

# Information Bulletin

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## **A Profile of Remandees in Custody in South Australia on 30 June 2002**

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This Information Bulletin summarises the findings from a study of 100 males who were remanded in custody in South Australia on 30 June 2002.

The study aimed to provide a profile of custodial remandees to determine:

- The proportion for whom custodial remand seems the most appropriate option; and
- The proportion that could potentially be diverted from custody.

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## Introduction

This report summarises the findings from a study of 100 males who were being held on custodial remand in South Australia on 30 June 2002. The research forms part of a series of studies undertaken by the Office of Crime Statistics and Research that were prompted by concerns about a substantial increase in the number of males remanded in custody in this state from 2000/2001 onwards.

This increase had led to discussions about the range of strategies that could potentially be introduced to divert people from custodial remand. However, it was acknowledged that the proportion of remandees who could benefit from such initiatives was not known. If, under current legislative guidelines, remand in custody was an appropriate option for the majority of individuals presently in South Australian gaols, then introducing alternative processes and options would do little to reduce the daily average remand numbers.

This study therefore aimed to provide a profile of male custodial remandees to determine, within the context of current legislative practice guidelines;

- The proportion for whom custodial remand seems the most appropriate option; and
- The proportion that could potentially be diverted from custody if new, non-custodial options were to be introduced.

It should be stressed that the study was *not* intended to explain recent increases in the number of males remanded in custody in South Australia. This issue has been addressed in other studies by the Office of Crime Statistics and Research.<sup>1</sup>

The study was undertaken in two stages.

- Stage 1 involved the development of a simple bail risk measure to provide a broad indication of the proportion of remandees in the study group who could be classified as low, medium and high risk according to the key factors currently taken into account by judicial officers when determining a defendant's suitability for bail. The underlying assumption in developing this measure is that custodial remand would be more appropriate for those who fall in the high risk categories, while those in the low risk categories could potentially be candidates for diversion from custody.

The bail risk measure is intended only for use by this study. It is not designed to be used as a predictive tool, but merely to determine what proportion of current remandees possess those characteristics which, under current decision-making practices, are seen as 'high risk'.

- Stage 2 consisted of more in-depth analysis of the individuals within each of the identified risk categories to provide a more refined estimate of the proportion that could potentially be diverted from custody. In particular, this component of the study sought to determine whether any of the remandees were actually granted bail during their remand episode and if so, to identify what, if any, factors had changed that made them appropriate candidates for bail. Underpinning this is the possibility that if appropriate strategies had been in place to address these factors earlier in their case, then there may have been no need to remand these defendants in custody in the first place.

## Data sources

The profile of remanded defendants was developed using data from the Department for Correctional Services, Courts Administration Authority and South Australia Police.

The Department for Correctional Services provided a list of all males who were on custodial remand on 30 June 2002<sup>2</sup> – a total of 438. Information included the start date and end date<sup>3</sup> of the remand episode, as well as the

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<sup>1</sup>Contact the Office of Crime Statistics and Research for further information.

<sup>2</sup> This analysis is based upon 'stock' data rather than flow statistics such as admissions or discharges. It is acknowledged that any profile based on stock data will include a relatively high proportion of longer term and potentially more serious offenders while, because of the 'churning effect', flow data will include a high proportion of short term remandees who are charged with less serious offences.

<sup>3</sup> 'End dates' all post-dated 30 June 2002.

relevant court file details for that admission. Where an individual had several remand episodes during the one court case, only that episode which included 30 June 2002 was used for this analysis.

While a range of data were available electronically, certain information on each remandee could only be obtained by manually searching court files. To reduce the time taken for this process, a random sample of 100 was selected from the original 438 remandees who were in custody on 30 June 2002.

Relevant court files were then manually searched for details on the remand episode itself and for the case as a whole. In terms of the actual remand episode, information was extracted on:

- The offences involved;
- Whether the remandee applied for bail during the current episode and if so, at what point;
- Whether the remandee was granted bail and if so, at what stage during the episode; and
- Whether the remandee had bail refused, and if so, the reasons for refusal.

For the case as a whole, details were obtained on:

- Whether the remandee was in custody from the beginning of the court proceedings, or had been on bail at an earlier stage of the case but had failed to appear or breached bail conditions;
- Whether any reports had been requested (eg bail enquiry, home detention, psychological);
- The outcome of the case (eg whether the charges were convicted, dismissed/withdrawn); and
- The type of penalty imposed (custodial, suspended, other).

## Stage 1: Bail Risk measure

The first stage of the study involved the development of a measure to provide a broad estimation of the bail risk for the 100 remandees in the sample, using those key factors currently taken into account by judicial officers. Factors considered for inclusion in the measure were based on:

- Reasons given by judicial officers when refusing bail for individuals within the study group; and
- Factors listed in the *Bail Act, 1985* which are required to be taken into account by judicial officers when assessing an application for bail.

Of the 56 remandees in the study group who were refused bail during their court case<sup>4</sup>, 47 had reasons for the refusal recorded on their court files. The reasons given are listed in Table 1. As shown, for the study group, it was found that the seriousness of offence, risk of re-offending, prior bail breaches and risk of absconding were the main factors listed by judicial officers when refusing bail for these individuals.

