

This submission to the NSW Law Reform Commission’s Review on Bail is intended to provide new data on bail / remand for vulnerable juveniles to the review to assist its inquiries.

Background

The data reported here is part of a large-scale study, investigating People with Mental Health Disorders and Cognitive Disabilities (MHDCD) in the Criminal Justice System (CJS) in New South Wales. Conducted at the University of New South Wales and lead by Chief Investigators Professor Eileen Baldry and Dr Leanne Dowse, the Australian Research Council funded study involves partnerships with Justice Health NSW, Corrective Services NSW, NSW Housing and NSW Council on Intellectual Disability. The study uses an innovative data merging and pathway building method to link the administrative records from a range of NSW government criminal justice and human service agencies for 2,731 people whose MDCHC diagnoses are known and who have been in prison. This report describes the group of individuals in the MHDCD study who have been identified as having been remanded in custody as a juvenile and details their interactions with the criminal justice system. Where relevant comparative data is presented to highlight the particularity of the experiences of people who were not remanded as a juvenile and describes the trends across a range of factors including gender, Indigenous status and the known diagnosis of individuals.

Juvenile Remand

Age

Individuals in the MHDCD study had substantial contact with the criminal justice system as a juvenile, with 75% of individuals in the dataset having contact with police as a person of interest as a juvenile. Of these, over 50% were remanded in custody. Individuals with complex needs, that is, dual diagnosis¹, co-morbidity² and multiple mental, physical and cognitive disabilities³, were much more likely to have been remanded as a juvenile with 60% of all people remanded as juveniles having complex needs. Over 80% of those with complex needs, who were remanded, had an intellectual or borderline intellectual disability. In other words, those with juveniles with complex cognitive impairment were significantly less likely to be granted bail and far more likely to be remanded than those without complex cognitive impairment.

Individuals in the cohort who had a period of remand as a juvenile had very early contact with the police, with the *average* age of first police contact occurring when individuals were almost 14 years of age, with the average age of first remand episode occurring just over two years later. Individuals with complex needs had both their first police contact and first episode on remand earlier than those without complex needs. Having an intellectual or borderline intellectual disability is indicative of early police contact and remand, with those having with an intellectual or borderline intellectual disability having the earliest police contact and remand.

¹ Mental health disorder and alcohol or other drug problematic use

² mental health and cognitive disability

³ cognitive disability includes intellectual disability ie under 70 IQ; borderline intellectual disability ie between 70 and 80 IQ; and people with significant acquired brain injury (ABI) that puts them into the intellectual or borderline intellectual disability range

Indigenous young people had earlier police contact than non-Indigenous Australians, with the average age of first police contact occurring at just over 13 years of age, over one year earlier than non-Indigenous Australians. On average, there were 2.5 years between first police contact and first episode of remand as a juvenile, occurring on average at 15.6 years of age for Indigenous youth. Indigenous young people with complex needs have substantially earlier contact with police than other groups with the *average* age of first police contact occurring at 12.8 years of age, and the first period of remand occurring at just over 15 years of age.

So Indigenous young people with complex cognitive disability are substantially more likely to have the earliest contact with police, not be granted bail and be remanded in custody.

Episodes Remanded

On average, the individuals in the MHDCD study who were remanded as a juvenile had 5.4 episodes of remand as a juvenile. Individuals with complex needs were remanded more frequently (6.1 times on average) than those without complex needs (4.5). The effect was greatest for individuals in the study with complex needs that included an intellectual or borderline intellectual disability. These individuals had on average more than one additional episode on remand as a juvenile.

Likewise, Indigenous people in the cohort had substantially greater number of episodes on remand as a juvenile (6.6) with an additional two episodes on remand compared to non-Indigenous individuals in the study (4.8). Indigenous Australians with complex needs had on average an additional 2.5 episodes on remand compared to non-Indigenous Australians with complex needs, having 7.6 episodes on remand as a juvenile. Again, the effect was greater for those having complex needs including an intellectual or borderline intellectual disability, with this group having an average of almost 8 episodes on remand.

Time Spent In Remand

Individuals in the study spent, on average, over 70 days total remanded each, over an average of five episodes leading to an average length of stay on remand of 13 days per remand episode. Individuals with complex needs spent on average 18 additional days remanded compared to those without complex needs, however on average the length of stay was slightly shorter by just under one day per episode. Individuals with complex needs that include an intellectual or borderline intellectual disability had the longest number of days remanded, with an average of 86 days per person. The average length of stay per episode of remand was 13 days per episode. Individuals with an intellectual or borderline intellectual disability only (ie no other diagnosis) had similar numbers of days remanded in custody, and had an average length of stay slightly higher than those with complex needs, with an average of 14.5 days in custody per episode.

Indigenous youth spent significantly more days in custody on remand, with 97 days remanded per individual compared to 55 days for non-Indigenous youth in the study. The average length of stay was also greater for Indigenous youth, with an average length of stay of 14.6 days per episode, over three days longer than non-Indigenous youth in the cohort. Indigenous youth with complex needs likewise had a longer amount of time remanded, staying an average of 107 days per person, almost double that of non-Indigenous people with complex needs (57.6). The length of stay per episode was also longer for Indigenous people, staying almost three days longer per episode compared to

non-Indigenous people with complex needs. Again, the effect was greatest for those with complex needs that include an intellectual or borderline intellectual disability. These Indigenous individuals had an average of 114 days in remand as a juvenile.

