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Sinead Freeman

Dublin Institute of Technology, sinead.freeman@dit.ie

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The Experience of Young People Remanded in Custody: A Case For Bail Support and Supervision Schemes

Abstract

This article focuses on the potential role and benefits bail support and supervision (BSS) schemes may have for young people in the Irish context. This article is based on a wider Ph.D study examining the issue of coping on remand. The research used court observation and semi-structured interviews conducted with young prisoners aged 16 to 21 years in remand custody. The findings indicate that young people often end up in remand custody as a result of non-compliance with bail. The case is made arising from the research, that the operation of bail support and supervision (BSS) schemes may benefit these young people greatly.

Key words: Custodial remand; young remand prisoners; Probation Service; bail support and supervision schemes

Introduction

Every person charged with committing a crime is remanded on bail or in custody before they appear for trial or sentence in court. An accused individual may be released on his/her personal bail, with or without an independent surety (undertaking by third party). Conditions restricting certain interactions, movements or behaviours may be included (O'Malley, 2006). The Children Act, 2001 and United Nations Convention on the Rights of the Child state that custody should be used as a measure of last resort. Research has shown that the vast majority of young people are

remanded on bail rather than in custody in the Irish context (Kilkelly, 2005; Carroll et al., 2007)¹. However, there is no support or supervision provided to young people remanded on bail in the Republic of Ireland and research indicates that many fail to comply with conditions imposed during the bail period (Kilkelly, 2005; Carroll et al., 2007).

Little is known about who ends up in remand custody or the exact nature of the Irish custodial remand experience (O'Mahony, 1995; McCullagh, 1996). Such a dearth of information creates difficulties assessing the exact role and benefits bail support and supervision schemes may play in the Republic of Ireland. This study aims to address this gap by providing an insight into the reasons why individuals are remanded in custody and their experiences of remand custody. The study focuses on young people in particular who are recognised as an especially vulnerable group in the prison population (Goldson, 2002; Liebling, 2007). They are also reported to experience difficulty in complying with bail (Brown, 1998; Carroll et al., 2007; Kilkelly, 2005).

Methodology

The research included two main methods of data collection; court observation and semi-structured interviews with remand prisoners. The court based research was carried out in the Children Court in Dublin in July 2003. A total of 207 cases involving 203 separate individuals were observed in the Children Court. Of this total, 189 were male and 14 were female. Sixty-two percent (126) were aged 16 and over, with thirty-eight percent (77) under the age of 16 years. The observation study took place in the Children Court over a two-week period. Every

¹ The use of the term remand custody in this article refers to the confinement of individuals in a prison or detention centre as opposed to police custody.

case that occurred in this time frame was observed and the gender, age, remand position of each child was observed and recorded on a pro-forma document. The prison based research took place at St. Patrick's Institution, Cloverhill Remand Prison and the Dóchas Centre between February 2005 and March 2006.² This was prior to the change in the system from 1st March 2007 which prohibits the use of adult prison for those under 18 years. Sixty-two remand prisoners participated and of those fifty-five were male and seven were female. This broadly reflects the composition of the Irish prison population where nine out of every ten prisoners are male (Irish Prison Service, 2007). The prisoners were aged between 16 and 21 years with a mean age of 18 years. Forty-eight were Irish, nine were Irish Travellers, two were English, two were African and one was Romanian. Almost two-thirds had been on remand for less than three months, one-fifth from three to six months, and approximately another one-fifth between seven and twelve months. In terms of prior custodial experience, over one-half had previously been on remand, 19 of who were remanded on just one other occasion. One-half of the prisoners had spent time in sentenced custody; the majority (17 out of 31 cases) having received one custodial sentence. Almost one-third reported that it was their first time in custody.

² St. Patrick's Institution is a detention centre which houses remand and sentenced male prisoners aged 16 to 21 years. It is the only remand centre for 16 and 17 year old males in the Irish context. Cloverhill Remand Prison is a purpose built remand prison and is the main remand centre for adult males. The Dóchas Centre is one of only two prisons which caters for females aged 18 and over who are either sentenced or on remand.

Findings

Non-compliance with bail as a route to remand custody

Non-compliance with bail emerged as a common route to remand custody in both the court and prison study. During the court observation, nine individuals were remanded in custody. The reason for this remand in eight of these nine cases was non-compliance with bail requirements. Almost one-half of the prisoners interviewed in the study had been originally released on bail but ended up in remand custody due to re-offending, failure to attend court or the breach of bail conditions during the bail period. Over one-quarter of the prison sample were remanded for a variety of other reasons including no fixed abode, inability to pay bail surety and drug rehabilitation. Less than one-third of the prison sample were remanded due to the serious nature of their charge or because they were deemed to be at risk of re-offending. The prisoners' self-reported criminal histories reflected that serious offending behaviour was not the main reason underpinning their remands in custody. Their accounts differed little from national (An Garda Síochána, 2006; Irish Prison Service, 2007) and international (Synder and Sickmund, 2006; Wilson et al., 2006) trends on youth offending and like most young offenders the majority of remand prisoners' alleged crimes were not essentially violent in nature such as public order and theft.

