

power to protect

reform
scotland

power to protect

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About Reform Scotland

Reform Scotland is an independent, non-party think tank that aims to set out a better way to deliver increased economic prosperity and more effective public services based on the traditional Scottish principles of limited government, diversity and personal responsibility.

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Executive summary

Objective

In 'Power for the Public' Reform Scotland outlined lessons Scotland could learn from New York City to make policing more accountable and transparent and therefore more responsive to the public's expressed desire to see more 'bobbies on the beat'. However policing is only one aspect of the wider criminal justice system in Scotland designed to protect the public and ensure the maintenance of law and order. There are many different elements that feed into the criminal justice system from courts to social work and victim support to drug abuse. The purpose of this report is to focus in more detail on policing, courts and sentencing, and prisons and to examine what can be done in those areas to help bring about a long term fall in the rate of crime. 'Power to Protect' assesses the problem of crime in Scotland by examining key indicators and the solutions currently in place to address criminal behaviour, compares those crime levels with those in other countries and outlines what lessons Scotland can learn to make the country safer.

Reform Scotland recognises that youth justice and drug abuse are areas which cut across many other departments, including health and education, and as such will be the subjects of separate papers in the future.

Findings

- Over the past ten years in Scotland:
 - Spending on criminal justice has increased by 44% in real terms.
 - The total number of crimes and offences has increased by 4% to just over 950,000.¹
 - The prison population has increased by 22% to 7,376.

¹ According to *Recorded Crime in Scotland 2007/8* published by the Scottish Government, the term "crime" is generally used for the more serious criminal acts; the less serious are termed "offences", although the term "offence" may also be used in relation to serious breaches of criminal law. The distinction is made only for working purposes and the seriousness of the offence is generally related to the maximum sentence that can be imposed. For example minor assault is classed as an offence while vandalism is a crime, so therefore ignoring a class of figures may make the crime figures look better, but it ignores a number of breaches of the law and the victims they create

- When compared to other countries in Europe, Scotland is ranked:
 - In the top five for total number of crimes per head.
 - In the top five for number of homicides per head.
 - In the top five for drugs related crimes per head.
- For the 2.3million crimes the Scottish Crime and Victimization survey estimates are committed each year, only 138,830 people were convicted in Scottish courts last year.
- Most people receiving a custodial prison sentence are given a sentence of three months or less, with almost 2,000 people receiving a sentence of between 28 and 34 days.
- Although many commentators argue that Scotland’s prison population is too high, when compared to other countries Scotland actually sends a far lower proportion of criminals to jail.

Policy recommendations

Greater accountability within the police: We recommend police forces should match up to local authority areas and be accountable to councils rather than police boards. An individual councillor within the ruling council group should be given the responsibility for policing in each council area, in a similar way as councillors are given the responsibility for education or transport. Operational matters would still be left to the Chief Constable, however this structure would ensure that there were clear lines of accountability to the communities the police serve. Should areas adopt a system of local government with a directly elected mayor or provost², that individual could appoint a police commissioner to liaise with the police on his or her behalf.

We would also recommend that greater powers are devolved down within the police allowing different policing methods to be tried in different areas. To demonstrate the effectiveness or otherwise of the policies being pursued, we would recommend that localised crime statistics are published on a regular basis. As well as providing clearer lines of accountability, such policies should lead to more innovative ideas to combat crime and ultimately should lead to a fall in crime rates.

² As set out in Reform Scotland’s report, ‘Local Power’.

Publish the number of crimes prosecuted in courts: We recommend that in future statistics are produced which show the actual number of crimes and offences prosecuted, and the number of crimes and offences which result in a guilty verdict. At present while the actual number of crimes and offences are recorded, when it comes to court proceedings, it is the number of individuals prosecuted and convicted that is recorded. This makes it impossible for accurate conviction rate statistics to be produced or to see how the crime rate compares to what is happening in courts.

Area Procurators Fiscal to be directly elected: Procurators Fiscal can make crucial decisions about whether, where and how crimes are prosecuted in Scotland, yet, as with the police, there is little transparency or accountability to the public within the system. We recommend that each of the area Procurators Fiscal who head up the 11 offices in Scotland should be directly elected from the area they represent. We would not envisage these elections being party political and would expect the elections to be between legal professionals fought on the policies and attitudes the individual would adopt in office. We recognise that such a move would have an impact on the role of the Lord Advocate which would need to be examined more fully in conjunction with the legal profession.

Judges to have full range of sentencing disposals: We recommend that Judges should have access to a full range of disposals when handing down a sentence, so that the most appropriate and effective sentence is imposed by the court. At present, various limits are placed on them. For example, at present a judge or sheriff may believe that a Supervised Attendance Order (SAOs) is the correct disposal for an offender. However, that sentence is only available once an offender defaults on a fine. Equally Drug Treatment and Testing Orders (DTTOs) are only available in the Sheriff and High Courts. However, someone who has committed their first minor offence due to a drug habit will probably be sent to a district or justice of the peace court. It is only once they have graduated onto their career of crime that the sentence that possibly best suits them becomes available. We believe all sentences, including SAOs and DTTOs, should be available to every court in the first instance. If the most appropriate sentence is given at the earliest opportunity this should hopefully lead to a reduction in re-offending.

Sentences should be carried out in full: We recommend that schemes like early release should be scrapped with any reduction in time served purely as a result of good behaviour. If sentences, either in prison or in the community, are not properly enforced it makes a mockery of the justice system and is less likely to deter others from committing crimes. We therefore believe that once the judge has decided on the sentence it should be the responsibility of the state to ensure that the sentence handed down is carried out. This should apply whether the sentence is an alternative to custody, or a period in prison.

No-one sent to jail for a sentence in the first instance of less than 3 months: We recommend that people should not be given sentences of less than 3 months. There is little point in sending people to prison for sentences of less than three months. As well as costing the taxpayer a lot of money, such sentences offer little time for rehabilitation and can end up pushing a person towards a career in crime and re-offending rather than away from it. Therefore we recommend that District and Justice of the Peace Courts, which can currently sentence someone to a maximum of 60 days, are no longer able to send people to jail at all in the first instance. However, should an offender breach the conditions of his alternative sentence; the ultimate sanction of jail should still be available. In addition Sheriff Courts should only be able to send anyone to prison in the first instance for a sentence period of over three months. There is no good reason why some level of rehabilitation and training cannot be offered to a prisoner serving a sentence of three months or more.

More innovative rehabilitation within prison: We would encourage prisons to come up with innovative schemes, including involving the private sector in the training of prisoners in useful skills as well as schemes which could consider incentivising prisons and staff for lower re-offending rates. One of the main purposes of prison is to rehabilitate, however too often overcrowding in prisons has led to a weakness of rehabilitation programmes with re-offending rates remaining too high. We would accept that not all prisoners will choose to participate in such programmes, however with the removal of automatic early release; successfully completing rehabilitation and training programmes could help prisoners earn time off their sentences.

Conclusion

The maintenance of law and order is the premier public service and the ultimate goal of that service has to be to reduce crime rates in order to better protect the public. While the reduction in crimes and offences in 2007/8 is to be welcomed, to successfully reduce levels of crime and offences over the longer term requires some radical new thinking. There are a number of issues from family breakdown to drug abuse which all need to be tackled to successfully reduce crime. Many of these areas need people to take individual responsibility for their actions; however the government can also help deliver lower crime rates by changing the way services are delivered.

Despite a huge increase in criminal justice spending and comparatively high levels of spending per head compared to other European countries, Scotland is failing to adequately protect its citizens from high rates of crime. However, Reform Scotland believes that high crime rates are not inevitable. As other areas around the world have proven, adopting the right policy framework, within which the police, courts and prisons services can all contribute towards a reduction in crime is the key.

By increasing transparency and accountability within the criminal justice system in Scotland innovative ideas which will vary from place to place, can be developed which can help contribute to a lower overall level of crime. Reform Scotland believes that the policy recommendations outlined in this paper will help deliver such a crime-fighting system.

1. Introduction - crime in Scotland

In 2006/7 Scotland spent £1.6billion on criminal justice and the Crown Office and Procurator Fiscal Service, an increase of 44% in real terms on the previous decade.³ Despite this increase in funding, although the reduction in crimes and offences reported in 2007/08 is to be welcomed, the levels are still higher than they were ten years ago.⁴ Indeed crimes and offences in Scotland have been steadily increasing since the end of World War Two.

Figure 1: Long term changes in the criminal justice system⁵

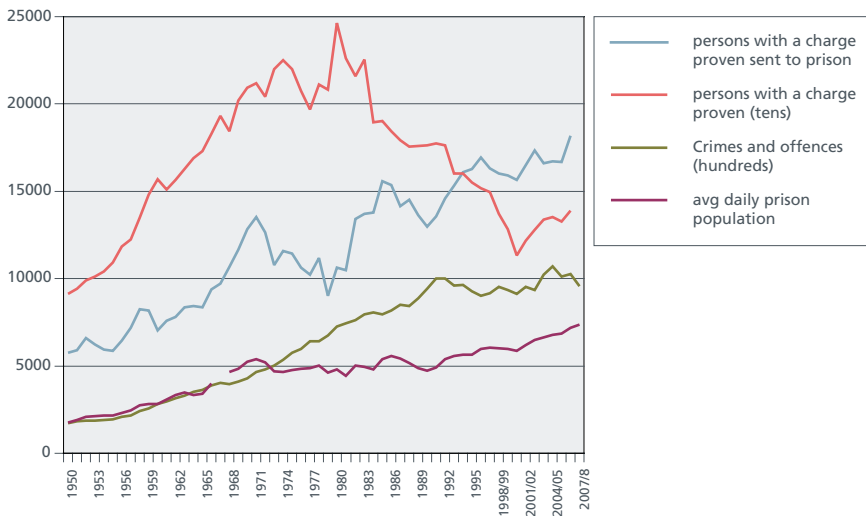


Figure 1 also illustrates that over the same period although the number of people found guilty of a crime and sent to jail has increased along with the daily prison population, the conviction rate has generally been falling since the early eighties.

