

Locked into remand:

Children and young people on remand in New South Wales

Background paper
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Prepared by Clare Blakemore, Policy Officer

Contact Person:
Clare Blakemore, Policy Officer
Social Policy and Research Program
Social Justice, Partnerships and Communication
UnitingCare Children, Young People and Families
PO Box W244, Parramatta NSW 2150
Phone 02 9407 3218, Fax: 02 9687 6349
Email: cblakemore@burnside.org.au

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1.0 Introduction

UnitingCare Burnside (Burnside) is a member of the Children, Young People and Families service group of UnitingCare NSW.ACT and part of the Uniting Church in Australia. Burnside is a leading child and family organisation in New South Wales, with over 5,000 services users in metropolitan, regional and rural communities. Burnside's purpose is to provide innovative high-quality programs and advocacy to break the cycle of disadvantage that affects vulnerable children, young people and their families in New South Wales.

This paper considers the increasing number of children and young people in New South Wales who are being held on remand. A child or young person is considered to be on remand when they are in detention but have not yet been sentenced. A number of factors are contributing to the rise in children and young people held in detention on remand. These include current difficulties in finding suitable accommodation for children and young people awaiting trial, changes to the *Bail Act 1978* and restrictive bail conditions that are closely monitored by police.

This situation affects disadvantaged children and young people throughout New South Wales. Children and young people in out-of-home care, Indigenous children and young people, and children and young people from regional areas are all over-represented in the Juvenile Justice system and are most likely to be affected by an inability to access appropriate accommodation and by restrictive bail conditions (Nyman 1997). In 2005 "30 percent of juvenile offenders have been or are presently in the care of the Minister for Community Services" and in 2007 37.8% of all children and young people on remand were Aboriginal and Torres Strait Islander (Select Committee on Juvenile Offenders 2005, p.107; NSW Auditor-General 2007).

In the recent report on the Special Commission of Inquiry into Child Protection Services in NSW, the Commissioner, Justice Wood stated that:

One problem which was repeatedly brought to the notice of the Inquiry has been the difficulty in securing accommodation for young people who might otherwise have been released on bail, but cannot be released because they do not have stable accommodation or are unable to return home because of family breakdown or safety or neglect risks. (Special Commission of Inquiry into Child Protection Services in NSW and New South Wales 2008, p.558).

UnitingCare Burnside youth programs provided strong anecdotal evidence about this issue and the impact it has on many of their service users. Youth homelessness programs stated that they see children and young people "all the time" who are dealing with restrictive bail conditions and an inability to find appropriate accommodation.

This paper will examine the different factors that have contributed to an increase of children and young people on remand, especially the lack of suitable accommodation and support for children and young people who are trying to meet bail conditions. It will argue that there are serious consequences of holding young people on remand, including increasing the rate of recidivism. Possible solutions to address the increase in the number of children and young people on remand in New South Wales are discussed in the final section of this paper.

2.0 Factors contributing to the increase of children and young people on remand

In 2007, 4,263 children and young people in NSW were kept on remand in Juvenile Justice Centres (NSW Auditor-General 2007). Per day, the total remand population is 55-60 per cent of the total number of young people in detention (Special Commission of Inquiry into Child Protection in NSW and New South Wales 2008). The Department of Juvenile Justice submitted to the Special Commission of Inquiry into Child Protection that:

A recent review of remand cases undertaken by Juvenile Justice over a period of three months (the first quarter of 2006/07) found that 90 per cent of these did not meet bail conditions in the first instance and spent an average of eight days in custody. Ninety-five per cent of those remanded during the review period had court imposed bail conditions to 'reside as directed'. (Department of Juvenile Justice in Special Commission of Inquiry into Child Protection in NSW and New South Wales 2008, p.558). [A magistrate can impose a condition to reside as directed by either the Department of Juvenile Justice or by the Department of Community Services. This order requests either department to find appropriate accommodation for the young person.]

These statistics indicate that the majority of young people held on remand in Juvenile Justice Centres are there due to a failure to find suitable accommodation (that meets bail conditions) while they are awaiting trial.

The NSW Ombudsman has identified that a further group of children and young people remain on remand in Juvenile Justice Centres because of "changes to the *Bail Act 1978* which make it more difficult for some young people to get bail" (NSW Ombudsman 2008, p.120).

