# Evidence-based policy & law making: Bail reform in New South Wales

## JUSTICE ISSUES NO. 37


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**AUGUST 2025**

Bail laws in New South Wales (NSW) have undergone significant amendments over the past 15 years. These changes have often been influenced more by political ideologies and public perceptions rather than a transparent evidence-based approach. Further, there has been insufficient data collected or analysed to comprehensively understand the impacts of these reforms, constraining opportunities for future evidence-based reforms.

This paper does not seek to recommend particular reforms to bail legislation. Rather, to ensure that bail legislation achieves the purposes of safety and fairness, it argues for a move towards evidence-based policymaking (EBP) in bail law reform.

## Principles of Bail

Bail is a legal mechanism determining whether an accused person remains at liberty between arrest and trial. A fundamental principle of bail is that remand is a restriction of liberty and therefore should only be used as a last resort, as per the International Covenant on Civil and Political Rights, to which Australia is a signatory:

> "It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial." [1]

Evidence-based policymaking (EBP) and law reform is crucial to inform bail laws that uphold this principle and achieve justice, mitigate unnecessary incarceration, and do not disproportionately impact vulnerable communities. Despite this, bail is being increasingly denied in NSW.

## What is Evidence-Based Policy and Law-Making?

Evidence-based policymaking refers to the systematic use of research, data, and empirical analysis to inform legislation and policy decisions. In this context, examples of 'evidence' include:

- **Quantitative Data** – Statistical findings on crime rates, recidivism, and legal outcomes
- **Qualitative Data** – Case studies and expert analysis on the social impacts of legal policies
- **Comparative Studies** – Lessons from jurisdictions that have implemented similar policies
- **Evidence Synthesis** – Bringing together relevant existing data from multiple sources

[1] United Nations General Assembly (1966) International Covenant on Civil and Political Rights. Treaty Series 999,171.

EBP describes a *process* by which such evidence is collated, assessed, analysed and applied. Effective EBP is a nuanced process that considers evidence in a critical and highly contextualised way. [2] As such, the governance of how evidence is used is important. Key principles of good governance of evidence include:

- Transparency – policymakers should justify why certain evidence is used over others.
- Accountability – there should be clear mechanisms for evaluating policy success/failure.
- Plurality – a range of social concerns (not just crime rates) should be factored into policy decision. [3]

### Importance of Evidence-Based Policymaking

The effectiveness of laws is enhanced where EBP is applied to ground decisions in factual, empirical findings rather than anecdotal concerns. Policymaking informed by data promotes fairness, efficiency, and public trust in the legal system.

Relying on empirical research and robust data analysis enables policymakers to:

- Develop laws that are fair, just, and effective in achieving their intended goals
- Reduce unintended consequences, such as disproportionate impacts on marginalised groups
- Allocate resources efficiently, ensuring that policies address actual rather than perceived risks
- Improve public confidence in the justice system by ensuring policies are informed by facts
- Create long-term sustainable solutions rather than reactionary measures that may require frequent amendments

### Challenges of Evidence-Based Policymaking

Despite its benefits, EBP faces challenges including:

- Debates about what counts as reliable evidence
- Privileging of particular holders of knowledge
- Political resistance to reforms that contradict public sentiment
- The complexity of collecting and interpreting justice data

[2] Nutley, S M, Walter, I and Davies, H T O (2007). Using evidence: How research can inform public services, Bristol University Press.

[3] Parkhurst, J (2017). The politics of evidence: From evidence-based policy to the good governance of evidence, Taylor & Francis.

