



Bail Me Out

NSW Young Offenders and Bail

September 2009

Youth Justice Coalition

**Katrina Wong
Brenda Bailey
Dianna T Kenny**

Bail Me Out

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Project Co-ordinators:

Youth Justice Coalition

Public Interest Advocacy Centre

Authors:

Katrina Wong, Convenor, Youth Justice Coalition

Brenda Bailey, Senior Policy Officer, Public Interest Advocacy Centre

Diana T Kenny, Professor of Psychology, The University of Sydney

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Cover Design: Karen Kwok

Youth Justice Coalition

c/- Katrina Wong
Marrickville Legal Centre
338 Illawarra Road
Marrickville NSW 2204
Phone: (02) 9559 2899



The Youth Justice Coalition

The Youth Justice Coalition (YJC) is a network of youth workers, children's lawyers, policy workers and academics who work to promote the rights of children and young people in NSW and across Australia. The YJC was formed in early 1987 under the auspices of NCOSS (Council of Social Service of NSW) to contribute to the development of new legislation for juvenile justice and child welfare. The YJC is currently convened by the Children's Solicitor at Marrickville Community Legal Centre.

The Aims of the YJC

- To promote the rights of children and young people, including their rights under the United Nations Convention on the Rights of the Child (CROC) and other international human rights instruments
- To promote appropriate and effective initiatives and responses in juvenile justice, child welfare and other areas of law affecting children and young people
- To ensure that children's and young people's views, interests and rights are taken into account in law reform and policy debate

The YJC achieves these aims by:

- Advocating for the rights and interests of children and young people in law reform and policy debate
- Undertaking research
- Consulting with children and young people
- Providing community legal education
- Conducting media work

Our Work

The following list provides a brief overview of some examples of the ways in which YJC has undertaken its work:

- 1990: *Kids In Justice: a blueprint for the 90s – a report card on the juvenile justice system in NSW* contained over 200 recommendations for a better juvenile justice system
- 1994: *Nobody Listens*, joint report with Youth Action and Policy Association (YAPA) examining the problematic relationship between young people and the police
- 1997: *Kids in the Maze*, a submission to the Australian Law Reform Commission Inquiry into Children in the Legal Process
- 1998: *It's Our Act*, a youth participation project - a response to the review of the *NSW Care and Protection Act*
- 1999: *Youth Street Rights: a policy and legislation review*, a joint report with the Community Law and Legal Research Centre (UTS)
- 2002: *Joe's Conference*, an educational video about youth justice conferencing
- 2002: report *Young People's experiences of the Young Offender's Act NSW*
- 2003: joint project with YAPA on shopping centre protocol
- 2007: evidence to the Parliamentary *Inquiry into the Prohibition on the publication of names of children involved in criminal proceedings*
- 2009: submission to the NSW Law Reform Commission in relation to penalty notices
- 2009: consultations with the Attorney General's Department on changes to the *Fines Act*

Membership of the YJC

- Banardos Belmore (incorporating the Reconnect program, Streetwork program and Post Release Options Program)
- Bondi Outreach Project
- Catholic Care Sydney
- Central Illawarra Youth Services
- Crime and Justice Research Network
- Dr Dorothy Bottrell, Lecturer and Convenor, University of Sydney Network for Childhood and Youth Research
- Elaine Fishwick
- Illawarra Legal Centre
- Inner West Community Development Organisation
- Liverpool Youth Accommodation Assistance Company (LYAAC)
- Jenny Bargen – CHD partners
- Joanne Morrison, Youth Development Officer – Canterbury City Council
- Jodie Grundy (Community Project Officer (Youth) - Camden Council
- Macarthur Legal Centre
- Marrickville Legal Centre
- Marrickville Youth Interagency
- Marrickville Youth Resource Centre
- National Children's and Youth Law Centre
- NCOSS (Council of Social Service of NSW)
- Professor Chris Cunneen, NewSouth Global Chair in Criminology, Faculty of Law of the University of New South Wales
- Public Interest Advocacy Centre
- Redfern Legal Centre
- Rosemount Youth and Family Services
- Shire Wide Youth Services
- Shopfront Youth Legal Centre
- South Sydney Youth Services
- The Crossing, Mission Australia
- Uniting Care Burnside
- Western NSW Community Legal Centre
- Youth Accommodation Association (YAA)
- Youth Action and Policy Association (YAPA)

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Preface

Early in 2008, the Youth Justice Coalition (YJC) identified the issue of bail and its impact on young people in the juvenile justice system as a priority policy area, particularly in relation to homelessness. There was little research evidence available at the time about the scale of this problem. To contribute to the policy discussion in a productive way, the YJC decided to develop its own research program to address the identified gaps in information.

The aim of the research is to find out what is happening to young people in relation to bail, particularly those young people who are homeless. It is also anticipated that the issues raised in this report will provide policy makers, administrators and researchers with information allowing them to identify areas that require further research and policy action.

Since the decision to initiate this research, the NSW State Government has announced a strategic review of juvenile justice policy and practice in NSW. It is hoped that this report will be taken into consideration in the review process and in the resulting proposals for reform.

It is important to note that this research was undertaken with limited financial and other resources. The research, data collection and the written report were conducted by members of the YJC who undertook this work in addition to their substantive commitments. I would like to thank them for their hard work.

This research would not have been possible without the continued commitment, dedication and support of the members of the YJC, who offer their time in a voluntary capacity to provide advocacy on a wide range of issues affecting young people.

There are many people who assisted and contributed to this research project and I would particularly like to thank the following people and their organisations:

- Aaron Tang, Children's Legal Service, Legal Aid NSW
- Brenda Bailey from the Public Interest Advocacy Centre for her invaluable input to the project as a whole, including developing the research, literature review, data analysis and the written report
- Professor Dianna Kenny from The University of Sydney who generously assisted by providing advice to improve the survey instrument, and her analysis of data
- Elaine Fishwick for her editing assistance and feedback
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- Leah Cruickshank and Katherine Boyle and MLC CLC volunteers for their assistance in collecting the raw data
- Marrickville Community Legal Centre
- Public Interest Advocacy Centre for coordinating the design and printing of this report

Katrina Wong
Convenor
Youth Justice Coalition

August 2009

Executive Summary

Further research and policy development

The findings from this study identified significant areas of concern that warrant further research on which policy and practice in the juvenile justice system, could be based.

Research questions that require further attention:

- Do the nature and type of bail conditions imposed on young people effectively reduce reoffending?
- What are the effects on young people and the court system of police practices of monitoring and arresting young people on 'technical breaches'?
- Do bail conditions disproportionately disadvantage young women?
- Do the lack of services specifically meeting the needs of young women affect the courts decision to grant bail?
- Are Aboriginal young people less likely to obtain bail?
- What community services and models of therapeutic interventions can reduce reoffending during the remand period?

There is a significant gap in policy development with respect to the provision of appropriate assistance to young people on bail. There is no policy or residential service model funded by the Government that supports young people's adherence to their bail conditions in a community setting. There is also significant inconsistency between the evidence base for diverting young people from the justice system and the practices of policing and monitoring this group of young people.

Recommendations

1. The Youth Justice Coalition recommends that the NSW government:

- 1.1 *Increase resources for Legal Aid NSW and the Aboriginal Legal Service (NSW/ACT) to support young people at bail hearings.*
- 1.2 *Fund a Department of Community Services officer position at the Children's Court to assist young people with accommodation and welfare related issues.*
- 1.3 *Amend s22A of the NSW Bail to exempt young people appearing in the Children's Court.*
- 1.4 *Amend legislation to provide a discretionary power for police to decide whether or not to breach a young person who is on bail.*
- 1.5 *Amend legislation to allow NSW Police the power to warn or caution a young person who is found to be in breach of their bail.*

2. The Youth Justice Coalition recommends that the NSW Police Service in each local area command:

- 2.1 *Meet benchmarks for referral rates to diversionary options. The measures should be incorporated in the NSW State Plan.*
- 2.2 *Initiate community based strategies to improve relationships between police and Aboriginal communities.*
- 2.3 *Undertake specific training on how to engage and work with young people.*
- 2.4 *Develop and implement a best practice model for engaging and working with young people, consistent with existing legislation and frameworks.*

3 The Youth Justice Coalition recommends that:

- 3.1 *The NSW Department of Juvenile Justice be responsible for organising services for young people granted bail, to meet their bail conditions, particularly 'reside as directed' conditions and placement in a program.*
- 3.2 *The NSW government fund children's services sector with expertise in out-of-home care services to establish a residential service for young people granted bail with 'reside as directed' conditions*
- 3.3 *The Department of Community Services approved and funded services be permitted to provide accommodation services to young people released on bail without referral from DoCS. Caps on the number of referrals agencies can accept from court without referral by DoCS should be removed.*
- 3.4 *The NSW government should fund community diversionary programs that are responsive to young offenders on bail. Organisations working with young Aboriginal people should be a target for these services.*

4. The Youth Justice Coalition recommends that DoCS and DJJ cooperate to meet the needs of young people by:

- 4.1 *Sharing information (through data matching) to assist the court and to develop joint accommodation and intervention options.*
- 4.2 *Ensuring formal arrangements to secure consistent practices and services from Police, Education, Health, Corrective services, DADHC and Housing*
- 4.3 *Securing support for services during the period of detention on remand or community orders in a way that the assistance can continue when the court finalises the matter (that is a support plan continues in the community or where appropriate, in detention).*

Introduction

The number of young people in custody in NSW has significantly increased since December 2007.¹ a range of factors has contributed to this increase. Political pressure emphasising more law and order policies has resulted in a series of measures that have had a significant impact on young people. Changes to the bail laws have meant that it is now more difficult for a young person to make subsequent applications for bail², and this coupled with the close monitoring of young people on bail by NSW Police has resulted in the arrest and detention of young people for breaches of bail regardless of the nature of the breach or their circumstances.

