

# Bail Supervision and Young People: Pathway or Freeway?

Steve Mather<sup>†</sup>

Over the past decade bail legislation reform has curtailed the presumption in favour of bail and enabled its therapeutic use. Arguably such changes transform the traditional role of bail as a means of ensuring a defendant's return to court and balancing the presumption of innocence. These changes are likely to present challenges to those managing conditional bail and those subjected to it, particularly in relation to minimising net-widening and deviancy amplification.

This paper describes Stage One of a study involving an analysis of the administrative records of 512 young people and interviews with youth/social workers. The study found supervised bail orders contained a number of quasi-therapeutic conditions and were used, in part, to address young people's 'needs'. The findings suggest caution needs to be exercised when using bail as a rehabilitative tool in order to avoid the risk of entrenching young people further into the system.

## Introduction

Over recent decades youth justice systems, both nationally and internationally, have become increasingly interventionist (Muncie 1999). This new interventionism can be seen in the rise of developmental prevention, risk assessment and the 'what works' approach to rehabilitation. Of particular interest to this paper is the development of therapeutic jurisprudence; the utilisation of the law for therapeutic outcomes, leading inter alia to the development of specialist problem solving courts (Birgden 2004).

This paper reports the findings from ongoing research which suggests that in South Australia conditional bail for juveniles (where at least one condition is to be under supervision) operates in a way that reflects some of the elements associated with therapeutic jurisprudence. Drawing on the literature of interactionist and social control theorists, this paper argues that such an approach does, however, have particular risks which need to be considered if the youth justice system is to be used as a tool of social intervention.

This paper and its central thesis are based on data and analysis undertaken for a larger, ongoing research project focused on the practices and impact of supervised

---

<sup>†</sup> Department of Families and Communities, SA

bail. The findings of this larger project are not fully reproduced here, although this paper's conclusions are consistent with the work to-date. The first section of this paper establishes the grounds for the present study, including a review of relevant literature and an overview of the research method. The middle section provides selected results from the larger study. The paper concludes with a discussion of the research findings in light of the literature and makes a few final remarks.

## Literature Review

### Bail

The role of bail has traditionally been to ensure a defendant's presence at court whilst balancing their right to liberty and the community's right to protection (Bishop 1998; Queensland Law Reform Commission 1993). The purpose of any conditions imposed has customarily been to support the primary function of bail (Raine and Willson 1995). Recent bail reforms have to some degree altered these traditional understandings of bail, arguably introducing elements of therapeutic jurisprudence, particularly by using bail as a means to access intervention programs (Brignell 2002). For example, the *South Australian Bail Act (1985)*, amended by the *Statutes Amendment (Intervention Programs and Sentencing Procedures) Act (2005)*, enables a defendant charged with committing an offence while on bail to be directed to an intervention program. However, these amendments took place after the period to which the majority of data collected for this study refers.

The majority of bail literature reviewed for this research was concerned with the general reform of bail law, reducing the use of custodial remand, improving bail decision making processes, minimising offending while on bail or reviewing the effectiveness of bail programs (Fitzgerald and Marshall 1999; Morgan and Henderson 1998; Phillips 2004; Sarre et al. 2006). There was a tendency within this literature to focus on the relevance of bail to remand rates or offending. Bail on its own terms was to some extent left critically unexamined, with little consideration given to the potentially problematic nature of bail, particularly bail with conditions. It is this space that the present research occupies.

The study of the impact of bail, particularly bail with conditions, is an important area of research for at least two reasons:

- First, bail conditions in themselves have the potential to impose significant restrictions upon individuals; and
- Second, the work of interactionist and social control theorists has highlighted the central role of formal social control systems in the identification, labelling and potential promotion of anti-social role types (Bernburg et al. 2006; Bowditch 2002; Circourel 1968; Cohen 1979, 1985; Fox 2002; Lemert 1951, 1981).

