers to accessing alternatives to remand, these need to be considered".
- ¹⁰ In *DPP (NSW) v Zaiter*, [2016] NSWCCA 247 RA Hulme J noted "Bail decisions involve a discretionary evaluative judgment on a variety of factors about which, and within limits, reasonable minds may differ... [I]t must be recognised that most of these judgments are very specifically directed to the facts and circumstances of the case at hand...[E]very bail application presents its own unique factual matrix".
- ¹¹ Amy Pisani, Sara Rahman, Madeleine Griffiths and Suzanne Poynton, "Understanding bail decision-making: an observation and interview study", *Crime and Justice Bulletin* 265 (2024).
- ¹² Amy Pisani, Sara Rahman, Madeleine Griffiths and Suzanne Poynton, "Understanding bail decision-making: an observation and interview study", *Crime and Justice Bulletin* 265 (2024).
- ¹³ NSW Bureau of Crime Statistics and Research, *Bail*, <https://bocsar.nsw.gov.au/topic-areas/bail.html> (accessed 17 March 2026).
- ¹⁴ NSW Bureau of Crime Statistics and Research, *Bail*, <https://bocsar.nsw.gov.au/topic-areas/bail.html> (accessed 17 March 2026).
- ¹⁵ Jennifer Galouzis and Simon Corben, "Judicial Outcomes of Remand Inmates in New South Wales", *Research Bulletin* 34 (2016).



- ¹⁶ Data provided by Corrections Research and Evaluation Service, December 2025.
- ¹⁷ Jennifer Galouzis and Simon Corben, “Judicial Outcomes of Remand Inmates in New South Wales”, Research Bulletin 34 (2016).
- ¹⁸ Data provided by Corrections Research and Evaluation Service, July 2025.
- ¹⁹ NSW Law Reform Commission, *Bail* (Sydney: NSW Law Reform Commission, 2012). Noting the comments of Judge Cross in *R v Wakefield*, where he identified as a “common error” in discussions of bail the view that the interest in liberty and the presumption of innocence are *private* interests, particularly those of the accused. Judge Cross noted that there is a *public* interest in these fundamental principles, and so the decision required in a bail context is one of competing *public* interests.
- ²⁰ The Hon. Andrew Bell, Chief Justice of New South Wales, Statement on Bail by Chief Justice of New South Wales, 27 May 2025, <https://supremecourt.nsw.gov.au/documents/media/Bail20250527.pdf>.
- ²¹ Joana Andrade, Rui A. Gonçalves, Catrina Abrunhosa and Andreia de Castro-Rodríguez, “Evidence-based Interventions Targeting Remand Prisoners: A Systematic Review and Meta-analysis”, *The European Journal of Psychology Applied to Legal Context*, 16(1) (2024), 49 – 59; Will Dobbie, Jacob Goldin, Crystal S. Yang, “The Effects of Pretrial Detention on Conviction, Future Crime, and Employment”, *American Economic Review* 108(2) (018), 201–240.
- ²² NSW Bureau of Crime Statistics and Research, *NSW Closing the Gap Target 10 Quarterly Report* (Sydney: NSW Bureau of Crime Statistics and Research, 2025).
- ²³ For women, the *rates* of revocation for breach of bail conditions – not reoffence – are now lower than in 2015 (down from 21.1% to 16.5% in 2024), though again it should be noted that the last two years have seen an increase in that rate (up from 13.8% in 2022, now at the highest level since 2019). In raw numbers it is a significant increase, moving from 112 to 401 (a factor of around 3.5).
- ²⁴ Inspector of Custodial Services, *Women on Remand* (Sydney: NSW Government, 2020).
- ²⁵ Ruth McCausland and Eileen Baldry, “Who does Australia Lock Up? The Social Determinants of Justice”, *International Journal for Crime, Justice and Social Democracy* 12(3) (2023), 37–53; Australian Institute of Health and Welfare, *The health of people in Australia’s prisons 2022* (Canberra: Australian Government, 2023).
- ²⁶ The Hon. Andrew Bell, Chief Justice of New South Wales, Statement on Bail by Chief Justice of New South Wales, 27 May 2025, <https://supremecourt.nsw.gov.au/documents/media/Bail20250527.pdf>.
- ²⁷ Peter McClellan, Special Commission of Inquiry into Offending by Former Corrections Officer Wayne Astill at Dillwynia Correctional Centre (Parramatta: NSW Department of Communities and Justice, 2024).
- ²⁸ For example, see discussion in the Chapter 3 of Senate Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia* (Canberra: The Senate, 2023).
- ²⁹ Bugmy Bar Book, Bugmy Bar Book, <https://bugmybarbook.org.au/> (accessed July 2025).
- ³⁰ NSW Law Reform Commission, *Bail* (Sydney: NSW Law Reform Commission, 2012).
- ³¹ People with lived experience also advised that it is not uncommon for people who are incarcerated to have property repossessed or stolen whilst they are in custody, noting that a feature of remand is that there is no time to ‘prepare for custody’ as people are often arrested without warning and so unable to ‘put their affairs in order’.
- ³² (AIHW 2019/2022)