Analysis of the prison data indicated that the vast majority of the young people's lives prior to remand resembled a chaotic web, entangled by a plethora of difficulties, with little structure or stability. One-half of the prisoners were not engaged in any purposeful structured activity such

as education, employment or training prior to remand. Almost three-quarters reported using drugs in the six month period before remand, with nearly one-third of the drug-users taking cocaine, ecstasy and / or heroin on a daily basis outside prison. Just under one-half of the prisoners reported receiving assistance for mental health difficulties, primarily depression, aggression and conduct disorder. Despite their young age, many prisoners reported that a number of destabilising events such as family conflict (one-half), parental separation (one-third), the imprisonment of family members (one-half) and the death of close family (three-fifths) and friends (two-fifths) had impacted negatively on their support networks.

The presence of such a complex array of difficulties in the prisoners' lives was identified as playing a considerable role in the non-compliance with bail conditions. In essence, the lack of a structured foundation meant that many of the young people had become unaccustomed to performing certain tasks or being in particular places at pre-defined times:

I'm in here for breaking me curfew ... Like basically there was no structure, There was nothing there. I wasn't doing anything just running here and there and drinking and messing around.. I was just used to doing what I wanted when I wanted.

(P25, Male Age 18 on Remand 180 days)

The regular consumption of drugs was identified to have a further destabilising influence during the bail period and was generally reported not to be conducive with maintaining strict conditions such as curfews or attending court on a regular basis:

I was on drugs like and it f..... up your head ... You don't be like thinking about going to court or anything like that. You be thinking nothing really just drugs, drugs, tablets, tablets.

(P44, Male Age 18 on Remand 335 days)

The use of drugs was also found to be involved in offending behaviour during the bail period:

Just with the drink and drugs like, I just couldn't stay out of trouble while I was on bail. I tried to like but I just got caught up in robbing again for drugs.
(P38, Male Age 21 on Remand 240 days)

The prevalence of mental health problems especially depression was also identified as a stumbling block in relation to bail conditions and court appearances. In many cases, the prisoners bail periods reportedly coincided with a general prevalence of hopelessness and apathy in their lives. It appeared many were just living from day to day with little evidence of forward planning or goal setting:

When I was charged, I had lost track of me life, hadn't got a clue. I was feeling very down. Depression was real bad and well I'd just nothing else to lose, didn't care missing court and all that.
(P60, Female Age 20 on Remand 17 days)

Furthermore, the lack of support experienced by many prisoners often resulted in a complete void of familial assistance and encouragement when it came to abiding by bail:

My parents like they wouldn't come to court, no. They wouldn't want to know.
(P61, Female Age 17 on Remand 35 days)

Thus, amidst all their difficulties, it emerged that many prisoners ultimately had to deal with the requirements of bail on their own. A process the prisoners reported to be particularly hard when trying to successfully adhere to bail:

It can be hard keeping it [bail] when you've no-one behind you ... When no-no-one is there for you, ah it can be hard to stay focused, especially being young. Sometimes you know you just wish there was someone there to help.
(P22, Male Age 16 on Remand 3 days)

The nature and impact of the custodial remand experience

Analysis of the data indicates that young prisoners are exposed to a particularly negative experience in remand custody. In spite of their presumption of innocence, the remand prisoners

reported that they had to contend with similar experiences as those serving a sentence, especially in relation to the prison lock-up regime:

Sure no-one cares that you're on remand in here. We're treated the same as any other person really in here. We're just criminals to the staff aren't we?
(P1, Male Age 16 on Remand 7 days)

You're just blocked in with four walls for 18 hours. I'm just sitting in there all that time ... You've to eat your meals and all in your pissy cell.
(P18, Male Age 18 on Remand 25 days)

Not only that, the remand prisoners identified that they had to deal with a number of difficulties more specific to remand. This included a lack of employment opportunities within the prison, along with frequent court appearances which often incorporated lengthy journeys, handcuffs and holding cells. Furthermore, the prisoners reported experiencing a high level of uncertainty on remand, in particular as no maximum duration for remand custody exists in the Republic of Ireland:³

