

Western Australian Auditor General's Report



Management of Adults on Bail



Report 10: June 2015

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WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

Management of Adults on Bail

Report 10
June 2015



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

MANAGEMENT OF ADULTS ON BAIL

This report has been prepared for submission to Parliament under the provisions of section 25 of the *Auditor General Act 2006*.

Performance audits are an integral part of the overall audit program. They seek to provide Parliament with assessments of the effectiveness and efficiency of public sector programs and activities, and identify opportunities for improved performance.

This audit assessed how effectively bail is administered and how effectively adults on bail are managed. It focused on the timeliness and adequacy of administrative processes and the level of support given to people on bail. The scope of this audit did not include juveniles.

The Department of the Attorney General, the Department of Corrective Services and Western Australia Police all have responsibility for managing people on bail.

My findings were that more support for defendants, better information sharing and more effective use of bail data would improve the efficiency and effectiveness of the bail system and have the potential to reduce costs. I identified a number of recommendations to be considered, and the need for agencies to work better together to deliver improvements.

I wish to acknowledge the staff at the Department of the Attorney General, the Department of Corrective Services and Western Australia Police and other stakeholders we spoke with for their cooperation.

A handwritten signature in black ink, appearing to read 'C. Murphy'.

COLIN MURPHY
AUDITOR GENERAL
10 June 2015

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Auditor General's Overview

Bail is a key part of our justice system with over half the people arrested each year given bail. Bail has significant benefits both for people accused of offences and the State. However, the release of accused persons on bail carries risks that need to be managed, usually through the monitoring and enforcement of Court imposed bail conditions. If the risk is too great, the Court will direct the accused person be held on remand.



People granted bail should be released as quickly as possible and their bail conditions should be effectively monitored and enforced. In these areas, the bail system can work better.

Many people granted bail by the Courts are nevertheless held on remand because current processes do not effectively facilitate their release. This results in unnecessary exposure to the prison system and avoidable costs. Simple measures such as SMS reminders can improve the rate at which people return to Court, and save Police and Court resources. Agencies also need to know more about which bail conditions work in encouraging compliance, and they need to make sure there is consistent monitoring and enforcement.

The changes needed to make the bail system work better are more incremental than fundamental. Implementing them, however, is likely to be more difficult because responsibility for managing people on bail is shared across multiple agencies. The Department of the Attorney General, the Department of Corrective Services and Western Australia Police will need to work better together to deliver the improvements that are clearly possible.

Executive Summary

Introduction

This report assessed the effectiveness of the administration and management of adults on bail. It focused on whether bail management results in benefits being maximised and risks to the community minimised.

Background

Bail maintains the presumption of innocence by allowing persons arrested and charged with an offence to stay in the community and continue with their lives while they wait for their Court hearing. Bail also reduces the pressure and cost on the State's prison system.

A 2005 'Observational Study of Bail Decision Making' by Edith Cowan University commented that bail can allow a defendant to:

- keep their job, home and stay in contact with people who can support them
- reintegrate back into the community once released from prison
- be protected from the negative impacts of remand which can influence them to commit more serious offences.

The granting of bail is made on the understanding that the defendant will appear at their Court hearing. Bail conditions can be imposed to give greater assurance that the defendant will return to Court or to address concerns about the safety of the community whilst the defendant is on bail.

In Western Australia, any arrested person has the right to have bail considered. The bail process starts upon arrest (Figure 1 on page 6). Following an arrest, Police decide whether to release the defendant on bail while they wait for their Court hearing. If denied bail, the defendant stays in Police custody until the initial Court hearing, usually within 24 hours.

Regardless of whether they are released on bail or held in custody, the defendant must appear at the initial Court hearing. The Magistrate or Judge then makes a decision on whether to release the defendant on bail while they wait for their next Court hearing and the need for any bail conditions.

In 2014, nearly 81 000 bail decisions were made by the Western Australia Police (Police) and the Courts of which just over 43 000 people were granted bail (15 630 by the Police). Around 38 000 people were denied bail because of a significant risk that they might not attend Court or because of a high safety risk to the community.

Some bail conditions must be confirmed or met before a defendant will be released. For example, providing the address for where they will be living whilst on bail and provision of a surety. A surety is a person who agrees in writing to pay a specific amount of money if the accused fails to appear in Court.

Some defendants find it difficult to meet these bail release conditions. The Department of Corrective Services (Corrective Services) employs a small number of Bail Coordinators to help defendants meet their bail conditions. Surety approval officers then assess if the surety conditions are met. If the bail conditions are not met, then the defendant is held in remand until their next Court hearing.

Bail conditions can be protective or non-protective. Protective conditions can prohibit the defendant from contacting a specific person or approaching them at places where they work

or live. Non-protective conditions, such as drug analysis, providing an address or surety aim to ensure that defendants are more likely to return to Court and less likely to reoffend.

An important component of the bail process is the monitoring and enforcing of bail conditions. Police and Corrective Services are responsible for monitoring most bail conditions. Multiple bail periods for defendants and simultaneous court orders makes managing and enforcing bail a complex process.

The Department of the Attorney General (DotAG) is responsible for the administration of the *Bail Act 1982* (the Bail Act) and the collection of forfeited sureties and personal bail. In 2013, DotAG developed a software program called the Bail Module as a way of electronically recording all bail decisions and for sharing this information across all three agencies. DotAG is currently reviewing the Act.

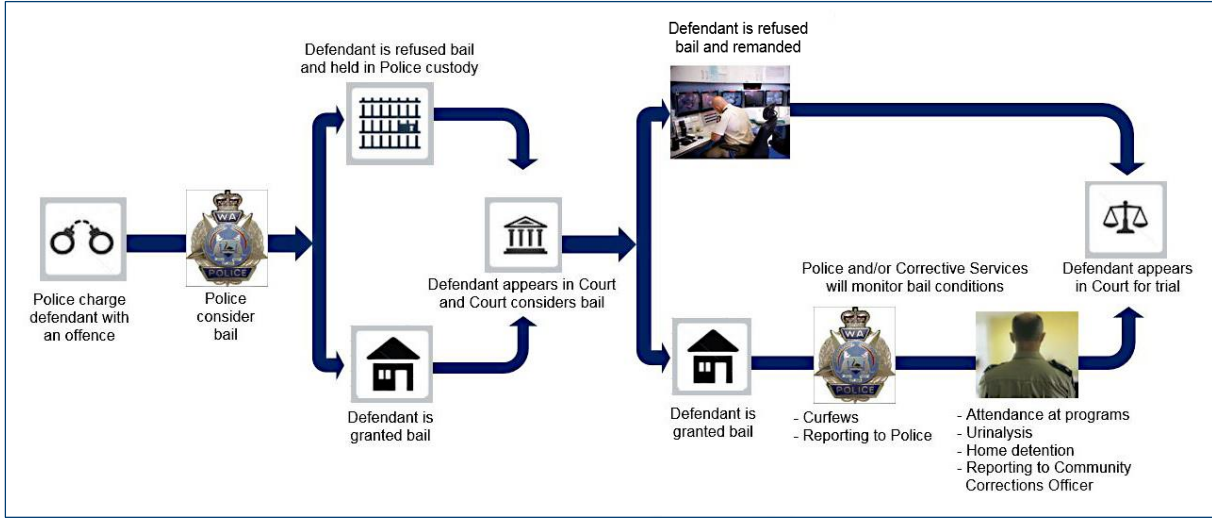


Figure 1: The Bail Process

Audit conclusion

There are opportunities to improve the effectiveness and efficiency of the bail system. The number of people granted bail but held in remand, sometimes for long periods, could be reduced if more support were provided to help them meet bail release conditions. It could also save the State significant imprisonment costs. Other measures such as text message reminders to people on bail to attend Court hearings have proven elsewhere to lessen the rate that people fail to return to Court and to save Police and Court resources.