Consequently, not only has there been an increase in the number of young people in detention, but also an increase in the number of young people remaining in custody on remand for longer periods of time³. This has led to the overcrowding of young people in juvenile detention, placing them significantly at risk both in terms of their safety⁴ and in relation to their increased exposure to the juvenile justice system itself.

It could be argued that the negative impacts of the reforms to legislation, policy and practice have been partly the result of the lack of a comprehensive strategic direction in relation to juvenile justice. The NSW state government at times seems to have adopted measures that appear contradictory in relation to bail and recidivism. For example (as detailed below) the State Plan⁵ has the objective of keeping the community safe through tightened monitoring of those at high risk of reoffending. This can in fact have a negative impact on another stated objective, that of reducing reoffending.

In order to reduce the risks that young people face in detention and to minimise the risk of reoffending, it is essential that a different approach be adopted to reduce the number of young people unnecessarily held on remand. It is also important to recognise that current strategies contravene the juvenile justice principles of using detention as a last resort, as articulated in Article 37(b) of the United Nations *Convention on the Rights of the Child* and in the *Beijing Rules*.⁶

There continues to be a lack of detailed research on children, young people and bail. However, a number of significant studies have highlighted the negative impact on young people who have been refused bail, the difficulties of being remanded in custody, the onerous nature of bail conditions and the over-policing of bail that lead to a dilution of young people's rights. The following section provides an overview of the current bail legislation followed by key findings of relevant reports and inquiries on bail and young people. These findings coupled with the evidence gathered from members of the Youth Justice Coalition in their day-to-day work with young people provide the framework for this study.

¹ NSW Department of Juvenile Justice *Annual Report 2007-2008*; NSW Auditor-Report to Parliament vol 5 (2007)

² Section 22A of the *Bail Act* (NSW) (2008)

³ NSW Department of Juvenile Justice *Annual Report 2007-2008*; NSW Auditor-Report to Parliament vol 5 (2007)

⁴ ABC News, 'Youth' faces court for alleged detention rape'. Rape occurred when two young people were placed in a room, designed for one person.
<http://www.abc.net.au/news/stories/2009/03/12/2513837.htm>

⁵ NSW Government, *NSW State Plan: A new direction for NSW*, (2006)

⁶ Article 37(b) *The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.* "The Beijing Rules" refer to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

1 Background: Reasons for custody

1.1 Young people and bail Conditions

The court in considering whether or not to grant bail, the court will take into account a number of factors. These include the:

- seriousness of the offence
- risk of the defendant absconding
- likelihood of the defendant committing further offences
- protection of the community⁷

The primary purpose of entering into a bail undertaking is to ensure that a defendant appears in court at the next occasion, and to prevent further reoffending.

Statistics for 2006-2007 for outcomes of appearances at the Children's Court by bail status reveal that 87 percent of young people were either granted bail or bail was dispensed with. Fewer than two percent of young people failed to appear at court or had arrest warrants were issued in the same year.⁸ These percentages provide an indication that the risk of young people not returning to court is very low.

When the Children's Court take a welfare approach, bail conditions placed on young people generally aim to alter behaviour, rather than ensure that they return to court.⁹ For example, a curfew may be imposed on a young person, even though imposing such a condition has no discernable link to whether a young person will appear at court on the next occasion.

Bail conditions imposed on young people are numerous and often prescriptive as to behaviour and conduct. The conditions can be onerous for a young person and difficult to comply with, particularly given their age and lack of maturity and resources. A common bail condition that is imposed on young people is to 'reside as directed by the Department of Community Services or Department of Juvenile Justice', or to 'obey reasonable directions of carer'. These types of conditions are often imposed on young people who have no home or cannot return home, and do not reflect the nature of the alleged offence. When the welfare needs of safe and secure housing are not met, young people remain in custody until such placements become available.

1.2 Breaches of bail

Data collected by the NSW Bureau of Crime Statistics and Research in 2006-2007 found 'breach of bail conditions' was the most common reason for appearances in court'.¹⁰

The law is unambiguous in providing that where a person who is on bail and fails to comply with any of their bail conditions, then he or she may be arrested and brought before the court.¹¹ There is no distinction made within the *Bail Act* with regards to the types of breaches that may occur when a defendant is on bail, and there is no provision for dealing with 'technical breaches'.¹² The police are acting within their

⁷ Section 32 of the *Bail Act* (NSW)

⁸ NSW Children's Criminal Courts Statistics July 2006 to June 2007, Number of persons appearing by bail status, Aboriginal status and outcome of appearance (2007)

⁹ NSWLRF, *Young Offenders*, 2005, section 10

¹⁰ Bagen J, *Juvenile justice: responding to Australia's children and young people in trouble with the law*, ALRC p28-36 2008

¹¹ Section 50 of the *Bail Act* (NSW)

¹² Defined in this study as: a breach of a bail condition which of itself is not a criminal offence, does not place the young person or the community in danger.

duty to arrest a young person if they observe a breach of any bail conditions. However, the *Children (Criminal Proceedings) Act 1987* (NSW) recognises that arrest should only occur in particular circumstances. Police have other options to proceed with charges such as issuing a Court Attendance Notice (CAN) where the breach can be brought to the attention of the court in a less costly, less intrusive and less disruptive way. This provision is also consistent with Australia's international obligations as a signatory to the United Nations *Convention on the Rights of the Child* (CROC) in relation to detention as an option of last resort.

The proactive intervention in relation to 'technical breaches' seems to be at odds with the existing evidence on the importance of keeping young people out of the formal criminal justice system in order to reduce reoffending. One of the primary considerations in dealing with young offenders is to divert them from court, and the criminal justice system, wherever possible.

The NSW State Plan, has as one of the eight priorities: *Keeping people safe*. The strategies include a focus on reoffending, with a target of a reduction of ten percent by 2016.¹³ The actions committed in achieving this outcome include:

*Extending community monitoring of those at high risk of reoffending. For example, more random home visits, and electronic monitoring 24 hours a day, seven days a week for very high risk individuals.*¹⁴

The State Plan also recognises that reducing reoffending requires more than police monitoring:

*Breaking the cycle of reoffending must start early, with schools, health, justice agencies, police, family services and community groups working together to reduce the risk factors associated with juvenile involvement in crime.*¹⁵

There is no evidence that monitoring, arresting and detaining young people for breaches of their bail condition reduces reoffending among juvenile offenders. However, there is a connection between intervening early with diversion options and reducing repeat offending.¹⁶

The Australian Institute of Health and Welfare (AIHW) (2007) report on young offenders experiencing juvenile justice supervision¹⁷ found that the younger a child experienced a period of supervision, the more likely they were to 're-enter juvenile justice supervision during subsequent years'. This is of particular concern for the Aboriginal community since Aboriginal children were more likely to be referred to court at a young age, than non-Aboriginal offenders.¹⁸

The NSW Auditor-General's report, *Addressing the Needs of Young Offenders*,¹⁹ found that the rate of reoffending for young people will depend on the action taken in response to the offence. If a young person's needs are not addressed, then the risk of reoffending is high. The largest percentage of those reoffending are young people who appear in court, and the lowest rates are for those receiving cautions or participating in youth justice conferences.

¹³ NSW State Plan, *A New Direction for NSW* R1 and R2 (2006)

¹⁴ Ibid p30

¹⁵ Ibid, 2006 p31

¹⁶ Vignaendra S et al, BOCSAR, Bulletin 126 (May 2009)

¹⁷ Supervision can be in detention or a control order or similar management arrangements in the community.

¹⁸ Snowball L, *Diversion of Indigenous Offenders, Trends and issues in crime and criminal justice*, no 355, Australian Institute of Criminology (June 2008)

¹⁹ NSW Auditor-General, *Performance Audit, Addressing the Needs of Young Offenders* p3 (2007)

1.3 Court outcomes

Data on the number of young people in detention demonstrates a system under stress. The Auditor-General's Report to Parliament for 2007 states that annual numbers in detention held steady at around 3,600 until a recent jump to 4,236²⁰ and another significant increase in the 2007-2008 to 5081.²¹ This 15 to 20 percent increase per year coincided with a period when there was no increase in juvenile involvement in violent and property crime.²²

Most of the young people included in this number were on remand, that is, not serving a sentence after being found guilty and convicted.²³ Only a small proportion of those young people detained go on to receive custodial sentences (between 8 and 16 percent)²⁴.

The then Minister for Juvenile Justice, Barbara Perry,²⁵ conceded that increases in the number of young people in detention was due to policing practices and changes to the *NSW Bail Act*.²⁶ The situation for young people seeking bail became more difficult in December 2007, when the *NSW Bail Act* was amended.²⁷ The amendments severely limited the number of applications that could be made for bail by young people on remand unless that young person was not initially represented by a lawyer, or a court decided that new facts or circumstances had arisen since the previous application.