It's a bad feeling being on remand, you haven't a clue when you are going to be out, honestly I wouldn't like to say. I would be only guessing pull a number out of the sky will I?
(P42, Male Age 21 on Remand 135 days)

These issues resulted in prisoners reporting that a custodial sentence was sometimes easier than custodial remand:

People might think its [remand] easier it's not easier; it would be harder in a good lot of ways. It's harder not knowing what the story is. There is not as much facilities here, there is no nothing. I would prefer a sentence and a lot here would say the same.
(P25, Male Age 18 on Remand 180 days)

³ Under the Criminal Procedure Act, 1967 there is no time limit on the length of detention for children or adults on remand; the only stipulation is that individuals may not be detained for longer than thirty days between court appearances. If however, the delay before the trial hearing is prolonged and arguably excessive, an application for a further period of remand in custody may be challenged with some success, at least in that the next hearing may be marked peremptory by the judge, i.e. the charges will go ahead that day or be dismissed.

The vast majority of prisoners reported that the stress of remand impacted negatively on them, with over two-third's reporting that they found it difficult to cope on remand. A sense of hopelessness was apparent in a number of the prisoners' accounts and almost one-quarter expressed that they had experienced feelings of wanting to give up while in custody. The data suggest that the remand experience was particularly difficult for those detained for the breach of bail, who not surprisingly appeared least positioned to deal with the restrictive demands of remand:

I'm used to been out late, not having to stay in ... Having curfews and all is hard, locking you up its worse. It's very hard being locked up ... It's very difficult, does be wrecking your head. I need to be out of here.

(P50, Male Age 18 on Remand 90 days)

It emerges that the adverse impact of remand was not just confined to the prisoners' time in custody but permeated beyond the prison walls to exert a disruptive effect on the prisoners' lives outside prison. Almost one-fifth reported that they had lost their accommodation at the time of interview. Many prisoners also identified that remand had placed emotional and financial strains on their already fractured relationships:

Its normal for people to say their lives are worse after remand. Everything is just turned at you. You've everything to sort out when you get out, a job, somewhere to stay; your family and all. You lose a lot in custody.

(P31, Male Age 19 on Remand 180 days)

To make matters worse, the prisoners reported that it was difficult to make plans or receive help with their difficulties while in prison due to the uncertainty which surrounded the outcome and duration of their remand. Thus, the data indicated that for many prisoners, life would in fact be worse on release than on their initial arrival to remand custody:

When I get out I will be starting from scratch. It's hard knowing when I get out I don't have things out there, things will be worse. Sometimes I think I should just come back to prison and stay there. If you're not able to make a proper go of it, you might as well.

(P25, Male Age 18 on Remand 180 days)

Discussion

The study paints a bleak picture for prisoners remanded in custody; the indication being that young prisoners are detained in stressful and austere conditions sometimes for lengthy periods of time. The findings suggest that non-compliance with bail contributes considerably to the young remand population. It can be argued that the ideology underlying such remands is counter-productive in that it identifies a problem area (i.e. inability to abide by restrictive demands), only in turn to increase exposure to this particular difficulty. Such grounds for custodial remand appear to draw in particularly vulnerable young people that have frequently little or no previous custodial experience. The use of remand custody for such individuals seems to be both an inappropriate and disproportionate measure, particularly in light of the principles under section 96 of the Children Act, 2001 promoting the notion of custody as a last resort and the provisions limiting the use of custody under the United Nations Convention on the Rights of the Child.

Remand custody does not address the issues that result that result in young people failing to comply with bail. Rather, the implication is that custodial remand may make future breaches of bail an increasingly possibility on release due to its disruptive impact on the prisoners' already unstable lives. Such findings identify that young people who breach bail would be better served by avenues other than custodial remand and highlight the important role that BSS schemes could play in the Irish context. Over the last few decades, a number of countries including England, Scotland, and Northern Ireland have introduced BSS schemes in order to minimise the use of custodial remand among those who breach bail but do not pose a threat to public safety. Such

schemes, most often provided by specialist divisions of the Probation Service are designed to help individuals attend court, abide by bail conditions and not re-offend during the bail period. In particular, the schemes aid young people, females, and those experiencing mental health difficulties while they are on bail (Scottish Executive, 2000; Youth Justice Board, 2002; Northern Ireland Office, 2006). Individuals are selected to participate on the BSS schemes following an initial assessment of their needs, their bail history and current circumstances which is conducted either at court or in remand custody. Following this assessment, a customised support and supervision programme tailored to each individual is presented and agreed before the court, subject to continual review during the bail period (Thomas and Goldman, 2001).