**Table 1: Reasons given by Magistrate for refusal of bail**

Reason type	No. of files where mentioned	% of files	No. for which this was the only reason
Seriousness of offence(s)	27	57	6
Risk of reoffending	13	28	2
Prior bail breach(s)	12	26	2
Risk of absconding	10	21	0
Risk to others	7	15	0
Unsuitability or lack of residence	6	13	0
Number of prior convictions	6	13	1
Unsuitable guarantor	4	9	0
Will not comply with bail conditions	3	7	1
Lack of family ties	2	4	0
Defendant at risk	1	2	0
Other reason*	9	24	4
<b>Total number of refusals with reasons</b>	<b>47</b>	<b>100</b>	

Note: reason categories not mutually exclusive.

\*Other reasons listed were: poor mental state, potential for lengthy imprisonment, defendant in hospital, use of firearm, previous failure to attend court, drug use, need for urgent medical attention, waiting for information from Drug Court, strength of Prosecutions case, opposed by prosecution.

<sup>4</sup> Not all of the remandees applied for bail, and so did not attract a bail refusal.

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As expected, the reasons given by judicial officers for refusal of bail correspond closely with the factors listed under Section 10 of the South Australian *Bail Act, 1985* which details eight criteria to be taken into account by Bail Authorities when assessing an application for bail. These are:

- The seriousness of the offence;
- The likelihood that the applicant will abscond;
- The likelihood that the applicant will offend again;
- The likelihood of the applicant to intimidate witnesses or destroy evidence or hinder police enquiries;
- The applicant's need for physical protection;
- The applicant's need for medical or other attention;
- Previous contravention of a bail agreement; and
- The victim's need for physical protection from the applicant.

It is also acknowledged that a number of other factors may influence the bail/custodial remand decision, such as drug use, accommodation, medical issues and family/community ties. However, information on such issues was not available for all individuals within the group. Nor was information available on some of the pertinent criteria listed in the *Bail Act*, such as the applicant's need for physical protection. This information is not routinely recorded by courts (except when listed as a reason for refusal, which occurs only rarely). The only other source of data was the bail enquiry reports but these were requested for only one third of the sample and so were of limited use.

Accordingly, the following four factors were selected to develop the bail risk profile:

- Severity of offending;
- The likelihood that the defendant will re-offend;
- The risk of absconding; and
- Prior breaches of bail.

These factors correspond with the four most frequently listed by the judicial officers when refusing bail. The measures used to approximate these factors are described below.

### **1. *Severity of offending***

The ABS National Offence Index (Criminal Courts, Australia 4513.0) was used to determine the severity of the most serious charge faced by each remandee for the current remand episode. The Index ranks offences from 1 (murder) to 155 (traffic and driving regulatory offences). Based on the ranking of their most serious charge, each individual was given a score from 1 (very low) to 5 (very high). Table 2 provides an overview of the severity categories.

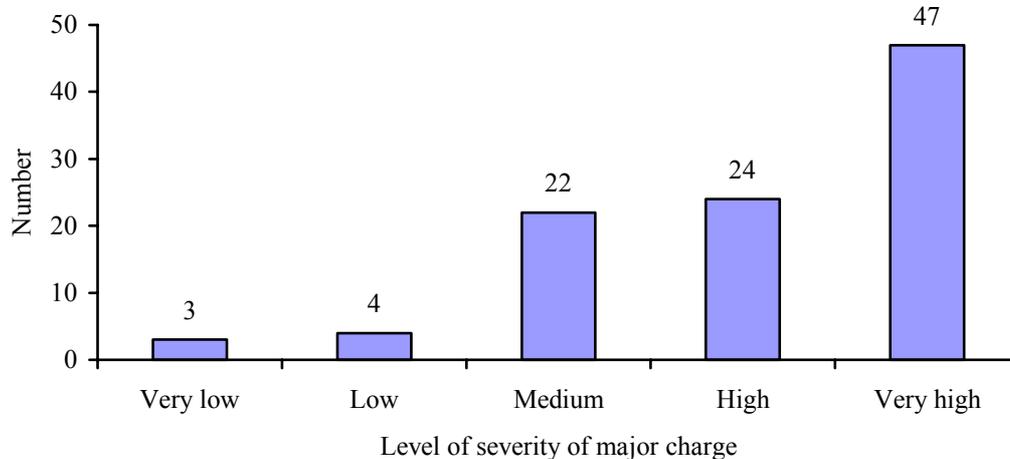
**Table 2: Offence severity categories based on ABS National Offence Index**

Index Rank	Example offences	Score	Severity Category
1-31	Murder, assault, aggravated robbery	5	Very high
32-62	Non-aggravated robbery, blackmail, unlawful entry with intent	4	High
63-93	Fraud, deception, illegal use of motor vehicle, theft, receiving, drink driving	3	Medium
94-124	Pollution, against justice procedures, breach bail, breach parole, breach restraining order, possess/use illicit drug	2	Low
125-155	Trespass, offensive language/behaviour, disorderly behaviour, shoplifting, resist police, driving unlicensed/unregistered, regulatory driving offences	1	Very low

Figure 1 illustrates the offence severity profile of the study group. As indicated:

- For nearly half of the remandees (47) their most serious charge for the current episode fell within the very high severity category;
- Almost one quarter were in the high category;
- 22 were in the medium category; and
- Less than 10% were in the low to very low severity categories.