Section 22A of the *Bail Act* states:

(1) A court is to refuse to entertain an application for bail by a person accused of an offence if an application by the person in relation to that bail has already been made and dealt with by a court, unless:

- a) The person was not legally represented when the previous application was dealt with, and the person now has legal representation, or*
- b) New facts or circumstances have arisen since the previous application that justify the making of another application*

The amendments to the *Bail Act* were aimed at safe-guarding against unnecessary and repeated bail applications, particularly in relation to more serious offences.²⁸ However, it is clear that these new provisions are applied to young people regardless of the nature of the offence, with detrimental consequences for them and the community. Section 22A has caused a sharp increase in the number of young people in remand since its introduction.²⁹ Since the introduction of section 22A, no parallel increase in the remand population has occurred in the adult correctional population.³⁰

The nature of bail conditions imposed on a young person and the combined effect of police monitoring has had a significant impact on the number of young people entering juvenile detention. Many young people who are arrested for 'technical'

²⁰ Auditor-General's *Report to Parliament* 2007 Volume 5

²¹ *Ibid* 5

²² Crime Fast Fact 03, *Is Juvenile crime increasing?* Bureau of Crime Statistics and Research, (2006-2007)

²³ NSW Law Reform Commission, *Young Offenders*, Part 10, (2005)

²⁴ Variation depends on source of statistics, AIHW, *Juvenile Justice in Australia* 2006-07, p86 report 8%, Wood report into Child Protection Services in NSW reported 16%, Vol 2, Chapter 15, p559

²⁵ Minister for Juvenile Justice 11 April 2007 to 5 September 2009

²⁶ Australian Broadcasting Corporation News, *Hopes funding will ease juvenile centre overcrowding*, (June 2 2008)

²⁷ Section 22A of the *NSW Bail Act*

²⁸ Hansard – debate on *Bail Amendment Bill* 2007, (6-7 November 2007)

²⁹ NSW Department of Juvenile Justice, *Annual Report, 2007-2008* at Chapter 5 (2008)

³⁰ NSW Department of Corrective Services, *Facts and Figures*, 9th Edition, (2009)

breaches, or remanded due to homelessness, find section 22A has made it more difficult to make a subsequent application for bail. As a result, young people are spending longer periods of time on remand.³¹ In addition, there is no longer an opportunity for scrutiny by the court of young people who are being detained because they are unable to meet bail conditions as support services were unavailable.³²

Members of the YJC have witnessed the result of these changes. Youth workers and solicitors reported higher incidents of police monitoring, and reported young people being breached on bail conditions, which to them, were trivial in nature and served no purpose. The nature of these breaches did not put the young person or the community at harm, and did not involve committing a new offence.

Solicitors reported that they were allocating more time to young people on breaches of bail, which rarely resulted in anything positive. The only results they observed were negative: the allocation of legal resources to matters that did not progress a case towards finalisation; a young person increasing their contact with juvenile offenders; disruption to education or other programs; and stress for families already struggling with poverty and dislocation.

1.4 Impact on young people

The NSW Department of Juvenile Justice (DJJ) reported to the *Inquiry into Child Protection Services in NSW* in 2008 that between 55 to 60 percent of the young people held in detention are on remand. DJJ reported on a review of remand cases over a three month period and found that 90 percent of this group were granted bail but were unable to meet the conditions imposed.³³ The most common condition imposed was 'reside as directed' by the Departments of Community Service or Juvenile Justice. Hence, young people remained in custody because they were homeless and the government Departments did not provide the support requested by the Court.

The NSW Law Reform Commission report, *Young Offenders*³⁴, provided similar statistics in 2005. The Commission's report described significant and well documented reasons why the numbers of young people in custody on remand was a poor outcome for young people and the community, these included:³⁵

- The detrimental effects on the ability of the young person to prepare for their court appearance
- The fact that young people convicted of charges do not receive a custodial sentence
- It was important to prevent associations forming in detention centres by providing opportunities to be diverted from the juvenile justice system
- The inability of young people to maintain community and family ties, and the disruption to schooling or employment
- Juvenile detention centres may be located a long way from a child's family, particularly for girls, with fewer detention centres available
- A breach of international obligations – Article 37(b) of the *Convention on the Rights of the Child* (CROC) provides for detention for children as a last resort

³¹ Vignaendra S et al, BOCSAR, *Bulletin 126*, (May 2009)

³² A bail condition which means that a young person will remain in detention until acceptable accommodation can be found. The court does not have authority to mandate that the Department of Community Services assist with providing accommodation for a young person. In such a situation the young person can remain in detention until an available placement is found.

³³ The Hon James Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, vol 2, 558, NSW Government (November 2008)

³⁴ NSW LRC, *Young Offenders*, section 10.3 (2005)

³⁵ Ibid

The *Report into the Inquiry Into Child Care and Protection Services*³⁶ also contained Department of Juvenile Justice data on young people who had 'reside as directed' orders. The data included the findings that:

- 10 to 12 year olds had longer stays in custody before meeting their bail conditions
- Young people involved with the Department of Community Services (DoCS) prior to an offence had longer stays in custody than those unknown to DoCS
- Girls were more likely to be on remand and unable to meet bail conditions than boys

The findings on the detrimental and inequitable impact of bail also supports the evidence gathered by YJC members in their discussions and exchange of information leading up to the decision to prioritise bail as a key research and policy issue.

1.5 Policy in practice: experience of YJC members

The day-to-day experiences of youth workers, solicitors and other YJC members working with young people are key indicators of how legislation and policy are being translated into practice.

Since 2007, members of YJC have reported changes to police practices in monitoring young people on bail, as well as what appeared to be increasing incidents of young people being breached for what were considered 'technical' reasons. These examples included (provided at YJC meetings), where a young person was arrested for returning home 10 minutes outside of their curfew, walking 20 metres from the bus stop to home without their parent, or being in the company of a youth worker (ie a responsible adult rather than the parent nominated).

The CIDNaP project³⁷ which provides legal assistance to young people who have been unlawfully arrested or detained, also reported similar concerns. They noted an increase in the number of young people detained due to breaches based on out of date bail conditions or arrest warrants that had been withdrawn. It is disturbing that the *Bail Me Out* research identified two cases of this nature, which were not corrected until the young person appeared in court. This assumes that the police records were not checked, or court information was not available and/or solicitors were unable to intervene prior to the hearing to arrange the young person's release.

YJC members also noted what appeared to be an increased emphasis on the monitoring of young people on bail, with cases reported of police checking to see if a young person was at home several times a night, including in the early hours of the morning. These observations were of concern to YJC members given that this was more likely to affect young people from disadvantaged backgrounds.³⁸ Members were concerned that these relentless and inflexible approaches were failing to divert young people from the criminal justice system.

³⁶ Wood, Report on the special commission of inquiry into child protection services in NSW, p556-557 (2008)

³⁷ *Children in Detention Project* is a partnership with NSW Legal Aid, Public Interest Law Clearing House and the Public Interest Advocacy Centre. CIDⁿAP seeks to improve the way young people are treated by the police and juvenile justice system.

³⁸ DoCS and DJJ report that young people who are:.... *significantly higher risk of poor educational achievement, alcohol and other drug addiction, mental illness, homelessness and poor family relationships, ... are known risk factors for juvenile criminal offending behaviour.* (Memorandum of Understanding, DoCS and DJJ) unpublished

Of particular concern to YJC members are young people who were granted bail, but then detained in juvenile custody due to the lack of accommodation available in the community. This usually occurred when the young person was deemed to be homeless³⁹ and assistance from the Departments of Community Services or Juvenile Justice failed to secure them accommodation. It appears that young people from disadvantaged backgrounds are being doubly disadvantaged in relation to breach of bail and use of custody. Increased contact with others' criminal behaviour and the separation from community and family, provides further significant barriers to young people remaining at school, gaining employment or participating in health programs.

A lack of sufficient official data and information in relation to the above groups of young people and their experience with bail processes, led to the current research being undertaken. The aim of this research was twofold: one was to provide a snapshot on the circumstances in which a young person was likely to be breached on their bail, and the other was to highlight the issue of the availability of suitable accommodation for young people who are homeless or at risk of homelessness. It is anticipated that this in turn could lead to the development of the research and information needed to develop evidence led policies and best practices.

The following section outlines how the research for this project was undertaken and is followed by a discussion of the findings. The study also includes a qualitative examination of case studies to further explore the circumstances behind bail breaches and to identify issues that require further study. The final section provides concluding remarks and recommendations for the future.

³⁹ Without accommodation or in insecure accommodation

2 Methodology

A pilot survey of young people in the Children's Court at Parramatta was undertaken from 25 August 2008 to 31 August 2008 (inclusive) (referred to as the 'pilot study'). The survey was repeated, with improvements to the survey instrument, between 18 January and 24 January 2009 (referred to as 'Study 2'). The criteria for the survey subjects and method of recording data were the same for both study periods.

The Participants

To be eligible for inclusion in the study, the young person who appeared must have appeared on the custody list on the day of survey recording. All of the young people on the custody list were in custody at the time they presented in court, whether in police custody, or in the custody of the Department of Juvenile Justice. These were typically young people who had breached their bail, been arrested for committing new offences, or had been bail refused or unable to enter into their bail at their previous court appearance.

The Survey Form

The survey form was designed to collect data relating to a young person's bail, including information such as: type of bail conditions imposed, nature of the breach of bail, court outcome in relation to bail, and accommodation at the time of arrest. There were two aspects to this survey, the first was to determine the circumstances leading to a young person being detained in juvenile detention or in police custody. For this reason, data were only collected for young people who appeared before the Children's Court who were in custody. The other purpose was to analyse the outcome for young people who were homeless. The survey sought to gather information in relation to a young person's accommodation and state of homelessness, and whether this had an impact on a young person being released on bail or remaining in detention. The questions in the survey were developed with extensive consultation with the members of the YJC.

The Process

Researchers (comprised of members from the YJC) sat in Parramatta Children's Court and completed a survey for each young person appearing in court who met the survey criteria. No personal details were collected about the young person apart from their age, sex and details relating to their bail conditions. All information was kept confidential and maintained according to privacy protocols practiced by community legal centres.

The data were collected from one Children's Court in order to maintain consistency and provide a snapshot of the issues that presented in one week. Parramatta Children's Court was selected to collect the data given its centrality and status as the major Children's Court in NSW. Permission was sought from the Senior Children's Magistrate to conduct this research and to attend the court proceedings. The research was also supported by the Children's Legal Service of Legal Aid (NSW) and the Aboriginal Legal Service (NSW/ACT).