- Lack of investment in developing public and private sector capacity to facilitate evidence-based policymaking [4]

## What are the Threats to Evidence-Based Policymaking?

### Public Opinion

The tension between evidence-based policy and public opinion requires careful navigation to ensure reforms are not only effective but also retain public trust. This can be particularly difficult when public opinion diverges from evidence-based approaches, especially when driven by media coverage of high-profile cases and concerns over public safety. Public sentiment often leans toward harsher bail laws, often influenced by a desire for punitive measures rather than rehabilitative or preventative approaches. [5],[6]

However, public attitudes may be more nuanced than they first appear. It is important to consider that the majority of the population do not have direct contact or experience of the criminal legal system and instead tend to learn about crime and the criminal justice system through the mass media. [7] However, when individuals are asked about specific approaches such as offenders being released on parole to serve the last part of their sentence under supervision, or community obligations to assist a person's re-entry after prison, public attitudes are ambivalent and tend to reflect a range of considered positions. [8]

### Media

Media portrayals of crime often selectively report, ignoring certain aspects of crime stories, providing little systematic information about crime processes or its underlying principles which result in a overestimation of the prevalence of crime.

The role of media in shaping public opinion cannot be underestimated. Public perception of crime and justice is largely shaped by media coverage, which tends to focus on extreme cases rather than systemic patterns. This can create a misleading impression that bail laws are too lenient and that released individuals frequently reoffend. [9],[10], [11] In reality:

[4] Head, B W (2016). Toward more "evidence-informed" policy making? Public administration review 76(3): 472-484, Head, B W (2024). Reconsidering expertise for public policymaking: the challenges of contestability. Australian Journal of Public Administration 83(2): 156-172.

[5] O'Neil, M, Kendall-Taylor, N and Volmert, A (2016). New narratives: Changing the frame on crime and justice, Frameworks Institute.

[6] Sentencing Advisory Council (2018). Public opinion about sentencing: A research overview, Sentencing Advisory Council Victoria.

[7] Gelb, K (2006). Myths and misconceptions: Public opinion versus public judgment about sentencing.

[8] Freiberg, A, Bartels, L, Fitzgerald, R and Dodd, S (2018). Parole, politics and penal policy. QUT Law Review 18(1): 191-216.

[9] Weatherburn, D (2011). Uses and abuses of crime statistics. Sydney, NSW Bureau of Crime Statistics and Research.

[10] Anand, A and Taneja, M (2024). The influence of media on public perception of crime. International Journal for Multidisciplinary Research 6(2): 9.

[11] Hollis, M E, Downey, S, Alex del, C and Dobbs, R R (2017). The relationship between media portrayals and crime: perceptions of fear of crime among citizens. Crime Prevention and Community Safety 19(1): 46-60.

- **Crime rates for most offence categories have been declining** in many jurisdictions, yet public concern over crime remains high. [12]
- **The majority of accused individuals comply with bail conditions** and do not commit further offences while awaiting trial.[13]
- **Pre-trial detention can increase reoffending rates**, as individuals who are incarcerated before trial experience greater instability upon release. [14] [15]

### Politicisation

The impact of public pressure can have a powerful effect on legislative changes, often leading to reactionary law-making. The 2014 amendments to the Bail Act 2013 exemplify this. There were criticisms at the time that these amendments were a response to media-driven concerns over specific bail decisions rather than data indicating a failure in the system. [16] The introduction of the show-cause provision and the weakening of the unacceptable risk test were not backed by empirical evidence but appear to have been designed more so to placate public fear.

### Achieving a Balance

The challenge for policy and law makers is to balance the competing influences, ensuring that bail reforms are grounded in evidence while also addressing public concerns. Public education and transparent communication about the goals and outcomes of evidence-based bail policies can help bridge this gap, fostering a more informed public discourse that supports reforms designed to enhance both fairness and safety in the justice system.

Balancing public opinion with evidence-based policy requires:

- **Improved public education** on how the bail system functions and the actual risks associated with pre-trial release
- **Transparent decision-making** to ensure the public understands the rationale behind judicial decisions
- **A commitment to empirical research** that informs legislative changes rather than reacting to isolated cases
- **A media strategy that counters misinformation**, highlighting data-driven insights on bail effectiveness and community safety

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[12] NSW Bureau of Crime Statistics and Research (2025). New South Wales recorded crime statistics: Quarterly Update - March Quarter 2025. New South Wales recorded crime statistics. 2. Sydney, NSW Bureau of Crime Statistics and Research, NSW Bureau of Crime Statistics and Research.