While the collection of information about bail has improved, there remains a lack of key information on effectiveness, for instance on the breach rate of the different bail conditions or the extent to which breaches lead to enforcement action. Better and more consistent monitoring, analysis and reporting is necessary to make sure risks are minimised and people on bail are managed effectively.

Managing people on bail is a responsibility shared between DotAG, Corrective Services and Police. Each of these individual agencies have made some efforts to improve the way they meet their own responsibilities. However, a greater degree of collaboration will be needed to realise further gains, including agreement on which agency is best placed to lead which improvement activities. For instance, DotAG owns the key information system and is likely to be best placed to lead improvement in that area, whereas providing more support to people to meet their bail release conditions may be best led by Corrective Services.

Key findings

Defendants can have difficulty satisfying some bail conditions such as providing a permanent address or finding a surety. In 2014, of the 43 249 defendants granted bail, 1 663 were held in prison until they could meet their bail release conditions. This represents a significant cost to the State. Of the 1 663 people held in remand, Bail Coordinators helped 1 356 meet their conditions of which 740 were released within a week. Providing more support to defendants at the time bail is granted would help reduce the number of people granted bail but held in prison.

Imprisoning defendants who have been approved bail is costly. For instance, a person granted bail but who is remanded in prison for one week while they arrange to meet their bail conditions will cost the State about \$5 390. This is because the cost of bringing a defendant into the prison system is high regardless of the short time they spend there.

Limited availability of Aboriginal translators in the State is increasing the risk that Aboriginal people may not understand their bail obligations and be more likely to breach them. Forty per cent of the prison population are Aboriginal or Torres Strait Islanders. The Aboriginal Legal Service estimates that one in five Aboriginal or Torres Strait Islanders in regional areas may not understand English. People who do not speak English as a first language will likely be disadvantaged as they may not understand the judicial process or conditions that can be applied if granted bail. DotAG spent \$770 000 in total on translation services in 2013-14 of which \$23 100 was spent on Aboriginal translation services.

Better monitoring of protective bail conditions such as not to contact a specific person is needed to reduce the safety risk to the community when defendants are released with these bail conditions. These conditions can be difficult to monitor but not monitoring means that Police rely on protected people to report breaches. It could also mean that some of the most commonly used conditions are not effective at managing risk to the community. There is a process to inform the protected person of the conditions in place but this is inconsistently followed. As a result protected people do not always know when to inform Police when a person breaches those protective conditions.

Corrective Services and the Police are not consistently managing bail conditions. Breaches with similar circumstances are inconsistently monitored and reported with no clear explanation for the different action. For example, bail conditions imposing a curfew are carefully monitored by Police while conditions requiring periodic breathalysing are infrequently monitored. Likewise, breaches of bail with similar circumstances are inconsistently reported.

We estimate that breaches of surety and personal bail conditions totalled \$7.4 million in 2014. DotAG exercises only limited management over the collection of forfeited surety and personal bail and does not know what has or has not been collected. The Courts do not in every instance order forfeiture. In our sample of 16 breaches, the Courts ordered forfeiture in 14 cases. Of these, in two cases the amount owed was converted to time in custody. Of the 12 remaining cases, DotAG had not collected any of the forfeited money or employed alternative collection methods such as confiscating assets or the suspension of vehicle licence to encourage payment.

Failure by defendants on bail to attend court hearings is a serious problem. Sixteen per cent of people (6 928) granted bail in 2014 failed to appear for their Court hearing. This wasted Court time and required Police time to locate them and bring them back to Court. Technology can help to reduce non-attendance. Experience in other jurisdictions indicates that sending a SMS text reminder can significantly reduce breach rates. Video conferencing from approved locations can also make it easier for regional people to appear before a Court. Video conferencing has increased to 27 per cent of the time in 2014, but its use was mainly by the

prisons in the metropolitan area. Despite the improvement, there are opportunities to use video conferencing more widely in rural communities.

DotAG has improved the information it collects about people on bail by introducing the Bail Module in 2013. But, neither Police nor Corrective Services have the ability to independently access the statistical trend data they need to evaluate the effectiveness of bail and they have not requested that data from DotAG. This information would allow Police and Corrective Services to be more proactive when managing defendants on bail. For example, in 2014 there were 488 instances where the bail period started before the Corrective Services officers were aware that a defendant came under their management.

The ability to plan long-term improvement or measure the effectiveness of bail is limited by a lack of analysis and poor data. The DotAG, Police and Corrective Services' data is not used to understand and improve bail mechanisms. More frequent and extensive use of the information currently collected would also lead to improved data quality and reduced inaccuracies.

Recommendations

By the end of 2016:

- DotAG, Corrective Services and Police should improve collaboration and coordination in the management of bail and establish targets to measure the effectiveness of the bail process
- DotAG, Corrective Services and Police should ensure that their bail data is reliable and accurate and appropriately shared to allow them to drive improvements
- DotAG, Police and Corrective Services should improve how bail conditions, including protective conditions, are monitored and reported when they are breached
- DotAG should keep an up to date and complete record of forfeited surety and personal bail, so they can easily determine how much is collected and how much is outstanding
- Corrective Services should review the support needs of people on bail and use this to inform how defendants granted bail are supported
- DotAG should determine and address the needs of Aboriginal and other minority groups that cannot speak English within the Court bail decision process
- DotAG should make better use of technology to increase Court attendance.

Agency responses

Department of Corrective Services

The Department of Corrective Services (DCS) welcomes the findings of the Auditor General's audit of the management of adults on bail. Bail is a complex process, with three separate agencies having a direct impact on each individual's bail experience and how the system operates as a whole.

DCS is committed to working individually, and with these other agencies, to implement the recommendations of this report. Particular priorities include the strengthening of interagency collaborative processes and the enhancement of data capture and reporting systems.