**Figure 1: Severity level of most serious charge listed for the remand episode**



## 2. *The likelihood that the defendant will reoffend*

The number of prior offences proved against an individual was used as an indicator of the likelihood that the defendant would offend again if given bail.

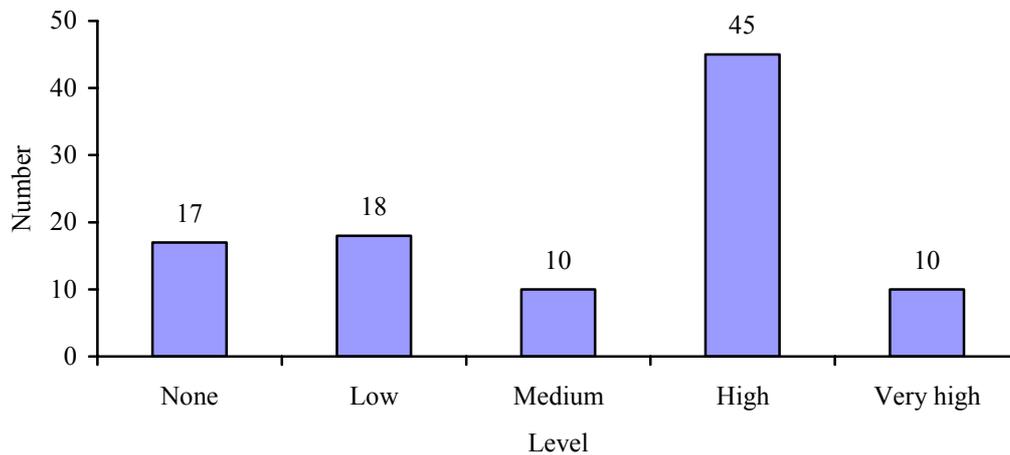
Based on the number of prior findings of guilt (excluding traffic offences, offences against good order and ‘other’ offences) each remandee was given a prior offending score ranging from 0 (no priors for the selected offences) up to 4 (50 or more priors for the selected offences). It should be noted that traffic offences, offences against good order and ‘other’ offences were excluded from this measure because they are generally of a less serious nature. In most cases these types of offences would not result in custodial remand or a sentence of imprisonment. Table 3 provides an overview of the prior offending categories.

**Table 3: Prior offending categories**

Number of (selected) offences	Prior offending score	Prior offending category
0	0	None
1-5	1	Low
6-10	2	Medium
11-50	3	High
51+	4	Very high

As shown in Figure 2, the majority of remandees had high levels of prior offending, with over half (55) in the high or very high categories. It is also worth noting though, that there were 17 who had no prior findings of guilt. It could therefore be argued that for these individuals, there is no track record to indicate they would be likely to re-offend if granted bail.

**Figure 2: Level of prior offending\***



\*Prior offending excludes traffic, against good order and 'other' offences.

### **3. Risk of absconding**

This was measured by whether the defendant had at least one warrant of apprehension in the previous five years for failing to appear in court.

Overall, 70% of the study group had at least one prior warrant of apprehension.

### **4. Prior breaches of bail**

This factor was measured by whether the defendant had at least one proven breach of bail in the previous five years.

Just under half of the study group (44%) had at least one prior bail breach in that time period.

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## Bail risk score

The next step in the study involved combining the four key factors into a single measure.<sup>6</sup> Each of the 100 defendants in the study group was given a **bail risk score** made up of the sum of:

<b>Factor</b>	<b>Possible score</b>
Severity of most serious charge	1 to 5
Prior offending level	0 to 4
Prior warrant of apprehension	0 or 1
Prior breach of bail	0 or 1

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The overall bail risk score per individual could potentially range from 1 (involving a very low offence seriousness rating, no prior offences and no warrants or breaches of bail) up to 11 (incorporating a very high offence seriousness rating, a very high number of prior offences, at least one warrant and at least one breach of bail).

To simplify the analysis, the bail risk scores were then grouped into five categories, as follows:

<b>Bail risk score</b>	<b>Bail risk category</b>
1-2	Very Low
3-4	Low
5-6	Medium
7-8	High
9-11	Very High

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As a first-level filter, it was hypothesized that custodial remand is *more* likely to be appropriate for individuals in the High and Very High bail risk categories than for the other categories and that strategies/supports designed to assist defendants in obtaining release on bail may be less likely to impact upon individuals in these groups.

Conversely, it is suggested that custodial remand is *less* likely to be appropriate for individuals in the Very Low and Low bail risk categories and that particular strategies and supports may be more likely to impact upon the ability of these defendants to obtain bail.

Individuals within the medium risk group are likely to be ‘borderline’ cases where either custodial remand or bail is equally appropriate. Within this group some would potentially become eligible for bail if alternative strategies or supports were put in place, while others would remain as unlikely candidates for bail.

## Stage 1 Results

Figure 3 illustrates the number of remandees in the study group by Bail Risk Category.