[13] NSW Bureau of Crime Statistics and Research (BOCSAR). (2025). Bail Dashboard. https://bocsar.nsw.gov.au/topic-areas/bail.html

[14] Walker, S C and Herting, J R (2020). The Impact of pretrial juvenile detention on 12-month recidivism: A matched comparison study. Crime and delinquency 66(13-14): 1865-1887.

[15] Cordle, R and Gale, E (2025). Reducing reoffending: A synthesis of evidence on effectiveness of interventions. Ministry of Justice Analytical Series. London, Ministry of Justice.

[16] Brown, D and Quilter, J (2014). Speaking too soon: The sabotage of bail reform in New South Wales. International Journal for Crime, Justice and Social Democracy 3(3): 73-97.

# Bail Reform as an Example of 'Failed' Evidence-Based Policymaking

## The Evolution of Bail Law in NSW

### Bail Act 2013: A Reformative Approach

In 2011, the Bail Act 1978 had become overly complex, with excessive presumptions that contributed to rising remand populations, particularly among young people. In response, then-Attorney-General Greg Smith (SC), a former prosecutor, commissioned the NSW Law Reform Commission (NSWLRC) to develop a more accessible framework. [17]

The Bail Act 2013 (NSW) was the product of a rigorous law reform process headed by Judge James Wood and retired Supreme Court Judge Hal Sperling. The process involved a robust review and extensive consultation with diverse stakeholders, including the NSW Police. The resulting Bail Act 2013 (NSW) delivered a more streamlined Act requiring bail authorities to have regard to the presumption of innocence and the general right to be at liberty.

In the Second-reading for the Bail Bill 2013, Attorney-General Greg Smith (SC) stated that bail decisions should consider the risk that the accused will fail to appear, commit a serious offence, endanger the safety of individuals or the community, or interfere with witnesses. [18]

The Bail Act 2013 introduced several key changes:

1. **Removal of presumptions** against, and in favour of bail.
2. **Introduction of the "unacceptable risk" test**, which was central to simplifying the Act. This is a two-step process, first assessing whether an accused person poses an unacceptable risk of failing to appear, committing a serious offence, endangering the safety of victims of the community, or interfering with witnesses or evidence, and second; to consider whether those risks can be mitigated by imposing conditions.
3. **Conditions-based approach**, allowing bail to be granted with specific conditions mitigating identified risks.
4. **Emphasis on the presumption of innocence** and the general right to liberty.

This Act initially received bipartisan support and was welcomed as a more principled, risk-based approach to bail decision-making.

### The 2014 Amendments: A Reactionary Shift

Within weeks of implementation, media backlash against specific bail decisions led the NSW government to commission a review by former Attorney-General John Hatzistergos. In the second-reading speech, [19] Attorney-General Brad Hazzard made clear the amendment was triggered by community concern regarding a number of bail decisions under the new Act (Bail

[17] NSW Law Reform Commission (2012). Bail. Sydney, NSWLRC.

[18] Greg Smith Attorney General (2013). Second reading Bail Bill 2013. Legilsative Assembly. 1 May 2013, https://www.parliament.nsw.gov.au/bill/files/420/2R%20BAIL%20BILL%202013.pdf.

[19] Brad Hazzard Attorney General (2014). Second reading Bail Amendment Bill 2014. Legislative Assembly. 13 August 2014, https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=829.

Act 2013). He then described the methodology for the review as including consultation with key stakeholder and the consideration of a number of bail decisions made under the new Act. This rapid response to community concern could be considered a reactionary exercise that disproportionately privileges community expectations over consideration and application of rigorous evidence. The absence of evidence to support the amendment was made clear when the Attorney-General announced that the Bill accepts all recommendation of the Review Report as “common-sense changes”.