## Net-widening

Cohen (1979, 1985) argued that diversion and decarceration programs increase the numbers of individuals under some form of social control; that is, they widen the net of formal social control. Murray (1985) demonstrated similar results from Australian policies of decriminalisation and diversion. Austin and Krisberg (1981) provided a useful typology for distinguishing different ways in which net-widening can occur; that is, stronger, wider, different nets, indicating more individuals, more intensity and more forms of control respectively. The development of diversionary programs has also been associated with changing the principle of intervention from guilt to a perception of need (Austin and Krisberg 1981; Cohen 1985).

When bail has conditions attached it has the potential to impose significant restrictions on defendants. For example, the *South Australian Bail Act (1985)* Section 11 (2a)(vi) states that bail authorities may impose '... any other conditions as to the applicant's conduct that the authority considers should apply while on bail'. As discussed by Kellough and Wortley (2002, p. 204) the use of conditional bail can have consequences for defendants and their ongoing involvement with the justice system. A study into recently introduced powers enabling British police to apply conditions to bail found that, rather than reducing numbers in police custody (the policy intent), individuals placed on police bail with conditions after the powers were introduced were more likely to have received unconditional bail prior to their introduction (Raine and Willson 1997).

The current research does not explore trends in the relative numbers of young people under different forms of control - specifically bail, conditional bail or remand. Rather, it explores Austin and Krisberg's (1981) notion of stronger nets; that is, the intensity of restrictions imposed on individuals. A simple but meaningful way of assessing the level of restriction imposed by an order is by reference to the number of conditions it contains. In an earlier study, Raine and Willson (1995) found that

bail orders issued by United Kingdom magistrates' courts contained an average of two conditions. A further five studies that were also based in British magistrates' courts similarly indicated that, on average, bail orders had one or two conditions attached (Dhami 2004).

A second means of assessing the level of restriction imposed by a bail order is to look at the nature of bail conditions. In their study Raine and Willson (1995, p.30) found that the most commonly applied condition was residency (78.5%), followed by no contact with co-defendants (46%), keep away from specific address (23.8%) and curfew (21.1%). In the five studies discussed by Dhami (2004) the most common conditions included residency, report to police and to have no contact with co-defendants.

## Deviancy Amplification

The underlying precept of the interactionist tradition is that deviant behaviour, rather than being an inherent attribute of a particular act or person, is socially produced (Ageton and Elliot 1975). The social production of deviancy has two inter-related processes, one being the definition of particular acts as deviant, the other being the facilitation or promotion of 'deviant' acts and actors. The experience of being apprehended, labelled and processed by formal systems of social control is viewed as central to the probability of adopting an anti-social role. The notion of deviancy amplification suggests that the actions of social control systems, rather than minimising deviant behaviour, in fact escalate that behaviour.

Lemert (1981, p.38) argues that 'Secondary deviance ... is an explanation of how casual, random or adventurous deviance becomes redefined and stabilized through status change and self-conscious adaptation to secondary problems generated by social control'. In the context of the youth justice system the secondary problems referred to by Lemert (1981, p.38) include '...new rules to follow, whose violation subjects the juvenile to penalties unrelated to his original deviant act'. Marx (1981) has identified three ways in which formal systems of social control can contribute to the escalation of deviant behaviour - over-enforcement, under enforcement and covert facilitation. Processes of amplification not only increase deviant behaviour but also provoke greater levels of official control, ultimately leading to an escalating spiral of deviance-response.

The scenario outlined by Lemert has particular resonance with the situation of a defendant placed on bail. For example, Raine and Willson (1997) found that front

line custody officers viewed individual bail conditions ‘...as levers of influence to achieve a measure of control over defendants’. It would also be expected that the intensity and nature of the rules or conditions imposed would impact on the likelihood of producing a deviance-response amplifying spiral. Notions of net-widening, particularly in terms of intensity of control and deviance amplification, are therefore closely inter-related.

The aim of this paper is to highlight the intensity and nature of control to which a young person placed on a supervised bail order can be subjected and, by drawing on the literature, outline some of the implications this has for the young person and the community.