Department of the Attorney General

The Department of the Attorney General has valued the opportunity for external review of its performance regarding its role in the management of adults on bail. Since 2007 considerable initiatives have been implemented by the Department to improve the State's Bail Process as evidenced by the:

- development and implementation of the Bail Module in November 2013. Up until that time there was no central repository (manual or electronic) of bail information
- significant progress made in the improvement of audio visual conferencing capability in the Justice sector. Overall the use of audio visual conferencing has progressively increased with persons in custody appearances currently at 66 per cent.
- modernisation of the *Bail Act 1982* to allow for audio visual links
- creation of the Aboriginal Liaison Officer positions to assist Aboriginal people to better understand court processes including bail conditions
- comprehensive review of the *Bail Act 1982* during the period 2010-2013, that included extensive consultation with relevant agencies such as the WA Police, the Department for Child Protection and Family Support, the Department of Corrective Services and the Office of the Director of Public Prosecutions. The review has made a number of recommendations to amend the existing legislation and some non-legislative recommendations. In August 2014 Cabinet approved the drafting of an amendment Bill. Drafting of the Bill has commenced and it is anticipated that the Bill will be introduced into Parliament this year.

The improvement of data integrity will remain a key focus for the Department and we will continue to work closely with Justice sector agencies to explore the use of technology as an enabler of process improvement.

The Department notes the findings reported regarding the management of adults on bail and will consider the Auditor General's recommendations to the Department following a risk assessment.

Western Australia Police

The Western Australia Police recognise the importance of bail in the criminal justice system, together with our role in supporting Courts and victims by contributing to its management. In response, the Police have renewed and strengthened policy, as well as developed an offender management strategy to introduce more rigour in monitoring bail conditions.

It is pleasing to note that this review has found that the Police are carefully monitoring curfew bail conditions. Nonetheless, we welcome improvements that will assist in building further

good practice. In particular, not only will trend information assist all agencies with an evidence base on the operation of bail, improvements in the accuracy and timeliness of Court data in the Bail Module will provide Police with alerts and information vital to the effective monitoring of bail conditions.

The improvement of information and increased availability to Police will minimise risks to the community and the role of this report in highlighting this issue is important. The work of the staff from the Office of the Auditor General in this regard is acknowledged.

Audit focus and scope

This audit assessed the effectiveness of the administration and management of adults on bail.

We focused on answering three main questions:

- What are the benefits and risks of bail and how often is it granted in WA?
- Are there adequate and timely administrative processes for bail?
- Is there effective support and management of people on bail?

The scope of the audit included adults on bail. It did not include juveniles. It also did not include a small number of people who had been convicted of an offence, but are on bail awaiting sentencing. This is because these people are sentenced through specialist courts and require a more intensive management regime compared with the standard bail population.

The audit scope covered people bailed in metropolitan and regional areas and from the Magistrate, District and Supreme Courts.

We reviewed 30 case files of people on bail with Police monitored conditions and 15 people with Corrective Service monitored conditions. The sample was designed to reflect the volume of conditions monitored by Police and Corrective Services.

We visited the Northbridge Weekend Court to observe hearings where bail was decided.

We conducted the audit in accordance with Australian Auditing and Assurance Standards.

A lack of support at the Courts increases the risk some people cannot meet their bail conditions

Fifty four per cent of defendants were granted bail in 2014

An effective bail regime requires careful management of the risks by all those involved in the process. To realise the full benefits of bail, the risks need to be appropriately managed so the defendant returns to Court and the community is safe.

Police make the first bail decision and these people whether granted bail or not return to Court for an initial court hearing. In the initial Court hearing the Judicial Officer decides whether to release the defendant on bail until their next Court hearing for a judgement.

In 2014, Police and the Courts made 80 815 bail decisions and 43 249 were granted bail. Police made 28 340 bail decisions and 55 per cent were granted bail. Of the 52 475 bail decisions made by the Courts, 53 per cent were granted bail. The other 47 per cent were remanded in custody because of the risk they posed.

When granting bail Police and the Courts are required to consider the five risks outlined by the Bail Act. These are:

- the defendant failing to appear in Court
- the defendant committing a crime while on bail
- the defendant jeopardising the safety of the victim or the general public
- the defendant interfering with Court proceedings
- the defendant influencing the outcome of a trial.

When a high bail risk cannot be mitigated by conditions, bail is denied and the defendant is remanded in custody until their next Court hearing.

Bail conditions are used in different circumstances, with protective conditions managing the risk to the community, and non-protective conditions addressing the risk of reoffending. A list of bail conditions that are monitored and those that are not monitored can be found in Appendix 1 on page 25.

The bail population is complex in that the defendants can be charged with multiple offences. In turn, each of these offences can have their own set of conditions attached. This increases the difficulty of monitoring and enforcing bail conditions.

The case example below demonstrates how conditions are used to manage risk.

Case example – Use of bail conditions

As part of our audit we visited the Northbridge Weekend Court to observe 10 bail hearings to understand the process of making bail decisions. We saw several cases where bail decisions were made. In the first hearing we observed, a man who was accused of assaulting his partner was issued bail with protective conditions, which were:

- not to contact his partner, the protected person
- not to approach her at work or at home.

In another hearing we saw a diagnosed alcoholic whose bail conditions prohibited him from entering a licensed premises and consuming alcohol. During the ruling the Magistrate spoke of how the defendant’s bail conditions were intended to prevent him from reoffending.

It is important to ensure that the bail conditions are suitable. Part of this involves knowing how many people reoffend while on bail including reoffending involving a more serious offence. We expected the agencies to be monitoring indicators like this to gauge the effectiveness of the conditions in ensuring defendants did not reoffend. However, such monitoring does not occur.

A lack of support to meet bail conditions meant 1 633 people who were granted bail were held in prison

If a defendant is granted bail, but cannot satisfy the conditions placed on them, they are remanded in custody until all conditions can be satisfied. Last year, 1 663 people were on remand because they could not meet their conditions (Figure 2). Providing a residential address while on bail and providing a surety were the two conditions most difficult to meet. Around seven per cent of those granted bail with conditions were not immediately released.