³ S2W-24534

⁴ In 1997/98 the total number of crimes and offences was 917,170. In 2007/08 it was 957,390.

⁵ S2W-17682, 17684, 17685, 22251 and 22252; Scottish Government, "Criminal proceedings in Scottish Courts 2006/7", June 2008; "Recorded Crime in Scotland 1998", 1999; "Recorded crime in Scotland 2006/7" 2007; "Recorded crime in Scotland 2007/08", 2008; "Prison Statistics Scotland 2007/8" 2008.

However official figures, like those used in [Figure 1](#), only include crimes and offences which are actually recorded. Many crimes are not reported to the police - the 2006 Scottish Crime and Victimization Survey found that only 4 in 10 crimes were reported to the police.⁶ This could mean that the true level of crimes and offences in Scotland in 2007/8 was over 2.3million compared to the 957,000 that were actually reported.⁷

But then not all the reported crimes, or even those which are cleared up, will actually be prosecuted in the courts. Unfortunately official government figures don't record the number of crimes prosecuted in court, rather focusing on the people, many of whom will be tried for more than one offence. Although parliamentary questions have been asked to try and achieve the information, they have not been directly answered⁸; therefore it is near impossible to work out an accurate conviction rate or to measure the proceedings in court against the crime rate.

However on the basis of the information that is available, about 18 crimes occur for every one person found guilty in a Scottish court, as illustrated by [Table 1](#).⁹

Table 1

Estimated true crime and offences figure 06/07	2,562,142
Number of crimes and offences reported to the police 06/07	1,024,857
2006/07 clear up rate for crimes and offences	74.4%
Number of crimes and offences cleared up by the police	762,864
Persons proceeded against in court in 2006/7	154,000
Persons found guilty in Scottish courts in 2006/7	138,830

The illustration is even starker when broken down by crime category. For example there were 14,099 non sexual crimes of violence in 2006/7 though only 2,364 people were found guilty in court; 6,726 crimes of indecency with

⁶ Scottish Government, "2006 Scottish Crime and victimisation survey: main findings", 2007

⁷ 957,390 crimes and offences were reported in 2007/08 according to Recorded Crime in Scotland 2007/08 published by the Scottish Government. If that figure represents only 40% (4 in 10) of the crimes and offences actually committed this puts the true figure at approximately 2,343,475.

⁸ S3W-15185 and 15186

⁹ Figures for 2006/07 are used as this is the latest year statistics are available for criminal proceedings in Scottish Courts.

¹⁰ Scottish Government, "Criminal Proceedings in Scottish Courts 2006/07", June 2008

only 841 people found guilty; 183,760 crimes of dishonesty with only 18,401 people found guilty; and 129,734 acts of fire-raising or vandalism with only 5,429 people found guilty.

Scotland's crime rate also compares unfavourably with other countries in Europe as illustrated by Figures 2 to 4:

Figure 2: Criminal offences per 10,000 people across Europe in 2006¹¹

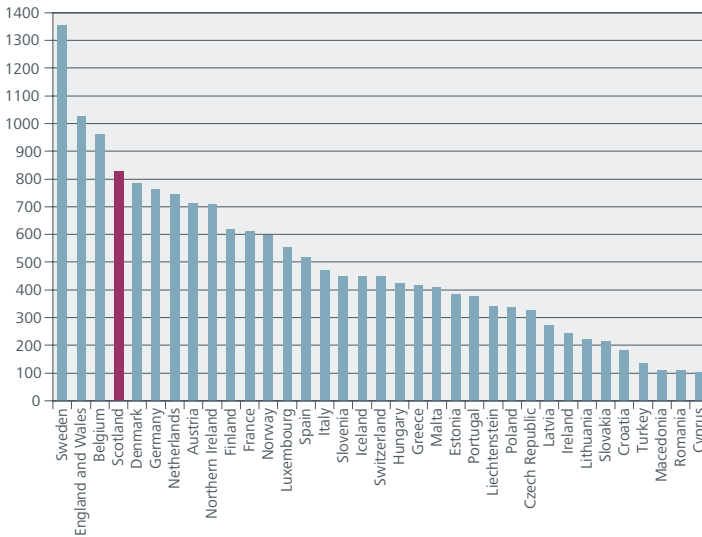


Figure 3: Homicide per 10,000 across Europe in 2006¹²

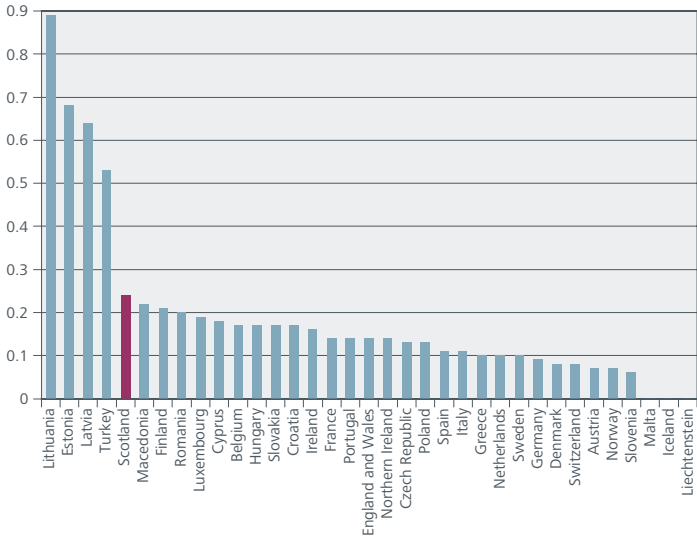
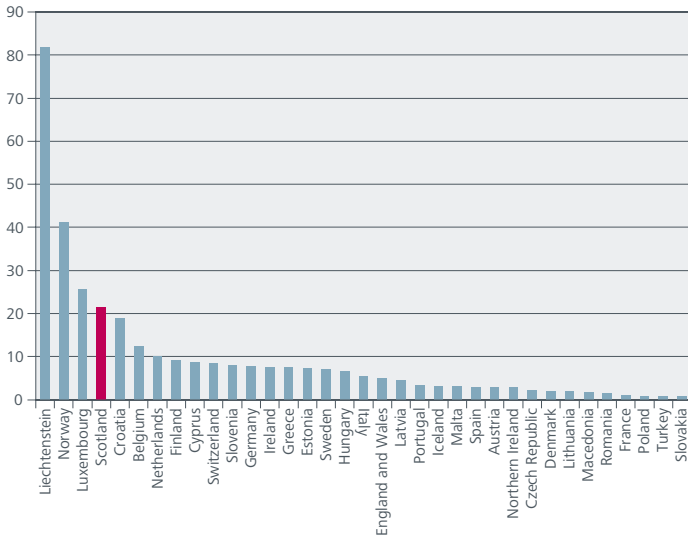


Figure 4: Drug trafficking per 10,000 people across Europe in 2006¹³



12 EUROSTAT

13 EUROSTAT

However it is not only the crime statistics that indicate there is a problem with the criminal justice system in Scotland. A number of Sheriffs, judges and police officers have also openly criticised the current system claiming it is failing to protect the public.

The following is a selection of some of the criticism:

- *“I and every other sheriff can no longer give any assurance to the public that they are going to be protected for any particular period if our decisions can be overruled by a person who has neither heard the facts of the case nor had any input to the judicial decision to select a particular length of custody.”*

Sheriff Robert Dickson, 19th June 2008, following the case of Jason Jarvie who was freed from a young offenders’ institution less than a third of the way through a 15-month sentence and went on to re-offend.¹⁴

- *“I’d be failing in my duty to the public if I did not make it clear that, in my opinion, judicial disposals are largely meaningless and the system is being brought into disrepute.”*

Sheriff Kevin Drummond, 20th May 2008, following the early release of James Easton who then went on to re-offend.¹⁵

- *“Over the years I have spoken both formally and informally to the Social Work Department about the content and length of the Social Inquiry Reports provided. The responses I have received have been wholly unproductive to the extent that I have been informed that these reports are prepared to a formula and in a style laid down by the department...I am driven to the conclusion that social inquiry reports are prepared by the department for the department.”*

Sheriff Kevin Drummond, 31st July 2008, complaining about the length and content of social inquiry reports given to the court.¹⁶

¹⁴ BBC News online, “Sheriff’s anger at early release”, 19 June 2008

¹⁵ Scotsman, “Sheriff blasts early release as arsonist caught with drugs”, 21 May 2008

¹⁶ Daily Express, “Sheriff calls social work reports a waste of time”, 1 August 2008

- *“It is a source of controversy, deriving to some extent from its lack of transparency, with the consequence that individuals, including judges and others within the criminal justice system, just do not understand how some aspects of it operate.”*

Lord Macfadyen, 21st June 2005, arguing that the law governing early release and any supervision in the community was complex.¹⁷

- *“I tell you this, right here and now, you are lucky this charge was not brought on indictment, because if it had been that would have allowed me to pass the custodial sentence this case deserves. I can’t because you are first offenders and it is on summary complaint. The maximum I can sentence you to is three months, which is woefully inadequate”*

Sheriff Gordon Liddle, 27th November 2007, criticising the legal restrictions which stopped him putting two Edinburgh teenagers in custody for longer for an unprovoked attack on a stranger.¹⁸