## **Method**

The larger research project that informs this paper is investigating the association between having a supervised bail order and subsequent youth justice contact and exploring factors that may contribute to this relationship. The operation of the youth justice system in South Australia involves a range of stakeholders, including defendants, legal advocates, police, social welfare department and the Youth Court. Any outcome of the system is therefore a result of a process of interaction between these stakeholders. This study, however, took as its prime context the practices of the social welfare department. To a much lesser extent, it accessed the outcome of the ‘interaction’ of other stakeholders indirectly via details of bail agreements. This research can therefore only give a partial picture. The following section outlines the key data sources, variables and analysis.

## **Data Sources**

The research has involved the collection of quantitative and qualitative data from three sources; the social welfare department’s administrative client records system, bail order records and field staff interviews.

Data were extracted from the administrative client records system on all young people whose first life-time supervised bail contact occurred in either 1999/2000 or 2002/03. The extracted data described the amount and type of all departmental

contact prior to and for three years following the first-ever supervised bail order, as well as demographic characteristics.

Information on bail orders was gathered using a standardised survey form incorporating both code and text fields to allow for qualitative and statistical analysis. The information collected included charge details and the number and type of conditions.

Semi-structured interviews were held with field staff who directly supervise or support young people on supervised bail. The interviews covered topics such as assessment, objectives and enforcement. Staff participation was voluntary, with an open invitation sent to all field staff. Inclusion was on a 'first come, first serve' basis and resulted in a cross section of classifications, roles and units being represented. Each interview lasted approximately one hour.

#### *Variables*

'Supervised bail' is defined as bail with conditions where at least one of those conditions is to be under supervision. 'First-ever supervised bail' is defined as the first supervised bail order that a young person has received in their lifetime. 'Subsequent supervised bail' is defined as any supervised bail order that comes after the first-ever supervised bail.

## **Analysis**

Bail order data were subjected to simple frequency analysis to describe the frequency and distribution of conditions. The text details of bail conditions were subjected to qualitative analysis.

Interviews were taped, professionally transcribed and analysed in a three-stage process. The first level of analysis focused on a literal account of the answers given and looked for internal relationships between them. The second stage of analysis focused on the identification of common themes and differences that emerged across the respondents. The third level of analysis focused on interpreting the findings in light of the research literature.

## **The Sample**

Data were collected on all young people who had had their first ever supervised bail order in 1999/00 or in 2002/03 giving a total sample of 512 individuals. Of these, 404 (79%) were males, 108 (21%) were females, 153 (30%) were Indigenous and the total mean age was 15.6 years.

The majority of young people (94%) had had some care and protection or youth justice contact prior to their first-ever supervised bail order.

Information on first-ever supervised bail orders was also obtained on 395 (77%) individuals from the original sample. The remaining 117 orders could not be located. This was due to a range of factors, the most common of which was the fact that they had originated in a country court.

## **Results**

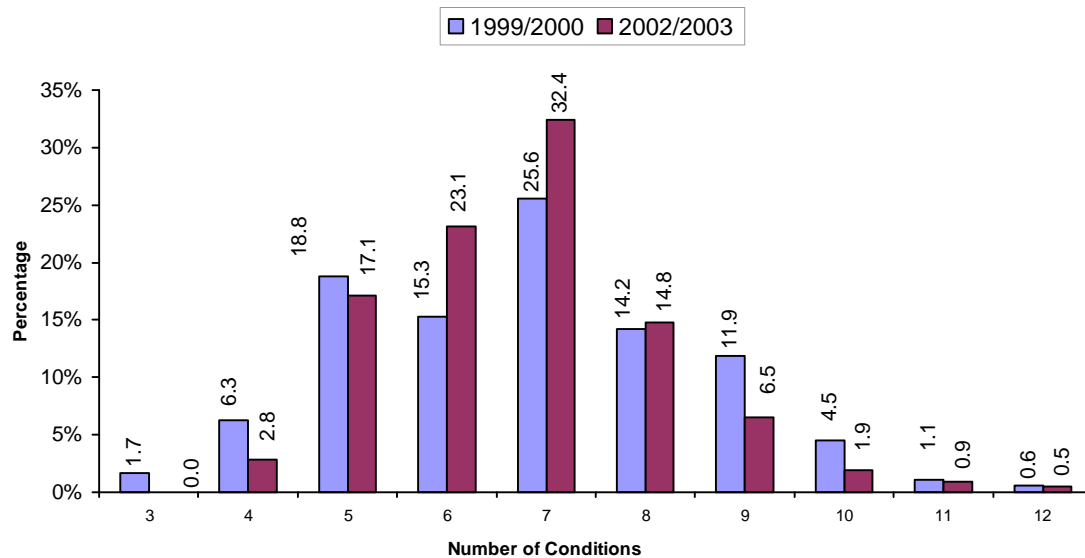
### **Bail Orders**

The following describes results from the analysis of the 395 first-ever supervised bail orders.