Treatment of pilot study and Study 2

The data from the pilot study and Study 2 were combined in the tables and graphs wherever possible. When data were analysed only from the pilot study or Study 2, this is identified in the table or graph.

Qualitative Study

Researchers also collected detailed accounts of cases where the young person was not able to meet bail conditions, or where the nature of the breach was minor. This case study material was analysed using qualitative methods (content analysis) to

identify themes in circumstances of young people who appeared before the court in relation to bail.

Limitations

The data collected was dependent on the amount of information that was available during the court hearing. As a consequence, particularly for the pilot study, there were gaps in the collection for some questions, such as: not knowing what all the young person's original bail conditions were, or where they were living at the time of arrest etc. Similarly, the pilot study identified areas of information which were not being collected and were thus included in Study 2's survey form.

3 Results

3.1 Demographic: sample characteristics

Age and gender

A total of 145 young people were surveyed in this study, of which 109 (75%) were male. This varies from the annual number of male defendants with cases finalised in 2007-2008, which was 82.3 percent.⁴⁰

Table 1 below shows the distribution of age by gender, from the 141 young people for whom information on their gender and age was available. The study found the majority of male young people were between the age of 15 and 17, while more than half of the females were under the age of 15.

Table 1 Gender by age

Gender	Age (years)	Number	Percentage
Male	12-14	21	19.8
	15-16	44	41.5
	17+	41	38.7
Male total		106	100
Female	12-14	19	54.3
	15-16	12	34.3
	17+	4	11.4
Female total		35	100

Ethnicity

Table 2 reveals that young people from culturally and linguistically diverse backgrounds were the largest group of young people in custody (37%) on the day of collection, followed by those from an English speaking background (34%) and by those identified as Aboriginal (29%). This also varies from the Department of Juvenile Justice data, which reports that the number of Aboriginal young people remanded in custody for 2007-2008 was approximately 40 percent.⁴¹

Table 2 Ethnicity

Ethnicity	Number	Percentage
Culturally and linguistically diverse (CALD)	54	37
English Speaking Background (ESB)	49	34
Aboriginal	42	29
Total	145	100

Homelessness and statutory care

Of the 135 young people for whom information on their statutory status was available, 19 percent were in statutory care and four percent were at risk of coming into statutory care. This is probably an underestimate of young people who are known to DoCS, as it does not include those who had previously been placed in out-of-home care, had previously had involvement with DoCS, or at some time been notified to DoCS as being in need of care and protection. The survey only looked at the young person's circumstances at the time of arrest. Other studies identify about 25 percent of juvenile offenders as having experienced out-of-home care placements.⁴²

⁴⁰ ABS, *Criminal Courts*, 4513.0, 2007-08, Table 4.3, p84 (2008)

⁴¹ Department of Juvenile Justice, *Annual report 2007-2008*, p23 (2008)

⁴² Kenny DT & Nelson P, *Young Offenders on Community Orders*, s 2.132008 (2008)

Table 3 Statutory care and risk status

Statutory care status	Number	Percentage
In statutory care	26	19.3
Risk	6	4.4
Neither	103	76.3
Total	135	100

Of the 144 for whom information on their living arrangement at the time of their arrest was available, the majority were living with their family (72%), nearly one-fifth (19%) were homeless, and nearly one-tenth (9%) were in out-of-home care.

Living with family at time of arrest did not necessarily mean that the young person had somewhere to live, if granted bail, nor does it indicate stable accommodation. In some cases, living with family at the time of arrest may reflect tertiary homelessness, particularly where:

- The family member may not have been the primary caregivers
- The accommodation may not have been a permanent arrangement
- The accommodation itself may have been unstable (e.g. living in boarding houses)
- It was unsafe for the young person to return home
- The parents/primary carers refused to allow the young person to return home

The classification for this variable therefore underestimates the state of homelessness for this survey sample. The data for homelessness cannot be used as an indicator for the number of times the condition 'reside as directed' would be expected to be found.

Tracking the interaction between homelessness and the court process was one of the main purposes of this study. The implications of the living arrangements of young people in this sample are explored in more detail in the section on Homelessness.

Table 4 Living arrangements at time of arrest

Living arrangement at time of arrest	Number	Percentage
With family	82	72
Homeless ¹	22	19
Out of home care	10	9
Total	114	100

¹ Homeless includes those experiencing primary homelessness, who were couch surfing or living in SAAP accommodation.

3.2 Reason for custody

The reason for being in custody was available for 133 of the young people and are presented in Table 5 below. Over half of this group were in custody due to a breach of bail (60%), approximately a third (32%) committed new offences,⁴³ five percent remained in custody because they were unable to meet their previous bail conditions, and three percent were in custody due to administrative errors or arrested unlawfully. The study sought to distinguish between those young people who breached their bail due to the commission of new offences, and those who breached their bail by virtue of not following a set bail condition.

⁴³ This was where a young person was charged for committing an offence who had not been on bail.

Table 5 Reason for custody

Reason for custody	Number	Percentage
Breach bail condition	80	60
Fresh offences ¹	42	32
Bail condition unmet	7	5
Administrative errors	4	3
Total	133	100

¹ Not on bail when the offences were committed

Of the 80 young people who were in custody due to breach of bail, the bail conditions breached were recorded for 77 (96%) people. Where the information was available, multiple responses were collected, and the results are presented in table 6 below. The most common bail condition breached was curfew (22%), followed by failure to report to police (12%) and breach of non-association order, either non-association from a person or place (10%). 'Other' includes the group who committed new offences while on bail (32%). The number of bail conditions received is likely to be underestimated, given that information was recorded only on what was available during court proceedings. There may have been other conditions that formed part of a young person's bail undertaking that were not mentioned during court proceedings.

Table 6 Bail conditions breached (Multiple responses collected)

Bail conditions breached	Number	Percentage	Percentage of cases
Breached curfew	17	18	22
Fail to report to police	9	10	12
Non-association (place/person)	8	9	10
Fail to reside as directed or in specified address	6	6	8
Fail to obey reasonable direction (Carer/DoCS/DJJ/Parent)	4	4	5
Fail to attend (School/programs)	1	1	1
Others	49	52	64
Total	94	100	122

3.3 Court outcomes

Bail result

The court outcomes in relation to bail were available for 142 young people, and the results are displayed in table 7 below. Fifty percent of the young people surveyed were granted bail, 20 percent did not apply for bail, 14 percent were refused bail, and eight percent were granted bail but were unable to meet conditions of bail.

Table 7 Court outcomes in relation to bail

Bail outcome	Number	Percentage
Bail granted ¹	71	50
Bail not applied for	29	20
Bail refused	20	14
Bail granted, but unable to enter	12	8
N/A - matter finished	10	7
Total	142	100

¹ Bail granted includes cases where bail conditions were continued or varied

Gender, ethnicity and age

Court outcomes in relation to bail was further examined in terms of gender, ethnicity, age and the reason the young people were in custody.

Table 8 below shows that while more females were granted bail than males (54% females and 48% males), a significantly higher proportion of females were unable to enter into bail (20%), and an almost equally large proportion of males were refused bail (18%).

Table 8 Court outcomes in relation to bail by gender

Gender	Bail continued /granted/varied		Bail refused		Bail not applied for		Bail granted but unable to enter		N/A - matter finished		Total	
Male	51	48%	19	18%	25	23%	5	5%	7	7%	107	75%
Female	19	54%	1	3%	4	11%	7	20%	4	11%	35	25%
Total	70	49%	20	14%	29	20%	12	8%	11	8%	142	100%

Chi square tests assessing the differences in the proportion of each ethnic group who were granted bail compared with all other bail outcomes was significant (table 9). More CALD young people were granted bail or had bail continued compared with either ESB or Aboriginal young people [$\chi^2 = 6.43$, $df=2$; $p=0.04$].

The distribution of bail outcomes by age is displayed in table 10. The figure shows that while the majority (74%) of 12-14 year olds were granted bail, at least nine percent of young people in this age group were unable to enter into bail.

Table 9 Court outcomes in relation to bail by ethnicity

Ethnicity	Bail continued /granted/varied		Bail refused		Bail not applied for		Bail granted but unable to enter		N/A - matter finished		Total	
ESB	22	45%	4	8%	13	27%	5	10%	5	10%	49	34%
Aboriginal	18	44%	8	20%	3	7%	7	17%	5	12%	41	29%
CALD	31	58%	8	15%	13	25%	0	0%	1	2%	53	37%
Total	71	50%	20	14%	29	20%	12	8%	11	8%	143	100%

Table 10 Court outcomes in relation to bail by age group

Age group	Bail continued /granted/ varied		Bail refused		Bail not applied for		Bail granted but unable to enter		N/A - matter finished		Total	
12-14 years old	29	74%	5	13%	1	3%	3	8%	1	3%	39	28%
15-16 years old	25	45%	5	9%	13	23%	5	9%	8	14%	56	40%
17 years old or older	16	36%	10	22%	15	33%	2	4%	2	4%	45	32%
Total	70	50%	20	14%	29	21%	10	7%	11	8%	140	100%

Court outcomes and bail

Table 11 shows the bail outcomes in relation to the reason the young people were in custody. Sixty percent of the young persons in custody due to breach of bail were granted bail again (59%). Of those in custody due to fresh offences, nearly half (48%) were granted bail. Twenty-four percent did not apply for bail, and 14 percent were refused bail. All of the 11 young people who were in custody because they were previously refused bail did not reapply for bail.