- *“To be honest, I’d put the figure nearer 5% (of police available for frontline duties). Sometimes stations are virtually deserted, especially if something big is going on in another division. Paperwork and ridiculous training courses take up so much time, but even more basic things like not having enough cells and having to transport prisoners across town just add to the headaches”*

A police officer, who wanted to remain anonymous, comments to Scotland on Sunday about the levels of frontline officers available.¹⁹

- *“What does a person have to do not to qualify for a home-detention curfew, because that behaviour is quite appalling”*

Sheriff Wyllie Robertson, 2nd July 2008, commenting on the behaviour of Melissa Lafferty who has caused a lot of disorder and offences whilst inside Cornton Vale Prison but was still released and given a home detention curfew after serving 10 weeks of a nine-month sentence.²⁰

¹⁷ The Times, “Early release in confusion, says judge”, 22 June 2005

¹⁸ BBC News online, “Sheriff criticises restraints”, 27 November 2007 Since the case, the maximum sentence which can be passed on summary conviction has been increased from 3 to 12 months

¹⁹ Elias. R, “Only one in 13 police are on the beat in Scotland”, Scotland on Sunday 5/11/07

²⁰ Howie. M, “Sheriff slams home detention curfews after violent inmate freed”, Scotsman 8/7/08

- *“When you are looking at crimes of violence, I don’t feel a financial penalty is appropriate. Crimes of violence – and I would include housebreaking as a crime of violence, having been a victim a few years ago because you feel victimised in a violent way – to me, that’s a custodial sentence”*

Chief Constable Stephen House in an interview with the Daily Mail where he also criticised knife laws and the pressure placed on the police in monitoring sex offenders.²¹

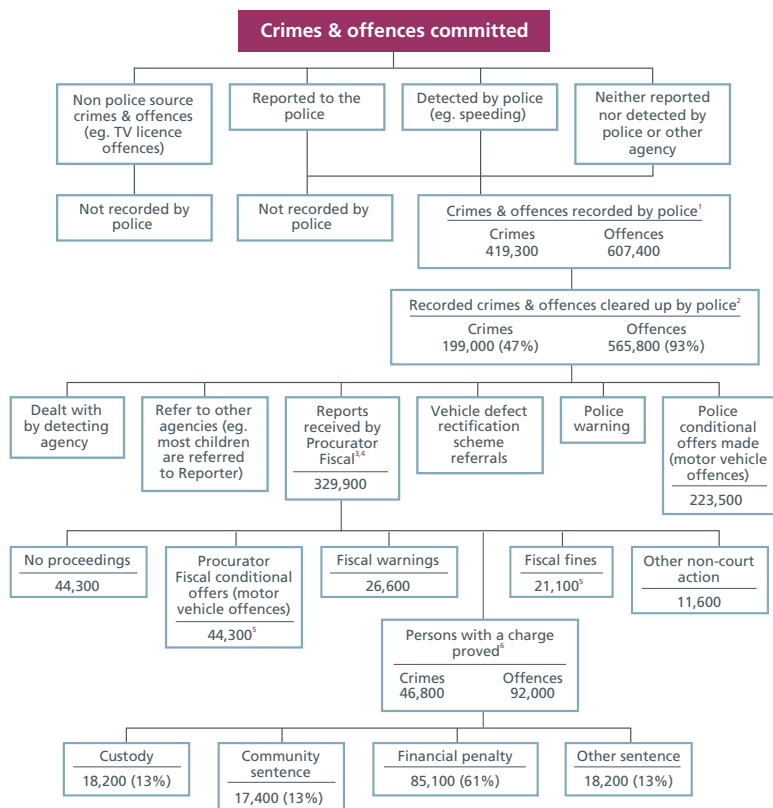
However, despite this depressing outlook increasing crime rates are not inevitable. The next section explains how the main elements of the criminal justice system operate in Scotland, with the subsequent chapters offering policy recommendations aimed at turning Scotland’s crime problems around.

²¹ Grant. G, “Police Chief: We are soft on crooks”, Daily Mail, 11 August 2008

2. Overview of the Scottish criminal justice system

The purpose of this section is to set out the basic workings of the key elements of the criminal justice system in Scotland, explaining the police, courts and prison services. Chart 1 below illustrates the rough process of what happens from when a crime or offence is committed to a person being found guilty in court and sentenced.

Chart 1: Overview of action within the criminal justice system 2006/07



1. Figures rounded to nearest 100
2. Crimes reported in 2006/07 may not be cleared up or dealt with until 2007/08 or later
3. A report to the procurator fiscal may involve more than one crime or offence and more than one alleged offender
4. The total number of reports to the fiscal includes reports on non-criminal matters such as sudden deaths
5. Figures relate to cases which were closed as offer accepted
6. Figures for persons with a charge proved count the number of occasions on which a person is convicted.

2.1 Policing

As at 31 December 2007 there were 16,267 police officers in Scotland spread across eight territorial police forces²². Two forces, Dumfries & Galloway and Fife, are governed by unitary police boards made up of councillors from only one council as they each cover only one local authority area. The remaining six forces, Central, Grampian, Lothian & Borders, Northern and Strathclyde each cover many local authority areas. As a result, their respective police boards are comprised of councillors from each of the local authorities the force covers. The Police Board is presided over by one of the councillors.

The Police (Scotland) Act 1967 provides for the 'tripartite' sharing of legal responsibility for policing by Chief Constables, Scottish Ministers and Police Boards. Generally, Scottish Ministers have policy responsibility for law and order; Police Boards are responsible for determining the budgets available to the police force, determining officer numbers and appointing senior officers; whilst Chief Constables are responsible for operational matters including police deployment. This separation of powers in the Scottish structure is designed to ensure that operational matters do not become politicised.

In addition to the eight territorial police forces, there is also the Scottish Crime and Drug Enforcement Agency with the purpose of detecting and preventing serious and organised crime at a national level.

2.2 Courts and sentencing

Elish Angiolini is the Lord Advocate, the most senior law officer in Scotland. She is responsible for heading up the prosecution service in Scotland, including the appointment of procurators fiscal, as well as acting as the main legal adviser to the Scottish Government and represents the Scottish Government in legal proceedings.

The Crown Office and Procurator Fiscal Service (COPFS) is responsible for the prosecution of crime in Scotland. The COPFS is split into eleven areas, each headed by an Area Procurator Fiscal. The boundaries coincide with police force areas except for Strathclyde which is split into four COPFS areas. The 11 areas are:

²² www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/TrendPolice

- Argyll & Clyde
- Ayrshire
- Central
- Dumfries & Galloway
- Fife
- Glasgow
- Grampian
- Highlands & Islands
- Lanarkshire
- Lothian & Borders
- Tayside

The Area Procurator Fiscal is responsible for the effective, efficient and economic management of District offices and the quality of decision making in those offices. The Procurator Fiscal's responsibilities in relation to crime committed in Scotland covers both its investigation and its prosecution. The Procurator Fiscal receives and considers reports of crimes and offences from the police and other reporting agencies and decides whether or not to take criminal proceedings in the public interest. The factors which they have to consider include:

- Seriousness of the offence
- Length of time since the offence took place
- Interests of the victim and other witnesses
- Age of the offender, any previous convictions and other relevant factors
- Local community interests or general public concern
- Any other factors at his discretion, according to the facts
- Circumstances of the case

As illustrated in [Chart 1](#) the Procurator Fiscal can also issue fiscal fines and fiscal warnings as well as deciding to pursue the alleged offender in court. Once a Procurator Fiscal decides that court proceedings are the appropriate course of action, it is also the Procurator Fiscal which decides which court that an individual should be tried in. This is a very important element as the type of court impacts on what sentence can be handed down if the person is found guilty. The Procurator Fiscal and their deputies also prosecute cases in all courts except the High Court of Justiciary.

The Judicial Appointments Board for Scotland, made up of an equal balance of lay and legal members, provides the First Minister with a list of candidates recommended for appointment as either Judges, Sheriff Principals or Sheriffs, from which the First Minister makes legal appointments. The Judicial Appointments Board for Scotland also approves the procedures for the appointment of Justices of the Peace.

Types of court

The Scottish Court Service is responsible for the administration of all courts in Scotland with the exception of district courts, which are administered by local authorities.

High Court

The High Court of Justiciary is Scotland's supreme criminal court with jurisdiction over all of Scotland and all crimes and with the widest range of sentencing powers. The court is used as both a trial court, where it deals with the most serious crimes such as murder, rape and serious sexual offences, as well as a court of appeal. When sitting as a trial court, the court is presided over by a single judge and a jury of 15 men and women, when sitting in its appellate jurisdiction it sits only in Edinburgh and is presided over by at least three Judges when hearing appeals against conviction or two when hearing sentence appeals. However more judges may sit when the court is dealing with exceptionally difficult cases or those where important matters of law may be considered.

Sheriff Courts

There are a total of 49 Sheriff Courts in Scotland split between six sheriffdoms:

- Glasgow & Strathkelvin
- Grampian, Highland & Islands
- Lothian & Borders
- North Strathclyde
- South Strathclyde, Dumfries & Galloway
- Tayside, Central & Fife.

Sheriff Courts either deal with summary cases, where a sheriff sits alone and can impose a prison sentence of up to 12 months and/ or a fine of up to £10,000, or deal with solemn cases where a Sheriff sits with a jury and can impose sentences of up to five years in prison and an unlimited fine.²³ Sheriffs presiding over solemn cases can remit the case to the High Court if they believe their sentencing powers are not adequate for the case.

District Courts/ Justice of the Peace Courts

District Courts were established in and administered by each local authority area by the District Courts (Scotland) Act 1975. The courts only deal with summary cases and are presided over by one or more lay justices of the peace. Generally District Courts deal with minor offences and have limited sentencing power. The maximum sentences which can be imposed are imprisonment up to 60 days and a fine up to £2,500. In Glasgow, the District Court can also be presided over by a qualified stipendiary magistrate who has the same sentencing powers as a Sheriff sitting in a summary court.