According to the Bail Risk measure:

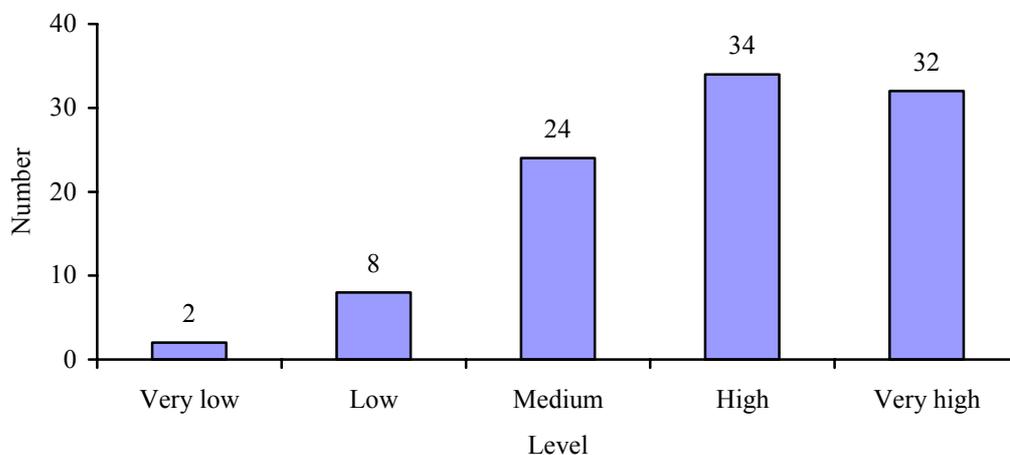
- Two thirds of the 100 randomly selected remandees in custody on 30 June 2002 fell within the two highest bail risk categories, including 34 in the High risk category and 32 in the Very High risk category. This suggests that, if only the four key factors currently used by judicial officers when assessing an individual’s suitability for bail are considered, for the majority of the study group custodial remand represents the most appropriate option. Hence, under the current decision-making regime, strategies and support programs designed to assist defendants to obtain bail may be less likely to have an impact upon these individuals.
- There were 10 remandees in the two lowest bail risk categories, including two in the Very Low category and eight in the Low category. It would appear that, based on the four bail risk criteria used here, custodial remand may not be appropriate for 10% of the current custodial remand population.

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<sup>6</sup> Because seriousness of offending and risk of re-offending were cited more frequently by judicial officers when giving reasons for refusing bail, these two factors were given more weighting than the other two.

- There were 24 remandees in the study who were in the Medium risk category. For these individuals it is more difficult to assess the appropriateness of their custodial remand.

**Figure 3: Profile of remandees by bail risk category**



#### **Bail risk category by sentencing outcomes**

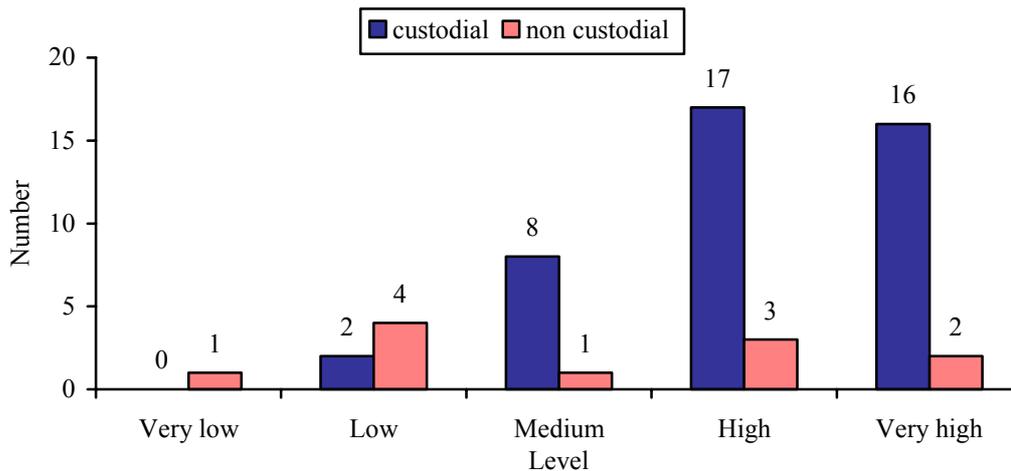
As a check on the validity of the Bail Risk measure, the bail risk category to which each individual was assigned was compared with the sentencing outcomes for that case. It was hypothesized that those in the higher risk groups would be more likely to receive a custodial outcome.

Of the 70 remandees in the study who had their case finalised before the end of the study period (April 30<sup>th</sup>, 2003), 55 were found guilty of at least one offence, while four were referred to a diversion court.<sup>7</sup> Of the 55 who were found guilty, 43 received a custodial penalty. Of note is the fact that 11 of the 55 had all their charges dismissed or withdrawn.

Figure 4 illustrates the penalty type by bail risk category to which they were assigned. As shown, those in the higher risk groups were more likely to receive a custodial penalty than those in the low and very low groups. Although numbers are small and should be interpreted with caution, the likelihood of a custodial penalty for the medium risk category was generally similar to that of the higher risk groups.

<sup>7</sup> That is, the Drug Court or Mental Impairment Court.