Table 11 Court outcomes in relation to bail by reason for custody

Reason for custody	Bail continued /granted/ varied		Bail refused		Bail not applied for		Bail granted but unable to enter		N/A - matter finished		Total	
Breach of bail	47	60%	12	15%	8	10%	5	6%	6	8%	78	55%
Fresh offences	20	48%	6	14%	10	24%	4	10%	2	5%	42	30%
Bail previously granted but unable to enter into	1	14%	2	29%	0	0%	2	29%	2	29%	7	5%
Bail previously refused	0	0%	0	0%	11	100%	0	0%	0	0%	11	8%
Administration error	2	50%	0	0	0	0	1	25	1	25	4	3%
Total	70	49%	20	14%	29	20%	12	8%	11	8%	142	100%

The bail conditions imposed were collected for 78 of the 82 young people (95%) who were granted bail with conditions. This includes young people with conditions they were unable to meet and who remained in custody. The results are summarised in table 12 below. A total of 239 bail conditions were imposed on this group of young people, averaging three bail conditions per young person. Sixty-seven percent of this group were assigned three or more conditions. The three most common conditions imposed were curfew (68%), reside as directed (58%) and obey reasonable direction (58%).

Table 12 Type of bail conditions imposed (multiple responses collected)

Bail Conditions	Number	Percentage receiving condition ¹
Curfew	53	68
Reside as directed or as specified	45	58
Obey reasonable direction	45	58
Non-association	24	31
Report to police	21	27
Attend school/program	12	15
Pay surety	7	9
Not to consume drugs or alcohol	5	6
Supervision of DoCS/DJJ	3	4
Other	24	31
Total	239	

¹Percentage of the 78 young people granted bail who received this condition.

3.4 Discussion

Bail conditions imposed on young people

The study shows that the most common types of bail conditions that were imposed on young people were prescriptive in terms of behaviour (curfew, obeying reasonable directions, non-associations, report to police) and welfare focused (reside as directed, attend school/program). The number of bail conditions imposed on young people was also high, with 67 percent of young people receiving three or more bail conditions.

The type and number of bail conditions imposed also indicate a more welfare-based approach to supervising young people on bail. Bail conditions were framed around what would normally be part of a case management plan objectives (such as: attend counselling, reside as directed). However, the conditions are imposed by the Court with no consultation with the families, or little assessment of the young person. The appropriateness of the court or police imposing such conditions need to be assessed, as such conditions may disadvantage young people.

A significant majority of young people surveyed were 16 years old or younger.⁴⁴ The development of young people of this age group makes compliance with multiple and complex bail conditions more difficult. The authors believe these factors contribute to the overwhelmingly large proportion of young people (60%) in custody appearing before the Children's Court due to breaching their bail.

Breaches are more likely when young people cannot remember all of their bail conditions or understand what they mean. The nature of bail conditions imposed is not only restrictive on the young person, but also places pressure and responsibility on a young person's parents/family or carer to assist a young person comply with their bail conditions. For example, a curfew condition could mean that the onus was on the parent or carer to be with the young person outside of the stated hours, which places stress on disadvantaged families (eg: those from low income families, isolated families etc).

These data highlights significant concern regarding the type of bail conditions imposed on young people, especially for those who have already breached their bail conditions. Some young people who were granted bail again, were released on the same bail conditions. Without amending the conditions that lead to the breach of bail, many young people are left in the vulnerable position of being breached again for the same bail condition.

Technical breaches

There is no evidence-based practice to show that the imposition of restrictive or welfare-based bail conditions will either ensure the young person's return to court at a future date, or reduce reoffending. Studies demonstrate that young people who are diverted from the court processes fare better than those who remain in detention.⁴⁵ Indeed, over two thirds of young people surveyed did not commit new offences or fail to appear at court, but were in custody due to breaching their bail conditions. Of those young people who had breached their bail, sixty percent were granted bail by the Children's Court, with little or no change made to the bail conditions. This suggests that the nature of the breaches were not significant and points to the imposition of unnecessary bail conditions. This was reflected in the study, with the

⁴⁴ See Table 1: 60.3% of males and 88.6% of females surveyed were 16 years old or younger; 19.8% of males and 54.3% of females surveyed were 12-14 years old.

⁴⁵ Vignaendra S and Fitzgerald J, Reoffending among young people cautioned by police or who participated in a youth justice conference, NSW Bureau of Crime Statistics and Research, Bulletin Number 103 (October 2006)

most common breach leading a young person into custody being a breach of curfew, followed by reporting to police – breaches which were not a new criminal offence, did not cause harm to the young person, and did not compromise the safety of others or the community.

With the Courts failing to amend bail conditions and continuing to impose restrictive and welfare focused conditions when granting bail (see Table 13), consideration must be given to the methods of enforcement and monitoring of young people that result in the arrest and detention of young people for ‘technical breaches’ of bail.

Police practices

Police are responsible for the monitoring of bail and for taking action when a person has breached their bail conditions. Young people on bail are easily monitored by police, given the nature of their bail conditions, and are more susceptible to being breached due to social behaviours that are restricted by their bail conditions (such as hanging out with friends outside of curfews, being at a shopping centre). When the court makes a decision consistently, as is shown in this study (60 percent of young people in custody for a breach of bail were released on bail), it indicates that the nature of the breach is not serious enough to warrant detention and the young person is not at risk of not returning to court at a future date. This displays a clear problem in relation to police practices and a failure to consider other options before placing a young person in custody. It indicates an uncompromising approach in dealing with young people, with little discretion exercised in utilising other options available.

The principle of detention as a last resort should be emphasised when dealing with young people. This is reflected in legislation,⁴⁶ in international covenants⁴⁷ and in principles of juvenile justice which recognise that young people, by virtue of their age and lack of development, should be diverted away from the juvenile justice system, and be dealt with in the least intrusive manner.

It is important to note that a breach of bail is not in itself a criminal offence, and given the minor nature of the breaches of bail that were highlighted in this study, it is alarming that such a large proportion of young people are arrested and placed in detention.

Young people who do not request bail

In the study, 11 young people were in custody because they were previously refused bail and did not apply for bail. This is particularly concerning given that the breach of bail for which the young person was arrested, may have been a minor breach. It therefore extends their period on remand, when, if convicted, they may not receive a custodial sentence. It is also harmful to the young person for the reasons set out in the introduction to this paper. The practice creates overcrowding of detention centres, restricts their access to services young people would have in the community, such as schooling⁴⁸ and places them in an environment where their only peers are offenders.

A decision to not apply for bail could be due to factors such as the seriousness of the substantial offence or the young person’s previous criminal record. It could also be possible that a young person was advised not to make an application for bail by their

⁴⁶ See section 8 of the *Children (Criminal Proceedings) Act 1987*, the *Young Offenders Act (1997)*.

⁴⁷ See article 37 of the *United Nations Convention on the Rights of the Child*

⁴⁸ The detention centre opened at Emu Plains does not provide any educational facilities or other day programs, cells do not have sanitation and there have been periods when young people have been locked in the cells up to 20 hours a day. News article available at: <http://www.smh.com.au/national/locking-up-young-viewed-a-criminal-waste-20090426-ajdh.html>, Horin, Locking up young viewed as criminal waste, SMH, 27 April (2009)

solicitor because he/she were unable to meet requirements in section 22A of the NSW *Bail Act*⁴⁹. The methodology of this study did not allow an examination of the effect of this section, as it did not collect information outside of the court proceedings.

Since this study was undertaken, the Bureau of Crime Research and Statistics (BOCSAR) has clarified this issue, publishing data which clearly points to the disproportionate effect of section 22A on young people. The BOCSAR report, in describing the relationship between data for the increase in length of stay in detention and commencement of section 22A, found the relationship was so obvious it stated that to test the statistical significance *would be superfluous*.⁵⁰

Bail outcomes

The results showed that while females were more likely to be granted bail, there was a significantly higher proportion of females who were unable to enter into their bail. This result requires further investigation to determine whether girls are more likely to be assumed by the court to be at risk (due to indicators of abuse of domestic violence within family structures) or there are fewer places available for girls to reside.

Young people under the age of 16 were generally more likely to be unable to enter into their bail. This again points to a welfare focus of the Courts, with detention considered a more appropriate option for young people who do not have accommodation options available to them. This is of further concern given that the younger a person enters the juvenile justice system, the more likely and the more frequent the periods of supervision will be in the future.⁵¹

Those who were more likely to be granted bail were 12-14 years of age, with those young people aged 17 years or older more likely to be bail refused. Young people from CALD backgrounds were more likely to be granted bail. This may be due to CALD communities experiencing more supportive family and social structures.⁵² This result points to the need for further examination of this relationship.

⁴⁹ (1) A court is to refuse to entertain an application for bail by a person accused of an offence if an application by the person in relation to that bail has already been made and dealt with by a court, unless:

- a) The person was not legally represented when the previous application was dealt with, and the person now has legal representation, or
- b) New facts or circumstances have arisen since the previous application that justify the making of another application

⁵⁰ BOCSAR *Bulletin* 128, Figure 2, p3 (May 2009)

⁵¹ Australian Institute of Health and Welfare, *Juvenile Justice in Australia 2005-2006* p2 (2006)

⁵² Vinson T. *Unequal in life: the distribution of social disadvantage in Victoria and NSW*. Melbourne: Ignatius Centre for Social Policy Research (1999)

4 Zero tolerance, bail and homelessness

Researchers collected case studies of 31 subjects for the pilot study and 23 for Study 2. A summary of the case studies is at Appendix 1.

The case studies were analysed to identify common themes and circumstances that could indicate a need for further research, in legal, policy or administration of the juvenile justice system. The analysis of the case studies presented three issues for further study:

1. Technical breaches
2. Arrests due to administrative errors
3. Unmet bail conditions

4.1 Technical breaches

This study has defined 'technical breaches' as circumstances where a young person is arrested for a breach of a bail condition/s which in of itself, is not a new offence, does not harm the young person, another person or the community.