However the Criminal Proceedings etc (Reform) (Scotland) Act 2007 is phasing out District Courts and replacing them with justice of the peace courts. These new courts will be administered by the Scottish Court Service, rather than local authorities, but will have the same sentencing powers that District Courts currently have.

²³ McCallum, F, Ross, G & Oag, D, *"The Scottish Criminal Justice System: The Criminal Courts"*, SPICE, 24 April 2007. The Criminal Proceedings etc (Reform) (Scotland) Act 2007 extended the powers of the Sheriff courts in summary cases from 6 months prison and £5,000 fine.

2.3 Prison

Types of prison

There are 16 prisons and young offenders' institutions in Scotland. The majority are for male adults, with one prison, Cornton Vale, housing the majority of female prisoners, including young offenders. All but Kilmarnock prison are currently operated by the state, and all have different levels of security.

Most prisons, including Aberdeen, Edinburgh, Barlinnie, Greenock, Inverness and Perth mainly take prisoners from the local areas holding remand (those who have yet to be tried or sentenced in court) prisoners and those given short sentences (less than four years).

Shotts is a maximum-security prison for long term adult male prisoners while Glenochil holds long-term adult male prisoners with High, Medium and Low supervision security classifications. Peterhead prison also accommodates prisoners who require high supervision and is a national resource for convicted long term sex offenders.

Castle Huntly and Noranside are both open prisons holding low supervision adult male prisoners serving 18 months and over, including life sentence prisoners, who have been assessed as suitable to serve part of their sentence in open conditions.

Polmont holds convicted and remand young offenders.

Currently prisons in Scotland house an average daily population of 7,376 prisoners²⁴, though the prison estate only has a design capacity of 6,400. However capacity is due to increase when HM Prison Addiewell is opened in December 2008 with 700 places and new blocks are opened in late 2009 at HM Prison Edinburgh and Polmont Young Offenders Institution which will provide an additional 250 places. A new prison at Bishopbriggs is due to be opened in 2011.²⁵

²⁴ Scottish Government, "Prison Statistics Scotland 2007/8", August 2007,

²⁵ Scottish parliamentary written answer S3W-6454

Prison sentences

Prison sentences of less than four years are classed as short sentences with prisoners being automatically released from prison after serving half of their sentence, regardless of their behaviour. As a result there is no incentive for inmates serving short sentences to behave well as it will make no difference to their release date. Sentences of over four years are classed as long sentences. Prisoners have more incentive to behave and participate in programmes as they can be released on parole after half their sentence for good behaviour; otherwise they are released automatically after two thirds of the sentence.

Prisoners can also be released earlier from prison under a home detention curfew. Since 2006, short term offenders who are assessed as low risk can be released between 2 weeks and 4 months earlier than under automatic release, subject to an electronically monitored curfew. From March 2008, long term prisoners who are deemed suitable for release at the half way point of their sentence can also be made subject to home detention curfews.²⁶

2.4 Conclusion

This section simply set out how the main components of the justice system in Scotland currently work, the next sections examine the police, courts and prisons in more detail, comparing how Scotland performs with other countries and making recommendations on how Reform Scotland believes justice could better be delivered in Scotland.

²⁶ Scottish Government, "Circular No JD 7/2008: Home detention curfew – guidance for agencies", July 2008

3. Police

3.1 Problems

Figure 5: Police numbers across Europe in 2006²⁷

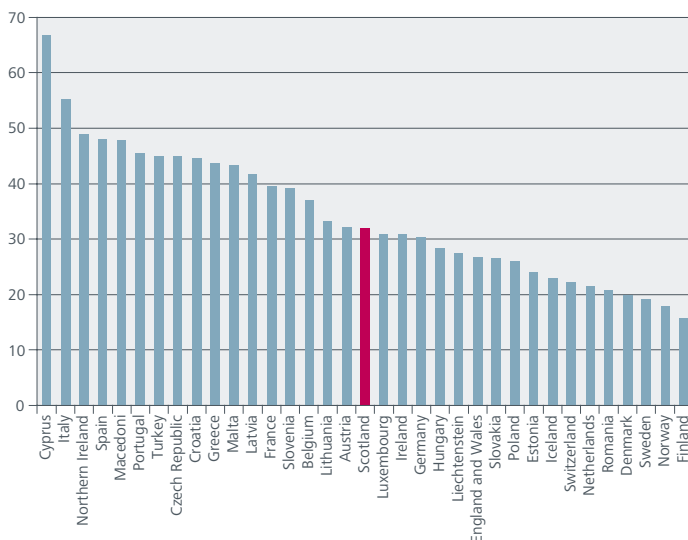


Figure 5 above shows that compared to other countries, Scotland has a roughly average number of police per capita. However as illustrated earlier in Figures 2-4, the country does suffer from a higher level of crime. Police numbers, and their ability to cut crime, have generated a great deal of political debate recently, especially since the SNP came to power. However, simply increasing the number of police officers does not necessarily cut crime. For example, Belgium has a higher number of police officers than Scotland per capita, though still has a higher crime rate than Scotland, while Switzerland has fewer police per capita but a lower crime rate.

The focus of policing should instead be on deployment and how the police are actually used, rather than numbers alone. There have been a number of anecdotal cases in Scotland where increasing the police presence in communities has led to a fall in crime.

²⁷ EUROSTAT

Ayr: To stem rising youth crime in Ayr in 2007, police officers were taken away from desk duties with an increase in high visibility policing. The result was a 54% decrease in alcohol related crime, including vandalism and anti-social behaviour.²⁸

Broomhouse: The Broomhouse area of Edinburgh had been suffering from a high level of anti-social behaviour as well as more serious crimes in 2004. However, in July 2004 six police officers started patrolling the streets on foot at different areas and times each day and night so that trouble makers wouldn't be able to work out when they would be patrolling a particular area. The officers built up relationships with the local community and in the six months to December 2004 car crime fell by 88%, assaults fell by 50% and complaints against young people fell by 62%.²⁹

In 'power for the public' Reform Scotland highlighted the success of zero tolerance broken windows policing in New York City. That strategy had seen a dramatic drop in crime across the city and when compared to Glasgow, ten years ago there was more violent crime per capita in the American city than there was in Glasgow, by 2006/7 there was more violent crime in Glasgow.³⁰

Although there was a large increase in police numbers in New York City, the key to the strategy followed was increasing accountability and transparency within the police force, which in turn restored trust and confidence within local communities. Unfortunately, the recent debate in Scotland has focused too much on the former and not enough on the latter.

In Scotland there is little, if any, direct accountability to the man in the street when it comes to policing. Continually at election times and when surveys are commissioned putting more bobbies on the beat is a top priority for voters³¹ and is a policy supported by political parties, yet little seems to change. This is largely because MSPs and ministers at Holyrood cannot put more police on the street.

Operational matters, including police deployment, are rightly the responsibility of chief constables. However there is little holding a chief constable to account

28 Grant, G. "Police find new tactic...beat bobbies", Daily Mail, 17/7/08

29 Mooney, C & Mather, A. "Scheme finds the way to beat crime", Evening News 20/1/05

30 Reform Scotland, "power for the public", April 2008

31 In an ICM poll commissioned by the BBC ahead of the 2007 Scottish elections respondents ranked "more bobbies on the beat" as their top priority.

for his actions. Chief constables, in theory are accountable to Police Boards, who can remove the senior officer if they feel he or she is not doing a good enough job. The problem lies in the police boards that are generally neither accountable to the electorate nor particularly transparent.

The police boards are made up of councillors from the various council areas covered by the police force, one of whom chairs the board. For example Edinburgh Councillor Iain Whyte is Chairman of Lothian and Borders Police Board. However not only does Councillor Whyte not have any responsibility to the electorate in West, East and Midlothian as well as the Borders, he isn't even answerable to the population of Edinburgh as a whole. Councillor Whyte is not a member of the ruling parties on Edinburgh City Council and is only answerable to the people of Inverleith who elect him.

So basically there is no way to challenge the policing methods or encourage the adoption of the sort of successful crime fighting strategies that have been adopted elsewhere. That isn't to say that there is a right and a wrong way to tackle crime, however the policy adopted in New York encouraged different policing methods to be developed.

3.2 Policy recommendations

Increased accountability – elected individuals given crime role

Reform Scotland believes that greater accountability to local people is needed to redress this balance. One way of achieving this aim would be to match up police forces to local authority areas, appointing an individual within the cabinet with responsibility for policing, in the same way that a councillor is responsible for education or housing. The chief constable would retain operational discretion as at present; however he or she would clearly be answerable to an individual within the council, which was in turn accountable to the electorate. If the policies being pursued by the chief constable were not delivering a cut in crime, this would give the council a clear mandate to demand a change in policy or replace the chief constable, therefore creating a clear line of accountability back to the electorate.

This would not mean 32 police forces based on the structure of the current eight, but police forces structured to meet the needs of the local area. Scotland already has a serious crime squad, the Scottish Crime and Drug

Enforcement Agency, which could continue to deal with the most serious crimes, whilst the local forces would ensure that less serious crime was cleared up.

In areas where the local population have decided to adopt a directly elected Provost or Mayor, the Provost or Mayor could appoint a Police Commissioner to operate in a similar fashion.

The point of this policy is not to interfere with police matters or dictate to the police how they should go about their job, but to ensure that the public has a greater voice in policing and the ability to demand that if crime continues to rise, policies are changed and new approaches considered.

Already in Scotland there are two areas where the police force area matches up to a single local authority area in Fife and Dumfries & Galloway. It would therefore be easy to pilot these policies in one or both of these areas.