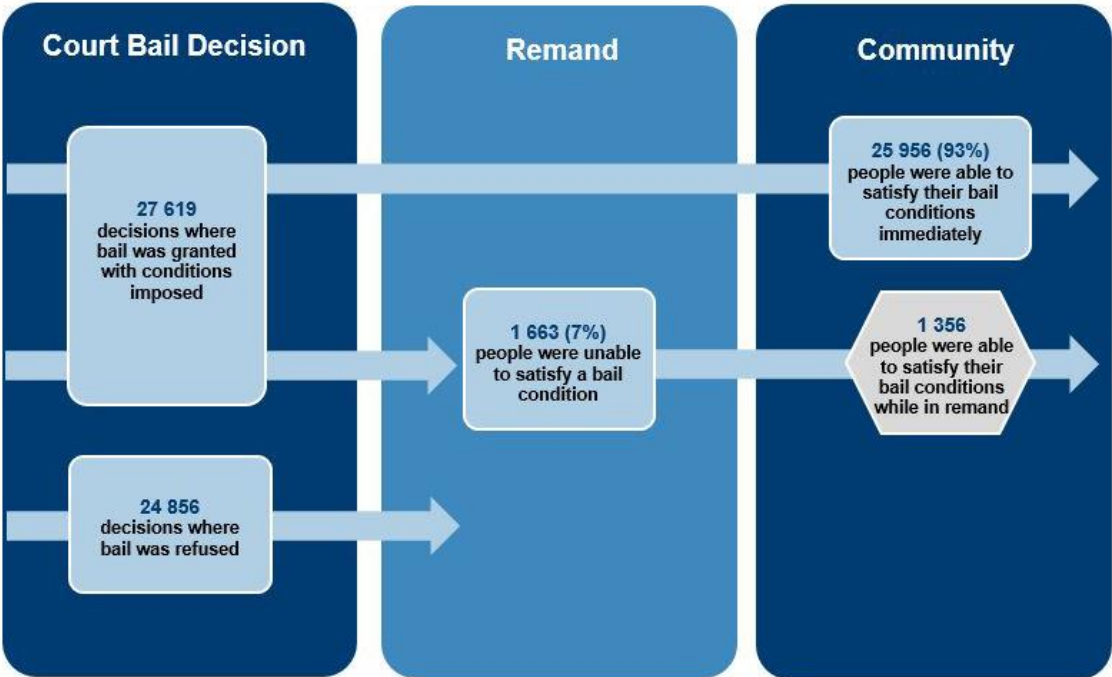


Figure 2: People who spent time in remand waiting to satisfy bail conditions

Note: Of the 27 619 Court decisions to grant bail, 4 668 decisions were granted with no conditions imposed.

There are limited opportunities for a defendant to meet bail conditions. Corrective Services staff at the Courts advised us that the defendant usually has only two opportunities after their bail hearing to call people they know. This is part of the reason why it is difficult for them to arrange a surety or a place to stay, especially when attempting contact using a telephone landline.

If the defendant cannot meet the bail conditions, they are taken from the Court to the prison, and through the admission processes. Figure 3 shows that the time spent in prison before the defendant is either able to meet the conditions or their court hearing occurs varies from less than a day to over a month.

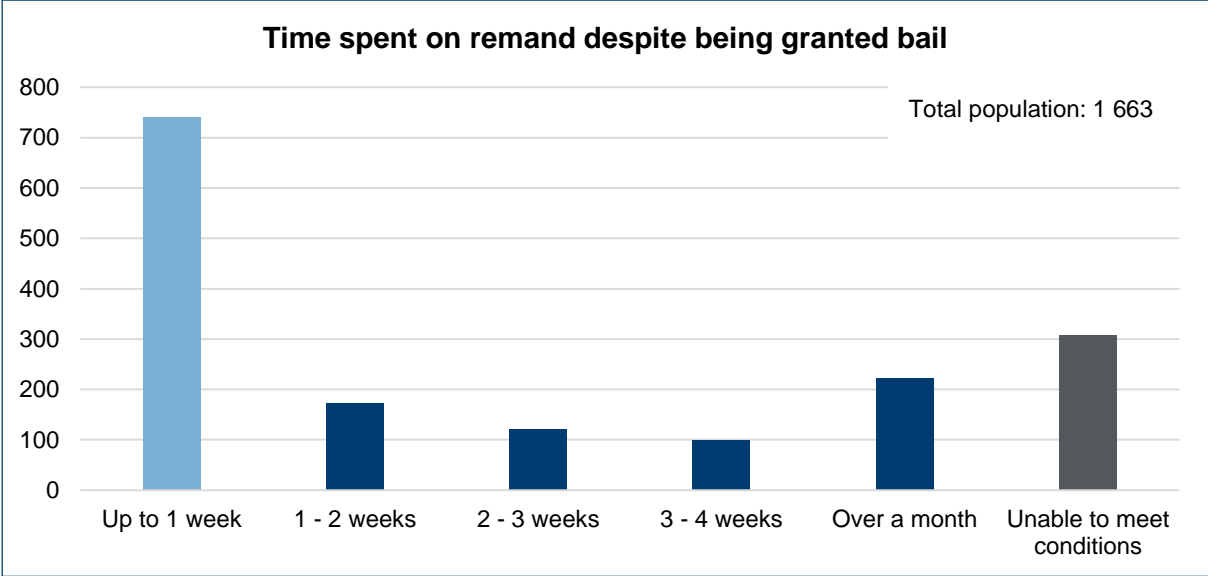


Figure 3: People granted bail held in remand for failing to initially meet their conditions

Holding people in prison for short periods has a very high daily cost due to the assessments and additional support needed when defendants are first received in prison.

Corrective Services estimates that keeping defendants in prison for less than a week can cost up to \$770 a day which is around double the cost for longer term prisoners. The cost of managing an offender in the community is estimated at \$44 a day. This estimate excludes any associated Police cost and the cost of home detention. Using these estimates, the cost of holding people granted bail in prison for a week or less was just over \$1.5 million in 2014, compared to \$89 000 if they had been released. In 2014, 304 of the defendants spent less than 24 hours on remand (Figure 4).

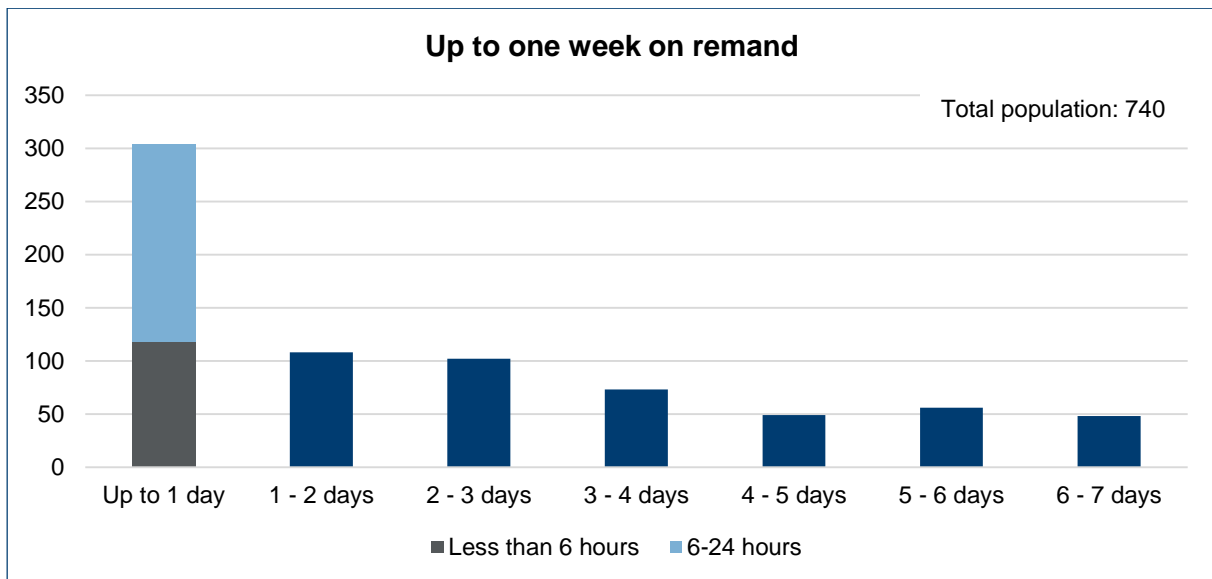


Figure 4: Average length of stay in custody before bail conditions are met within a week

