The Future of Pre-charge Police Bail: an introduction

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Introduction

- Mechanism by which suspects may be released from police detention whilst further enquiries are undertaken
- Legally innocent and insufficient evidence to charge
- Existed since 1925 but current law is enshrined in PACE 1984
  - Limited routine and exceptional detention times – max 96 hours
  - Investigations cannot always be completed during available detention time
- Introduced as a due process right
  - Mechanism to ensure that suspects are not detained
  - Overlong detention is the issue which bail resolves
- More recently viewed as a draconian police power
Current use

- Data are not routinely collected
- Extensive use
  - Around 70,000 to 80,000 suspects are on bail at any one time
  - 31% of those arrested are bailed (Home Affairs Select Committee, 2015)
  - 303,000 per year
  - 2% (19,600) are on bail for over 6 months
- Increasing use
  - Timing of arrest
  - Investigation techniques
  - Moves to reduce case processing times in court
Little attention historically
PACE review in 2007 and some parliamentary scrutiny in 2009 in relation to conditions
*Hookway* (Greater Manchester Police v (1) Hookway, (2) Salford Magistrates' Court, AC, 19 May 2011)
NPIA research report (2012)
  - Drivers for use
    - Unplanned arrests
    - Quality of initial investigations
    - Limited custody space/bail dates
    - Level of evidence required
Recent events

- Growing concern about pre-charge bail
  - Time spent on bail
  - Number of rebails
- Celebrity cases
- College of Policing consultation (2014)
- Home Office consultation on Statutory Time Limits (2014)
- Policing and Criminal Justice Bill
  - to create a presumption that suspects will be released without bail unless it is necessary
  - limit pre-charge bail to 28 days, with an extension of up to 3 months, authorised by a senior police officer
  - in exceptional circumstances, the police will have to apply to the courts for an extension beyond three months, to be approved by a magistrate
### Proposed review structure

<table>
<thead>
<tr>
<th>Cumulative time on bail</th>
<th>Reviewer</th>
</tr>
</thead>
<tbody>
<tr>
<td>28 days</td>
<td></td>
</tr>
<tr>
<td>Extension up to 3 months</td>
<td>Senior police officer</td>
</tr>
<tr>
<td>Further extensions (6, 9, 12 months and so on)</td>
<td>Magistrates’ court</td>
</tr>
</tbody>
</table>

- Home Office figures suggest 14% of cases will appear in the magistrates’ court
- No review by the courts before 3 months
Pre-charge bail law

- Complicated and opaque (Home Office, 2007)
- Original power to release suspects on bail is found in section 47(3) of PACE 1984
- Section 34(2) – requires the police to release individuals with or without bail when detention is no longer necessary
- Sections 34(5) and 37(2) – both deal with cases where there is insufficient evidence to charge
  - S. 34(5) – police are able to bail suspects in order for further enquiries to be undertaken
  - S. 37(2) – police must release suspects on bail unless they have reasonable grounds for believing that detention is necessary to secure or preserve evidence
- Conditions may be imposed on bail under S37(2) but not S.34(5)
Section 37(7) (a)

- introduced in conjunction with statutory charging by Criminal Justice Act 2003
- mechanism for bailing suspects awaiting charging decisions
- Police believe they have sufficient evidence to charge
- Unconditional or conditional bail
Suspect arrested and detained
• Police decide further evidence is required which cannot be gathered whilst the suspect is in custody

Suspect bailed under sections 34(5) or 37(2) for further enquiries
• Further enquiries are undertaken which result in sufficient evidence to charge

Suspect bailed for CPS charging decision under section 37(7)

Suspect is charged and released on post-charge police bail
Pre-charge bail: an investigation in two police forces

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Aims and objectives of the research