Technical breaches occurred when young people returned home after a curfew, were not accompanied by a person stated on the bail undertaking, or because the young person was in the company of someone listed on a non-association order. Examples include:

- The young person was not to go within 50 metres of the victim. The victim saw the young person while he was waiting in his father's car, while his father shopped in a grocery store
- A bail curfew prohibited the young person from visiting his mother who had mental health issues. The young person visited his mother after she contacted him threatening to commit suicide if he did not visit. He went to his mother's house and was breached for not complying with curfew
- The young person arrived home at 8.40pm when curfew was 8.00pm. This was a first breach
- The father of a young person gave permission for his son to go out with his cousin. The bail condition stipulated the young person must always be with parents
- The young person visited a shopping mall from which she was banned. She then voluntarily presented to police and was then arrested
- The young person reported to police every day during his period on bail. He breached this condition once when he was sick, did not have access to a telephone and did not live close to a police station. He was arrested when reporting the following day

The stories behind the data support the conclusion that the higher number of breaches reflect the inflexible policies of policing young people, which is in contradiction to the objectives of diversion away from the criminal justice system.

4.2 Administrative errors

Administrative errors is the term used to describe the breaches or arrests that occur because either:

- There are several bail conditions where one or more are contradictory and in meeting all conditions, a breach will occur

- A young person is arrested on a breach, when they do not have any cases pending or bail conditions. That is, the conditions have changed or a matter has been finalised

Examples from the case studies demonstrate how this occurred:

- The young person was arrested for breaches based on out of date information. The matter had been dealt with, but not updated on police system (a similar case occurred in each study period)
- The young person did not appear in court because notification of the court date was sent to the wrong address
- The Children's Court was unable to determine the name of the carer of the young person as DoCS documents were unavailable
- A DoCS case worker was not available at time of hearing to assist court
- The bail condition directed the young person to reside at the same address as victim
- Young person could not enter a specific suburb where his aunt lived, but could live or visit the same aunt
- Two young people could not associate with each other, yet went to the same school
- The young person was directed to reside at an address where he was also unable to visit because of an AVO

Administrative errors indicate the need to improve court processes and police information systems and practices. Police should have protocols to manage breaches where there is some evidence that their information is incorrect (such as documents provided by the young person or carer) or are clearly the result of an administrative error (such as residing at a residence where the young person is unable to reside, due to an AVO).

4.3 Unable to meet bail conditions

Young people remain in detention when the court has granted bail because they cannot meet the conditions of bail. The underlying reason for failing to meet conditions were generally beyond the control of the young person and were a result of inadequate resources for young people and their families, and a lack of health, housing and welfare services.

A 'reside as directed' condition by the Department of Community Services or the Department of Juvenile Justice can result in a young person remaining in detention when the agencies fail to fulfil that direction. Other reasons young people remain in custody despite being granted bail, included:

- Case workers unavailable to coordinate accommodation or provide information
- Drug and alcohol program place unavailable
- Family unable pay a surety
- Guardian unable to pay for travel from a regional area to detention centre to collect young person
- Departments unable to determine if available accommodation is suitable
- Court unable to determine (lack of information from DoCS) who had guardianship of young person
- Transport to accommodation unavailable

Payment of surety, transport, places in health programs, lack of case workers, are all fundamental resource issues for the family and service providers who have responsibility for providing support or programs for young people.

4.4 Homelessness

Late in 2008, the NSW Government released Justice Wood's report of *the Inquiry into Child Protection Services*. The report included a chapter on *Child protection and the criminal justice system*.⁵³ The report concluded that:

Coming within the juvenile justice or criminal justice system should not exclude a young offender from long-term services from DoCS and other human service agencies. Nor should a shortage of refuges or other forms of accommodation result in young people who cannot live safely with their families, being remanded in custody unnecessarily, pending trial⁵⁴.

The Youth Justice Coalition, in considering recommendations arising from this study, developed similar conclusions as that described by Wood in his report.

A significant motivation for undertaking this study was to document the circumstances of young people who were finding themselves in detention because they were homeless. This section brings together the data and case studies from this survey to describe the effect of homelessness on court outcomes and the failure of a system to deal with individuals who have complex needs.

Case studies from this survey found a range of circumstances where young people were in need of support from DoCS. For example, the case studies describe circumstances where DoCS refused requests to find accommodation, or did not follow up cases where previous placements had failed. There were also cases when:

- Parents did not want the young person to return home
- Care agencies could not determine who the legal guardian was, in order to release the young person into their care
- Living arrangements with distant relatives and friends broke down
- Short term stays in refuges were the only option
- Circumstances where parents were too ill to care for the young person

Courts are in a difficult situation when faced with a young person, who, if released on bail, does not have accommodation and is rendered homeless. The presumption of innocence, the nature of the offence, assessment of risk of returning to court and the likelihood of a custodial sentence if convicted, is set up against the welfare needs of the young person. In these circumstances, detention becomes an unsatisfactory extension of the care system, or 'warehousing' in juvenile detention centres.⁵⁵ Remaining in detention because the young person could not meet conditions has a significant impact on future applications for bail, as they would be prohibited under section 22A of the NSW *Bail Act* to make an application for bail, if accommodation was unavailable. This effectively places reliance on an under-resourced system to find accommodation for a young person, before they are able to even make an application for bail. In addition to this, the Court has few options available to place an obligation or monitor DoCS or DJJ to find accommodation within a certain period in order to minimise the time a young person is placed on remand.⁵⁶

⁵³ Vol 2, Chapter 15, ff 556 (2008)

⁵⁴ Wood, Vol 2, Chapter 15, p575 (2008)

⁵⁵ Ibid, term used by Wood, p559

⁵⁶ Refer to previous YJC submissions: *YJC submission on the Green Paper into Homelessness* (available at: http://www.naah.org.au/download_files/YJC%20green%20paper%20submission.pdf)
YJC submission to the Woods Inquiry into Child Protection Services (available at: [http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/vwFiles/YJC_Submissions_120308_3026398_Received.pdf/\\$file/YJC_Submissions_120308_3026398_Received.pdf](http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/vwFiles/YJC_Submissions_120308_3026398_Received.pdf/$file/YJC_Submissions_120308_3026398_Received.pdf))

Community resources

Young people who are homeless and on bail rely on the same accommodation services as others in the community. That is, they are not specifically designed for their needs or to support them to meet their many bail conditions. One housing program which is most likely to take young people is the Supported Accommodation Assistance Program (SAAP).

To test what happens to referrals from young people, the Youth Accommodation Association (YAA)⁵⁷ undertook a pilot study with their Youth Emergency Accommodation Line (YEAL). In August 2008 (same time period as the Bail pilot study) YEAL was asked to report on referrals from young people leaving court over a one week period.

Results of the 14 referrals that met the criteria, found the referrals:

- Were for youths aged between 13 and 15
- Were made by the Department of Juvenile Justice, Department of Community Services or a solicitor
- Six of the 14 referrals were assisted with accommodation
- Three were refused service because beds were not available
- Five were not eligible⁵⁸

While the sample was small and generalisations should not be made, the sample reinforces what is known and documented elsewhere about unmet demand in SAAP services.⁵⁹ The number of young people ineligible for places indicates more research and policy projects need to be undertaken to identify the type of services needed to meet the needs of this group of young people.

UnitingCare Burnside,⁶⁰ in association with several other community organisations undertook to develop a policy position on a preferred model of care for young people on bail. In consultation with community sector service providers, a position paper was developed that recommended a residential rehabilitation model that would meet the complex needs of young people on remand.⁶¹

4.5 Discussion

The systemic resource and administrative failures, point to problems throughout the justice process, such as the:

- Limited time solicitors have to become familiar with a matter, allowing potential problems with bail conditions to be missed
- Numerous conditions placed on young people of a welfare nature, which lack an evidence base for their effectiveness⁶²
- Understanding young people and their carers have of the court process and bail conditions

⁵⁷ The YAA is the peak body for organisations operating youth refuges funded under Supported Accommodation Assistance Program (SAAP)

⁵⁸ Not eligible for the accommodation available means the beds available were probably in a women's refuge or services restricted to 18 to 24 year olds.

⁵⁹ AIWH, *Demand for SAAP accommodation by homeless people 2006-07*, valid unmet requests to youth agencies for 06-07 was 29% (p30), total number of 'turned away' requests for all SAAP services was 57% (p57)

⁶⁰ UnitingCare Burnside is a member of the UnitingCare Children, Young People and Families Service Group of UnitingCare NSW.ACT and part of the Uniting Church in Australia.

⁶¹ *Releasing the pressure on remand: Bail support solutions for children and young people in NSW*, available from Burnside Uniting Care, Social Justice, Partnerships & Communication UnitingCare Children, Young People & Families, PO Box W244, Parramatta Westfield 2150 (October 2009)

⁶² Vignaendra, Moffar, Weatherburn, Heller, *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, NSW Bureau of Crime Statistics and Research, Number 128 (2009)

- Currency of information arising from court appearances and its flow from courts to police

The experiences in the case studies describe circumstances where the resources of young people, their carers and police are unable to adequately track numerous conditions in difficult circumstances. The introduction of new information technology such as 'Justicelink',⁶³ has not prevented errors and unlawful arrests from occurring.

Contributing to this situation is a lack of a residential rehabilitation model, where young people who are homeless or at risk can be placed in the time leading up to their court hearing. Young people are not meeting bail conditions, in particular the 'reside as directed' orders because there is not a model of care in NSW which can meet their needs. A therapeutic or rehabilitation service needs to be funded, that can manage the effects of abuse, neglect, mental health issues, drug and alcohol abuse, learning difficulties and disrupted education during this period and continues to provide support past the period of detention to prevent reoffending.