The review recommended significant changes, including:

- **Relegating the presumption of innocence** and the right to liberty to the preamble, thereby diminishing their legal weight.
- **Replacing the two-stage "unacceptable risk" test** with a more subjective "bail concerns" framework.
- **Introducing "show-cause" provisions** for serious offences, requiring defendants to justify why bail *should be granted* rather than the prosecution proving why it *should be denied*. This is arguably the most problematic recommendation. The stated reason for this recommendation is to ‘provide a useful level of reassurance for the community in relation to serious offenders whilst also providing a greater level of consistency.’ [20]

There appears to be no record (at least publicly available) of any empirical evidence that informed these recommendations. In fact, there is a dearth of evidence to show any demonstrable link between tighter bail laws and public safety.

Due to the rapid adoption of the Bail Amendment Act (2014), there have been limited opportunities to adequately review the impacts of the initial Bail Act 2013 (before the amendment). An evaluation of the impact of the Bail Act 2013 (NSW) on trends in bail and remand was published by NSW Bureau of Crime Statistics and Research (BOCSAR). [21] This noted that “following the introduction of the NSW Bail Act 2013, there was a sharp transient fall in the percentage of defendants refused bail by police and courts” but no further examination of the effects of this fall has been conducted.

In 2016, BOCSAR undertook a follow-up study on the impact of the Bail Act 2013 (NSW) looking at trends in bail. [22] This study aimed to examine the effect of the Bail Act 2013 (NSW) and subsequent show-cause amendments on trends in the number and proportion of defendants being refused bail. BOCSAR concluded that the Bail Act 2013 (NSW) and subsequent amendments appear to have had no meaningful effect for *all* defendants, but there has been an increase in the proportion of *bail eligible* defendants (that is, excluding defendants for whom bail was dispensed with) who were refused bail.

[20] Hatzistergos, J (2014). Review of the Bail Act 2013. Sydney, Department of Premier and Cabinet.

[21] Weatherburn, D and Fitzgerald, J (2015). The impact of the NSW Bail Act (2013) on trends in bail and remand in New South Wales. Crime and Justice Statistics Bureau Brief. 106, NSW Bureau of Crime Statistics and Research, NSW Bureau of Crime Statistics and Research,.

[22] Thorburn, H (2016). A follow-up on the impact of the Bail Act 2013 (NSW) on trends in bail. Crime and Justice Statistics Bureau Brief. 116, NSW Bureau of Crime Statistics and Research, NSW Bureau of Crime Statistics and Research,.

In 2018, BOCSAR published an evaluation report examining whether the 2013 Bail Act increased the risk of bail refusal, controlling for other factors that could impact bail decisions. [23] This study aimed to estimate the causal effect of the 'policy change' from the old bail laws to the new bail laws (i.e. the Bail Act 2013 (NSW) and the subsequent bail amendment act 2014). BOCSAR's findings showed that Aboriginal and Torres Strait Islander defendants were disproportionately impacted by the new bail laws. Police decisions to refuse bail more than tripled while court decisions doubled. However, the authors urged caution in the interpretations of the police decision estimates, as some statistical assumptions may not hold up. [24]

Notwithstanding the 2018 BOCSAR report, none of the analyses show with any great certainty who is most impacted by the 2013 Act and 2014 amendments.

It should be noted that sentencing reforms in 2018 and COVID-19 restrictions in 2020 may have influenced both remand rates and prison population, although these changes were time-limited.

Below, we examine in more detail these changes and their impacts.

## The Unacceptable Risk Test

The unacceptable risk test was designed to provide a structured, rational approach to bail determinations, ensuring that decisions were based on objective assessments of risk rather than subjective or arbitrary factors. The test involves a two-step process:

1. **Assessing the presence of an unacceptable risk**, such as the likelihood of failing to appear, committing a serious offence, endangering public safety, or interfering with witnesses or evidence

2. **Determining whether conditions can sufficiently mitigate the identified risk** to allow bail to be granted

This framework was intended to simplify the bail process and enhance judicial discretion. However, subsequent amendments (2014 Amendments) have altered its practical application. Some key concerns include:

- **Erosion of judicial discretion**, as the 2014 amendments introduced a more rigid "bail concerns" framework that limits how risks can be evaluated, diminishing judicial expertise and eroding the process by undermining critical fundamental legal principles

- **Lack of transparency in decision-making**, particularly in police bail refusals, where reasons for denying bail are often vague or poorly justified and/or documented

- **Disproportionate impact on Aboriginal and Torres Strait Islander defendants**, as they are more likely to be assessed as an unacceptable risk due to systemic bias in risk factors such as prior convictions or social disadvantage

[23] Yeong, S and Poynton, S (2018). Did the 2013 Bail Act increase the risk of bail refusal. Crime and Justice Bulletin. 212, NSW Bureau of Crime Statistics and Research.

[24] Pisani, A, Rahman, S, Griffiths, M and Poynton, S (2024). Understanding bail decision-making: an observation and interview study. Crime and Justice Bulletin. 265, NSW Bureau of Crime Statistics and Research.

- **Over-reliance on subjective criteria**, including perceptions of an accused person's "criminal associations" or likelihood of reoffending, without clear empirical backing

While there is data available on the numbers and categories of bail refusal, there is no publicly available information on how these assessments are made, particularly in police bail refusal. Consequently, the data poses some questions as to how these issues are considered:

- Section 18 (1)(i) the likelihood of a custodial sentence being imposed if the accused person is convicted of the offence. In 2022, 43 per cent of Aboriginal remanded received a non-custodial sentence and 9 per cent received a time served sentence. (average days on remand for non-custodial penalty is 68 days).

- Section 18 (1)(k) any special vulnerability or needs the accused person has including because of youth, being an Aboriginal or Torres Strait islander, or having a cognitive or mental health impairment. Given the high proportion of Aboriginal people being bail refused it is uncertain how this consideration is applied in practice.

BOCSAR data from July 2022 to June 2023 indicates that 48.7 per cent of police bail refusals for Aboriginal people were attributed to the unacceptable risk test, with the most frequently cited reasons being "will endanger safety," "will commit a serious offence," "will fail to appear," and "will interfere with witnesses." The limited transparency surrounding how these assessments are made raises concerns about potential inconsistencies and systemic bias in bail decisions.

## The Show-Cause Provision

The introduction of the show-cause provision in the 2014 amendments marked a fundamental shift in bail decision-making. Under this provision, defendants charged with certain offences must prove why their detention is not justified, rather than the prosecution having to demonstrate why bail should be refused. The offences that attract the show-cause requirement include serious violent crimes, firearms offences, and offences committed while on bail or parole.

The rationale behind the show-cause provision was to instil greater public confidence in the criminal justice system by ensuring that individuals charged with serious offences faced additional scrutiny before being released. However, evidence suggests that this measure has led to unintended consequences, including:

- **Higher remand rates**, particularly for Aboriginal and Torres Strait Islander defendants, who are overrepresented in show-cause cases

- **Increased court congestion**, as bail hearings become more complex and prolonged

- **Failure to distinguish between offences and individual circumstances**, leading to unnecessary pre-trial detention for individuals who may pose little risk to the community

- **Potential conflicts with the presumption of innocence**, as it places the burden on defendants rather than requiring the prosecution to justify detention

Data from BOCSAR indicates that between July 2022 and June 2023, 35.1 per cent of police bail refusals for Aboriginal people fell under the show-cause provision, with 89.7 per cent of these cases recorded as being triggered because the alleged offence occurred while the person was already on bail or parole. While this may appear to support the rationale that repeat offending

justifies stricter bail responses, it more so raises concerns about how the provision operates in practice. Legal practitioners and advocates have highlighted that the show-cause requirement can be triggered by relatively low-level offences committed while on bail for unrelated matters. In such cases, the emphasis on bail status over offence seriousness may compound existing disadvantage, disproportionally affecting those with prior contact with the criminal justice system and entrenching cycles of incarceration.

