



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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Submission Cover Sheet

Inquiry into the Administration of Bail

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STANDING COMMITTEE OF JUSTICE AND COMMUNITY SAFETY (JaCS)

REVIEW OF THE *Bail Act* 1992

It appears timely that the *Bail Act* 1992 be reviewed, particularly in light of what has occurred in various states and territories of Australia in recent times ie a marked increase in domestic and family violence (DFV) incidents.

Whilst this submission is not supported by empirical evidence, it is prepared with emphasis of lived experience and pragmatic options and recommendations to curtail risk to the community for alleged offenders on bail orders.

As is known, bail is 'conditional liberty', where the alleged offender signs a 'contract' to adhere to the conditions of the bail order if they agree to the said conditions.

Whilst we have no data to determine how breaches of bail are 'dealt' with, Janine's experience of working in the criminal justice system, was that breaches of bail were often dismissed with a 'slap on the wrist', unless the breach was serious in nature. This could be viewed as a lack of deterrence for alleged offenders to abide by bail conditions.

Currently, there are many alleged offenders who are on bail orders awaiting hearings and trials; some of these bail orders can be years in duration due to the significant backlog within the ACT criminal courts.

These lengthy bail orders could be capitalised on by the alleged offender engaging in client centred programs/treatment, specifically tailored to address their individual criminogenic needs (as opposed to generic programs).

As is currently practiced in most of Australia, and currently being introduced in NSW following recent domestic and family violence (DFV) deaths, we endorse the use of Electronic Monitoring (EM) via ankle bracelets for such bailees who have been assessed as suitable to be bailed for DFV alleged offenders.

However, we impress that the use of EM should not be limited to only bailees who have been charged with DFV offences; the use of EM could encompass a range of offences, including other violent offences, burglaries, dangerous driving etc.

And, although not relevant to this review, the ankle bracelets could also be used for convicted offenders on good behaviour and parole orders.

Trialled in the ACT during the 2000's, EM was introduced for the purpose of home detention. For reasons unknown, the program was abandoned following the pilot period.

Whilst we have not undertaken a cost benefit analysis, it would appear prudent to conduct research of the fiscal costs of having EM as a bail option.

It is noted that Janine has been made aware that there was a significant amount of money spent on radio frequency identification (RFID) devices at the Alexander Maconochie Centre (AMC), however the program did not proceed. It would be interesting to know what happened to the RFID devices.

Terms of Reference –

Support service interaction for people of bail – working with a trauma informed and person-centred approach is considered essential. There needs to be a case management framework to interact with people on bail orders, and case plans developed to address the individual's criminogenic needs.

Supports can be accessed through government and non-government agencies to assist people to address their needs, on a holistic basis.

This kind of interaction does not necessarily need to be punitive; it should be realistic and achievable for the alleged offenders.

Alleged offenders often have a range of issues which has led to their offending behaviour; these issues need to be 'unpacked' and addressed accordingly.

Young people on bail – the ACT has a high rate of juvenile alleged offenders, and we are seeing many alleged offenders breaching bail orders on a regular basis (particularly relating to dangerous driving offences); this is placing themselves and others at considerable risk of harm.

Early intervention is considered paramount to address the criminogenic needs of young people, again using a trauma informed and person-centred framework.

As is known, many young people have been raised in dysfunctional families, and this significantly increases their risk of becoming alleged offenders. Whilst remand is essential for some young people due to the risk they pose to themselves and others, it is crucial that young people, if released on bail, are supported by pro-social influences.

Although challenging, all options should be explored to provide young people with the best possible supports to achieve the best possible outcomes for them, and the community within which they live.

These options could include support for families and the young people who have entered the criminal justice system. Support could include mentoring services, kinship care/foster care (if required), alternative education, skills training etc.

This is also where EM could be an appropriate option as opposed to remand, where there is the distinct possibility that their criminogenic needs may increase; therefore, increasing their risk of further offending behaviour.

Further, if young people demonstrate disregard sanctions for breaching bail orders, their needs to be appropriate consequences for such disregard.

Mental Health and bail – society has witnessed an alarming increase in people experiencing mental health issues which can, and does, impact significantly on offending behaviour.

Mental health is exactly that; a **health** issue, and to date, there can't be enough emphasis placed on this fact.

Currently, mental health resources are completely inadequate, both in the community and in custodial environments. This **must** be addressed, and appropriate resources made available to mental health consumers.

We cannot, as a community, continue to operate with a 'band aid' approach. It is imperative thorough and specialised mental health assessments be conducted, followed by ongoing treatment for those experiencing mental health issues ie it's not satisfactory for people to receive treatment only whilst on a bail order; there needs to be ongoing treatment and support, both for young and adult alleged offenders.

Supervision of people on bail – bail officers need to be comprehensively and appropriately trained to supervise people on bail; as well as being fully cognisant that bail is conditional liberty.

As noted above, specialised and appropriate case management needs to be applied to all alleged offenders on bail orders; this is also an opportunistic time to address criminogenic needs of people on an individual basis.

Breaches of bail should be submitted in a timely manner, with the capacity to complete breaches within statutory timeframes. There's no point closing the stable door after the horse has bolted.

Prevention of re-offending on bail – whilst this has been effectively addressed in the notes above, it is reiterated that re-offending on bail needs to be addressed seriously, as it is a breach of applied guidelines and legislation.

From personal and professional experience, we have witnessed lack of breach action being undertaken, and this has, at times led to tragic outcomes for alleged offenders and victims alike.