⁶³ *JusticeLink* enables interchange of information between NSW Supreme, District and Local Courts, as well as the Sheriff's Office, Coroner's Court and Children's Court.
http://www.lawlink.nsw.gov.au/lawlink/eservices/ll_eservices.nsf/pages/courtlink_about_us

5 Discussion and Recommendations

The study found that if young people were granted bail with conditions, there were usually more than three conditions. These conditions are expected to be understood by young people who are known to have a range of pressures on their lives including characteristics such as a greater likelihood of poor cognitive functioning,⁶⁴ unstable family arrangements,⁶⁵ more likely to have experienced a number of out-of-home care placements.⁶⁶

The types of conditions also put families under stress, for example, curfews allow police to visit and disturb the family by making frequent visits to the home at any time. Non-association conditions restrict families from participating in family functions or undertaking family responsibilities, such as attending funerals. Some young people were presented with the situation where they had to be in the company of the parent at all times but at the same time being forbidden from associating with other family members. These conditions had the capacity to affect all members of the family. There was also evidence from the case studies that guardians and young people did not always understand the nature of the bail conditions that were imposed (particularly in relation to non-association conditions).

The short and long term costs to families and the community, of detaining young people are not well documented. The type of costs if such a calculation were to be undertaken could include:

- Police investigation, interrogation, processing and holding cells
- Legal representation costs - Legal Aid and Aboriginal Legal Service
- Family costs – travelling, loss of work or social security payments if child in detention
- Court costs – magistrates and administration
- Long term costs of young person giving up school or losing employment
- Support services such as youth workers or out-of-home care providers
- Costs of holding a young person in juvenile detention cells

The costs that can be calculated are the direct costs of holding a young person in juvenile detention. The daily cost per juvenile in custody was \$541.⁶⁷ Speculating that if the number of administrative errors reduced the appearances of ten young people a week, for each court, there is a minimum saving of \$260,000 per year to the DJJ budget. This would also reduce the prospect of legal action against police for unlawful arrests.

If young people granted bail were assisted to meet their bail conditions (eg having adequate accommodation available), it would free up potentially over \$5 million a year of the DJJ budget. This is based on the number (928) of young people detained in 2007-2008 who could not meet conditions by the average number days young people remain in custody (10) on remand.⁶⁸

Further work could be done to formulate the cost for the number of cases where a young person is breached on a 'technical' breach, detained and brought before the court, and where there is no change to the bail conditions.

⁶⁴ Kenny and Nelson, *Young Offenders on Community Orders*, University of Sydney (2008) 6.16

⁶⁵ Ibid, 2.14

⁶⁶ Ibid, 2.13

⁶⁷ NSW Auditor-General Report to Parliament, vol. 5, 198 (2007)

⁶⁸ Department of Juvenile Justice, *Annual Report 2007-2008*, p44 (2008)

Recommendations

1. The Youth Justice Coalition recommends the NSW government:

- 1.1 *Increase resources for Legal Aid NSW and the Aboriginal Legal Service (NSW/ACT) to support young people at bail hearings.*
- 1.2 *Fund a Department of Community Services officer position at the Children's Court to assist with issues relating to accommodation and other welfare related issues.*
- 1.3 *Amend s22A of the NSW Bail to exempt young people appearing in the Children's Court.*
- 1.4 *Amend legislation to provide a discretionary power for police to decide whether or not to breach a young person who is on bail.*
- 1.5 *Amend legislation to allow NSW Police the power to warn or caution a young person who is found to be in breach of their bail (particularly for 'technical breaches').*

2. The Youth Justice Coalition recommends that the NSW Police Service in each local area command:

- 2.1 *Meet benchmarks for referral rates to diversionary options. The measures should be incorporated in the NSW State Plan.*
- 2.2 *Initiate community based strategies to improve relationships between police and Aboriginal communities.*
- 2.3 *Undertake specific training on how to engage and work with young people.*
- 2.4 *Develop and implement a best practice model for engaging and working with young people, consistent with existing legislation and frameworks.*

3 The Youth Justice Coalition recommends that:

- 3.1 *The NSW Department of Juvenile Justice have responsibility for organising services for young people granted bail, to meet their bail conditions, particularly 'reside as directed' conditions, transport and placement in a programs.*
- 3.2 *The NSW government fund children's services sector with expertise in out-of-home care services to establish a residential service for young people granted bail with 'reside as directed' conditions*
- 3.3 *The Department of Community Services approved and funded services be permitted to provide accommodation services to young people released on bail without referral from DoCS. Caps on the number of referrals agencies can accept from court without referral by DoCS should be removed.*
- 3.4 *The NSW government should fund community diversionary programs that are responsive to young offenders on bail. Organisations working with young Aboriginal people should be a target for these services.*

4. The Youth Justice Coalition recommends that DoCS and DJJ cooperate to meet the needs of young people by:

- 4.1 *Sharing information via data bases to assist the court and to develop joint accommodation and intervention options.*
- 4.2 *Ensuring formal arrangements to secure consistent practices and services from Police, Education, Health, Corrective services, DADHC and Housing*
- 4.3 *Securing support for services during the period of detention on remand or community orders in a way that the assistance can continue when the court finalises the matter (that is a support plan continues in the community or where appropriate, in detention)*

Appendix 1 Case studies summary

Pilot study August 2009

Age/Sex	Nature of breach	Bail outcome
17 Male	<ul style="list-style-type: none"> Breached bail condition of reporting to police Had reported regularly, but was unable to do so on the Saturday as he was sick. Home did not have a landline, mobile phone had no credit, and he lived some distance away from the nearest police station 	Bail granted
17 Female	<ul style="list-style-type: none"> ADHD –contravening an AVO sought against YP by family members Placed in foster care 	Bail granted
12 Female	<ul style="list-style-type: none"> Bail condition was to reside as directed by DJJ in consultation with DoCS YP was in conflict with parents at home due to domestic violence issues (DoCS were notified about this, but continued to return her home) 	Matter finalised
16 Female	<ul style="list-style-type: none"> Bail condition was to participate in an Alcohol and Drug program Placement was available so she stayed in custody pending placement being available 	Bail granted with varied bail condition for to reside with aunty
17 Male	<ul style="list-style-type: none"> Breached bail condition of reporting to police 	Bail granted
13 Male	<ul style="list-style-type: none"> Parole condition was to reside as directed. Could not be released until accommodation was found He came from a remote community and there were other cooffenders residing in that community so he could not return to this area 	Parole granted
16 Female	<ul style="list-style-type: none"> Condition was to reside as directed by DJJ/DoCS DJJ were unable to confirm accommodation arrangements 	Bail granted, but unable to meet conditions– placed in custody
15 Male	<ul style="list-style-type: none"> Did not comply with curfew Parents could not be contacted to notify them of son being held in custody – parents lived some distance away 	Bail continued and not to be released until suitable person came to collect him
13 Male	<ul style="list-style-type: none"> Breached curfew (first breach) Also was charged with shoplift and intimidate 	Bail granted with condition to reside with relative and obey reasonable directions
15 Male	<ul style="list-style-type: none"> Bail condition was a curfew and a condition to reside with parents He absconded for 3 days 	Bail granted
14 Male	<ul style="list-style-type: none"> Bail condition was to reside as directed by DJJ/DoCS to live with father Issues of family violence. YP absconded from home 	Substantive matters finalised
17 Male	<ul style="list-style-type: none"> Youth Justice Conference outcome plan was approved but referred back to court Letter notifying court date was sent to wrong address A warrant was subsequently issued for his arrest for failing to attend court 	Bail granted
17 Male	<ul style="list-style-type: none"> Magistrate found that there was no breach of bail Previous matters had been dealt with by court 	

14 Male	<ul style="list-style-type: none"> Has intellectual disability, mild bipolar and taking medication Had no contact with parents - was previously sexually abused by parents. Homeless and in DoCS' care – was residing at refuge Breached bail by assaulting DoCS officer (involved trying to grab the steering wheel while the DoCS officer was driving and pushing them) 	Bail refused
15 Male	<ul style="list-style-type: none"> Bail condition was to report to police daily Failed to report on one occasion and was arrested when reporting He had multiple bail conditions and got confused as to which date he had to reply 	Bail continued
15 Female	<ul style="list-style-type: none"> Unable to pay bail surety and remained in custody 	Bail granted –surety was amended to a reasonable person to sign for her
13 Male	<ul style="list-style-type: none"> Breached as he was not in the presence of a 'reasonable adult' He was at a shopping centre with his aunty (who happens to live with family). Aunty was not named on bail condition 	Bail refused
13 Female	<ul style="list-style-type: none"> Unable to enter into her bail as her carer could not get to the police station to collect her, the carer lived in a regional location and the nearest police station was a few hours drive away 	Bail granted
17 Male	<ul style="list-style-type: none"> Breached curfew (7pm-7am) Was found at 3:45am 	Bail granted
17 Male	<ul style="list-style-type: none"> Breached his curfew (6pm – 6am) He was at TAFE GyMEA sitting his trial HSC – he brought his mates home after 6pm curfew. A fight began, he attempted to break up the fight 	Bail granted
13 Male	<ul style="list-style-type: none"> Breached his curfew and non-association order by being within Glebe area He was allowed outside of curfew as long as he was with a reasonable adult – his aunty is considered a reasonable adult, however she lives in Glebe. He was on his way to Aunty's house which was in Glebe when arrested. This was the YP's first time before the court (he had received police bail) 	Bail granted
13 Female	<ul style="list-style-type: none"> Breached non-association order that stated she could not associate with her friend who attends the same school. She was arrested as she was seen with her friend 	Bail granted with the non-association condition deleted
13 Female	<ul style="list-style-type: none"> Breached non-association order that stated she could not associate with her friend who attends the same school. She was arrested as she was seen with her friend 	As per above
14 Female	<ul style="list-style-type: none"> Bail condition was to reside as directed by DoCS A declaration of homeless was made by DJJ as he could not return home due to family violence He was allocated a caseworker by DoCS, but as it was the weekend, there was no DoCS officer available to find appropriate accommodation 	Bail granted, but unable to enter into bail
13 Male	<ul style="list-style-type: none"> Breached his curfew and was not residing as directed at his parents home He absconded a number of times and had been couch surfing. 	Bail refused