The NSW Law Reform Commission (2005) points to another group of children and young people who are granted bail but end up back on remand in the Juvenile Justice Centres because their bail restrictions include non-association orders, area restrictions, curfews and other restrictions that are extremely challenging for the children and young people to comply with. The NSW Ombudsman remarked that "proactive policing of compliance with bail conditions" (NSW Ombudsman 2008, p.120) has impacted on the number of children and young people on remand.

2.1 Lack of suitable accommodation

According to Dambach (2007, p.170) “courts often make it a condition of bail for children charged with criminal offences, who are homeless or in need of care, that they ‘reside as directed by the Department of Community Services’”. This means that the court believes that the young person will be unable to meet bail conditions if they return to their usual place of residence, due to instability, safety or homelessness issues. The Court has therefore requested that the Department of Community Services find appropriate accommodation for the child or young person. The court is not requesting that the child or young person be remanded in custody.

However, there is a dearth of suitable accommodation options and DoCS is frequently unable to find an acceptable placement for these children and young people (Dambach 2007; NSW Law Reform Commission 2005). As a result these children and young people cannot meet their bail conditions and remain on remand in the Juvenile Justice Centres. This is an inappropriate accommodation option for these children and young people, especially considering six out of seven or 84 per cent of young people on remand will not receive a custodial penalty at sentencing (Department of Juvenile Justice in Special Commission of Inquiry into Child Protection in NSW and New South Wales 2008).

This issue was raised during the public hearing into Aboriginal Communities at the *Special Commission of Inquiry into Child Protection Services in NSW*. The Commissioner, Justice Wood, remarked:

There is a case which very recently went to the District Court where a magistrate directed that a young girl be given bail and, in effect, directed the department to find accommodation which was suitable for her. The department said, ‘We can't find accommodation; we can't comply and are not going to comply with the bail condition’...it is a classic case of a young girl who simply could not be placed by Juvenile Justice or by DoCS or anybody in suitable accommodation pending the hearing. It does seem to us that this has to be addressed. (Special Commission of Inquiry into Child Protection Services in NSW 2008 p.55)

The *Children and Young Persons (Care and Protection) Act 1998* makes it clear that DoCS has responsibilities to these children and young people who are homeless or in need of care (Dambach 2007). Section 9(e) of the *Children and Young Persons (Care and Protection) Act 1998* states:

If a child or young person is temporarily or permanently deprived of his or her family environment, or cannot be allowed to remain in that environment in his or her own best interests, the child or young person is entitled to special protection and assistance from the State (Dambach 2007, p.170).

Dambach (2007) highlights that at times DoCS have been unclear about their responsibilities.

The Children's Court of NSW submitted to the NSW Law Reform Commission on their staff's frustration with the court's limited capacity to help children and young people access appropriate accommodation and therefore obtain bail (NSW Law Reform Commission 2005). They also raised concern about the capacity of DoCS to respond to children and young people in care who are also in the Juvenile Justice system. Children's Court staff reported difficulties in contacting DoCS, even when the child or young person before them is under the parental responsibility of the Minister. Both the Children's Court staff and UnitingCare Burnside staff note that there have been times when children and young people who are under the parental responsibility of the Minister have not been provided with a support person from DoCS when they go to court (NSW Law Reform Commission 2005).

In order to find suitable accommodation without assistance from DoCS, magistrates do, on occasion, bail children and young people out to refuges. However, there are limited refuges that accept children and young people on remand and other options are also limited. For example UnitingCare Burnside's Doorways program which provides emergency accommodation and support for young people (aged 16 to 23 years) and their children who are homeless or at risk of becoming homeless has been involved in circumstances where the courts hand down a 'reside as directed' order to a young person which requires them to be accommodated at Doorways. However, Doorways has limited emergency accommodation and is a voluntary referral program so it cannot insist that children and young people stay at their service or remain in touch with them. As a result a staff member from Doorways must go back to the courts and explain that this is not an appropriate bail condition for the young person.