Reform Scotland recognises that one of the criticisms likely to be levied at such a set of proposals is that if police forces were matched up to local authority areas this would lead to an increase from eight to 32 police forces, which could be argued is a lot for a country the size of Scotland, especially when there are only 43 police forces in England and Wales.

However in other countries there is a far higher number of police forces. For example in Spain there are 1,700 municipal forces³² which are attached to towns and town halls and deal with more minor crime while the national police force deals with more serious crime.³³ Similarly in Norway, which has a population of less than Scotland at 4.6million³⁴, there are 27 local police districts each of which is under the command of its own chief of police.³⁵ Even in Iceland, which has a population of just over 300,000³⁶, the police are divided into 25 districts, corresponding to the administrative districts of the island, with each area having its own District Commissioner who also acts as the Police Commissioner and oversees the day-to-day administration and police functions.³⁷

32 <http://www.interpol.int/public/Region/Europe/pjsystems/Spain.asp>

33 <http://www.justlanded.com/english/Spain/Tools/Articles/Culture/Structure-and-organization>

34 CIA World factbook estimate for July 2008

35 National Police Directorate, *"The Police in Norway"*, 2006

36 CIA World factbook estimate for July 2008

37 The National Commissioner of Police, *"The Icelandic Police & Justice System: A short introduction"*, September 2005

Greater devolution of responsibility to police divisions and localised crime statistics

The success of New York City's model also hinged on greater powers being devolved down to precinct commanders, who were in turn answerable for the crime records in their areas. Regular 'Compstat' publications mapped crime figures and highlighted problems broken down by very local areas to illustrate where success or failure had occurred with regular meetings to discuss the publications allowing precinct commanders to learn from the different policing practices that had been tried in different areas. As the publications and meetings were open to the public, local communities were kept fully aware of what was going on in their area.

Reform Scotland would recommend that similar policies were adopted in Scotland with greater powers to be passed down to division commanders along with the publication of very localised crime statistics on a regular basis.

4. Courts and sentencing

Sentences³⁸

In 2006/07 154,000 people were prosecuted in Scottish courts, 90% of whom were found guilty.³⁹ The following outlines the range of sentences and the percentage of people with a charge proved that received such a sentence in 2006/7. More than one penalty can be given to an offender. Table 2 illustrates the sentences broken down by the crime committed.

Custody (13%)

Prison (10%)

Young Offenders Institution (3%)

Community sentence (13%)

Probation (7%): Probation orders can last between six months and three years and aim to help address the criminal's offending behaviour. The orders can include unpaid work, curfews, compensation to the victim and taking part in specialist programmes to address problems such as alcohol or drug abuse.

Community service order (4%): Community service orders (CSOs) require offenders to carry out unpaid work of benefit to the community for between 80 and 300 hours. CSOs are restricted to offences which would have otherwise resulted in imprisonment.

Supervised attendance order (0.1%): Where offenders default on monetary fine, they have to return to court and are subsequently either sent to prison for a short period or given a supervised attendance order. Such orders substitute the unpaid fine for a period of constructive activity designated by the social work department. The activity will often include social education, financial management and community service.

Restriction of liberty order (1%): Also known as tagging, a restriction of liberty order restricts an individual to a specific place for a set period each day

³⁸ Alternatives to custody section of the Scottish Government's website: www.scotland.gov.uk/Topics/Justice/criminal/16906

³⁹ Scottish Government, "Criminal Proceedings in Scottish Courts 2006/07", June 2008

for up to 12 months. Outwith the hours of restriction an offender would be free to go where he or she chooses.

Drug treatment and testing order (0.7%): Drug Treatment & Testing Orders (DTTOs) are available as an alternative to custody in the High and Sheriff Courts. They are aimed at people whose offending is as a result of a drug habit. The order requires a regular review by the court as well as random drug tests for the duration, with the understanding that immediate total abstinence is unlikely. DTTOs have been available throughout Scotland since 2005/6.

Community reparation order: These orders were introduced by the Antisocial Behaviour Etc (Scotland) Act 2004 and are aimed at offences where there is an element of antisocial behaviour. The orders are targeted at low level offenders and can involve between ten and one hundred hours of unpaid work.

Financial (61%)

Fine (60%)

Compensation order (1%)

Other (13%)

Insanity, hospitalised, guardianship order (76)

Caution or admonition (12%)

Absolute discharge (1%)

Remit to children's hearing (0.2%)

Local authorities also have a role to play within the criminal justice system through a legal duty to provide criminal justice social work services. The main services offered by local authorities include⁴⁰:

- social enquiry reports for the courts
- court social work services
- bail information service
- diversion from prosecution scheme
- supervised attendance order scheme

⁴⁰ www.renfrewshire.gov.uk/ilwwcm/publishing.nsf/Content/Navigation-sw-CriminalJusticeSocialWorkServicesHomePage

- probation supervision
- community service
- throughcare services
- drug services, including arrest referral, drug treatment and testing order (DTTO) and drugs counselling
- groupwork services

Table 2: Percentage of persons with a charge proved by main crime/offence and main penalty, 2006/7⁴¹

Main crime or offence	Custody	Community sentence	Monetary	Other
All crimes and offences	13	13	61	13
All crimes	24	20	41	16
Non-sexual crimes of violence	53	30	10	7
Homicide	93	2	3	2
Serious assault and attempted murder	50	35	11	4
Robbery	70	21	4	5
Other	22	33	18	26
Crimes of indecency	23	28	22	27
Rape and attempted rape	98	2	-	-
Indecent assault	30	44	16	10
Lewd and indecent behaviour	30	43	17	10
Other	7	16	30	46
Crimes of dishonesty	28	21	35	16
Housebreaking	51	27	14	8
Theft by opening a lockfast place	37	27	24	12
Theft of a motor vehicle	26	31	29	13
Shoplifting	26	18	37	19
Other theft	24	22	39	15
Fraud	17	20	50	14
Other	27	22	36	15
Fire-raising, vandalism etc	9	16	62	13
Fire-raising	27	39	20	14
Vandalism etc	8	15	64	13
Other crimes	20	18	45	17
Crimes against public justice	24	20	31	26

⁴¹ Scottish Government, "Criminal Proceedings in Scottish Courts 2006/07", June 2008

Handling an offensive weapon	30	31	29	11
Drugs	13	11	63	13
Other	37	27	27	8
All offences	8	9	72	12
Miscellaneous offences	12	14	53	20
Common assault	14	21	48	18
Breach of the peace	10	10	57	22
Drunkenness	2	3	73	23
Breach of social work orders	33	29	8	30
Other	3	4	80	14
Motor vehicle offences	3	3	91	3
Dangerous and careless driving	4	5	87	3
Drunk driving	3	6	91	1
Speeding	-	-	100	-
Unlawful use of vehicle	6	5	82	7
Vehicle defect offences	-	-	95	5
Other	-	-	96	3

Of the just over 19,000 community sentences that were carried out in 2006/7, there were just over 8,500 breaches.

Table 3: Summary of community sentences handed down in 2006/7⁴²

Type of order	Total	Breach applications	% of total
Community service order	5,937	1,892	31.87
Probation order	8,404	3,650	43.43
Supervised attendance order	3,047	1,125	36.92
Drug treatment and testing order	696	318	45.69
Restriction of liberty order	1,018	1,588	155.99

Custodial sentences

Figures six to nine below illustrate the different proportion of criminals found guilty of certain offences sent to prison across Europe.⁴³ The graphs show that compared to many other countries in 1999 Scotland was sending an average number of criminals to prison, though sent a higher than average number of convicted rapists along with a lower than average number of people convicted of assault or drug offences.

⁴² Scottish Government, "Criminal Justice Social Work Statistics 2006/7", December 2007

⁴³ Killias, M et al, "The European Sourcebook of Crime and Criminal Justice Statistics – 2003", 2003