**Figure 4: Penalty type received by bail risk category**



## Stage 2: In-depth analysis of individuals within bail risk categories

The Bail Risk measure outlined above is based, as stated, on only four criteria. If these were the only factors taken into account, then it could be argued that only those in the Low to Very Low risk groups may be potential candidates for bail while those in the high risk groups would be unlikely to get bail under current decision-making regimes. In other words, one would expect that none in the High to Very High risk group would be granted bail if they applied, while at least some (if not all) in the Low risk groups would be successful.

Stage 2 of the study aimed to test this by asking two questions:

- First, did any of the 66 in the High to Very High risk groups apply for bail during the remand episode, and if so, were they all rejected?
- Second, did any defendants in the Very Low to Low risk groups apply, and if so, were they all given bail?

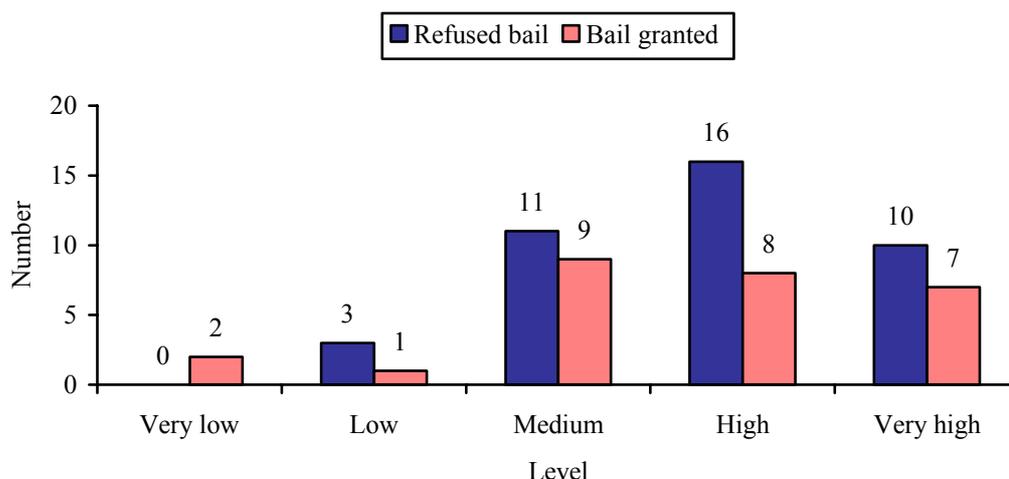
The results, as outlined below, were only partially in line with expectations.

### *Bail risk categories by bail outcomes*

Of the 100 defendants in the study group, 67 applied for bail during the remand episode. Individuals in the Very High bail risk category were the least likely to apply for bail with just over half applying for bail compared with approximately two thirds of the Medium and High risk groups, and seven of the 10 individuals in the Low bail risk categories.

Of the 67 remandees in the study group who applied for bail at some stage during the remand episode, 27 were granted bail. In contrast to expectations, when the bail outcomes were compared by bail risk category, a substantial number of remandees in the High to Very High risk categories were granted bail during the remand episode (n=15), while conversely, three in the low risk categories (ie half of the those who applied in these groups) were refused bail (see Figure 5).

**Figure 5: Bail outcomes by bail risk category**



These findings indicate that at least some individuals classified as high bail risks on the basis of the four selected criteria were still considered by judicial officers to be eligible for bail at some stage during the processing of their case. This suggests that, while the application of the Bail Risk measure to the remandees in the sample can provide a broad estimate of potential bail risk, these categories are not definitive. Clearly, factors other than the four selected criteria influence the bail decision which, by extension, means that in trying to estimate the number of current remandees who may or may not be appropriate candidates for bail, it cannot be assumed that all in the high to very high risk groups will be automatically ineligible or that all in the low to very low risk groups will be eligible.

This raises the question: ‘What are some of the other factors are operating and what does this mean for our estimates of who might or might not be candidates for diversion?’ To consider this more closely, in Stage 2 of the study those individuals within each of the bail risk categories were examined in more detail to try to identify the reasons why some were granted bail while others were not. This information was then used to refine our original estimates of the numbers who could be eligible for bail, particularly if other strategies/options were introduced. The analysis was also extended to consider those who chose not to apply for bail during the remand episode.

To simplify the analysis the five original bail risk categories were combined into three groups of Low, Medium and High risk.

### **Low Risk Group**

There were 10 individuals in the study group in the Low risk categories. For these:

- The major charges were serious criminal trespass, illegal use of a motor vehicle (3), breach of bail, driving unlicensed, drink driving, possession of drugs and indecent behaviour.
- Eight of the ten remandees in this category had no prior findings of guilt, while two had between 1 and 5. (Note that traffic and good order offences were again excluded from the count of priors).
- Five had at least one prior warrant of apprehension, while only one had a prior breach of bail.

Three did not apply for bail during the remand episode, three applied but were refused, and three were granted bail. There was also one remandee who applied for bail but there was no record of a bail outcome.

These groups are analysed in more detail below.