# Disproportionate Impacts

### Aboriginal and Torres Strait Islander Peoples

The current bail system in NSW has had a particularly severe impact on Aboriginal and Torres Strait Islander communities, exacerbating existing disparities within the criminal justice system.

Key concerns include:

- **Higher likelihood of bail refusal**: While Department of Communities and Justice data[25] reports that while court bail decisions have remained consistent over the past 5 years, police bail refusals have increased (34% vs 37%). This data also shows considerable variability in police bail refusal by police area command. This data does not control for offence characteristics, so it is not possible to determine whether bias is present in these decisions. It should be noted that BOCSAR published a report that controlled for some of these characteristics and concluded that there is no evidence to suggest police custody managers apply a stricter threshold of release on bail to Aboriginal defendants, [26] however, this analysis did not disaggregate by police area command.

- **Over-representation in remand populations**: While the adult prison population has remained fairly stable over the last five years, there has been a substantial increase in the number and proportion of adults on remand. The number of adults on remand is now the highest on record. As of June 2024, 44.3 per cent of the (all) prison population were in unsentenced detention compared to five years ago (June 2019) where 34 per cent were in unsentenced detention. Higher increases have been observed for Aboriginal people with the proportion of Aboriginal prisoners on remand increasing from 33.4 per cent of the total prison population in June 2019 to 46.8 per cent in June 2024. Additionally, the number of Aboriginal prisoners has increased with the proportion of the adult prison population who are Aboriginal now being 31.3 per cent, up from 26.3 per cent. [27] These numbers show an increase in the number of Aboriginal people being proceeded against by police to court. Furthermore, while we could expect this increase in the number of Aboriginal people being proceeded against to be reflected in the same magnitude of Aboriginal people being bail refused, the police bail refusal volume has increased at a faster pace.

- **Greater exposure to adverse consequences of pre-trial detention**: Incarceration, whether pre-trial or short-term, disrupts family structures, limits access to front-line

[25] Department of Communities and Justice (2023) Quarterly update Remand – December 2023. Spreadsheet shared to the Discovery Group by L. Stefanou in February 2024 with permission by BOCSAR.

[26] Klauzner, I (2023). Investigating bias towards Aboriginal people in police bail decisions. Crime and Justice Bulletin. Sydney, NSW Bureau of Crime Statistics and Research.

[27] NSW Bureau of Crime Statistics and Research (2024). NSW Custody Statistics: Quarterly update June 2024, NSW BOCSAR.

health services, destabilises housing and employment, and exacerbates mental health issues, disproportionately affecting Aboriginal and Torres Strait Islander defendants.[28], [29]

- **Structural bias in bail determinations**: Risk assessment criteria, such as prior interactions with the justice system, tend to disadvantage Aboriginal and Torres Strait Islander individuals, reinforcing cycles of incarceration. Recent data from the BOCSAR[30] highlights these disparities. Between July 2022 and June 2023, 35.1 per cent of police bail refusals for Aboriginal people fell under the show-cause provision, with 89.7 per cent of these cases recorded as being due to the offence being committed while on bail or parole. Additionally, BOCSAR data indicates that Aboriginal defendants are more likely to be assessed as posing an "unacceptable risk" despite a lack of clear evidence supporting these determinations.

In light of the failure to make meaningful contributions towards achieving the National Agreement on Closing the Gap targets – in fact rates of incarceration of Aboriginal and Torres Strait Islander people are increasing - more robust and evidence-based policy-making should be prioritised when considering bail reforms. [31]

Addressing these disparities requires targeted reforms, that are based on evidence, including:

- **Greater use of culturally appropriate bail support programs** to provide alternative pathways for Aboriginal and Torres Strait Islander defendants
- **Mandatory recording and review of bail refusal justifications**, ensuring transparency and accountability in decision-making
- **Reform of the show-cause provisions** to mitigate their disproportionate impact on Aboriginal and Torres Strait Islander individuals
- **Enhanced judicial and police training** to reduce systemic biases in risk assessments and promote fairer bail determinations