Figure 6: Percent of people found guilty sent to jail, 1999

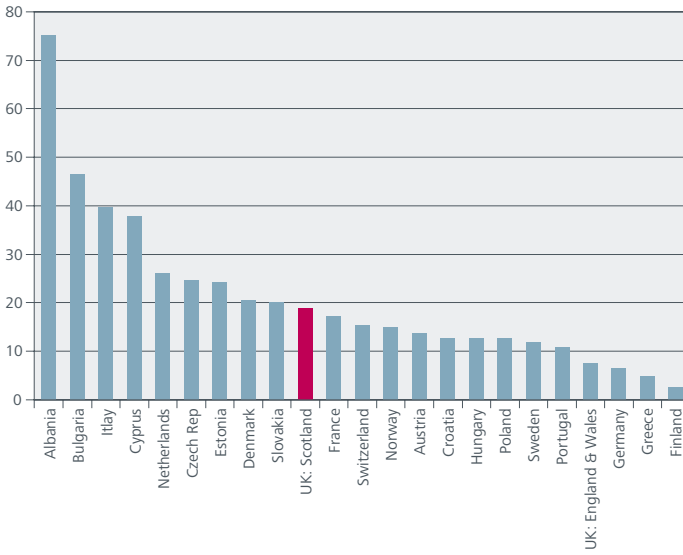


Figure 7: Percent of people found guilty of rape sent to jail, 1999

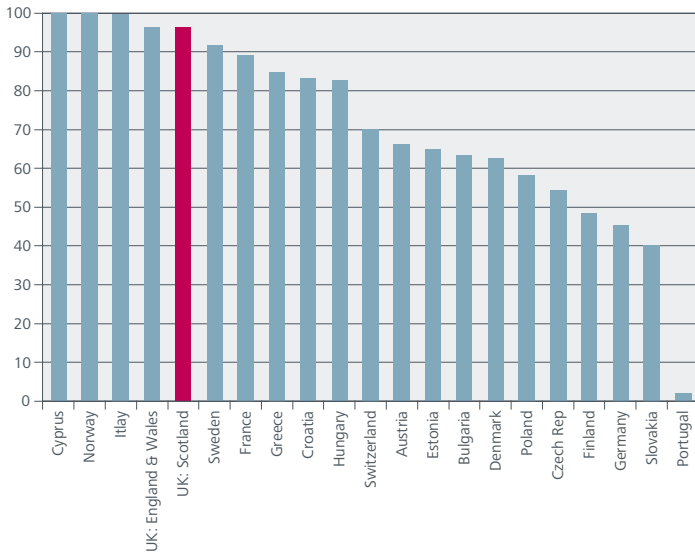


Figure 8: Percent of people found guilty of assault sent to jail, 1999

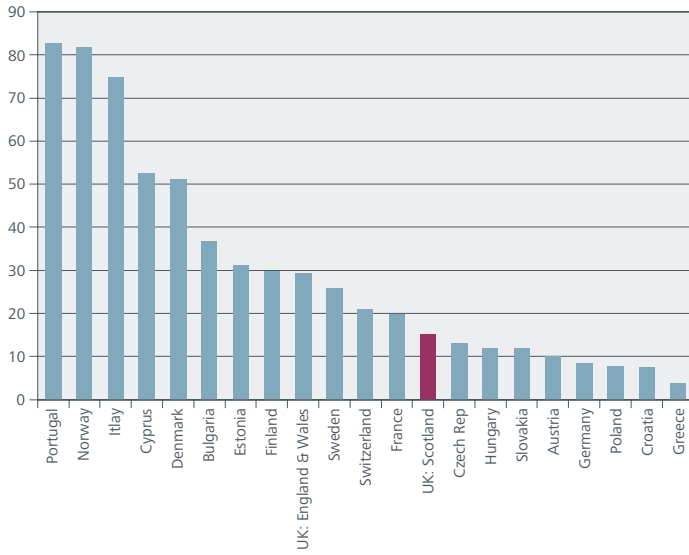
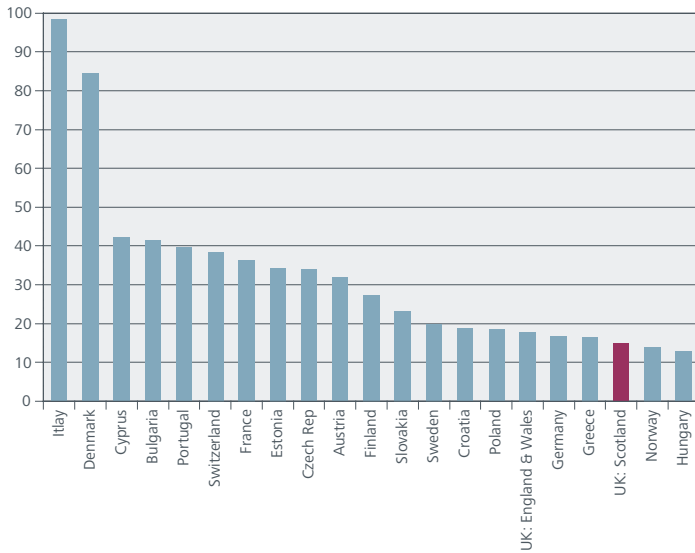


Figure 9: Percent of people found guilty of drug offences sent to jail, 1999



4.2 Who is accountable?

As with the police, there is a clear lack of accountability within the courts and sentencing arena. Whilst judges should be free from political involvement when deciding an individual sentence, the decision on whether the case is tried, what plea-bargaining is allowed and which court it is tried in can all have a big impact on the sentence eventually passed. In section one Sheriff Gordon Liddle was quoted criticising the fact that he could not give the defendants the sentence he felt they deserved because the Procurator Fiscal had decided the complaint should be dealt with in a summary jurisdiction, where he could only give a limited jail sentence.

Depending on what is set out in the relevant legislation Procurators Fiscal can be responsible for deciding if crimes reach court in the first place and whether it is in the public interest to prosecute the crime. However they are not answerable for the decisions they make. MSPs are responsible for devising the law and if the public disagrees with the stance of the government, they can vote for a different party at the next election that will take a different approach. However, the public have no such option if they disagree with the course of action being followed by Fiscals. Perhaps the public feel that minor drug offences should not clog up the courts' time, or that there should be zero tolerance of such offences, however regardless of their views, the public's opinions are ignored. But what is worse is the public is also generally ignorant of any particular policy being followed by the prosecution service – a lack of accountability and transparency.

The situation regarding secrecy and lack of accountability was illustrated by the media in August 2008 when it was claimed that fiscals were allegedly allowing violent offenders off with fiscal fines. Some defence lawyers suggested that guidelines regarding fiscal fines stated that if a victim of assault did not require at least three stitches a fixed penalty could be issued.⁴⁴ Although the Crown Office denied this allegation it refused to publish the guidelines or outline the procedures so the public was left in the dark, outraged that such offenders may be getting off lightly.

The situation can be usefully illustrated by contrasting Scotland with many areas in America which have a directly elected District or County Attorney.

⁴⁴ Herald, "MacAskill defends secrecy of fine guidelines", 19/8/08

District Attorneys may vary from state to state, but generally, District or County Attorneys are non-partisan individuals with a legal background elected every four years and act as the chief prosecutor in the area, ultimately responsible for who is tried for what crimes. The individual in the post can be held responsible for conviction rates and for helping reduce crime.

For example in July last year Kamala Harris was re-elected as the District Attorney for San Francisco following her campaign of focusing on serious and violent crime including gang culture whilst in office.⁴⁵ In Saratoga, District Attorney Jim Murphy established a domestic violence unit and placed a strong emphasis on the rights of victims.⁴⁶ Direct elections do not necessarily mean upheaval and change in the way crime is prosecuted, many District Attorneys have held their position for over a decade, however by being subject to re-election they are properly accountable to the public. Lynne Abraham, for example, has been District Attorney of Philadelphia since 1991, winning re-election in 1993, 1997, 2001 and 2005.⁴⁷

4.3 Policy recommendations

Publish the number of crimes prosecuted in courts

In Section one the problems of working out a conviction rate for crimes in Scotland were outlined. Whilst the actual number of crimes and offences are recorded, when it comes to court proceedings, it is the number of individuals prosecuted and convicted that is recorded. We would therefore recommend that in future statistical publications about the proceedings in Scottish courts be produced which show the actual number of crimes and offences prosecuted, and the number of crimes and offences which result in a guilty verdict, in addition to the number of offenders currently published.

All sentences available at all levels of court

Whilst some sentences handed down by judges may appear to the public or the press to be unfair, perhaps too lenient or too harsh, such opinions are normally expressed without being in receipt of the full facts of the case, and the option is open to both the Crown and the defendant to appeal the sentence. We believe

⁴⁵ www.kamalaharris.org/

⁴⁶ www.jimmurphyda.com/accomplishments.html

⁴⁷ <http://www.phila.gov/districtattorney/AboutUs/about.html>

that each judge must be left free to pass the sentence that they think most appropriate for the individual and the crime, which is why we would reject calls for sentencing guidelines to be introduced. The law already sets out sentencing levels for most crimes and it is the job of the judge to balance that law with the individual case. However in order for judges to be able to pass the most appropriate sentence, we would call for all sentencing disposals to be available to the judge at each level of the Scottish Courts, and available as a sentence in the first instance. This would mean that if a judge recognises that an individual has problems managing money and a fine would normally be the general sentence, the judge would be able to hand down a supervised attendance order as the initial sentence, rather than the person defaulting on the fine, returning to court and only then being applicable for a supervised attendance order.

Similarly Drug Treatment and Testing Orders are only available in the Sheriff Courts, however some criminals who have committed their first drugs related offence will be sent to the District Court, where that sentence is not available. If the judge feels that is the best sentence to hand out, they should be able to do so.

District Courts should not send people to prison in the first instance

Reform Scotland would issue one exception to the above recommendation. At present District Courts, or Justice of the Peace Courts, can only sentence someone to prison for a maximum of 60 days. There are a number of questions over the worth of such short sentences, particularly as there is little time for rehabilitation; these issues are discussed more fully in the next section. However we believe that whilst prison has to always be available as the ultimate sanction, sentences of 60 days have little merit, so while the lowest tier of court has this maximum sentence, we would recommend that prison cannot be sanctioned in the first instance.

Government's job to enforce sentence, not to change it

While it is the role of a judge to weigh up the facts of a case and pass the most appropriate sentence, it must be the role of the government to enforce those sentences, not circumvent them which is why we believe that the proposals laid out in the Scottish Government's Programme for Government in September 2008 to create a new system of sentencing guidelines and a sentencing commission are misguided. Instead we believe that the Scottish Government should end the system of automatic changes to sentences – such as early release or home detention curfews. Any reduction in sentence,

including being released on a home detention curfew, has to be earned and judged on an individual basis. The Scottish Government may wish to reduce the prison population, but the way to do that has to be to adopt policies which reduce crime, not to ignore the wishes of the court.

We recognise that abolishing early release may lead to shorter sentences being imposed in the first place, however that is a far more honest system.

In addition to enforcing prison sentences, government, including local authorities through their responsibilities for criminal justice social work, need to provide proper enforcement of alternatives to custody to ensure that such sentences aren't just a soft touch and can help turn offenders away from a life of crime before they progress to more serious offences.