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### ***Never applied for bail***

- It is likely that one of the three remandees in this category did not apply due to the seriousness of the major charge. He was charged with aggravated serious criminal trespass and was eventually convicted and sentenced to imprisonment for 5 years and six months.
- One remandee who did not apply for bail during the current remand episode had a major charge of illegal use of a motor vehicle. He had previously been on bail for the offence, but had failed to appear and had subsequently been apprehended and returned to custody. This may have dissuaded him from re-applying for bail.
- There was no indication as to why the third remandee in this group did not apply for bail. He had a relatively minor offence (drink driving). He had at least one previous warrant of apprehension but no record of a bail breach. He spent 33 days in custody before being convicted and receiving a suspended sentence. Based on the severity of the offence, it is arguable that this individual may have been granted bail if he had applied.

### ***Refused bail***

- One of the three remandees in the low risk group who were refused bail during the remand episode had previously been granted bail when he first appeared in court prior to the start of the remand episode. However, he had subsequently failed to appear. When he re-applied for bail during their current remand episode, he was refused. The reasons given for refusal were the seriousness of offence (major charge of larceny) and risk of absconding for the other.
- Another remandee who had been refused bail had earlier been charged with a breach of bail, and his current application was refused due to a risk of absconding.

### ***Granted bail***

- For one remandee (major charge of illegal use of a motor vehicle) the current remand episode occurred at the beginning of his court case. He spent five days in custody while a home detention report was prepared and he was eventually released on home detention bail. This raises the question of the appropriate length of time defendants are required to wait for home detention checks and whether the time taken for this process could be reduced.
- Two remandees in the Low risk groups were also granted bail at the beginning of their case but were unable to meet their bail conditions and remained in custody until the offences were finalised. One individual charged with indecent behaviour spent seven days in custody as he was unable to find an appropriate guarantor. He had previously been on bail for this offence, but had failed to appear in court. It is possible that the prior failure to appear influenced the Magistrate's decision to include the need for a guarantor as a condition of bail. The other remandee had a major charge of possessing drugs for sale and was in custody for 83 days after being granted bail because he could not provide the large guarantee that was required. However, this individual was from interstate, and so it is unlikely he would have been released without some form of guarantee to ensure his return.

### ***No bail outcome recorded***

- In addition to the *never applied*, *bail refused* and *bail granted* groups, there was one individual where the official bail outcome was unclear. He had a major charge of driving unlicensed and a previous record of at least one warrant of apprehension and at least one breach of bail. He also had a number of prior convictions, including break/enter and offences against the person. He applied for bail once, but while no record of refusal or reasons for refusal were found, he remained in custody for 49 days until he was convicted, with a penalty of a fine and a driver's licence disqualification.

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### ***Accommodation***

There was no evidence that any of the individuals in this group were in custody due to lack of suitable accommodation.

### **Summary of Low risk groups**

While caution should be used in drawing conclusions from the limited amount of information detailed above, it could be argued that of the 10 low risk individuals, six could have potentially been diverted from custody if alternative strategies had been in place. This included;

- one individual who did not apply for bail during the episode but was charged with a relatively minor offence and had no prior record of a bail breach;
- two individuals who were granted bail but remained in custody because they could not meet the bail conditions;
- one individual who was held in custody pending the preparation of a home detention report; and
- two individuals who, although they were either refused bail or did not apply for bail during the current episode, had been on bail at an earlier stage of the case but had failed to appear in court.

### **Medium Bail risk group**

There were 24 remandees in this bail risk group. Of these:

- The majority had a relatively serious offence - 19 had a major charge with a severity level of High or Very High, including homicide (3), assault (3), sexual offences (5) and armed robbery (1).
- In contrast, the majority had either no prior offending (n=9) or only low levels of prior offending (n=11).
- Only one individual in the group had at least one breach of bail in the previous five years and only six had a prior warrant of apprehension.
- Four did not apply for bail, 11 were refused bail and nine were granted bail.

### ***Never applied for bail***

Compared with those medium risk individuals who applied for bail, the four remandees who did not apply during the remand episode had relatively serious offences. All four remandees had a major charge in the very high severity category (murder, aggravated robbery, aggravated assault and sexual assault) compared with 11 of the 20 who applied for bail. None of the four remandees in this group had been granted bail previously for the charges. Of the two defendants whose cases were finalised, both received a custodial sentence (8 and 13 years). While it is not possible to anticipate the bail outcome for these individuals had they applied for bail, it would be reasonable to assume they had a high likelihood of being refused.

### ***Refused bail***

The 11 individuals in the medium risk category who were refused bail during the remand episode had major charges ranging from *driving while licence cancelled or suspended* to *murder*. As with the 'never applied' group, none of these individuals had previously been granted bail and subsequently failed to appear prior to the current remand episode. They were compared with those who were granted bail to assess what factors might have influenced the remand decision. Somewhat surprisingly, it was found that the two groups were very similar. With the exception of four remandees whose most serious charge was a sexual offence, offence types were similar between the refused and granted groups. In addition, remandees who were refused bail were no more likely to have prior offences, warrants of apprehension or prior breach bail offences than those who subsequently obtained bail.

While it is acknowledged that the specific details of each offence were not available and that this may have had an impact upon the bail outcome, in general this finding supports the notion that the bail risk of individuals within this category is 'borderline'.

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### ***Granted bail***

Of the nine remandees in the medium bail risk group who were granted bail:

- Four were unable to meet their bail conditions immediately and spent additional time in custody (periods of 1, 7, 16, and 356 days after bail was granted). One individual spent almost 12 months in custody after he was unable to provide the guarantee. According to the records, he did not re-apply for bail until one year after bail was initially granted.