2.2 Restrictions in the new Bail Act

Under the newly amended *Bail Act 1978* children and young people can only apply for bail once unless there are particular circumstances. If bail is not granted during the first application they may only apply again if they were not legally represented during the first application or if the court is satisfied that new facts or circumstances have arisen since the first application (Haesler 2008). Deputy Senior Public Defender Andrew Haesler explains that "on a bad day" one Magistrate and one duty Solicitor may be dealing with 50 bail cases (Haesler 2008, p.2). In this situation, a child or young person is not guaranteed sufficient representation by the duty Solicitor. Haesler states that "where a person is refused bail on a weekend after being represented by a duty Solicitor, Magistrates have held that they cannot hear a further application" (Haesler 2008, p.2). The NSW Attorney-General, Honourable John Hatzistergos, acknowledges that NSW has the toughest bail laws in Australia and that these have contributed to the increase in remandees in custody (Haesler 2008).

2.3 Bail restrictions: non-association orders, reporting, area restrictions and curfews

Adhering to bail restrictions can be problematic for children and young people. Even if a child or young person is able to obtain bail, they can find themselves back in the Juvenile Justice Centre after being found in breach of a bail restriction. Bail restrictions can include non-association orders, area restrictions, reporting orders and curfews. These restrictions can be difficult for children and young people to comply with (NSW Law Reform Commission 2005). For example, Doorways staff note that bail orders may include restrictions that are unworkable, where the young person “is not to step foot in (a certain town) even though most of their family members live there”.

The child or young person may also be restricted from associating with another young person who attends their school or lives in their community. The Aboriginal Justice Advisory Council submitted evidence to the NSW Law Reform Commission that:

[i]n one location in 52% of decisions where bail was granted a condition of that bail was the defendant leave the town and not return until they were required to appear at court. This was specifically the case for juvenile defendants. (NSW Law Reform Commission 2005, p.253)

Curfew restrictions can be dangerous for children and young people who face domestic or family violence as they are restricted by the court from leaving their home. Compliance with reporting orders may also be difficult, especially if the young person must report to the police every day. The reporting requirements can provide police with the “opportunity to go to a home several times a night” in accordance with a bail condition that requires the young person to “present him/herself at the door [of their home] to police” (NSW Law Reform Commission 2005, p.252). These orders reflect targets in the NSW State Plan which seeks a reduction in re-offending by 10% by 2016 and states this will be achieved through “extended community monitoring of those at high risk of re-offending, through more random home visits and electronic monitoring” (NSW Government 2006, p.17).

The Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission argue that “bail conditions should not criminalise a young person’s non-offending behaviour” (NSW Law Reform Commission 2005, p.249). Severe bail restrictions may effectively criminalise the young person’s non-offending behaviour and create conditions where the child or young person is more likely to re-offend. It may also be perceived as harassment and lead to resentment within the family or community (NSW Law Reform Commission 2005).

2.4 Consequences

New South Wales Juvenile Justice Centres are housing more children and young people on remand than ever before. In 2006, 3,623 children and young people were admitted to custody on remand and this jumped to 4,263 children

and young people in 2007 (NSW Auditor-General 2007). This is of particular concern given the recent allegations of overcrowding in Juvenile Justice Centres throughout NSW (Sydney Morning Herald 2008). Dambach suggests that the higher number of children and young people on remand than those on custodial orders shifts the focus in Juvenile Justice centres “away from programs and development towards security warehousing” (Dambach 2007, p.170).

Only 514 children and young people were actually sentenced to a custodial order in 2007 (New South Wales Auditor-General 2007). Therefore, there were approximately 3,750 children and young people who were placed temporarily in a Juvenile Justice Centre that a court judged were not required to serve a custodial sentence. Research has indicated that time in a Juvenile Justice Centre is the “most significant factor in increasing the odds of recidivism” (Holman and Ziedenberg 2006, p.4). The NSW Law Reform Commission expressed its concern with the effect of remand on a child or young person:

Children report feeling isolated and frustrated by the experience, particularly as they often do not have access to the same programs as detainees serving a sentence. In addition, placing a child on remand can put stress on family relationship and disrupts the child’s education. Young people on remand feel that they are often treated as if they have already been found guilty. (NSW Law Reform Commission 2005, p.231)

Thousands of children in NSW may be unnecessarily exposed to an environment that can have a detrimental effect on their future life chances.