16 Male	<ul style="list-style-type: none"> Bail condition was not to go within 50 metres of victim's residence or where she worked in a small regional town – he had unintentional contact with the victim. He was with his father in the car – his father stopped at a grocery store while the young person stayed in the car. He saw the victim then he called police for breaching the bail condition Submissions made re: small town, not to go within 50 metres of where victim worked meant that he could not go into town at all 	Bail granted
14 Male	<ul style="list-style-type: none"> Arrested on fresh offences. Bail condition was to reside as directed by DJJ –at a refuge Family were unwilling to have him return home. A notification of homelessness to DoCS 	Bail granted
15 Male	<ul style="list-style-type: none"> Breaching his curfew (7pm-6am) Found out at 11pm and was arrested 	Bail granted
15 Male	<ul style="list-style-type: none"> Arrested on a section 25(2) warrant) as he had failed to appear at court for an offence (where it had been referred to Youth Justice Conference but as the outcome plan had not been completed, it had been sent back to court) On the court date he called the court to ask for an adjournment due to his mother not being able to take a day off work to take him to court 	Bail granted
14 Male	<ul style="list-style-type: none"> Breach of curfew YP believed that he was allowed to leave his residence if he received permission from his foster parents. He received permission and went to his friend's place He was arrested when found later that night returning home (there was no reoffending associated with the breach of curfew) 	Bail granted
15 Male	<ul style="list-style-type: none"> Bail condition was to reside at a particular address He was subject to an AVO which did not allow the YP to approach that same address (AVO was placed by his family) 	Bail granted with order to reside at different residence

Study 2 January 2009

Age/sex	Nature of breach	Bail Outcome
14 Female	<ul style="list-style-type: none"> Unable to meet bail conditions as DoCS unable to assist DoCS caseworker not available to advise court 	Bail varied so that DJJ could assist with accommodation. To reside as directed with DoCS in consultation with DJJ
16 Male	<ul style="list-style-type: none"> Failed to report to police once, reported next day and arrested 	Bail continued
15 Female	<ul style="list-style-type: none"> DoCS care/involvement, was housed at a refuge which she failed to reside as directed Has learning difficulties, behavioural problems and intellectual disability 	Matter dismissed with caution
16 Male	<ul style="list-style-type: none"> DoCS care/involvement, has learning difficulties and behavioural problems Committed new offences while on bail 	Sentenced

12 Male	<ul style="list-style-type: none"> DoCS care/involvement placed in a youth refuge, mental health issues and behavioural problems Fail to obey reasonable directions of carer. Alleged to have damaged door of refuge 	Bail continue/bail granted
14 Male	<ul style="list-style-type: none"> Failed to report to police once (first time). 	Bail continue/bail granted
16 Male	<ul style="list-style-type: none"> Homeless Unable to be meet bail conditions to reside with uncle's as the victim resides there. Young person was in conflict with uncle's partner since she moved in. Uncle's partner called police 	Bail granted, but young person unable to enter into bail. No accommodation available
18 Male	<ul style="list-style-type: none"> Breach of non-association condition - YP was in car with cousin. Bail condition was to be always with parents. Father had given permission to go out with cousin 	Bail continued
17 Male	<ul style="list-style-type: none"> He was of good behaviour, has job. No longer on bail - matters already dealt with but was not updated on police system 	All fresh matters dismissed
15 Male	<ul style="list-style-type: none"> Mental health issues Committed new offences while on bail. Police questioned and arrested him for breach of curfew. Allegedly spat at police as he as being placed in the dock (assault charge) 	Not eligible to apply for bail
15 Female	<ul style="list-style-type: none"> Homeless. Couch surfing, staying with friends short term. Mother doesn't want YP home Fresh offences (ie. not previously on bail) 	Not eligible - section 22A of Bail Act. As mother did not want YP home and there was no other accommodation, therefore no bail. Application was made and bail refused
14 Female	<ul style="list-style-type: none"> DoCS care/involvement provided Out of home care - emergency care Fresh offences 	Bail granted, but young person unable to enter into bail. Unable to find accommodation - DoCS unable to assist
17 Female	Fresh offences while on bail	Bail granted, but young person unable to enter into bail To remain in custody until transport or family member can pick him up. Parent/carer unable to collect YP DJJ unable to arrange transport for a number of days
15 Female	<ul style="list-style-type: none"> DoCS care/involvement – placed in refuge, behavioural problems and intellectual disability. Failed to reside as directed by DoCS 	Bail continued
13 Female	<ul style="list-style-type: none"> DoCS care/involvement to stay at SAAP/Refuge. Failed to reside as directed by DoCS. 	YP wanted DoCS caseworker present at court. Held over to next day
15 Female	<ul style="list-style-type: none"> Prior notifications to DoCS. Breach curfew. Fail to comply with non-association order by disobeying banning order to not go to shopping centre She handed herself into police after visitng centre 	All fresh matters dismissed

16 Male	<ul style="list-style-type: none"> Homeless and has mental health issues. Accommodation with mother is not suitable as mother has mental health issues Commit new offences while on bail. He did not realise he was on bail 	<p>Bail granted, but young person unable to enter into bail</p> <p>Bail varied: 1) Not to be released until DJJ approve accommodation.</p> <p>2) Report to police</p> <p>Parent/carer unable to collect YP</p> <p>DJJ needed more time to check if address is suitable and acceptable</p>
17 Male	<ul style="list-style-type: none"> Breach curfew Police did a bail compliance check at residence, when he wasn't there he was then arrested Parents would not take him home and no alternative accommodation 	Not eligible - section 22A of Bail Act
14 Male	<ul style="list-style-type: none"> DoCS care/involvement. Breach curfew as he was out at 8pm, police found YP hanging around 	Bail continued
14 Female	<ul style="list-style-type: none"> Homeless, DoCS care/involvement, an aunt listed as having custody of her as a result of mother handing her over when young Fresh offences, YP was arrested for breaching AVO following call from mother 	<p>Bail granted: reside as directed by DJJ/DoCS. Not absolutely sure who the official carer was, DJJ awaiting DoCS to send paper work.</p> <p>The proceedings were drawn out because of DoCS lack of involvement.</p>
17 Male	<ul style="list-style-type: none"> Homeless, DoCS care/involvement YP received call from his mother who threatened to commit suicide unless he went to her house immediately Breach essentially consisted of a failure to tell anyone where he was going when he visited his mother 	Bail continued
16 Male	<ul style="list-style-type: none"> Home at 8:40pm rather than 8pm as per curfew. Police came by at 8:05pm and YP was not at home. First time breach 	Bail continued
14 Female	<ul style="list-style-type: none"> DoCS care/involvement Fail to comply with non-association order (with other young person) 	Bail granted, but young person unable to enter into bail until transport was organised

Acronyms and abbreviations

AoD	Alcohol and other drug
AVO	Apprehended Violence Order: Part 15A of the Crimes Act
BNAFR	Bail not Applied For Refused
BOCSAR	Bureau of Crime Statistics and Research NSW
CALD	Culturally and linguistically diverse
CIDnAP	Children in Detention Project (a project in partnership with Legal Aid NSW, Public Interest Advocacy Centre and Public Interest Law Clearing House)
CROC	Convention on the Rights of the Child
DoCS	NSW Department of Community Services
DJJ	NSW Department of Juvenile Justice
NFPA	No fixed place of abode
SAAP	Supported Accommodation Assistance Program
YAA	Youth Accommodation Association
YAPA	Youth Action and Policy Association
YP	Young person
YJC	Youth Justice Coalition

Glossary

Bail

A grant of liberty to a person who has been charged with a criminal offence, on the undertaking that they will return to court when ordered to do so. Money or property or conditions can be imposed or given to the court as security when a defendant is released.

Defendant

A person charged with a criminal offence.

Detention centre

One of nine secure juvenile justice centres operated by the NSW Government.

Homelessness

This study used primary and secondary homelessness definitions. Primary homelessness includes all people without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter.

Secondary homelessness includes people who move frequently from one form of temporary shelter to another. On census night, it includes all people staying in emergency or transitional accommodation provided under the Supported Accommodation Assistance Program (SAAP). Secondary homelessness also includes people residing temporarily with other households because they have no accommodation of their own and people who are staying temporarily in boarding houses.⁶⁹

Non-association

A bail condition which prohibits the young person from associating with someone else for a stated period or prohibits him or her from often using or visiting a place or area for a stated time. The condition may prohibit the offender from being in company with someone else or communicating with that person.

Remand

Held in custody while waiting for a matter to be finalised after the young person has been charged with an offence(s) and has been bail refused.

Reside as directed

A bail condition which means that a young person is to live where they are *directed* to live by either the Departments of Juvenile Justice or Community Services. This means that a young person will remain in detention until acceptable accommodation can be found. The court does not have authority to mandate that the Department of Community Services assist with providing accommodation for a young person. In such a situation the young person can remain in detention until an available placement is found.

Section 22A (NSW Bail Act)

States that an application for bail cannot be made unless that defendant was not initially represented by a lawyer, or a court decides that new facts or circumstances have arisen since the previous application.

Statutory care

Where the parental responsibility of the young person is placed with the Department of Community Services. This also includes those young people placed in out-of-home care by the Department of Community Services (either in a foster home, or at a youth refuge).

Technical breach

A breach of a bail condition which in of itself is not a criminal offence, does not place the young person or the community in danger (eg: breach of curfew).

Young person

A child or young person under the age of 18 years.

⁶⁹ Chamberlain and MacKenzie (1992)

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