

The Future of Pre-charge Police Bail: an introduction

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Introduction

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

Current use

- Data are not routinely collected
- Extensive use
 - Around 70,000 to 80,000 suspects are on bail at any one time
 - 31% of those arrested are bailed (Home Affairs Select Committee, 2015)
 - 303,000 per year
 - 2% (19,600) are on bail for over 6 months
- Increasing use
 - Timing of arrest
 - Investigation techniques
 - Moves to reduce case processing times in court

Pre-charge bail landscape

- Little attention historically
- PACE review in 2007 and some parliamentary scrutiny in 2009 in relation to conditions
- *Hookway* (Greater Manchester Police v (1) Hookway, (2) Salford Magistrates' Court, AC, 19 May 2011)
- NPIA research report (2012)
 - Drivers for use
 - Unplanned arrests
 - Quality of initial investigations
 - Limited custody space/bail dates
 - Level of evidence required

Recent events

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

Proposed review structure

Cumulative time on bail	Reviewer
28 days	
Extension up to 3 months	Senior police officer
Further extensions (6,9, 12 months and so on)	Magistrates' court

- Home Office figures suggest 14% of cases will appear in the magistrates' court
- No review by the courts before 3 months

Pre-charge bail law

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

Bail for CPS advice

- Section 37(7) (a)
 - introduced in conjunction with statutory charging by Criminal Justice Act 2003
 - mechanism for bailing suspects awaiting charging decisions
 - Police believe they have sufficient evidence to charge
 - Unconditional or conditional bail

A complicated process

Suspect arrested and detained

- Police decide further evidence is required which cannot be gathered whilst the suspect is in custody



Suspect bailed under sections 34(5) or 37(2) for further enquiries

- Further enquiries are undertaken which result in sufficient evidence to charge



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



Suspect is charged and released on post-charge police bail



Pre-charge bail: an investigation in two police forces

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Aims and objectives of the research

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

Research design

- Empirical research in two police forces
- Observations in custody suites
- Administrative records of cases in which suspects were released on pre-charge bail (n=14,173)
- Questionnaires to police officers (n=297)
- Interviews with police officers (n=38)

The Law

- Different sections of PACE used to bail suspects
 - Inconsistent practice between and within forces
- Knowledge of the law was superficial
- Little or no training
- Relationship between 34(5)/37(2) and 37(7)