Entering a prison can be time consuming and confronting. Once a defendant reaches the prison, they go through an initial process before they are taken to their cell. The defendant:

- is interviewed to confirm identity and demographics of the person
- undergoes a risk assessment
- has a photograph taken
- undergoes medical screening
- makes a phone call to their next of kin to inform them of where they are
- are strip-searched to ensure they do not have any contraband. Distinguishing tattoos or marks are noted and piercings are removed
- has a shower, is given a prison uniform and is issued with their prison forms.

Last year, 118 people went through these procedures but then were released on bail in less than six hours. Avoiding an admission into the prison system saves resources and reduces the emotional stress on the defendant. But as well, defendants held in remand for long periods because they cannot meet basic bail conditions such as providing an address are exposed to other high risk defendants. Research suggests that this sort of exposure can lead to people becoming involved in more serious offences.

In 2014, there were 616 people on remand for more than a week before they met their bail conditions. These defendants cost the State around \$342 a day. Other jurisdictions have introduced Bail Hostels as a low cost alternative that allows defendants without a fixed address to be released on bail. Corrective Services does not yet have the information to make an assessment on whether a similar initiative would work in Western Australia.

Bail Coordinators play a critical role

Corrective Services currently employ four Bail Coordinators to help defendants meet their bail conditions. The four coordinators assist approximately 2 000 people per month. Better access to Bail Coordinators would help more defendants to meet their conditions and be released, often without needing to spend time in remand.

The assistance the Bail Coordinators provide mostly involves contacting potential sureties and calling friends and family to arrange a residence for the defendant while they are on bail. They also visit Bandyup Women's Prison and Hakea Men's prison, where most people on remand are located.

Corrective Services has acknowledged that Bail Coordinators have a high volume of defendants to support and have taken steps to increase the level of support provided. Corrective Services are also considering other options to improve the support available for defendants trying to satisfy their bail conditions.

One in five remote Aboriginal and Torres Strait Islanders may need help understanding bail, but interpreters are limited

In order to comply with bail conditions, it is crucial that defendants understand the conditions placed on them, and the implications for failing to comply. Not all people who attend Court can read or comprehend English. In 2010, the Aboriginal Legal Service estimated that one in five Aboriginal or Torres Strait Islanders living in remote Western Australia had difficulty communicating with health or legal service providers.

In 2014, the Australian Bureau of Statistics reported that Aboriginal and Torres Strait Islander people made up 40 per cent of the prison population in Western Australia. Aboriginal English and Kriol are the first language for many Aboriginal people, but there are many more dialects. This population needs access to translators, as English is their second language. The Office of Multicultural Affairs, in the *State Language Services Policy 2014 and Guidelines* on translation services, provides that only certified translators should be used.

Of the \$770 000 spent on translators in total last year, DotAG spent three per cent (\$23 100) on Aboriginal translators with the rest spent on translators for other languages and the hearing impaired. Torres Strait Islander translators were not used at all in 2014. This comparatively small investment in translators for Aboriginal people within the justice system does not reflect the population. However, the Aboriginal Legal Service advised that interpreters for Aboriginal defendants have always been difficult to obtain. DotAG advised that if an accredited interpreter is not available they pursue other options, including using Aboriginal Legal Service field officers and other community members.

The Kimberley Interpreting Service is the only established Aboriginal interpreting service in the State. Guaranteed government funding for the service ended in 2014. Some political efforts were made in late 2014 to keep the Kimberley Interpreting Service operating but as at March 2015, there has been no public announcement about its future. It seems clear that if the service does not continue, many Aboriginal defendants will be disadvantaged.

We also saw challenges presented by a lack of interpreters during our visit to the Northbridge Weekend Court. We observed an Aboriginal defendant who appeared to not understand the questions asked by the Court. After a few attempts at rephrasing the question, bail was denied and she was remanded in custody.

Bail risks could be better managed by more consistent monitoring and enforcement

Protective bail conditions are frequently used, but are not always monitored

Protective conditions are the most commonly used bail conditions for defendants rated as a high risk. These conditions aim to reduce the risk of a defendant causing direct harm to a member of the community. They include requirements such as 'not to approach a location or protected person'. However, not all protective conditions are actively monitored and improvements could be made to the way risks to the community are managed.

Some practical issues make it difficult to monitor protective conditions, but not monitoring them can leave a protected person vulnerable. Currently, Police rely on the protected person, usually the victim, to report a breach or the defendant themselves to 'self-report' their breach. While there is a process to inform the victim of the conditions imposed on the defendant, it is not consistently followed. We were advised that victims of crime often do not want to receive information about the defendant, including if they have been granted bail. This increases the risk that some breaches will go unreported.

The Australian Law Reform Commission (the ALRC) suggests that there is a legal obligation to inform victims of family violence of bail decisions that impact them. The ALRC also recommends sending a copy of the bail conditions to protected persons and promptly contacting them when the conditions are revoked or varied. If the protected person does not want to be contacted, their legal representation could be sent a copy of the conditions or informed of variations to the bail conditions.

We were advised that the protected person may actively encourage the defendant to breach bail. In some cases the protected person is a family member. We saw two cases where a defendant was living with the protected person for three months to a year before a condition 'not to contact that person' was reported as breached. In both instances the protected person was a relative of the defendant and had invited them into their home, knowing they would breach their bail condition. DotAG have advised that they are working with Police and the Office of the Director of Public Prosecutions to determine a way to notify victims of crime if a defendant is granted bail or has their conditions of bail altered.

Corrective Services and Police exercise different levels of discretion so not all breaches of bail are reported

When a breach of a bail condition is reported, action is taken to return the person to Court. We found inconsistencies in the way Police and Corrective Services report breaches of bail. Varying levels of discretion exist when dealing with breaches of bail conditions and hence breaches are not always reported. If these conditions are not consistently monitored and enforced they may not manage the risks as intended.

Cases vary in their complexity and some discretion is necessary, but it is important to have a consistent approach to recording information about the defendant's behaviour while on bail and in using discretion when monitoring and enforcing bail conditions. Consistency improves the effectiveness of bail conditions.

