Pre-charge bail: The possible implications of research

October 2016

This note presents evidence from recent research into the implementation of pre-charge bail and the possible implications of current proposals to reform this process. It was prepared by the professional body for policing in England and Wales which will develop materials to assist the police to implement any reforms of bail which Parliament approves.

Bail is an important tool which can have a significant impact upon both the police’s ability to solve crimes and the reassurance of victims, and also the lives of those who are subject to investigation. It is right that it should only be used subject to conditions which Parliament has considered carefully. The College appreciates the need to reduce lengthy periods of uncertainty for both the victims of crime and those subject to bail, but notes that the evidence from research suggests that a 28 day limit may actually result in more uncertainty, not less, for all concerned. The proposed reforms could also impose significant new bureaucracy on the police, in contrast to manifesto commitments to “continue reducing” their paperwork.

The College of Policing

The College is the professional body for policing. Its purpose is to provide those working in policing with the skills and knowledge necessary to prevent crime, protect the public, and secure public trust.

We have three complementary functions:

Knowledge: developing the research and infrastructure for improving evidence of ‘what works’. Over time, this will ensure policing practice and standards are based on knowledge, not custom and convention.

Education: supporting the development of individual members of the profession. We set educational requirements to assure the public of the quality and consistency of policing skills, and facilitate academic accreditation and recognition of our members’ expertise.

Standards: drawing on the best available evidence of ‘what works’ to set standards in policing for forces and individuals, for example, through Authorised Professional Practice (APP) and peer review.

We will raise professional standards in policing by using the policing knowledge base, our legal powers, our influence and connection with members and our ability to set educational requirements, test new ideas and innovate.

For further information please contact:

Nathan Oley
Public affairs and Stakeholder Relations Manager
E: nathan.oley@college.pnn.police.uk
College of Policing
Leamington Road, Ryton-on-Dunsmore
Coventry CV8 3EN.
www.college.police.uk

Executive summary

The Policing and Crime Bill 2016 currently before Parliament proposes to reform pre-charge bail (‘bail’).
Currently: There is no limit to the time a person can be on bail. Statistics are not routinely kept, but recent research from a range of studies suggests that that around 80,000 people will be on bail at any one time and that nearly a half of these cases will result in no charges being brought. The average time spent on bail is about 46 days, most often attributable to the time taken to recover evidence from computers or phones.

Review and reform: Concerns, including about the long periods of uncertainty faced by some bailed individuals prompted a government review and the College to undertake research into how bail might be improved. Recent research by Hucklesby concluded that the current arrangements for pre-charge bail are confusing, spread across many pieces of legislation and that the whole process should be reviewed and be codified into a single place. Parliamentary review is therefore welcome, but the current proposals for reform of bail were published in the Policing and Crime Bill before the findings of the College’s research into bail was complete. This note seeks to inform Parliamentary debate with those findings.

Proposals: The current proposals for reform introduce a presumption against using bail, limit the initial period for pre-charge bail to 28 days with an inspector’s authorisation, and introduce new requirements for more senior officers or Magistrates to authorise longer periods of bail or re-bail.

Research: The College worked with nine police forces over six months to obtain evidence from 17,000 bail cases. It found that the average length of time spent on including extensions, was 53 days.

What takes so long?

- 41 per cent of all cases involving violence and sexual offences, including most rape cases were bailed for more than 28 days
- Forensic analysis (most frequently of phone downloads) was one of the key drivers of long periods of pre-charge bail. The study found 60 per cent of cases involving suspects bailed for more than 90 days involved forensic analysis
- A high proportion of cases where computer interrogation was cited as the reason for bail were sexual offences, with an average bail length of 84 days
- Drug offences account for a high proportion of cases where phone downloads were cited as the reason for bail. These cases can involve multiple phones and on average involved 71 days of bail.
- Other reasons cited for longer periods of bail included the file being with the Crown Prosecution Service for a decision on charging and the need to obtain a professional witness statement, for example, from a medical practitioner as part of an investigation into rape.

Possible implications:

Evidence suggests that factors including the increasing requirements of interrogating computers or phones, and the co-operation of other agencies make it unlikely that the proposed 28 day limit will be sufficient.