Of the four who were unable to meet their bail conditions immediately, one had initially been granted bail for the charges, but had failed to appear. This individual (charged with *drive while disqualified* and *illegal use of a motor vehicle*) was subsequently granted bail after 71 days in custody. It is possible that the original failure to appear contributed to remand episode.

- Five remandees were able to meet their conditions when they were granted bail. Of these, three were initially refused bail. It is not known what circumstances changed to enable subsequent bail applications to be successful.

### ***Accommodation***

Again, lack of accommodation did not appear to be a major issue contributing to the custodial remand of the individuals in the study group. There were only two remandees in the Medium bail risk category who had unsuitable residence listed as a reason for bail and one of these was eventually granted bail.

## **Summary of Medium risk group**

Based on the above results, it could be argued that, of the 24 in the medium risk group, all nine who were granted bail during the remand episode could potentially have been diverted from custody if appropriate strategies and options had been in place.

## **High Risk Categories**

There were 66 individuals in the study group who were in the High risk categories. Of these:

- Approximately 40% had very serious offences, including homicide (4), assault (11), sexual offences (5) and armed robbery (7);
- The majority had a high number of prior offences, with 55 (over 80%) having 11 or more prior convictions for the selected offences;
- Almost all had a previous warrant of apprehension (60), while two-thirds (45) had a prior breach of bail.

Of the 66 individuals, 25 never applied for bail, 26 applied during the remand episode but were refused and 15 were granted bail.

### ***Never applied for bail***

- The most serious charges for the 25 High bail risk remandees who never applied for bail ranged from *drink driving* to *murder*.
- When compared with those who did apply for bail (whether refused or granted), it was found that the 'never applied' group were more likely to have more serious charges. Sixteen of the 25 remandees who did not apply had a charge with a very high severity rating, compared with 13 of the 41 individuals who did apply.

- There was very little difference in the proportion of remandees not applying for bail who had a warrant of apprehension in the previous five years compared with those who did apply (88% compared with 90%). However, remandees who did not apply were less likely than those who applied to have a prior breach of bail (40% compared with 78%).
- There was also a higher proportion of remandees who were identified as Indigenous in the group that did not apply (34% compared with 29% who did apply).
- Five of the individuals in the high bail risk categories were recorded as having failed to appear at an earlier stage in the current case. As indicated, it is possible that they would not be in custody at all, if not for their prior failure to appear in court.

With the exception of the five individuals who had previously been granted bail in the case but had failed to appear, these findings suggest that the majority of remandees in the high risk category who opted not to apply for bail would be likely to have bail refused, given the generally more serious nature of the charges involved.

### ***Refused bail***

When compared with remandees who were granted bail it was found that the 26 individuals in the High risk group who were refused bail were:

- More likely to have had a previous breach of bail (85% compared with 67%); and
- More likely to receive a custodial sentence at the end of the case (16 of the 18 individuals in the refused group whose cases were finalised compared with 3 of the 6 remandees who were granted bail).

However, there were three remandees in the High Risk category who were refused bail during the current remand episode, but who had been granted bail previously in the case and then had failed to appear. The most serious charges involved for the three were *manufacturing drugs*, *receiving* and *larceny/illegal use of a motor vehicle* respectively, with two of the three remandees having more than 20 prior convictions. Despite the serious nature of the charges and/or the high number of priors, it is noted that they were initially considered suitable for bail and that the current remand episode for these individuals may have been avoided if they had appeared in court when required.

### ***Granted bail***

As indicated, 15 of the 66 remandees in the highest bail risk group were granted bail during the remand episode. It is noted that the majority of these (12) had previously been refused bail. Again, it is not known from the available data what circumstances changed so that the remandee could be released. However, this indicates that an earlier refusal does not preclude the granting of bail at a later date, even in the High risk categories.

Of the 15 High Risk remandees who were granted bail:

- There were three who were granted bail who were unable to meet the bail conditions:
  - One had a major charge of serious criminal trespass and did not have a residence suitable for home detention. He did not apply again until six months later, when he was released on bail and referred to the Drug Court.
  - One with a major charge of illegal use of a motor vehicle was unable to provide a large guarantee and spent an additional three months remanded in custody before the case was finalised. He was convicted and received a fine and a driver's licence disqualification.
  - The third individual in this group had a major charge of theft from a person. He applied for and was granted bail approximately eight months after the start of the remand episode but could not provide the large guarantee. He spent an extra six days in custody before the case was dismissed.
- There were 12 remandees who were able to meet the conditions. Of these, there were three who did not apply for bail until well after the start of the current remand episode, increasing the time remanded in custody by 62, 90 and 152 days respectively. However, it is acknowledged that the personal circumstances of these individuals may have changed over the period and they may have been refused if they had applied earlier.

- None had been granted bail previously for the charges and failed to appear.

### Summary of High risk groups

Overall, the analysis of the 66 remandees in this category found that 15 did get bail at some stage during the remand episode. Again, it could be argued that all 15 could have avoided custodial remand or had the remand episode reduced had there been strategies in place to help with the provision of a guarantor or guarantee, or provide assistance/encouragement to apply for bail earlier.