### **Number of Conditions**

The number of conditions per order ranged from a minimum of three to a maximum of 12, with a mean (SD) of 6.8 (1.8) in 1999/00 and 6.7 (1.4) in 2002/03. The distribution of the number of conditions per order is shown in Figure 2

**Figure 1: Distribution of Total Number of Conditions per subject**



In terms of the type of conditions that the bail orders contained, three ('not to leave the state', 'supervision', 'residence/obey house rules') were included on almost every order. Of these, 'not leaving the state' is a legislative requirement, while 'supervision' is the condition required for inclusion in the study. On some orders conditions were combined (e.g. 'supervision and residence'), leading to a small proportion in 1999/00 that did not have one or other of these two conditions.

Another group of eight conditions - 'curfew', 'program participation', 'forfeiture', 'guarantor', 'report', 'non-association with peers', 'await transport' and 'other' - were attached to approximately 20 per cent to 90 per cent of orders. A third group of rarely used conditions included 'attend counselling', 'attend school', 'non-association with witness', 'non-association with victim', 'notify change in details', 'report to police' and 'comply with other sentence'. In addition to being recorded separately, 'attend counselling' and 'attend school' were often incorporated into a 'program participation' condition. The number of orders which contained each of these conditions is shown in Table 1.



**Table 1: Number of Orders with each Condition**

Condition	1999/00		2002/03	
	Number	%	Number	%
Not to leave State	171	98	216	100
Supervision	168	97	216	100
Residence/obey house rules	169	97	213	99
Curfew	87	50	127	59
Program participation	111	64	162	75
Forfeiture	87	50	40	19
Guarantor	63	36	55	25
Report	141	81	193	89
Attend counselling	6	3	5	2
Attend school	9	5	29	13
Non-association – peers	38	22	51	24
Non-association – witness	0	0	1	1
Non-association – victim	7	4	6	3
Notify change in details	1	1	0	0
Report to police	2	1	4	2
Comply with other sentence	1	1	0	0
Await transport	42	24	45	21
Other	73	42	93	43

## Nature of Conditions

A condition of 'report' usually specified that the young person must report to their supervising office within two working days of the court hearing. The condition 'await transport' required the young person to remain in custody until transport could be arranged. No time restrictions were placed on this condition. Each 'curfew' condition specified the hours of that curfew which, in a number of cases, required the young person to remain at home on a 24 hour basis (usually with specified exceptions such as to attend school or in the company of an adult).

A condition of 'residence' always included a requirement to obey house rules although in the majority of cases the rules were not specified. On those occasions when they were specified, there were as many as 12 additional rules, including, 'to meet requirements of the family' or to 'try and get a part time job'. A condition of 'program participation' commonly required attendance at specific programs or

program types but it could also include quite general directions. Common program types included anger management, education or counselling, employment assistance or family counselling but could be as general as 'any programs that can assist him with perhaps starting to enjoy learning'; 'attend psychiatrists' or 'physical or mental treatment'.

Conditions classified as 'other' for the purposes of this study can be separated into three types of conditions; restricting access to specific locations, prohibiting the use of alcohol and other drugs, and proscribing specific behaviours. Those that focused on restricting behaviour typically included the following: 'not to hit, abuse, threaten, harass or interfere with siblings', 'not to assault, threaten or use bad language to mother', 'not to assault or harass staff and/or residents' or 'not to assault, threaten teacher or student at school'.

## **Staff Interviews**

This section presents information derived from interviews conducted with 13 staff from 11 different primarily metropolitan units of the one social welfare department. Whilst the number of interview participants is relatively small, one striking feature of the analysis is the degree of consistency between responses.