Therefore a large proportion of people arrested are likely to be released without pre-charge bail whilst evidence is interrogated, but they could be re-arrested at a later date. This will result in more uncertainty for both victims of crime and those subject to investigation, not less. The proposed changes to bail will also involve higher ranks, diminishing their valuable work in other areas, and be more bureaucratic.
Pre-charge bail - Policing and Crime Bill

Summary

Issue – Pre-charge bail provisions in the bill
The Policing and Crime Bill includes a number of clauses that amend relevant legislation in relation to pre-charge bail including to:

- create a presumption that a person subject to a continuing investigation will be released without bail unless the police consider it proportionate and necessary;
- limit the initial period of pre-charge bail to 28 days;
- require authorisation of an inspector for the initial release on pre-charge bail;
- require authorisation by a superintendent for any extension of pre-charge bail up to a maximum of 3 months; and
- require authorisation of a magistrates’ court for periods of pre-charge bail beyond 3 months.

College of Policing Position
The College of Policing strongly encourages the improved management of pre-charge bail and agrees that legislation on time limits to reduce bail is appropriate. However, the evidence suggests that limiting initial bail to 28 days and extensions that can be authorised by superintendents to three months is unrealistic and will create some unnecessary bureaucracy and resourcing difficulties.

The College of Policing is working with forces to ensure effective implementation of the legislation

Recommendation
That the bill is amended such that a sergeant can authorise bail for longer – preferably up to 56 days, with inspectors’ authority required at three months and magistrates’ court approval beyond six months.
Background

The Policing and Crime Bill is passing through Parliament, with the Lords Committee Stage due to recommence in late October 2016. The pre-charge bail proposals were included in the Bill before the evidence from the College of Policing study was available. The Bill includes a number of clauses (clause 51 et seq) that amend relevant legislation in relation to pre-charge bail,

- a new test of ‘necessity and proportionality’ to apply to the custody officer decision to grant pre-charge bail. Where the test is not met, the person under investigation will be released unconditionally. If new evidence is found, or evidence is found that the police did not know they had (e.g. images on a computer), the person can be rearrested.
- The decision to grant release on bail must be authorised by an inspector and is limited to 28 days.
- Re bail is permitted, up to 3 months, if authorised by a superintendent. The officer must be prepared to receive representations from the person on bail and/or their representative.
- Further rebails will be authorised by magistrates’ courts.
- Periods of time when a file is with the Crown Prosecution Service will not be counted as part of the bail time calculation.

Police have released people on pre-charge bail since the power was introduced under the Police and Criminal Evidence Act 1984. The power allows police to release on bail to enable investigations to continue and/or to allow the CPS to consider whether to charge a person with a criminal offence. There is no limit to the time a person can be on bail or how often bail can be increased.

Reasons for legislation

There have been concerns expressed in recent years about cases where people have been on bail for very long periods of time, with repeated extensions of that bail, only for them not to be charged with any offences. Mr Paul Gambaccini, for example, described his experience of being on bail for over a year with repeated extensions and there being no criminal charges as an abuse of police powers.

Previous research in two forces has shown that in nearly a half of the cases where pre-charge bail was imposed resulted in no charges being brought. This research found a deeply ingrained cultural approach that drives officers to use pre-charge bail, even when they know or strongly suspect that no charges will follow. Officers wish to be sure that all sources of evidence are explored prior to making the decision to discontinue cases. This research also found that officers tend to work to the maximum time limit rather than seeking to resolve cases more quickly and that the oversight of senior officers acted as encouragement for

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enquiries to be conducted more expeditiously. Other research\(^2\) found risk aversion was a driver for pre-charge bail, as officers wanted to be sure that there was no evidence to support a charge.

Hucklesby (2015) concluded that the current arrangements for pre-charge bail are confusing and spread across many pieces of legislation. The whole process should be reviewed and be codified into a single place.