Offences

The offences that lead to a remand episode are taken from the Department of Juvenile Justice remand intervention table. Table 1 shows that these offences were relatively minor, with the largest number of remand episodes being for justice offences (ie breaches of orders, fail to appear etc). There was extensive variation across the offence categories in the average days remanded, with those few charged with homicide and related offences staying remanded in custody for 88 days, however individuals remanded for justice offences stayed an average of almost nine days.

Table 1: Offences Individuals Were Remanded For In Custody As A Juvenile

DJJ ASOC Category	Remands	Avg Days Remanded
Justice Offences (eg abscond, breach order, fail to appear)	331	8.71
Break and Enter	259	15.21
Other Acts Intended to Cause Injury (eg assault, AOABH, common assault)	256	17.47
Miscellaneous Offences	251	11.24
Other Theft and Related Offences	240	9.83
Motor Vehicle Theft and Related Offences	218	15.93
All Robbery, Extortion and Related Offences (not Break and Enter)	168	31.14
Public Order (e.g.trespass, offensive language)	97	8.11
Illicit Drug Offences	62	15.21
Aggravated Assault (e.g. malicious wounding, assault gbh)	60	30.45
Property Damage and Environmental Pollution (incl.mal.damage)	32	4.94
Homicide and Related Offences	16	87.75
Other Dangerous, Negligent Acts Endangering Persons (inc Dangerous Driving)	10	31.50
Road Traffic and Motor Vehicle Regulatory Offences	8	38.88
Aggravated Sexual Assault	7	31.14
Weapons and Explosive Offences	4	34.25
Other Sexual Assault and Related Offences (e.g. Carnal knowledge, indecent assault)	3	7.33
Aggravated Drink Driving Offences	2	37.00
Deception Offences (eg fraud, forgery)	1	1.00
Total	2025	15.50

The reason for remand is shown in Table 2. Again, this data is taken from the juvenile Justice remand intervention table and may not represent all episodes of remand. The most frequent reason for remand is danger or frequency of reoffending, accounting for nearly half of all remands reported

here. Individuals, who are unable to meet conditions of bail, stay on average ten days in custody. However, the longest number of days remanded is for individuals who have committed a serious offence.

Table 2: Reason For Remand With Number Days Remanded And Average Days Remanded

Reason Remanded	Number Remands	Avg Days Remanded
Danger/frequency of reoffending	925	14.86
Other	335	9.94
Not meet conditions	278	10.34
Lack of community ties	277	10.53
Severity of offence	211	40.37
Counselling	1	1.00
Report Assessment	1	14.00
Grand Total	2028	15.48

Quite clearly the majority of those remanded instead of bailed were charged with minor offences (lower in the ASOC category), with the majority (90%) being remanded because they were recidivists, did not have community ties / could not meet conditions of bail, with severity of offence being only 10% of the reasons for not granting bail.

These multiple episodes of remand do not appear to improve the chances of gaining support and assistance for these young people who have significant mental health and disability needs, as they keep cycling through the criminal justice system as juveniles and, as now described, as adults.

Adult Contact with the Criminal Justice System

The individuals in the MHDCD study group remanded as juveniles go on to have extensive contact with the criminal justice system throughout their lives. An average of 34% of the total police contact for these individuals occurs as a juvenile. A further 86 police contacts occur as an adult for these individuals as persons of interest, however this group have significant contact with police as both victims and contact under the Mental Health Act. Consistent with earlier data reported, individuals with complex needs have much higher numbers of police contacts over their lives than those without complex needs, with an average of almost 20 additional police contacts. Likewise, individuals with complex needs with an intellectual or borderline intellectual disability have the most contact.

Additionally, much of this police contact leads to extensive periods of incarceration as an adult. On average, these individuals have over eight episodes of incarceration as an adult and over three years in total of incarceration. Individuals with complex needs have a greater number of adult incarcerations but stay in prison, on average, for much shorter periods, with an average length of stay almost two months shorter than those without complex needs. This leads to an effect where individuals are very frequently returning to custody after only short periods in the community. This is particularly the case for indigenous Australians who return to custody as adults 100 days sooner than non-Indigenous people with complex needs after being in the community on average for approximately eight months. Although we do not yet have verified remand/bail data for this group

as adults, it is apparent that a significant number of these short stays are remand episodes. We will forward data on adult bail/remand when it becomes available should the review wish.

This analysis shows that individuals with mental health and or cognitive disabilities who are remanded as juveniles have extensive contact with the criminal justice system. Individuals with complex needs and Indigenous Australians have the most extensive contact with the criminal justice system as juveniles, which continue through to their adult lives.

This submission provides observations and conclusions from an analysis of juvenile remand data in the MHDCD in the CJS ARC project. The full evidence and analysis is being prepared for an article, so are not included here. Nevertheless, Professor Baldry will be happy to provide further explanation should the inquiry wish it.

Eileen Baldry, Melissa Clarence and PetaMacGillivray

Social Sciences and International Studies, UNSW

e.baldry@unsw.edu.au