The prevention of re-offending of people on bail requires comprehensive person-centred practices to address the criminogenic needs of alleged offenders.

It would be beneficial for bail progress reports to be prepared by ACTCS bail officers and provided to the courts on a regular basis.

Dangerous driving offending on bail – this has been considerably highlighted in recent years with a number of tragic outcomes ie several deaths of innocent victims caused by dangerous driving.

People on bail for alleged dangerous driving offences need to be closely monitored, and serious measures implemented for those charged with such offences. Further, if someone facilitates a person to drive a car (with a condition not to drive on their bail order), they should also face the prospect of prosecution.

Again, EM could be an option to monitor people on bail to determine if they have been driving a car when a condition of a bail order is not to drive a motor vehicle.

Presumption of bail – whilst there is a presumption of innocence for people of bail (depending on the severity of the offence), this should be reviewed, particularly where

there is overwhelming evidence that a person has committed the offence/s, and is serious in nature.

The *Bail Act* 1992, particularly under Section 8A requires an immediate review. Whilst this may involve legislative amendments, however we are unable to provide knowledge of how this could be undertaken.

Having (Janine) spoken to the former Chief Police Officer, Mr Neil Gaughan, he expressed the frustration of Australian Federal Police (AFP) officers regarding the presumption of bail and the high instances of people re-offending whilst on bail being released time and time again due the presumption of bail.

Bail Support Programs – this has been effectively canvassed in the above notes, however it is reiterated that bail support programs should address the criminogenic needs of the alleged offender and ‘tailor made’ to provide best possible outcomes for the person, and the community in general.

Again, emphasis needs to be placed on realistic and appropriate programs for alleged offenders to engage ie there is no utility in setting people up to fail.

Any other related matter – in respect to alleged offenders who have sole care of their children, bail (and bail conditions) should be considered regarding the best interests of the child/ren, taking into account the risk of the alleged offender re-offending, with weight placed on potential harm to themselves and/or others.

Children and young people are, at times, removed from their sole carer when a person has been placed on a bail order, and we believe these instances should be carefully considered for all involved, potentially with the recommendations/input of Child and Youth Protection Services (CYPS).

This is another option for EM to be used ie if the risk is considered reasonably negligible; EM could be an appropriate option for maintaining the cohesiveness and well-being of the family unit, with appropriate supports implemented to support the same.

Further, if deemed appropriate, it is considered that complainants in bail matters, should ideally be consulted regarding conditions of bail orders.

RECOMMENDATIONS:

Recommendation 1 – ‘Brontë’s Law’ (relevance can be explained)

When a person is arrested and taken to the Watch House, a simple 5 step process should be conducted by qualified professionals.

If there is a possibility the person is going to be remanded in custody or released on a Bail order, the following assessments/information should be completed for the presiding magistrate/judge to have access, prior to the person attending court:

- Full criminal history to be provided;
- Physical health screening – obtain medical records if there is a presenting medical issue ie diabetes, epilepsy, high blood pressure, limited mobility, ongoing medical conditions etc;
- Alcohol and other Drugs (AOD) screening; if there is substance use involved, what is the substance of choice of the person? And will this mean the person will enter withdrawal? If so, measures need to be put in place for the withdrawal to happen safely, whether it be in the community or in custody;
- Mental health screening – obtain mental health records if there is a history of mental health issues of the person eg has the person been previously diagnosed with a mental health disorder, experienced suicide attempts, suicidal ideation, self-harming, depression, anxiety etc;
- Disability screening – does the person have a developmental delay, acquired brain injury, cognitive impairment, dementia etc

Emphasis should also be placed on co-occurring conditions eg mental health and substance use issues and other co-morbidities.

All this information should be provided to the presiding magistrate/judge prior to the arrested person attending the relevant court.

These screening tool assessments should provide a clear ‘snapshot’ of the criminal history, criminogenic, physical, mental health, AOD issues and disability needs of the arrested person for the magistrate/judge to determine Bail conditions and/or remand status eg was the person assessed as a ‘prisoner at risk’ (PAR), requiring close monitoring at the AMC or referred for a mental health assessment under S 309A of the *Crimes Act 1900*.

Recommendation 2

If a person is released on a bail order, adherence to the bail conditions should be carefully monitored by Community Corrections staff, and where breach action is required, this should be attended to in a timely and professional manner. There should be a protocol/policy developed regarding a time frame in which a breach of bail needs to be submitted.

If the arrested person is remanded in custody, when/if the person applies for bail, the presiding magistrate/judge should have information (as noted in Recommendation 1) provided to him/her/them prior to the person’s attendance at court or via Audio Visual Link (AVL).

It is also paramount that families/carers be provided with relevant information regarding the safety and wellbeing of the arrested person, as defined by privacy and confidentiality protocols, including the Forensic Mental Health Services Model of Care and other relevant protocols and policies.

Recommendation 3

The introduction of Electronic Monitoring devices for alleged offenders on bail orders.

Following a thorough risk assessment, if it is considered appropriate for the alleged offender to remain in the community, EM could benefit the alleged offender insurmountably ie to maintain employment, maintain positive family relationships (this is particularly important with young people of bail),

A cost benefit analysis should be conducted to determine the feasibility of such implementation of EM for alleged offenders on bail orders.

SUMMARY:

These recommendations have the capacity to assist and support people on bail orders to address their criminogenic needs.

Further, following a thorough review of the *Bail Act* 1992 and the implementation of changes/amendments to the *Act*, this has the genuine potential to make our community a safer place, as well as, more importantly, saving lives.