- to examine the use of pre-charge bail for further investigations to take place in two police forces
  - To explore the categories of suspects who are bailed before charge;
  - To examine the circumstances in which pre-charge bail is used and the justifications for its use;
  - To explore any patterns in the use of pre-charge bail;
  - To investigate the impact of the use of pre-charge bail on the management of custody suites; and
  - To explore investigating officers views of pre-charge bail, its use and management
Research design

- Empirical research in two police forces
- Observations in custody suites
- Administrative records of cases in which suspects were released on pre-charge bail (n=14,173)
- Questionnaires to police officers (n=297)
- Interviews with police officers (n=38)
Different sections of PACE used to bail suspects
  - Inconsistent practice between and within forces
Knowledge of the law was superficial
Little or no training
Relationship between $34(5)/37(2)$ and $37(7)$
Purpose of pre-charge bail

- Pre-charge bail was generally viewed positively and as a necessity
- Little appetite amongst police officers for change
- Law is enabling
  - Multiple functions
- Police culture has moulded the use of pre-charge bail
  - Always bail if evidence is outstanding
  - Test – is there a chance, however small, of evidence leading to a conviction coming to light
  - Linked to goal of getting convictions
  - ‘Just in case’
Use of pre-charge bail

- Patterns of use were strikingly similar at force level
- Majority were male
- Median age 23 and 28
- Ethnicity broadly reflected arrest data
## Alleged offence types

<table>
<thead>
<tr>
<th>Type</th>
<th>A (%)</th>
<th>B (%)</th>
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</thead>
<tbody>
<tr>
<td>Violence</td>
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<td>32</td>
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<tr>
<td>Theft-related</td>
<td>23</td>
<td>19</td>
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<tr>
<td>Property</td>
<td>19</td>
<td>13</td>
</tr>
<tr>
<td>Drugs</td>
<td>9</td>
<td>11</td>
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<tr>
<td>Disorder</td>
<td>6</td>
<td>6</td>
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<tr>
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<td>6</td>
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<tr>
<td>Traffic</td>
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<td>7</td>
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<tr>
<td>Other</td>
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<tr>
<td><strong>Total number</strong></td>
<td><strong>3924</strong></td>
<td><strong>10146</strong></td>
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</tbody>
</table>
Time spent in detention before release

- Force A
- Force B
Rebails

- Data only available in Force A
  - 60% suspects bailed once
  - 21% twice
  - 10% three times
- Common reasons for rebailing suspects
  - delays with forensic evidence
  - delays in other agencies
  - officers’ other commitments
  - witness availability
  - new developments with the case
  - No reviews
  - Lack of mechanisms to remind officers
- Stream-lined procedures
  - Rebail prior to bail date
  - Bailing at the front desk
<table>
<thead>
<tr>
<th>Suites</th>
<th>One</th>
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<td>65</td>
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<td>C</td>
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<td>21</td>
<td>24</td>
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<td>88</td>
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</tbody>
</table>
Time on bail

![Graph showing time on bail for Force A and Force B.](image)
## Time on pre-charge bail by custody suite in Force A