We also found constraints and inconsistencies in the Police's monitoring of bail conditions in our sample of 30 cases. Conditions for a defendant to comply with a random breath analysis were not monitored. Police confirmed that it is not their usual practice to monitor random breath analysis. One of the challenges are the restrictions on Police entering a private premises or

detaining a defendant for monitoring. As well reporting of breaches does not always occur. In our sample, four defendants breached a bail condition requiring them to periodically attend a police station. However, there was only one instance where a breach was reported.

In 2009, Corrective Services introduced an Enforcement Policy that required Community Corrections Officers (CCO) to report all breaches and incidences of non-compliance. This approach removes some discretion from CCOs.

As part of our audit, we reviewed 10 breaches observed by Corrective Services where defendants refused to comply with their conditions to undergo urinalysis or meet with their CCO. In all of those instances, the CCO did not report the first time the defendant breached. There were subsequent breaches, some of which were reported and some were not. For example, subsequent breaches by three defendants were never reported, and two other breaches were reported only when the defendant did not appear for their Court hearing.

In one case, a defendant had moved 358 kilometres away from the town where their next Court hearing would be. The CCO had not reported a breach when the defendant failed to comply with conditions to have psychological treatment in their previous place of residence. On the day of the Court hearing, the defendant failed to attend Court and an arrest warrant was issued for breach of bail.

In another case a CCO did not report a breach when a defendant failed to comply with a condition to report to the CCO. The defendant did not meet with the CCO during the entire bail period. An arrest warrant was issued when they failed to appear in Court.

Earlier reporting of these breaches would have highlighted the likelihood that the defendant would not attend their Court hearing and identified the need for preventative action.

To address these shortcomings, Corrective Services are now working on a framework that will guide CCOs in exercising their discretion. The framework will focus on defensible decision-making and should help to ensure a consistent approach to breaches, but its use and effectiveness will need monitoring.

DotAG does not know how much unpaid surety and personal bail remains uncollected

Personal bail is an amount of money that the Court may order the defendant to forfeit if they breach their conditions. Personal bail undertakings usually range from \$100 to \$50 000 but most commonly is around \$1 000. Surety is where someone else agrees to pay a sum of money to the Courts if the defendant breaches their bail conditions. Sureties typically range from \$1 to \$20 000 but most commonly are around \$5 000. Payment in advance to release a defendant on bail is not normally required.

We estimate that breaches of surety and personal bail conditions totalled \$7.4 million in 2014. This estimate was calculated using Court data from the Bail Module. But, DotAG exercises only limited management over the collection of forfeited surety and personal bail and it does not know the value of surety and personal bail collected, written off or yet to be collected in a financial year.

The Courts do not in every instance order forfeiture. In our sample of 16 breaches, the Courts ordered forfeiture in 14 cases while in two of these cases the amount owed was converted to time in custody.

Of the remaining cases, DotAG had not collected any of the forfeited money and we saw no evidence of the use of alternative collection methods such as confiscating assets or the suspension of vehicle licenses to encourage payment. The average elapsed time after the Court ordered forfeiture to the time we reviewed the sample cases was 215 days.

In one instance, the Court permitted a defendant to progressively payoff their personal bail amount. However, no money was paid and DotAG had not followed up on this account for over a year. Inconsistent enforcement of forfeited surety or personal bail weakens it as a disincentive to breaching bail conditions.

In their 2014 Annual Report, DotAG stated that it collected \$84 million from debts recorded in the Fines Enforcement Registry. However, DotAG does not know how much of this was forfeited surety or personal bail as opposed to traffic infringements. This makes it difficult for the stakeholders issuing fines to review how successfully the fine acts as a deterrent or penalty.

There are opportunities to improve return to Court rates by making better use of technology

Whether a defendant returns to Court for their Court hearing is a key measure of the effectiveness of bail. Court data indicates that in 2014, 6 928 people, or 16 per cent of all people granted bail, failed to attend their Court date. Not attending Court both delays justice and takes up Court and Police resources, particularly when defendants have to be located and returned to Court. Using text reminders and video conferencing can help to improve return to Court rates.

Defendants attending Court often lack a stable home environment and the structure in their lives that would make them more likely to attend their Court date. A 2012 academic study found that the main reasons defendants did not attend their Court hearing was because people:

- were avoiding the Court outcome
- were confused about the Court process
- could not understand the Bail Forms and Court Notices
- led chaotic lifestyles.

Technology can increase the instances of Court attendance and thereby reduce the wastage of Court and Police resources. For example, many stakeholders we interviewed recommended the use of SMS text reminders as a way of getting people to Court. This has been successfully trialled and implemented in Tasmania.

Case example — Use of SMS text reminders in Tasmania

In 2009, Tasmania introduced an SMS text reminder service to ensure that people returned for their Court date. Immediately following its introduction, Tasmania reported that the service had increased attendance rates by 12 per cent for first Court appearances and 21 per cent for subsequent appearances.

DotAG advised us that while they are introducing SMS text reminders to follow up outstanding fines from the Fines Enforcement Registry, they had not previously considered using SMS text reminders for Court appearances or bail conditions.

In cases where a person lives far from the Court and it is difficult for them to return to Court, video conferencing may be a low-cost alternative to increase compliance. Following a recommendation from the Ward Coronial Inquiry, the use of video and audio conferencing has increased. In 2014, 27 per cent of all bail decisions heard across the three Courts used video conferencing. However we found that there are opportunities to improve the use of video conferencing in rural communities.

Key stakeholders we spoke to reported that outdated technology was a barrier to getting the most from video conferencing. For example, internet connections that took too long to set up and unreliable internet connections meant that video conferences to remote areas kept 'dropping out' forcing the adjournment of cases. Stakeholders also commented that while the Courts had improved their technology systems these were not connected to Police stations, making video conferencing between Police stations and Courts difficult.

We did note that video conferencing was more widely used between the Courts and the prisons. Court officers suggested using smart technology such as tablets and smartphones would make DotAG's network more accessible to defendants who do not live near the Courts. DotAG have also recognised the importance of video conferencing by scheduling planned upgrades to technology.

Data on bail is captured but not effectively used

Bail data collection has improved with the introduction of the Bail Module, but the data is not effectively shared

In November 2013, DotAG introduced the Bail Module which aimed to create a central record of bail and share information across DotAG, Police and Corrective Services. This has improved the way data is collected and stored, and has allowed for single point of storage for the first time. However, Corrective Services has no access and Police access is limited, which results in inefficiencies and an increased risk of inadequate supervision of people on bail.

DotAG estimated that it spent \$300 000 developing the Bail Module. The module is a component of its Integrated Court Management System (ICMS) software and was developed in consultation with Police.