### Young People

Recent amendments (Bail and Crime Amendment Act 2024) have significantly impacted youth detention rates, leading to an increase in bail refusals for young people. This amendment offers another example of policymaking that fails to balance public concerns with evidence-based decision-making. The increase in bail refusals for young people has been thoroughly condemned by youth workers, academics, lawyers, and community leaders. [32] [33] At the time of announcement, the NSW Premier said he had spoken to mayors, police area commanders and

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[28] Australian Institute of Health & Welfare (2021). Improving mental health outcomes for Indigenous Australians in the criminal justice system. Produced for the Indigenous Mental Health and Suicide Prevention Clearinghouse. Cat. no. IMH 2. Canberra, AIHW.

[29] Knudsen, A and Roth, L (2023). Reducing incarceration of Aboriginal people: Challenges and choices. Key issues for the 58th Parliament. Research Paper: 2023-10. Parliamentary Research Service. Sydney, Parliament of New South Wales.

[30] NSW Bureau of Crime Statistics and Research (2023) Aboriginal over-representation in the Criminal justice System. Presentation shared to the Discovery Group by L. Stefanou in February 2024 with permission by BOSCAR.

[31] Australian Institute of Health and Welfare (2025). Closing the Gap targets: key findings and implications, 10.25816/gqtf-2k57. Canberra, AIHW.

[32] Karl Hoerr (2024) Law Society warns youth bail reforms are 'unprecedented'. LSJ Online,.

[33] Aboriginal Legal Service (NSW/ACT) (2024) Open letter to NSW Premier Minns and the Labor Government form 560 lawyers, community workers and academics.

local communities, who felt more needed to be done to deal with crime. These amendments, although promised by the Attorney-General to be 'time-limited' do not consider the unintended consequences of such changes, nor whether these changes are likely to bear long-term benefit.

Recent data highlights the concerning rise in remand numbers among young people:

- In December 2024, there were 225 young people in detention, an increase of 54 individuals or 31.6 per cent from December 2023.
- The rise in youth detention is primarily due to an increase in young people being held on remand. In December 2024, there were 172 young people on remand, reflecting a 34.4 per cent increase compared to December 2023.

These figures indicate that recent changes to bail provisions (youth) are driving higher rates of detention, particularly among young people who have not yet been convicted of an offence. The shift towards more restrictive bail practices disproportionately affects disadvantaged youth, many of whom lack the necessary family, housing, or social supports to meet stringent bail conditions.

Key impacts of bail refusals on young people include:

- Disruptions to education and employment – time spent in custody interrupts schooling and employment opportunities, contributing to long-term disadvantage and increasing the likelihood of reoffending. [34]
- Psychological and social harms – young people in detention are exposed to higher risks of trauma, institutionalisation, and negative peer influences, which can perpetuate cycles of criminal behaviours. [35]
- Higher likelihood of adult criminal involvement – research suggests that early exposure to the justice system increases the probability of continued contact with criminal justice system in adulthood. [36] [37] [38]

Given the significant increase in youth remand numbers, there is an urgent need to reconsider the impact of bail provisions on young people and ensure that bail decisions align with rehabilitative rather than punitive, approaches as per the evidence on effective youth justice practices.

## Implementing Best-Practice for Evidence-Based Bail Reform

A significant barrier to evidence-based bail reform in NSW is the lack of institutional structures that ensure policies are developed and assessed based on empirical data. Simply advocating for

[34] Kirk, D S and Sampson, R J (2013). Juvenile arrest and collateral educational damage in the transition to adulthood. Sociology of education 86(1): 36-62.

[35] Barnert, E S, Dudovitz, R, Nelson, B B, Coker, T R, Biely, C, Li, N and Chung, P J (2017). How does incarcerating young people affect their adult health outcomes? Pediatrics 139(2).

[36] Lambie, I and Randell, I (2013). The impact of incarceration on juvenile offenders. Clinical Psychology Review 33(3): 448-459.

[37] Boersig, J (2013). Indigenous youth and the criminal justice system in Australia. New directions in restorative justice, Willan**:** 115-133.