Directly elect Area Procurators Fiscal

Procurators Fiscal make crucial decisions about whether, where and how crimes are prosecuted in Scotland, yet there is little transparency or accountability within the system. Reform Scotland believes that each of the area procurators fiscal who head up the 11 offices in Scotland should be directly elected by the area they represent. We would not envisage these elections being party political; it would be quite conceivable for more than one contender to belong to the same party or none, rather the elections would be between the policies and attitudes the individual would adopt in office, similar to the way in which district attorneys are elected in the USA.

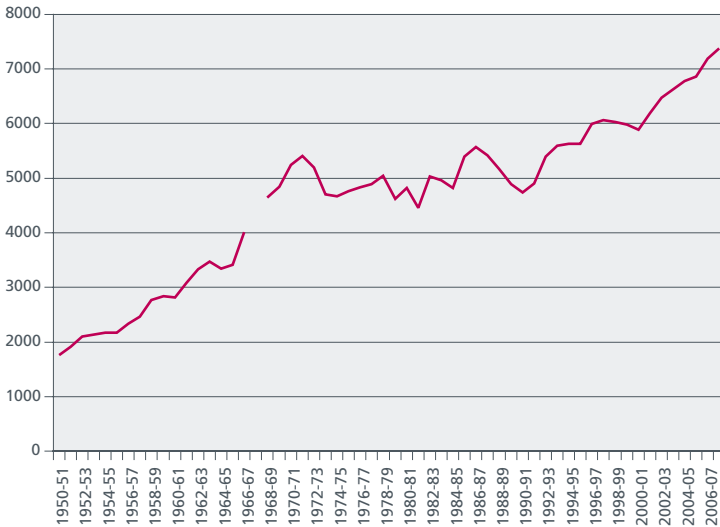
Such a policy would lead to a far clearer and more transparent system of justice, and could also allow different area procurators fiscal to pursue crime in different ways reflecting the problems in their area. For example the area procurator fiscal in Glasgow may have been elected on a platform to prosecute all drug crimes as solemn cases before a Sheriff and jury where higher sentences can be imposed in an attempt to act as a greater deterrent. However in the Highlands & Islands an area procurator fiscal may have been elected to take a stance against wildlife crimes. At present procurators fiscal often decide how, where and what crimes to prosecute, however under the system Reform Scotland is proposing the public are fully aware, and have a say, in the policies which are pursued. However we do recognise that this policy recommendation would have implications for the role of the Lord Advocate in Scotland and such implications would have to be examined in more detail in conjunction with the legal profession.

5. Prisons

5.1 Prison numbers

One of the main focuses in the debate over the use of prison in Scotland recently has been the increasing level of prisoner numbers and the effect that has had on prisoner overcrowding. [Figure 10](#) below illustrates how the prison population has grown significantly since the 1950s.

Figure 10: Average daily prison population in Scotland between 1950/51 and 2007/8⁴⁸



Although the prison population has been increasing at a steady rate for over half a century, this mirrors the rising level of crime and offences over this period ([Figure 1](#)). In the past fifteen years, as illustrated by [Figure 11](#), there has been a slight increase in the average length of sentence handed down by the courts from 258 to 312 days; however the average sentence has remained less than a year. Due to automatic release (see chapter 2) most prisoners will only actually serve half of this period.

⁴⁸ S2W-22252 and Scottish Government, "Prison Statistics Scotland 2007/8", August 2008

Figure 11: Average length of sentence imposed on prisoners⁴⁹

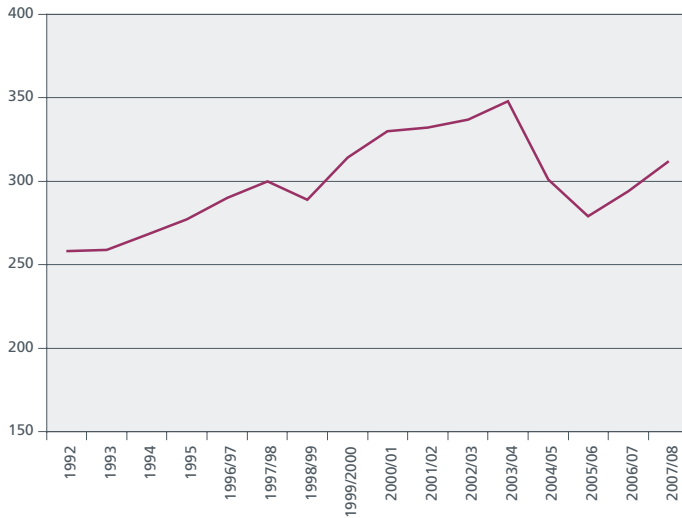


Figure 12 and Table 4 show in more detail the different lengths of sentences and how they have changed in recent years. Again this illustrates the length of sentences handed down by the courts, not the actual time served.

⁴⁹ Scottish Government, Prison Statistics series

Figure 12: Adult sentenced receptions to penal establishments by length of sentence.⁵⁰

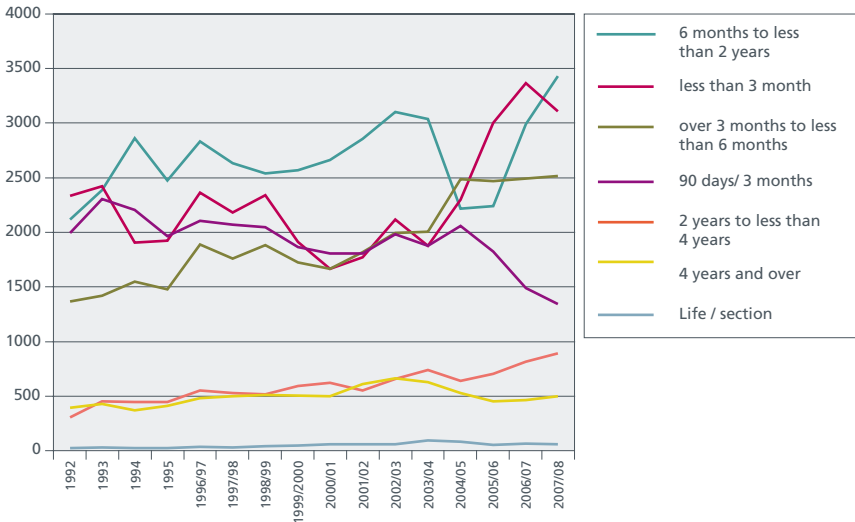


Table 4: Average daily prison population by length of sentence 2007/8⁵¹

Total average daily prison population ⁵²	7,375
Fine default	29
Less than 3 months	115
Over 3 months to less than 6 months	426
6 months to less than 2 years	1,226
2 years to less than 4 years	1,058
4 years and over	1,650
Life / section	696
Persons recalled from supervision/ license	615
Remand	1,560

While **Figure 12** shows that the second most frequently handed down sentence is for less than three months, **Table 5**, adjacent, shows that within that grouping, 2,823 people received a sentence of eight weeks or less and many received sentences of only a few weeks imprisonment.

⁵⁰ Scottish Government, Prison Statistics series

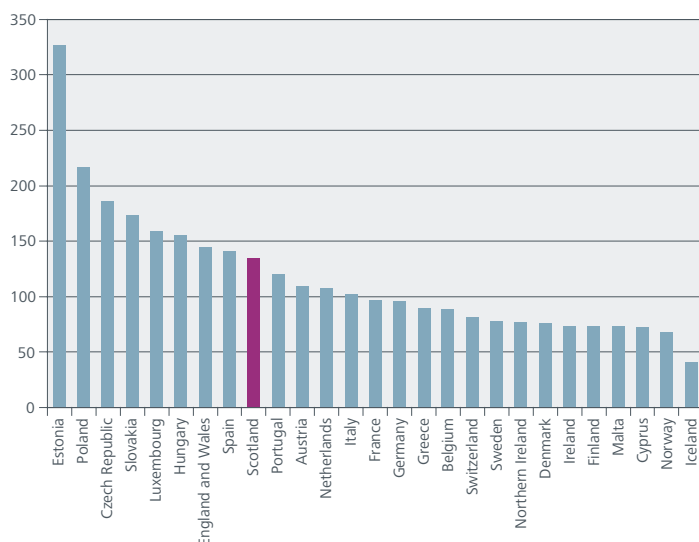
⁵¹ Scottish Government, "Prison Statistics Scotland 2007/8", August 2008.

⁵² The total figure replicates figures used in the official publication and does not add up to the 7,376 average daily prison population due to rounding

Table 5: Persons given custodial sentences up to eight weeks over the past 10 years⁵³

	Sentence in days							
	1-6	7-13	14-20	21-27	28-34	35-41	42-48	49-56
1997/98	7	222	274	57	1,725	48	69	12
1998/99	4	193	240	40	1,763	41	59	13
1999/2000	4	162	256	47	1,646	46	61	13
2000/01	11	213	221	40	1,633	27	57	11
2001/02	21	189	251	45	1,770	63	64	8
2002/03	5	128	237	38	1,779	34	65	10
2003/04	2	119	206	56	1,670	36	56	6
2004/05	2	87	164	35	1,765	80	72	34
2005/06	4	69	163	71	1,577	242	135	45
2006/07	5	87	240	79	1,717	388	204	103

Figure 12 and Table 5 certainly indicate that a lot of people are being sent to prison for a relatively short period of time. When compared to other countries, Scotland also appears to have a high prison rate as illustrated in Figure 13 which illustrates the prison population per 100,000 people:

Figure 13: Prison population per 100,000 people (2005)⁵⁴

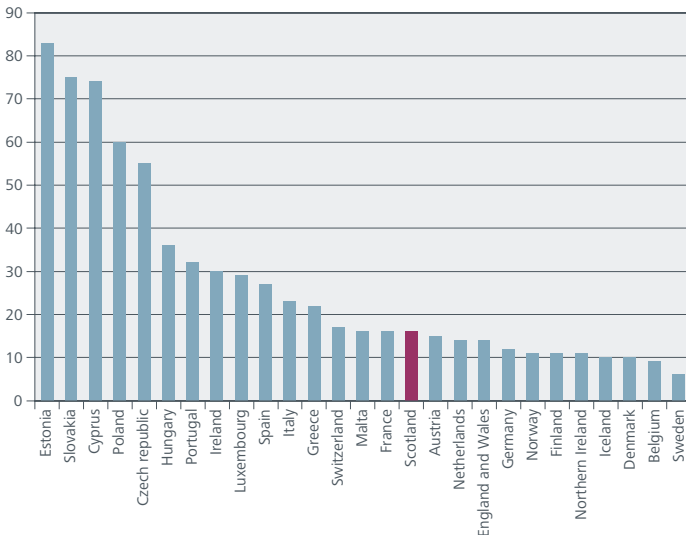
53 S3W-15184

54 Figures derived from prison and population figures provided on EUROSTAT

Although [Figures 10 to 13](#) all illustrate the high number of offenders who are sent to prison, and for very short prison sentences, there is a danger that the argument about prison numbers has become too focused on cutting prison numbers rather than cutting crime. Regardless of how many people are in prison, the reason they are there is because they broke the law. While reducing the prison population is a justifiable end, the way to achieve this has to be by cutting crime in the first place – if fewer people committed crimes, there would be fewer people in prison. This is why the recommendation of the McLeish Commission of a target of reducing the prison population to a daily average of 5,000 is back to front.