Police and the Courts use the Bail Module to record the details of the bail decisions they make including the contact details of a defendant, the bail conditions and the date of the next Court hearing. Generally, it can allow the agencies to determine the:

- length of time a defendant spends on bail
- number of people on bail
- types of conditions imposed
- number of breaches.

Corrective Services do not currently have access to the Bail Module, instead relying on bail documents to be mailed or faxed to it. As a result, Corrective Services does not always know when a person on bail comes under its management. In 2013, we saw 488 instances of the bail period commencing and the CCOs not knowing they had to manage and monitor the defendant. DotAG are currently working with Corrective Services to establish their access to the Bail Module.

The Police likewise have restricted access. While they can enter information into the system, they cannot access statistical trend data directly from the Bail Module. In addition, they have not made any request for this data or reports that would be of value to them. DotAG have advised that they intend to work with the agencies to provide this information.

DotAG also advised us that it does not intend to analyse operational level bail data. If either the Police and Corrective Services wish to analyse such data then they will need to collaborate with DotAG and decide what information is needed.

Data is not being used to inform improvements to the bail process

There is no bail related Key Performance Indicators and only minimal internal reporting done which can demonstrate the effectiveness of bail. The only internal reporting is by Corrective Services which reports on the 'total number of defendants released on bail' and the 'total eligible defendants with surety bail held in custody and released within seven days'. However, all three agencies recognised the potential to analyse and report information collected by the Bail Module.

Eighteen months after its implementation, we expected to see that the Bail Module data was being used to look at trends, find problems and to improve the bail process. However, this was not the case.

None of the three agencies could answer key questions such as:

- How many people were on bail?
- Which bail condition is most commonly imposed?
- How many defendants went on to commit a serious offence while on bail?

Understanding trends would help in planning the resources needed to manage people on bail. For example, knowing the most commonly breached conditions could help Corrective Services and Police decide if they are focusing resources on monitoring and managing the conditions most at risk of being breached.

Our analysis showed the protective condition that prevented a defendant from approaching a person or place is the most breached but least monitored condition. None of the agencies could advise us of the number of defendants known to have committed serious offences while on bail. Such information could help DotAG, Corrective Services and Police to determine and advise Government and the Courts on the effectiveness of the conditions aimed at protecting the community.

Our analysis of the available data revealed that there were around 2 300 people on bail each month. The most frequently used condition was a protective condition that prevented a defendant from approaching a person or place (Figure 5), followed by a non-protective condition to provide a residential address.

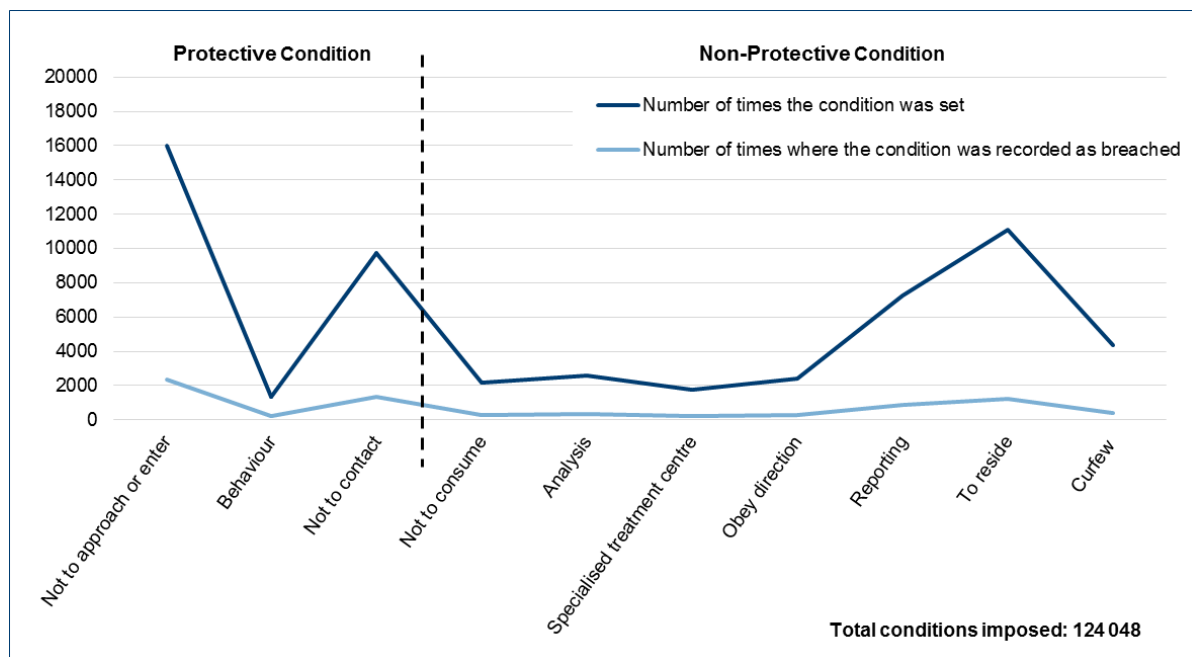


Figure 5: Ten most common conditions imposed and the number of times they were recorded as breached in 2014

We also analysed the use of personal bail and surety. Of the total people on bail, 59 per cent had personal bail and 14 per cent had a surety. The amount of personal bail or surety applied depends on the risk the defendant poses. The greater the risk, the larger the amount of surety and personal bail.

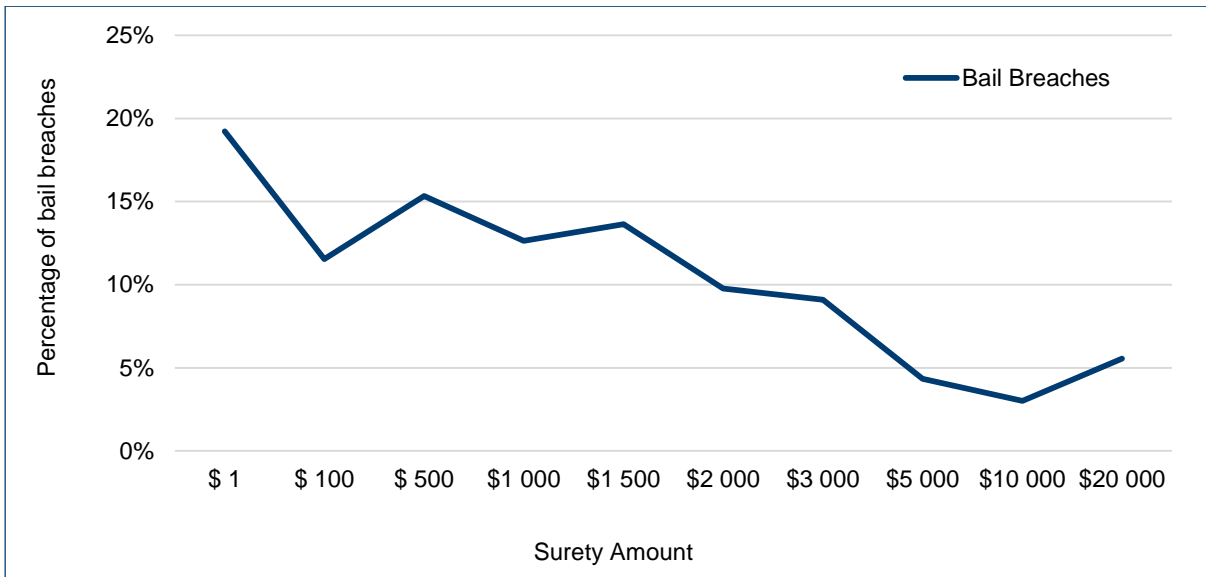


Figure 6: Use of surety (Courts and Police) in 2014

In 2014 we found that when higher amounts of personal bail or surety are set, the number of breaches is reduced (Figure 6 and 7). This indicates that the condition was either effective as a deterrent to breaching or that the amount was too high for the defendant to meet.