**Implications of proposed legislation**

There are a number of implications of the proposals in the bill that fall into two main areas:

- The impact of the presumption of release without pre-charge bail where the necessity and proportionality test is not met.
- Impact of changes to authorisation process within the police

**Impact of release without pre-charge bail**

It is difficult to predict the numbers of cases that are likely to be released without pre-charge bail under the proposals. However, a College of Policing workshop with practitioners suggested it is likely that the cases that will meet the proposed necessity and proportionality test are those where conditions are applied to pre-charge bail currently and that these are often violence and sexual offences. Recent College research\(^3\) found that those cases accounted for between 30-45\% of bail cases. Previous research\(^4\) has found that the use of conditions with pre-charge bail varies across forces with two thirds of cases having conditions imposed in one force whereas conditions were hardly used in the other. This makes it difficult to predict the likely impact of the proposals on inspectors and superintendents.

For those cases where bail is not granted:

- The impetus that a bail date might give to an investigation is removed
- A person released without bail may still be subject to an investigation but will have less certainty of when that investigation will be progressed and when a decision to proceed or not will be made
- A person being investigated may be rearrested at any time without the convenience of being able to plan for it that a bail date provides
- Victims of crime may be concerned about a person arrested for committing a crime against them being released without bail. They may fear that their case is not being progressed with sufficient vigour

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\(^3\) College of Policing (2016) Pre-charge bail an exploratory study

Consequently, the introduction of the ‘necessity and proportionality’ test raises the potential to reduce certainty rather than increase it for both victims and those arrested. The other outcome is that we do not know what the likely numbers of cases requiring the new authorisation process will be – this impacts on the ability to estimate the likely resourcing impact of the legislation overall.

**Changes to authorisation process for pre-charge bail**

Studies by the College of Policing\(^5\) and, independently, by Professor Anthea Hucklesby\(^6\) indicate that a large proportion of pre-charge bail cases take longer than 28 days to resolve, the average length of pre-charge bail ranging from 46 to 61.5 days across the studies.

Research has shown that the reasons for lengthy bail are often the requirement for forensic examination particularly of computers and phones. For example, the recent College report\(^7\) shows that 60% of cases over 90 days cited some form of forensic analysis as the reason for bail. The most frequent type of forensic analysis given as a reason for bail was ‘phone downloads’, accounting for thirteen percent of all cases and 33% of those cases bailed for over 90 days with a mean number of days bailed of 71, ranging from 44 to 104 days.

Requiring a person to return to a police station at 28 days, for there to be representations from a solicitor or other representative to a superintendent, when it was clear from the outset that 28 days would not be sufficient time seems to create an unnecessary bureaucratic burden. It is also unclear what increase in demand there will be in the court system.

The inclusion of senior police leaders for authorisation will reduce the leadership capacity within policing. Inspectors are often the most senior operational officer on duty and engaging them in bureaucratic processes relating to the granting of bail, including street bail, is likely to deflect them from their leadership role.

Superintendents will need to conduct a more involved review process, requiring the receiving of representations from a person returning on bail and/or their representative. This is likely to be a long process, reducing their opportunity to be engaged in other work.

Removing the time a case is with the CPS from the calculation of bail time also seems to pose a challenge to the intention to provide people under investigation with greater certainty.

There may be a considerable bureaucratic burden where cases are referred back and forth between the police and CPS in those cases that require repeated attention. Suspects and victims will need to be kept up

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\(^7\) College of Policing (2016) Ibid
to date with revised bail times and police records will need to be amended as new bail dates are set and cancelled.

**Implementation**

The College of Policing has been working closely with all organisations that are involved in the use of police bail. Whilst there are many concerns about the proposals in the Bill, the College is developing materials to support the police service to implement the legislation, whatever its form.

**Conclusions**

The 28 day limit for authorisation by an Inspector is very likely to be unrealistic for a large number of the cases given pre-charge bail under the proposed legislation due to the issues such as the lead in times for forensic analysis. Requiring suspects to return for bail extension when this is apparent from the outset will be an unnecessary waste of resources. Requiring an Inspector to authorise all initial pre-charge bail and a superintendent for periods over 28 days will put additional burdens onto already stretched ranks. A more realistic time limit is likely to be more effective at ensuring appropriate management of bail. The College of Policing suggests a time limit of 56 days for initial bail and reducing the rank required for authorising bail beyond three months to inspector. Bail for longer than six months should require authority of a magistrates’ court.