Purpose of pre-charge bail

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

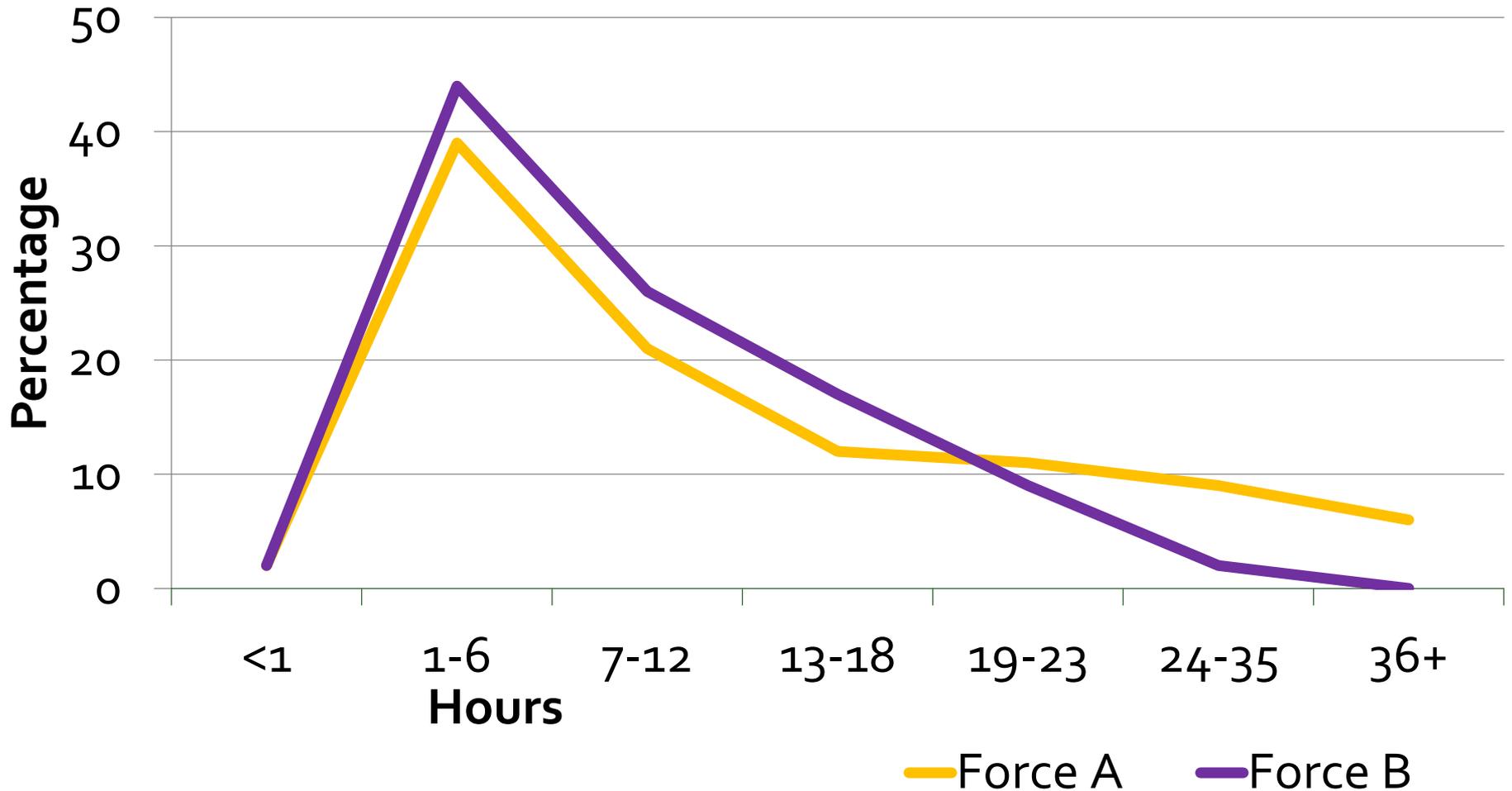
Use of pre-charge bail

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

Alleged offence types

	A (%)	B (%)
Violence	33	32
Theft-related	23	19
Property	19	13
Drugs	9	11
Disorder	6	6
Sexual	4	6
Traffic	3	7
Other	3	6
Total number	3924	10146