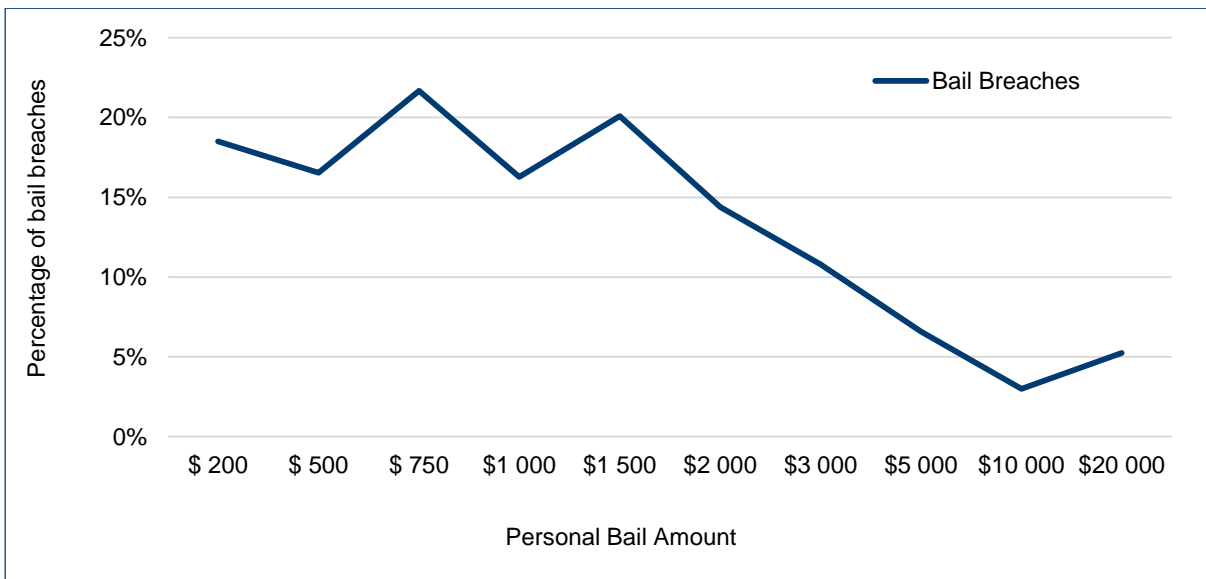


Figure 7: Use of personal bail (Courts and Police) in 2014

The accuracy of information entered in the Bail Module is poor and increases the risk of ineffective monitoring

Our analysis of 2014 Court data entered into the Bail Module showed numerous inaccuracies. For example, 79 per cent of alerts sent to Police of curfew conditions imposed on defendants on bail were incorrect. In one of 30 cases we reviewed, the alert was not sent to Police at all. We also found that 31 per cent of reporting conditions were entered incorrectly, the 'defendant's release location' was not recorded in 99 per cent of cases, and in 40 per cent of cases, non-protective conditions were identified as 'protective'.

At present there is no process to find and correct errors in the information collected. The errors can increase the risk that monitoring of people on bail is delayed or does not occur. The responsibility for processing the data is not clear.

The number of defendants on bail between the agencies was also inconsistent. For example, in 2013 Corrective Services reported that it managed 1 511 people on bail. However DotAG's Bail Module reports that Corrective Services managed 1 671 people.

Corrective Services and DotAG do not have a process to reconcile the number of defendants recorded in the Bail Module to the number of defendants recorded by Corrective Services. As a result these inaccuracies are not identified and still exist.

At present there is no process in place to review the information entered by Police and DotAG. The data is also not regularly used. There is no feedback on its accuracy, or reason to correct the data. Using the data regularly would provide the feedback needed to improve the data quality. During the audit, DotAG, Corrective Services and Police have all reported a commitment to improving data quality in the future.

Appendix 1: List of bail conditions

Below is a list of the most commonly used bail conditions and the agency that monitors them. Police can arrest people who breach both monitored and unmonitored conditions.

Bail condition	Monitored by	Protective / Non-Protective
Forfeiture of surety/personal bail undertaking	DotAG	Non-protective
Drug and alcohol testing	Corrective Services	Non-protective
Drug and alcohol counselling	Corrective Services	Non-protective
Mental health check	Corrective Services	Non-protective
Physical health check	Corrective Services	Non-protective
Attend a prescribed specialist treatment Centre	Corrective Services	Non-protective
Report to Community Correction Officer (reporting)	Corrective Services	Non-protective
Home detention with radio frequency monitoring	Corrective Services	Protective
Obey direction of Community Correction Officer (obey direction)	Corrective Services	Non-protective
Curfew (with or without breath analysis)	Police	Non-protective
Report to Police (reporting)	Police	Non-protective
Monetary amount to be forfeited	Police	Non-protective
Surrendering a passport	Police	Non-protective
To reside at a particular address	Not monitored	Non-protective
Not to consume a specific substance	Not monitored	Non-protective
Not to go within a specified distance to a specified place or person (not to approach or enter)	Not monitored	Protective
Compliance with a Violence Restraining Order (VRO)	Not monitored	Protective
Not to contact an individual	Not monitored	Protective
Not to behave in an aggressive/threatening/abusive manner	Not monitored	Protective

Auditor General's Reports

Report Number	Reports	Date Tabled
9	Opinions on Ministerial Notifications	4 June 2015
8	Delivering Essential Services to Remote Aboriginal Communities	6 May 2015
7	Audit Results Report — Annual 2014 Financial Audits	6 May 2015
6	Managing and Monitoring Motor Vehicle Usage	29 April 2015
5	Official Public Sector Air Travel	29 April 2015
4	SIHI: District Medical Workforce Investment Program	23 April 2015
3	Asbestos Management in Public Sector Agencies	22 April 2015
2	Main Roads Projects to Address Traffic Congestion	25 March 2015
1	Regulation of Real Estate and Settlement Agents	18 February 2015

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