[38] Jones, P (2018). Breaking a vicious cycle: The impact of bail and conditions on juvenile interaction with the justice system. Journal of Applied Youth Studies 2(4): 29-43.

EBP is insufficient – systematic mechanisms must be in place to support its implementation and prevent policy drift caused by political pressures and media narratives. EBP is an ongoing and iterative process that requires ongoing evaluation and analysis. Institutional reforms such as introducing legislative scrutiny requirements – where proposed bail law changes must undergo independent evidence review before enactment (including Justice Impact Tests) could strengthen EBP in bail policy. One such example is a requirement for publicly available Justice Impact Tests [39] that assess the differential impact on those groups affected by the proposed changes, risks of unintended consequences, such as reduced access to justice, potential perverse incentives, and impact on confidence and trust in the justice system.

## Challenges Necessitating Evidence-Based Reform

While this paper does not make specific recommendations for legislative or policy reform, concerns raised by legal practitioners and advocacy organisations offer insight into areas where greater integration of evidence could improve bail decision-making and outcomes. These concerns highlight inconsistencies and unintended consequences within the current system – issues that further underscore the need for evidence-based policymaking.

Example of these practitioner-identified concerns include:

1. **Re-examining the operation of the "show-cause" provisions**, particularly in relation to offence types that appear to disproportionately impact Aboriginal defendants
2. **Enhancing transparency in police bail decisions,** including clearer articulation of risk justifications beyond category-based reasoning
3. **Ensuring greater consistency between bail decisions and sentencing trends,** particularly where individuals are unlikely to receive custodial sentences upon conviction
4. **Improving data collection and analysis**, including tracking variations in bail decisions across police area commands and courts
5. **Expanding bail support programs**, especially in marginal cases where targeted support may reduce the need for custodial remand
6. **Subjecting the centralised virtual bail model to careful review**, particularly in regional contexts where concerns have been raised about access to justice and the quality of decisions made without adequate understanding of local circumstances or community context

## Conclusion

**EBP is vital to achieving principles and outcomes such as safety and liberty.** Evidence-based bail laws ensure that policy decisions balance individual rights with community protection, preventing unnecessary and unjust pre-trial detention.

**Bail reform exemplifies the need for EBP.** The history of bail reform in NSW highlights the risks of reactionary policymaking. Without an evidence-based approach fundamental legal principles

[39] Catriona Mirrlees-Black (2025). Justice impact tests: What are they, and what is their value? Justice Issues. 35. Sydney, Law and Justice Foundation of NSW, Law and Justice Foundation of NSW,.a

can be eroded, and reforms can disproportionately impact groups already experiencing structural disadvantage, including socioeconomic inequality, over-representation in the justice system, or reduced access to social and legal supports. Moving forward, policymakers must prioritise evidence-based approaches that balance public safety with the presumption of innocence and the principles of justice.

Without evidence-based reform, bail laws risk exacerbating social inequalities, contributing to cycles of incarceration, and undermining public confidence in the legal system. A commitment to research-driven policy is essential to creating a justice system that is both effective and equitable, balancing individual rights with community safety in a manner that upholds the rule of law.

More than a decade of ongoing bail reforms has prompted concern across the legal and judicial sectors, with many expressing unease at policies that appear disconnected from the operational realities of the justice system.

The integrity of the justice system depends on ensuring that legal frameworks are grounded in evidence, applied consistently, and developed through principled rather than perception-led or narrowly framed decision-making.

**Suggested Citation:** Butler K, & Davies K (2025) Evidence-based policy and law-making: Bail reform in NSW. Justice Issues No. 37. Law and Justice Foundation of NSW

**Evidence-based policy and law making: Bail reform in NSW**
**Justice Issues No. 37**

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ISBN: 1834-7266

**Law and Justice Foundation of New South Wales**
PO Box A109 Sydney South NSW 1235
Ph: +61 2 8227 3200
publications@lawfoundation.net.au
www.lawfoundation.net.au
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