³³ Persons with lived experience also highlighted that the uncertainty of a release date for people on remand often creates a ‘catch 22’ scenario – many housing and rehabilitation service providers will not accept a referral for a person in custody without a confirmed release date, and in the absence of a concrete offer from a service provider, a person on remand may not be able to secure release on bail.

³⁴ Bugmy Bar Book, Imprisonment, <https://bugmybarbook.org.au/chapters/imprisonment/> (accessed 18 March 2026).

³⁵ Scottish Prison Commission, *Scotland’s Choice* (Edinburgh: Scottish Government, 2008).

³⁶ Carole Wilson and Joe Perman, *Supervised bail in Scotland: research on use and impact* (Edinburgh: Scottish Government, 2012).

³⁷ Carole Wilson and Joe Perman, *Supervised bail in Scotland: research on use and impact* (Edinburgh: Scottish Government, 2012).

³⁸ Scottish Parliament Justice Committee, *An Inquiry into the Use of Remand in Scotland 7th Report* (Edinburgh: Scottish Government, 2018).

³⁹ Scottish Parliament Justice Committee, *An Inquiry into the Use of Remand in Scotland 7th Report* (Edinburgh: Scottish Government, 2018).

⁴⁰ Scottish Government, *Bail and Release from Custody Arrangements: Consultation Analysis* (Edinburgh: Scottish Government, 2022).

⁴¹ The Justice Social Work team at Glasgow confirmed this, noting that it could be challenging to have police action a report for non-compliance with supervision (noting that breach of bail is a criminal offence in Scotland, and as such evidence of ‘failing to engage’ needed to be available to meet the requisite burden of proof) and that this had impacted the credibility of the scheme.

⁴² Scottish Government, *Justice Social Work statistics in Scotland 2023–2024 Part 1* (Edinburgh: Scottish Government, 2024).

⁴³ Scottish Government, *Justice Social Work statistics in Scotland 2023–2024 Part 1* (Edinburgh: Scottish Government, 2024).

⁴⁴ Scottish Government, *Long Term Drivers of and changes in the Prison Population* (Edinburgh: Scottish Government, 2025).

⁴⁵ *R v Quinn* [2004] SASC 41 (20 February 2004).

⁴⁶ Attorney General’s Department Office of Crime Statistics, *Bail Reform in South Australia* (Adelaide: South Australian Government, 1986).

⁴⁷ John Richards, “The Contribution of Correctional Services to the Bail Process” in Dennis Challenger (eds), *Bail or remand? : proceedings of a conference held 29 November – 1 December 1988* (Canberra: Australian Institute of Criminology, 1991).

⁴⁸ John Richards, “The Contribution of Correctional Services to the Bail Process” in Dennis Challenger (eds), *Bail or remand? : proceedings of a conference held 29 November – 1 December 1988* (Canberra: Australian Institute of Criminology, 1991).

⁴⁹ Jesse Cale, Fredrick Zmudzki, Fiona Hilferty, Lise Lafferty, Tyson Whitten, Michael Doyle and Kylie Valentine, *Evaluation of Home Detention in South Australia: Final Report Prepared for: The Department for Correctional Services, South Australia* (Sydney: Social Policy Research Centre, UNSW Sydney, 2019).