Interviewees described a variety of aims for supervised bail including 'to facilitate self determination', 'provide structure', 'occupy time', 'meet the child's goals', 'support the family', 'control the young person', 'enable the young person to demonstrate they can toe the line', 'provide positive choices', 'reduce the final sentence', 'reduce offending', or as a consequence, 'diversion', 'deterrence, or 'safekeeping'. The general aim was concisely explained by one worker who said 'I think it's trying to get the kids back on track'.

The interviewed staff made little distinction between the types of services that would be provided to a young person on supervised bail compared to those under other mandates. It was repeatedly said that services to all young people were provided on the basis of their needs, not on the type of order they were under. This position was succinctly summarised in statements made by two different interviewees; 'The focus is on the young person not the mandate' and 'I'm trying to achieve what I would normally achieve if they weren't on bail'.

A bail order was therefore perceived to have little value in establishing a purpose for involvement. Instead, its primary value was in relation to its instrumental effectiveness. Most commonly this was identified as enabling some greater leverage or control over young people. Notwithstanding this, a young person being placed on supervised bail was often taken as an indication of their need. Moreover, workers suggested that involvement in the youth justice system was in itself a signal of need. Such a view is clearly evident in the following comment; 'It's not doing the right thing with young people if they don't have supports whilst the sentence is being heard. Irrespective of [the fact that] you are innocent until proved guilty, if they're in this sort of trouble there's something going on.' As is inferred in this statement, the discourse of needs minimised any consideration of the presumption of innocence.

In terms of enforcement, interviewees tended to describe an approach that was flexible and centred on the young persons needs. Interviewees described how they could use incidents as learning opportunities and would usually attempt to find an underlying cause behind a particular incident. However, as one participant explained, this flexible approach has potential risks:

'...if they're on bail and they breach some of their conditions, they might be minor breaches. They're expecting a consequence of that. ....But we don't. We turn around and work with them and say 'Hey, that's okay. You rang us at seven and got home at eight, but if the coppers had picked you up you would have got locked up'. But if that one's not that important and I was the one that said, you're not to commit any offences any more, because well, you didn't lock me up for that one. So they can't differentiate between the importance of the conditions because they think 'They're the rules. I broke that rule, nothing happened. I broke that rule, nothing happened. Now I've broken this one and I'm in trouble. Why didn't I get into trouble for the first two?'

Interviewees also stated that stricter enforcement regimes were sometimes used and articulated several factors that may be taken into account when this approach was being considered. Factors included the seriousness or consistency of the behaviour, the attitude of the young person, the young person's need for protection, the tolerance of workers and a general need to manage behaviour. Many workers did express concerns that bail conditions could be wielded like a 'big stick' and had the potential to set young people up for failure.

The field interviews suggest that case workers have a range of objectives when supervising a bail order, most of which are much broader than ensuring a

defendant's appearance at court. This broader role is also reflected in the number and nature of conditions attached to bail orders. The bail order is used primarily as a means of gaining some level of control over a young person's behaviour in order to address perceived needs. Involvement in the youth justice system and placement on supervised bail can be taken as an indicator of need. Ultimately, intervention is guided by the presumption that a young person is in need, rather than the presumption of innocence.

## Discussion

Traditionally, the role of bail has been associated with ensuring the defendant's return to court and procedural justice. However, the practices associated with young people on supervised bail revealed in this paper are arguably more reflective of therapeutic jurisprudence principles than with traditional legal justifications for bail. It was found that supervised bail was being used to address individual needs which were perceived (albeit indirectly) to underlie the alleged criminal behaviour. In this situation the court, through the imposition of quasi-therapeutic conditions and as the final arbiter of their enforcement, comes to occupy a central therapeutic role.

The intent of many of the bail conditions identified in this study (in particular, the requirement to participate in programs or attend counselling) is to require the young person to *do* something rather than just refrain from doing something. Implicit in these conditions is an expectation that, through these specified activities, the young person will change, develop or be rehabilitated. In this sense these conditions can be characterised as quasi-therapeutic. Similar expectations were also reflected in the supervisory goals and methods of intervention identified by staff, many of which focused on treatment outcomes.