<table>
<thead>
<tr>
<th>Suites</th>
<th>One mth or less</th>
<th>Over 1-3 mths</th>
<th>Over 3 -6 mths</th>
<th>Over 6 mths</th>
<th>Total N</th>
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</thead>
<tbody>
<tr>
<td>F</td>
<td>110 47%</td>
<td>72 31%</td>
<td>30 13%</td>
<td>21 9%</td>
<td>233</td>
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<tr>
<td>E</td>
<td>150 39%</td>
<td>155 41%</td>
<td>49 13%</td>
<td>26 7%</td>
<td>380</td>
</tr>
<tr>
<td>G</td>
<td>99 38%</td>
<td>103 40%</td>
<td>37 14%</td>
<td>19 7%</td>
<td>258</td>
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<tr>
<td>D</td>
<td>105 34%</td>
<td>138 44%</td>
<td>46 15%</td>
<td>24 8%</td>
<td>313</td>
</tr>
<tr>
<td>H</td>
<td>85 34%</td>
<td>89 36%</td>
<td>39 16%</td>
<td>37 15%</td>
<td>250</td>
</tr>
<tr>
<td>B</td>
<td>220 33%</td>
<td>267 40%</td>
<td>374 16%</td>
<td>72 11%</td>
<td>666</td>
</tr>
<tr>
<td>C</td>
<td>81 33%</td>
<td>105 42%</td>
<td>52 21%</td>
<td>10 4%</td>
<td>248</td>
</tr>
<tr>
<td>A</td>
<td>80 32%</td>
<td>109 48%</td>
<td>40 16%</td>
<td>20 8%</td>
<td>249</td>
</tr>
<tr>
<td>K</td>
<td>119 31%</td>
<td>124 33%</td>
<td>88 23%</td>
<td>48 13%</td>
<td>379</td>
</tr>
<tr>
<td>J</td>
<td>80 30%</td>
<td>115 43%</td>
<td>46 17%</td>
<td>28 10%</td>
<td>269</td>
</tr>
<tr>
<td>I</td>
<td>134 24%</td>
<td>214 38%</td>
<td>144 25%</td>
<td>76 13%</td>
<td>568</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1301 33%</strong></td>
<td><strong>1517 39%</strong></td>
<td><strong>1220 31%</strong></td>
<td><strong>402 10%</strong></td>
<td><strong>3925</strong></td>
</tr>
</tbody>
</table>
Barriers to timely charging decisions

- Barriers to timely investigations
  - Forensic evidence especially technology equipment
  - Medical reports
  - Financial information
- Space in bail diary/custody suite
- Cautious setting of initial bail dates
- Avoiding the need to rebail suspects
Bail conditions

- Policy not to use bail conditions in Force A
- Force B
  - 67% of suspects had conditions attached to their bail
  - Variations in proportion of suspects released with conditions between areas
  - Conditions synonymous with pre-charge bail
  - No data on which conditions were used
  - Banning conditions were reported to be used most frequently
  - Many purposes
    - Risk management
    - Reassurance
    - Presentational
    - Practical
Monitoring and enforcing conditions

- The presence of conditions was the main aim
- Less concerned with enforcement
- Enforcement was not routine
- Uncovering breaches was hit and miss
- Limited options for dealing with breaches
- Main purpose of monitoring was to provide evidence for application for custodial remand
Custody officers usually imposed conditions if recommended by investigating officers.

Conditions were not routinely reviewed when suspects were rebailed.
  - Routine rolling-over of conditions

Conditions were rarely questioned by suspects or solicitors.
<table>
<thead>
<tr>
<th>Outcome</th>
<th>Force A (%)</th>
<th>Force B (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charged</td>
<td>39</td>
<td>39</td>
</tr>
<tr>
<td>Dealt with</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>No Further Action (NFA)</td>
<td>48</td>
<td>47</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total number</strong></td>
<td><strong>3925</strong></td>
<td><strong>10149</strong></td>
</tr>
</tbody>
</table>
Outcomes II

- Varied according to:
  - Sex
  - Offence types
  - Custody areas
- Ethnicity
Release without bail

- Release and rearrest if fresh evidence becomes available
- Limited use currently
  - Confusion over definition of fresh evidence
  - Significant disadvantages for the police
    - No control
    - No conditions
    - Resources involving in rearresting suspects
    - Investigation may lose momentum
    - Victims’ reassurance
    - Remove deterrent of bail
    - Legitimacy issues – ‘two bites of the cherry’
- Some support for more use
  - Advantage of new custody clock
Conclusions

- Implementing the legislative proposals will be a challenge
- Proposals only deal with some of the issues
- Wide ranging review of legal framework including alternatives to pre-charge bail
- Review of procedures throughout the bail process
- Collection and scrutiny of routine monitoring data:
  - Ethnic groups
  - Use of bail conditions
  - Types of conditions imposed