⁵⁰ Jesse Cale, Fredrick Zmudzki, Fiona Hilferty, Lise Lafferty, Tyson Whitten, Michael Doyle and Kylie Valentine, *Evaluation of Home Detention in South Australia: Final Report Prepared for: The*



Department for Correctional Services, South Australia (Sydney: Social Policy Research Centre, UNSW Sydney, 2019).

⁵¹ NSW Jesse Cale, Fredrick Zmudzki, Fiona Hilferty, Lise Lafferty, Tyson Whitten, Michael Doyle and Kylie Valentine, *Evaluation of Home Detention in South Australia: Final Report Prepared for: The Department for Correctional Services, South Australia* (Sydney: Social Policy Research Centre, UNSW Sydney, 2019).

⁵² Jesse Cale, Fredrick Zmudzki, Fiona Hilferty, Lise Lafferty, Tyson Whitten, Michael Doyle and Kylie Valentine, *Evaluation of Home Detention in South Australia: Final Report Prepared for: The Department for Correctional Services, South Australia* (Sydney: Social Policy Research Centre, UNSW Sydney, 2019).

⁵³ Data provided by Department of Correctional Services South Australia, August 2025.

⁵⁴ Note an evaluation was undertaken in 2009 after 3 years of operation that suggested a cost benefit in the range of 1:1.7 to 1:5.9. See Victorian Department of Justice, *Court Integrated Services Program Tackling the causes of crime: Executive summary evaluation report* (Melbourne: Victorian Courts and Tribunals Unit, 2010).

⁵⁵ Noting the relationship between these factors and the predominant technical breaches leading to revocation of bail.

⁵⁶ In addition to the issues discussed below, one matter that might warrant legislative clarification is how a sentencing court should take into account time under supervision whilst on bail. There is existing caselaw in NSW addressing the extent to which strict supervision on bail can amount to 'quasi custody. There is no principle that dictates a reduction in sentence as a direct equivalent of a period of time spent subject to strict conditions on bail: while in *R v Cartwright* (1989) 17 NSWLR 243 the Court gave the offender credit for 75% of the time spent on bail, this percentage has not been applied more generally. Scotland has recently passed legislation commencing that, whilst maintaining ultimate judicial discretion, states that as a starting point 2 days on electronic monitoring could be considered the equivalent of 1 day in custody.

⁵⁷ There may also be additional resource impacts for other parts of the justice system such as police, prosecutors, court staff and publicly funded legal representatives. Initially at least this would include education and resources around bail supervision, development of appropriate protocols and systems, and potentially some additional court time. However, it is likely that this would be offset in the medium-longer term as some of the responsibility for obtaining and verifying information for bail purposes shifts to Community Corrections from these other agencies.

⁵⁸ This is why the reform program articulated in Scotland was named "Scotland's choice".

⁵⁹ Other than in the instance of an 'escape' – that is, where the person removes electronic monitoring and cannot be located. Though noting custodial officers also have powers of arrest for escapes and for non-compliance with conditions of leave.

⁶⁰ For women, the rates of revocation for breach of bail conditions – not reoffence – are now lower than in 2015 (down from 21.1% to 16.5% in 2024), though again it should be noted that the last 2 years have seen an increase in that rate (up from 13.8% in 2022, now at the highest level since 2019). However, again, in raw numbers it is a significant increase, moving from 112 to 401 (a factor of around 3.5).

⁶¹ Meeting with Justice Social Work team, Glasgow Sheriff's Court, July 2025.

⁶² In Scotland, electronic monitoring is provided by a private contractor without involvement of JSW staff. Although information is exchanged between the contractor and the bail supervisor, EM is not integrated into case management in the same way as it is in NSW.

⁶³ Meeting with Department of Correctional Services, South Australia, August 2025.



Good public policy starts with evidence.

Level 7, 15 Castlereagh Street
Sydney, NSW 2000 Australia

E info@appi.org.au | w appi.org.au