Housing children and young people in Juvenile Justice Centres is also a costly option for taxpayers. The 2007 Auditor-General’s Report to Parliament stated that the 2006-07 daily cost for detention in a juvenile justice centre was \$556 per young person compared with \$23 per day for a young person under community supervision (New South Wales Auditor-General 2007).

3.0 Future directions for support/accommodation options

The increase in children and young people on remand in NSW is the result of a number of complex issues that will require a range of solutions and a collaborative policy response. Solutions for accommodation and service delivery options that would meet the specific needs of children and young people on remand in NSW must be explored in partnership with service providers and other relevant stakeholders.

It is clear that more support should be provided to children and young people at a number of points, including:

- mandated support through the child protection system for all children and young people who attend court
- more programs that support children and young people in meeting their bail conditions. These programs should include supported

- accommodation options, as well as support in searching for family connections and longer term housing solutions.
- services to help children and young people to re-engage with the community through social, educational and vocational opportunities.

3.1 Current programs and trials in the NSW Department of Juvenile Justice

Limited information is available about the current programs available in New South Wales for children and young people who are at risk of being placed on remand. There have been a few successful small-scale programs supported by the Department of Juvenile Justice such as Stay Safe, the Intensive Bail Support Program and the Juniperina Shared Access Trial. However, the limited scope of these programs indicates that they are operating with limited resources and this may hamper successful outcomes.

Stay Safe is a program for 12-17 years olds referred through the Department of Juvenile Justice who are in need of accommodation and support in order to reduce the risk of reoffending (YES Youth and Family Services 2005). Based on the information available, it appears this program has limited resources and is unable to meet the current growth rate of children and young people on remand.

The Intensive Bail Support Program is a new program in New South Wales that may also be referred to as the Intensive Bail Supervision Program. Due to limited information it is unclear whether this program is for all young offenders aged 10-14 years as well as Indigenous young offenders or whether it is just available for Indigenous young people. The program aims to use outreach support to assist these young people in meeting their bail conditions (Aboriginal and Torres Strait Islander Social Justice Commissioner 2007).

The Juniperina Shared Access Trial, a partnership between DoCS, Housing NSW and DJJ, provides housing and support to young women 16-21 years who are at risk of re-offending (NSW Department of Community Services 2008). This trial includes young women on bail orders and is an example of the sort of holistic approach that may work for children and young people in New South Wales who need appropriate accommodation in order to access bail. An exploration of how this can be expanded to other target groups should be undertaken.

3.2 Bail-hostels

Bail-hostels provide accommodation for young people who would otherwise be refused bail and remain on remand. While bail-hostels have previously been considered as a service/accommodation option by the Department of Juvenile Justice, it is arguable that they are not significantly different to keeping the children and young people in Juvenile Justice Centres. Without appropriate supervision, bail-hostels may expose young people to environments similar to Juvenile Justice Centres. Young people may also have limited opportunities for educational needs to be assessed and met and

to engage with the community. All of the bail hostels previously running for young people in New South Wales are now closed down.

3.3 Bail and accommodation support programs in Victoria and Queensland

In the report on the Special Commission of Inquiry into Child Protection Services in NSW Justice Wood recommended that two programs based in Victoria and Queensland be implemented in New South Wales. These are the Victorian Central After Hours and Bail Placement Service and the Queensland Conditional Bail and Youth Program Accommodation Support Service.

The Victorian Central After Hours and Bail Placement Service (CAHABPS) is an after-hours service that provides support to children and young people aged 10-18 throughout Victoria who commit an offence and are being considered for remand or who need accommodation options in order to access bail (Department of Human Services 2007). During business hours these children and young people are referred to the regional youth justice unit. Police must notify CAHABPS or the youth justice unit when recommending remand of a child or young person (Department of Human Services 2007).

It is worth noting that while the report on the Special Commission has only recommended implementation of the after-hours service, accessing appropriate accommodation in order to meet bail conditions and obtaining court support during remand hearings are not only 'after-hours' problems. Implementation of an all-hours program based on the CAHABPS and the regional youth justice units based in Victoria may be more effective. This model would provide comprehensive court support for young people during their remand hearing and would assist young people to find accommodation appropriate to their bail conditions.