Within the therapeutic framework the distinction between guilt and innocence loses all relevance. It is not that young people were necessarily being presumed guilty but rather, that determinations of guilt or presumptions of innocence were not seen to have any role within the supervision of bail. This is, in part, evidenced by workers' reports that they generally do the same things with young people regardless of the type of order they are on. In fact a number of interviewees reported that 'in their experience' there tended to be *more* control (in terms of the number and nature of conditions) directed at young people whilst on bail than when serving a sentence.

Considerations of guilt or innocence have, at least at the level of practice, been displaced by considerations of individual need. Further, placement on a supervised bail order or involvement in the youth justice system can itself be taken as evidence of this need. Intervention, as part of bail, is therefore licensed by the presumption of need rather than the presumption of innocence. The danger is that limits to the degree of intervention become more a matter of individual principle and organisational resources than of formal legal safeguards. This blurring of guilt with need as the rationale for intervention is consistent with the patterns of blurring previously described by Cohen (1979) and Austin and Krisberg (1981).

This study also found that the *amount* of intervention directed at young people on supervised bail orders was considerable. The bail orders reviewed for this study contained an average of almost seven conditions, somewhat higher than the average of approximately two conditions reported in the literature (Raine and Willson 1995; Dhami 2004). This may reflect differences between adult and juvenile jurisdictions as much as it does between Australia and England. It does, however, indicate that the young people in the study were required to abide by a significant number of rules as part of their first-ever supervised bail order. Further, many bail conditions involved quite intensive and micro-levels of control; for example, 24 hour curfews and conditions to 'meet the requirements of the family' or 'attend medical appointments'.

Altogether, the presence of multiple and often fairly invasive bail conditions many of which require the young person to undergo quasi-therapeutic processes of change, amount to a form of net-widening, particularly as depicted in the notion of 'stronger nets' (Austin and Krisberg 1981). Multiple micro-level and quasi-therapeutic bail conditions also create numerous opportunities in which otherwise legal (for example, not obeying house rules or touching a remote control) or non-criminal (for example, truanting) behaviours can be subjected to criminal sanctions. These conditions or secondary rules (Lemert 1981) increase not only the opportunities for deviance (breach of conditions) but also the opportunities for multiple agencies (welfare, courts, police) to define such behaviour as deviant, anti-social or criminal. Ultimately, this is likely to lead to an increase in the scope and number of both behaviours and young people being formally classified as anti-social, with a parallel escalation in measures for their control.

The potential role of supervised bail in a deviance-response spiral will also be influenced by the way supervised bail orders are used. As already discussed, the primary use of supervised bail orders was as a means of addressing individual need. More fundamentally though, interviewees, in common with Raine and Willson's

(1997) custody sergeants, saw the greatest value of supervised bail in its instrumental effectiveness. In particular, supervised bail was seen as a relatively effective means of giving workers some degree of leverage over young peoples' behaviour. The use of supervised bail to gain 'leverage' and the therapeutic role of the courts both stem from the coercive authority embedded in the criminal law. Exploring how the notion of leverage actually operates in practice provides one means of understanding some of the risks associated with current supervised bail practices.

In practice, 'leverage' may be used in a number of ways to help facilitate the desired outcome. For example, the possibility of being returned to court may be used as motivation for the young person to attend meetings with their supervisor or the condition to 'obey house rules' may be used to bolster parental/carer authority or stabilise a particular place of residence. The young person may ultimately be returned to court in an effort to protect them from themselves (e.g. drug taking) or others (e.g. adults). The coercive value of supervised bail is not derived from a license to bully or intimidate. Rather, coercive authority is valued because of its perceived ability to assist in 'getting the job done' (Bowditch 2002; Lipsky 1980; Waegel 1981).