Time spent in detention before release



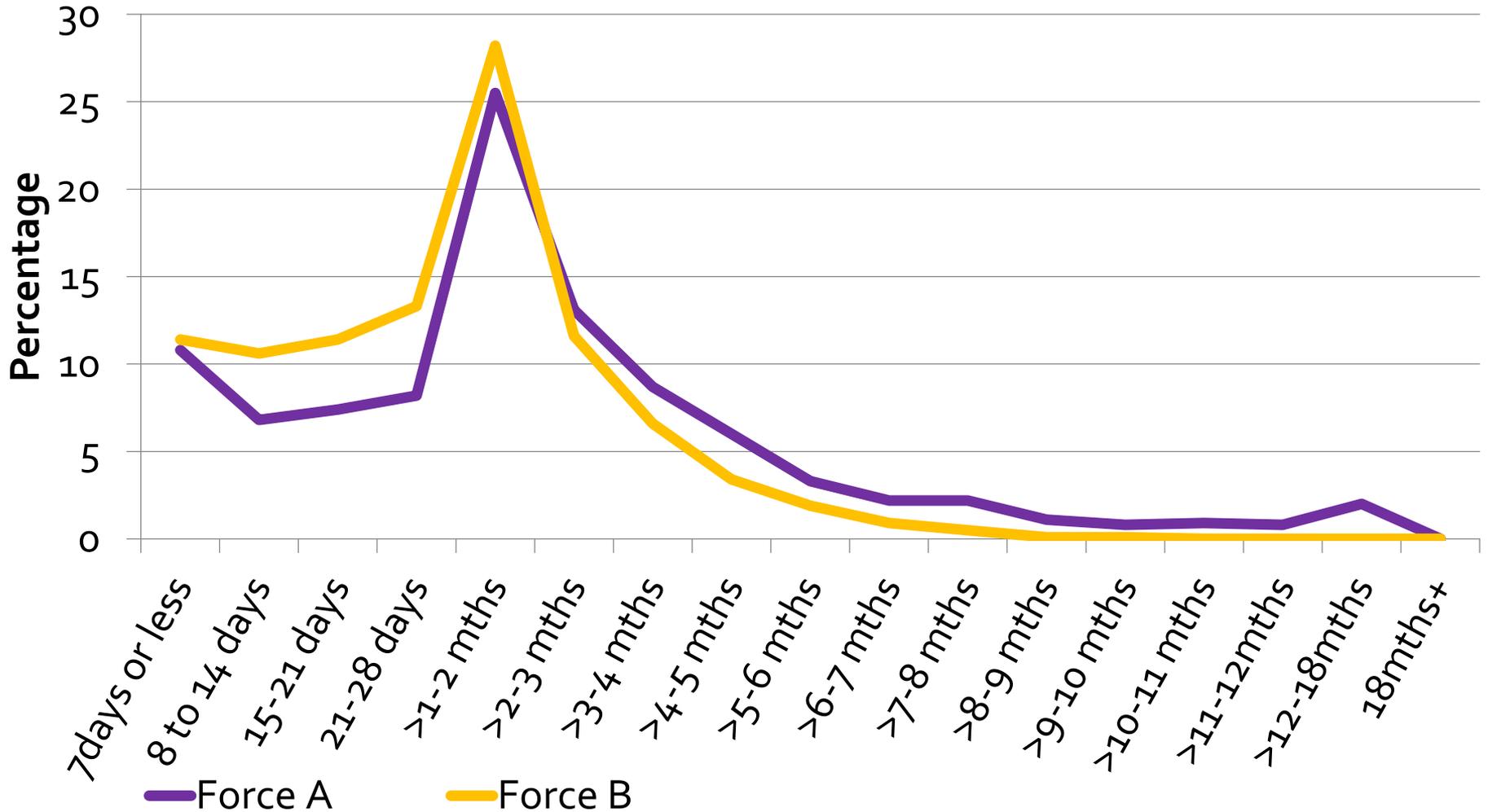
Rebails

- Data only available in Force A
 - 60% suspects bailed once
 - 21% twice
 - 10% three times
- Common reasons for rebailing suspects
 - delays with forensic evidence
 - delays in other agencies
 - officers' other commitments
 - witness availability
 - new developments with the case
 - No reviews
 - Lack of mechanisms to remind officers
- Stream-lined procedures
 - Re bail prior to bail date
 - Bailing at the front desk

Number of times bailed by custody suite in Force A

	One		Two		Three +		Total
Suites	N	%	N	%	N	%	N
A	179	72	47	19	23	9	249
B	452	68	148	22	65	10	666
C	165	67	41	17	42	17	248
D	206	66	65	21	42	13	313
E	245	65	74	20	61	16	380
F	149	64	48	21	36	15	233
G	163	63	58	23	37	14	258
H	153	61	45	18	52	21	250
I	347	61	123	22	98	17	568
J	163	61	59	22	47	17	269
K	227	60	78	21	74	20	379
L	49	56	18	21	21	24	88

Time on bail



Time on pre-charge bail by custody suite in Force A

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

Barriers to timely charging decisions

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

Bail conditions

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

Monitoring and enforcing conditions

- The presence of conditions was the main aim
- Less concerned with enforcement
- Enforcement was not routine
- Uncovering breaches was hit and miss
- Limited options for dealing with breaches
- Main purpose of monitoring was to provide evidence for application for custodial remand

Reviewing conditions

- Custody officers usually imposed conditions if recommended by investigating officers
- Conditions were not routinely reviewed when suspects were rebailed
 - Routine rolling-over of conditions
- Conditions were rarely questioned by suspects or solicitors

Outcomes

	Force A (%)	Force B (%)
Charged	39	39
Dealt with	9	12
No Further Action (NFA)	48	47
Other	4	2
Total number	3925	10149

Outcomes II

- Varied according to:
 - Sex
 - Offence types
 - custody areas
- Ethnicity

Release without bail

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

Conclusions

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