The Queensland Conditional Bail and Youth Program Accommodation Support Service, as recommended by Justice Wood, represents two separate programs known as the Conditional Bail Program and the Youth Bail Accommodation Support Service (YBASS).

The Conditional Bail Program was established in Queensland "in response to the growing numbers of young people remanded in custody" (Venables and Rutledge 2003, p.2). This program is available for young people 10-16 years who are facing remand and are considered by the court to be unlikely to comply with bail (Venables & Rutledge 2003). The Conditional Bail Program provides youth worker support to the young person and engages them with social, educational and vocational activities in order to reduce the risk of re-offending while on bail (Venables & Rutledge 2003).

YBASS is a similar program but is available for children and young people who are facing remand due to insufficient accommodation options, or who are on bail but are at risk of being remanded in custody due to accommodation instability (Venables & Rutledge 2003 and King & Hegarty 2002). YBASS provides brokerage services and youth worker support to these children and

young people. Working agreements between YBASS and SAAP accommodation services enable the YBASS youth workers to access accommodation options that the young person may not have been able to access on their own. YBASS complements the Conditional Bail Program when needed.

3.4 Youth Justice Board in the UK

The Youth Justice Board is a non-departmental public body that oversees the youth justice system in England and Wales (Youth Justice Board website 2009).

Programs overseen by the Youth Justice Board meet the following standards:

- a. Programs should be developed at the initial bail assessment point, and be individually tailored to the needs of the young person.
- b. Young persons should have immediate access to programs and support services once they are released on bail.
- c. Programs should take a more holistic view of the young person and their needs, and interventions should be focused on promoting a more stable lifestyle.
- d. Family should be involved when possible.
- e. Programs should include court support to help the person to comply with their bail conditions.

(Special Commission of Inquiry into Child Protection in NSW and New South Wales 2008 p.560-1)

In order to meet these standards and the needs of young offenders, local area Youth Offending Teams (YOTs) employ representatives from police, probation, education, health, drug and alcohol services, and housing (Youth Justice Board website 2009). YOTs identify the needs and find appropriate support programs for every young offender and provide support to young people on bail through a bail support and supervision program.

The accommodation officer employed by YOTs is responsible for ensuring that all young offenders have access to appropriate accommodation and support, including those on remand. A variety of accommodation options for young people are considered by the YOTs team including:

- **Floating support:** This option provides a young person with support no matter where the young person is living and can be provided alongside any type of accommodation (Youth Justice Board website 2009).
- **Remand foster care:** Remand foster care is successfully running as a remand option in England and Wales for children and young people without appropriate bail accommodation. This program places children and young people who are on remand but unable to access appropriate accommodation under the care of specifically trained remand foster-carers (Lipscombe 2007).
- **Supported lodging:** Individuals in the community provide low-cost short-term lodging in their home along with varying levels of support (Youth Justice Board website 2009)

- **Foyer:** While the foyer model is normally for young people in more stable situations, some foyer accommodation providers are considering offering supported accommodation for young offenders (Youth Justice Board website 2009).

A 2004 study by the Youth Justice Board examined further the effectiveness of some of the accommodation options available to children and young people, including the accommodation type's impact on re-offending, increasing compliance with bail conditions, ensuring young people attend their court hearing, and at protecting public safety, victims and the defendants (Hucklesby 2004). The study found that remand foster care was the most effective accommodation option, followed closely by supported lodging. Refuges (referred to as hostels in the UK) were also considered to be quite effective in providing supportive environments but were criticised for being difficult to access and not always being tailored specifically for young people. The key evaluation finding is that "Support is the key element of accommodation provision. Whatever accommodation is provided [...], the young people require support in order to prevent absconding, reoffending and breaching of bail conditions" (Hucklesby 2004, p.54).

4.0 The way forward

This paper demonstrates that there are a number of factors that are contributing to the growing number of children and young people held in detention on remand. Detention in a Juvenile Justice Centre is shown to increase the rate of recidivism, leading to increased pressure on both the Juvenile Justice and adult correctional systems.

Our research shows there are a number of support and accommodation options trialled in New South Wales, interstate and internationally that may reduce the high rates of remand and improve outcomes for children and young people.

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