The instrumental use of supervised bail as a means of achieving therapeutic ends involves, at best, a tension and, at worst, a contradiction between therapeutic and criminal justice objectives. Using a flexible, child-centred approach whilst more attuned to meeting therapeutic outcomes is unlikely to provide sufficiently consistent boundaries within a criminal justice context. In addition, what are considered to be acceptable boundaries for one agency may be viewed as unacceptable to another (Emerson 1983), leaving the young person to carry the consequences. The alternative of stricter more rigid enforcement may meet criminal justice objectives but risks the criminalisation of non-criminal behaviour, such as not attending medical appointments. This would no doubt be further compounded by the increased sensitivity to rule violations that would accompany closer surveillance. It is evident that both the under and over enforcement of supervised bail has the potential to facilitate increases in the formal classification of individuals as anti-social or criminal, amplify deviant behaviour and intensify measures aimed at their control. Such a paradox poses considerable dilemmas for those charged with supervising and enforcing supervised bail orders and those subjected to their enforcement.

This paper has argued that the operation of supervised bail revealed in the research reflects at least two characteristics associated with therapeutic jurisprudence; most notably, the use of the criminal law to address problems perceived to underlie (alleged) criminal behaviour and the use of the court as a therapeutic actor (Birgden 2004). It was further argued that the number and nature of conditions imposed can, because of the intensive levels of intervention involved, be considered a form of net-widening. In addition, the focus on bail as a means of controlling and addressing the needs of the young person minimises a consideration of key legal safeguards, such as the presumption of innocence, thereby effectively reducing formal limitations on intervention. Finally, it was argued that the utility of supervised bail as a means of 'leverage' stemmed from the inherent coercive capacity of the criminal law and it was this same capacity that created the greatest risks for those subjected to supervised bail. These risks were identified as the potential to increase the scope and number of behaviours and individual youths formally classified as deviant, anti-social or criminal and to intensify the measures aimed at their control. The key issue is not the legitimacy of the therapeutic approach but how such an approach is able to function in an environment founded on and saturated with coercive power. Or put differently, how can the objectives and methods of pastoral power operate within an institution of sovereign power (Foucault 1977, 1991)?

## Conclusion

The contention of this paper is not that bail or youth justice more generally should not or can not be used as a means of more broadly intervening in the lives of young people. Certainly the first of these questions raises more issues than can be addressed in a single paper. Nor is the intention to deny the agency of the young people who are in the youth justice system or that many of them have significant levels of need and/or involvement in serious criminal and civil anti-social behaviour.

The argument of this paper is that if the youth justice system is going to become increasingly interventionist whilst also seeking to increase the accountability of young people, it must do so in a way that is fully cognizant of the risks such a strategy entails. The risks are not only to those subjected to intensive levels of intervention but also to the community in the event that the measures of control actually exacerbate anti-social behaviour. As Nils Christie (1968) reminds us, the

ways in which formal systems of control make up 'offenders' is a topic of particular importance to criminology.