The level of support and supervision put into place for each individual on BSS schemes may vary depending on the nature of the alleged charge; the frequency of offending and the need of the individual; however a minimum of three interactions a week between individuals on the scheme and BSS staff is usually required (Thomas and Goldman, 2001). Interactions may occur in one or more forms ranging from individual case management and supervision of court attendance and compliance with bail conditions; compulsory reporting to a specified individual at a particular location; group work and regular home visits with parents or significant others. Tailored BSS schemes generally consist of a number of compulsory elements which must be complied with as a condition of bail; however voluntary aspects may also be included in the programme content. Both compulsory and voluntary elements of the schemes may include a range of measures to aid individuals while on bail including substance use interventions, health counselling and referral, anger management, training courses, employment advice, liaison with employers and education providers, assistance seeking stable accommodation, referrals to

specialist accommodation services, family mediation and participation in constructive leisure activities. The monitoring of curfews may be specifically provided via phone, visits or in some cases voice verification or electronic tagging. Court attendance may further be assisted through the attainment of correct information from solicitors, police and courts service by BSS staff, along with the encouragement of responsible attitudes towards court among individuals and their family members. While entitled to be viewed as innocent until proven guilty of the alleged charge(s), general offending related behaviour may also be addressed through participation in general offending programmes on BSS schemes (Thomas and Goldman, 2001; Northern Ireland Office, 2006).

BSS schemes yield a major advantage over custodial remand as they enable individuals to remain within or close to their communities during the remand period (Scottish Executive, 2000; Raes and Snacken, 2004). They also allow individuals to receive help with offending related difficulties which is reported to be of benefit even after the remand period (McCaig and Hardin, 1999; Thomas, 2005; Northern Ireland Office, 2006). Approximately 70% of individuals who are not deemed to require bail supervision complete bail successfully. Research evidence (Bail Support Policy and Dissemination Unit, 2000; Youth Justice Board, 2002; SACRO, 2004) indicates that BSS schemes have a success rate of approximately 80% with regard to preventing re-offending and ensuring young people abide by bail conditions and attend court. BSS schemes would thus appear to be particularly effective given that those on BSS schemes are considered to be at greater risk for non-compliance with bail. These figures also suggest that such schemes are the most promising alternative to remand custody given that other measures such as electronic monitoring report a lower success rate of 30% (Airs et al., 2000).

The types of services provided by BSS schemes would appear to be particularly appropriate and beneficial in the Republic of Ireland in light of the problems reportedly experienced by young people during the bail period. Such schemes could provide the necessary assistance needed to deal with these difficulties and also help young people to avoid the negative and destabilising impact of remand custody. In addition, BSS schemes may help young people to cope better with the actual remand process by allowing them to deal with the uncertainty of their case in a familiar, less transient environment. Also, through the provision of productive activities, which appear to be generally not available in remand custody, BSS schemes may enable young people to reduce feelings of hopelessness and encourage greater feelings of responsibility and control when it comes to attending court, abiding by bail conditions and desisting from crime. Such opportunities may be beneficial not only to the young people themselves, who are likely to increase their chances of staying out of prison but also to individuals in prison who may experience less crowded conditions.

While the findings suggest many benefits, it is important to acknowledge that concerns also prevail for the development of potential BSS schemes. As Raes and Snacken (2004: 514) have stated ‘determining the future of remand custody and its alternatives is not an easy task’. It appears that the main task in need of further attention is the establishment of a correct balance between the unnecessary over-intervention in young people’s lives (Beijing Rules, 1985) and the risk to public safety. In order to strike the right balance in the Irish context, further detailed research is required to establish the exact role different factors play in predicting success or failure with bail conditions, attending court and desisting from crime during the bail period.

Evaluative studies of the new pilot probation led BSS schemes will be necessary to ensure that the correct individuals are selected and the most effective practices are implemented.

Furthermore, it is vital that BSS schemes receive the necessary support and investment of the government with regard to the provision of human resources and training. Indeed, any financial concerns which may arise out of such a practice should be negated by the research demonstrating BSS schemes are more cost effective than custodial remands (Northern Ireland Office, 2006; SACRO, 2004). Finally, in light of the range of difficulties experienced by young people on bail, the findings suggest that the voluntary and community sectors have an integral role to play in the operation of BSS schemes in conjunction with the Probation Service.

Conclusion

To conclude, BSS schemes appear to have an important and beneficial role to play in the Republic of Ireland. The planned piloting of BSS schemes by the Probation Service will be a welcome development in the Irish context. Indeed, it can be said that by gathering further research data on best practice and attaining government and community agency support, BSS schemes may provide more positive outcomes for young people than remand custody.

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