In addition, there were eight remandees in this category who, while they did not apply for bail or were refused bail during the remand episode, had been granted bail earlier in the case and had subsequently failed to appear. As mentioned, the current remand episode for these individuals may have been avoided if they had appeared in court when required.

### Diversion from Custody

From the in-depth analysis, four groups were identified as having potential for diversion from custodial remand or a reduction in the time spent in remand. These groups are shown in Table 4.

**Table 4: Number of remandees who could potentially be diverted from remand**

Group/Issue	Risk category			Total
	Low	Medium	High	
Never applied for bail but low risk	1	0	0	1
Granted bail/conditions met	1	5	12	18
Granted bail/unable to meet conditions	2	4	3	9
Subtotal	4	9	15	28
Did not apply for bail or were refused bail during remand episode, but had previously been granted bail for charges and had failed to appear	2	0	8	10
Total	6	9	23	38

#### ***Group 1: Never applied for bail but appeared low risk***

As indicated in the previous analysis, only one of the 33 remandees who did not apply for bail appeared likely to be granted bail, based on information available.

#### ***Group 2: Granted bail/conditions met***

Overall there were 18 remandees who were granted bail when they applied during the remand episode and they were able to meet the conditions set. This raises the question of why they were remanded in custody in the first place and suggests that they are a target group for diversion.

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### ***Group 3: Granted bail/unable to meet conditions***

There were nine remandees who were granted bail but who were unable to meet the set conditions, generally in relation to the provision of a guarantor or guarantee.

Overall, on the basis of these three groups, 28% of the study group could potentially be diverted from custody with appropriate strategies, including alternatives to the provision of guarantors or guarantees and support to apply for bail.

### ***Group 4: Granted bail prior to remand episode but failed to appear in court***

In addition, there was another group who could potentially have avoided custody. There were 10 individuals who although they either did not apply for bail or were refused during the current episode, had been on bail for the current charges, prior to the remand episode. However, they failed to appear in court on the scheduled day.

It is not clear to what extent the failure to appear contributed to the subsequent remand in custody, as the reason was not on the court records. It is possible that the failure to appear was due to the disorganisation of the defendant, or the result of a deliberate attempt to avoid the court process. If it were a deliberate attempt to avoid the court process, then it can be seen as a serious failure of trust and an indication that bail was not appropriate for that individual. On the other hand, if the failure to appear was an oversight resulting from the chaotic or disorganised lifestyle of the defendant, then it may be that the defendant needs support, such as a telephone reminder, to avoid failure to appear. In the latter case, these persons may be targeted for strategies to improve the rate of appearance, which may flow on to a reduction in the incidence of custodial remand.

The fact remains that at some point within the case, these individuals had been assessed as eligible for bail. Therefore, up to an additional 10% of the study group could potentially have avoided custodial remand if there had been strategies in place to prevent/minimise failure to appear.

## **Conclusion**

Overall then, an analysis of the actual bail outcomes for a randomly selected sample of 100 detainees in custody on 30 June 2002 indicated that 38 could potentially have avoided custody if alternative strategies or supports were to be introduced.

This included:

- 6 of the 10 in the Low risk group
- 9 of the 24 in the Medium risk group and
- 23 of the 66 in the High risk group.

## **Summary**

This report summarises the findings of a study into male custodial remandees that aimed to determine the proportion for whom custodial remand is appropriate and the proportion that could potentially be diverted from custody if alternative strategies or supports were put in place.

In Stage 1 of the study, a simple Bail Risk measure was developed using four factors most frequently taken into account by judicial officers. When applied to a randomly selected sample of 100 male remandees who were in custody on 30 June 2002, it was estimated that very few could be diverted from custody. This included 10% who were classified as low risk, with possibly a small percentage of remandees from the medium risk category. Conversely, it was estimated that the majority (66%) of the sample were either a High or Very High Bail risk and custodial remand was more likely to be appropriate for these individuals. Based on the findings from the Bail Risk measure, the chances of reducing remand in custody appears slight.

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However, it is acknowledged that the four factors within the Bail Risk measure are not the only factors taken into account by judicial officers. Therefore, Stage 2 of the study involved a closer look at the actual bail outcomes for the 100 remandees in the study group including how many applied for bail, how many had previously been granted bail but had failed to appear and how many had delaying applying for bail. This in turn was used to determine the type of strategies required to avoid custodial remand in the first instance.

While caution should be used in generalising the results to the wider custodial remand population, it is estimated that 28 individuals within the study group (28%) may have avoided custodial remand or at least spent a shorter period in custody if there had been:

- additional support to apply for bail at all, or to apply for bail sooner;
- an alternative system for the provision of a guarantor/guarantee; and
- strategies to reduce time taken to provide home detention checks.

In addition, it is estimated that the number of remandees who could potentially be diverted from remand may be increased by up to 10%, if strategies or supports were in place to prevent or minimise failure to appear.

It is important to note that 23 of the estimated 38 individuals who could potentially have avoided custodial remand were in the High risk category, as determined by the Bail Risk measure. This demonstrates that the measure itself is not a reliable indicator of the ‘appropriateness’ of custodial remand.