## References

- Ageton, S. and Elliot, D. (1975) 'The effects of legal processing on delinquent orientations', *Social Problems*, Vol. 22, No. 1, pp. 87-100.
- Austin, J. and Krisberg, B. (1981) 'Wider, stronger and different nets: the dialectics of criminal justice reform', *Journal of research in crime and delinquency*, Vol. 18, No. 1, pp. 165-196.
- Bernburg, J., Krohn, M. and Rivera, C. (2006) 'Official labelling, criminal embeddedness, and subsequent delinquency. A longitudinal test of labelling theory', *Journal of Research in Crime and Delinquency*, Vol. 43, No.1, pp. 67-88.
- Birgden, A. (2004) 'Therapeutic Jurisprudence: the role of forensic psychology', in R. Sarre and J. Tomaino. (eds.) *Key issues in criminal justice*, Adelaide: Australian Humanities Press.
- Bishop, J. (1998) *Criminal procedure* (2nd edn.), Australia: Butterworths.
- Bowditch, C. (2002) 'Getting rid of troublemakers in high school', in E. Rubington and M. Weinberg (eds.) *Deviance: The Interactionist Perspective*.(8<sup>th</sup> edn.), Boston: Allyn and Bacon.
- Brignell, G. (2002) 'Bail: an examination of contemporary issues', *Sentencing Trends and Issues*, No. 24, Judicial Commission of New South Wales.
- Christie, N. (1968) *Scandinavian studies in criminology*. Vol. 2, London: Tavistock Publications.
- Cicourel, A. (1968) *The social organisation of juvenile justice*, New York: John Wiley & Sons.
- Cohen, S. (1979) 'The punitive city: Notes on the dispersal of social control', *Contemporary Crises*, Vol. 3, No.4, pp. 339 -363.
- Cohen, S. (1985) *Visions of social control: Crime, punishment and classification*, Cambridge: Polity Press.
- Dhami, M. (2004) 'Conditional bail decision making in the magistrates' court', *The Howard Journal*, Vol. 43, No.1, pp.27-46.
- Emerson, R. (1983) 'Holistic effects in social control decision-making', *Law and Society Review*, Vol. 17, No. 3, pp. 425-456.
- Fitzgerald, R.E. and Marshall, P. (1999) *Towards a more objective basis for bail decision making*. Paper presented at the 3<sup>rd</sup> National Outlook Symposium on Crime in Australia, *Mapping the boundaries of Australia's criminal justice system*, 22-23 March 1999, Canberra: Australian Institute of Criminology.
- Foucault, M. (1977) *Discipline and punish: The birth of the prison*, London: Allen Lane.
- Foucault, M. (1991) 'Governmentality'. in G. Bruchell, C. Gordon and P. Miller (eds.) *The Foucault effect: studies in governmentality*, London: Harvester Wheatsheaf..
- Fox, K (2002) 'Control agents and the creation of deviant types' in E. Rubington and M. Weinberg (eds.) *Deviance: The Interactionist Perspective*.(8<sup>th</sup> edn.), Boston: Allyn and Bacon.
- Kellough, G. and Wortley, S. (2002) 'Remands for plea. Bail decisions and plea bargaining as commensurate decisions', *The British Journal of Criminology*. Vol. 42, No. 1, pp. 186-210.
- Lemert, E. M. (1951) *Social pathology. A systematic approach to the theory of sociopathic behaviour*. New York: McGraw-Hill Book Company Inc.
- Lemert, E. M. (1981) 'Diversion in juvenile justice: What hath been wrought', *Journal of Research in Crime and Delinquency*, Vol. 18, No. 1, pp. 34-46.



- Lipsky, M. (1980) *Street-level bureaucracy: Dilemmas of the individual in public services*, New York: Russell Sage Foundation.
- Marx, G. (1981) 'Ironies of social control: Authorities as contributors to deviance through escalation, non-enforcement and covert facilitation', *Social Problems*, Vol. 28, No.3, pp. 221-246.
- Muncie, J. (1999) *Youth and crime: A critical introduction*, London: Sage.
- Murray, J. (1985) 'The development of contemporary juvenile justice and correctional policy', In A. Borowski and J. Murray (eds) *Juvenile delinquency in Australia*, Australia: Methuen.
- Morgan, P. and Henderson, P. (1998) *Remand decisions and offending on bail: evaluation of the Bail Process Project*. London: Home Office Study 184.
- Phillips, M. T. (2004) *Release and bail decisions in New York city*. Research Brief No.6 August 2004, New York: Criminal Justice Agency Inc.
- Queensland Law Reform Commission (1993) *Working Paper 41 The Bail Act*, Queensland: Law Reform Commission.
- Raine, J.W. and Willson, M.J. (1995) *Conditional bail or bail with conditions? The use and effectiveness of bail conditions*, Institute of Local Government Studies.
- Raine, J.W. and Willson, M.J. (1997) 'Police bail with conditions: Perspectives on the use, misuse and consequences of a new police power', *British Journal of Criminology*, Vol. 37, No.4, pp. 593-607.
- Sarre, R., King, S. and Bamford, D. (2006) 'Remand in custody: critical factors and key issues'. *Trends and issues in crime and criminal justice*, No. 310 May 2006, Australian Institute of Criminology
- Waegel, W. (1981) 'Case routinisation in investigative police work', *Social Problems*, Vol. 28, pp.263-275.

## Legislation

*Bail Act* (1985) South Australia

*Statutes Amendment (intervention Programs and Sentencing Procedures) Act* (2005) South Australia