However the debate about the prison population is far more complex than simply looking at pure numbers. [Figure 14](#) adjacent actually shows that when compared to her crime rate, Scotland doesn't actually jail such a high level of people.

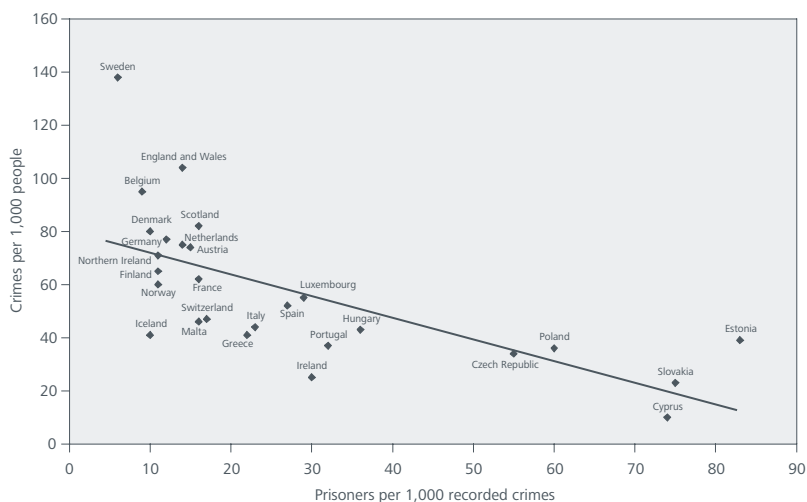
Figure 14: Prisoners per 1,000 recorded crimes, 2005⁵⁵



In countries where a higher proportion of offenders compared to the crime rate are jailed, the crime rate falls. This correlation is illustrated in [Figure 15](#).

⁵⁵ Figures derived from population, prison and crime levels provided on EUROSTAT

Figure 15: Relationship between the crime rate and prisoners to crime rate



Women prisoners

The argument about prisoner numbers has been particularly highlighted with regard to female prisoners. It has often been argued in both the popular press and by experts that too many women are being sent to prison, often pointing to the huge surge in the number of women prisoners in recent years. Between 1997/8 and 2007/8 the average daily female prison population almost doubled from 186 to 371⁵⁶, with a corresponding increase in the number of women sent to prison from 476 to 829. However the argument about more women in prison can partly be explained by the fact that more women are committing more crime and the crime they are committing is more serious. Between 1997/8 and 2007/8 the average length of sentence being handed down to female prisoners increased from 191 days to 277 days, reflecting the more serious nature of the crimes being committed by women. For example in the same ten year period the number of women sent to prison for non-sexual crimes of violence increased by 235% whilst the number of women sent to prison for handling an offensive weapon increased by 725%.⁵⁷ At the same time the number of female fine defaulters sent to prison fell by 58%.

⁵⁶ Scottish Government, "Prison Statistics Scotland 2007/8", August 2008, "Prison Statistics Scotland 2006/7", August 2007

⁵⁷ Scottish Government, "Prison Statistics Scotland 2007/8", August 2008, "Prison Statistics Scotland 2006/7", August 2007

5.2 Re-offending and rehabilitation

According to the latest official figures, 62% of people released from prison will re-offend within two years.⁵⁸ The Scottish Prisons Commission stated that re-offending rates at these levels are in line with other countries, but may reflect deeper social problems.⁵⁹ Research has shown that when an ex-offender gains employment their risk of re-offending reduces by between a third and a half.⁶⁰ However many prisoners have few qualifications, low levels of literacy, will likely never have held a proper job and will possibly also be dealing with a substance abuse problem. Therefore one of the most important responsibilities of prisons has to be to rehabilitate and educate these individuals so that the options facing them when leaving prison are more than simply returning to a life of crime.

In 2005 contracts were awarded to Motherwell College and Carnegie College Dunfermline to deliver learning, skills and employability training in prisons. Training on offer covers areas from adult literacy, languages and computing to vocational skills training such as bricklaying, engineering and laundry work.⁶¹

However as illustrated in [Figures 11, 12 and 13](#) most prisoners in Scotland are sent to jail for very short periods of time, making meaningful rehabilitation opportunities less likely. In 2005 the Scottish Parliament's then Justice 1 committee carried out an inquiry into the effectiveness of rehabilitation in prisons. The main opinion voiced to the committee was that rehabilitation was not a realistic option for short term prisoners. Indeed when even the Scottish Prison Service (SPS) was asked *"For the large numbers of prisoners facing short-term periods of custody is rehabilitation a realistic objective?"*, the SPS responded in the negative, stating *"No, and this is why the Service sees its role in this area as more to do with assessment and support than with targeted interventions designed to rehabilitate."*⁶²

Despite the pessimistic evidence, the committee disagreed with this view and

⁵⁸ HMIP Scotland, *"Learning , Skills and employability"*, Scottish Government 2008

⁵⁹ McLeish. H, *"Scotland's Choice: report of the Scottish Prisons Commission"*, Scottish Prisons Commission July 2008. According to the European Sourcebook of crime and criminal justice statistics 2003 there is little standardisation between counties in measuring re-offending rates, making meaningful international comparisons difficult.

⁶⁰ HMIP Scotland, *"Learning , Skills and employability"*, Scottish Government 2008

⁶¹ HMIP Scotland, *"Learning , Skills and employability"*, Scottish Government 2008

⁶² Justice 1 Committee, *"3rd Report 2005: Inquiry into the effectiveness of rehabilitation in prisons"*, Scottish Parliament 2005

argued that meaningful steps could be taken with prisoners serving short sentences and that such programmes should be sufficiently flexible and intensive in order to fit into the structure of shorter periods of custody and an urgent “radical re-think” of the treatment of such prisoners was needed. Whilst many voluntary and charitable groups, including faith based organisations are already involved in helping prisoners, there is scope for much more with each prison developing a rehabilitation and training programme to best suit the needs of its inmates, whether they are short or long term, white-collar or violent offenders.

Examples of prisoner rehabilitation

The following are some examples of innovative rehabilitation programmes used round the world which have reduced re-offending. They are not necessarily suitable for Scottish criminals, however a one size fits all approach does not work, and Reform Scotland believes that different programmes should be encouraged which can best address the differing needs and problems of offenders.

Shock Incarceration Programme:⁶³ Lakeview Shock Prison in upstate New York is a type of boot-camp style prison regime with a strong combination of discipline, schooling and rehabilitation. Offenders who have committed ‘gateway crimes’, where the authorities believe that unless stopped they will progress to more serious crimes, are given the choice of spending a longer sentence in a regular prison, or a six month stint at Lakeview. Prisoners get up at 5:30am during the week and 6am at weekends with no day off. Every day is filled with exercise drills, work, chores, education and rehabilitation programmes, marching and constant supervision. There are no televisions, magazines or recreation facilities, with punishments for minor offences such as lying on your bunk without permission. A condition of parole, which lasts for at least five years, is that ex-inmates must work or attend job training and college upon release. However the programme is so well known for successfully turning convicts into workers that many employers request them. One year after release only 8% of inmates have re-offended compared with 20% in the general prison population. The regime successfully manages to turn antisocial criminals with no respect for themselves or others into contributing members of society.

⁶³ Walters. J, “Isn’t this the sort of prison Britain needs?”, Daily Express, 1 August 2008

PRIDE:⁶⁴ Prison Rehabilitative Industries and Diversified Enterprises (PRIDE), a private not for profit organisation, has built up a partnership with the Florida Department of Corrections to provide work programmes which provide vocational training, improve prison security and promote the rehabilitation of prisoners while reducing the burden on taxpayers. PRIDE provides on-the-job training, carried out within the prisons, teaching prisoners. As well as inmates earning a wage, the money earned from the work helps reduce the cost to the state government through inmate wage deductions for room and board as well as contributing towards victim compensation. The training programmes provided are certified by a reputable external agency and reflective of private sector employer needs. The vast majority of participants are in prison for a relatively short time and the programme not only provides meaningful work during incarceration but also the skills necessary to find and keep a good job after release. PRIDE also helps provide job placement and other support services to help prisoners once they are released.

Dance and exercise:⁶⁵ In 2004 Byron Garcia a security consultant was brought in to help address increasing riots at the Cebu Provincial Detention and Rehabilitation Centre in the Philippines. Part of the change in regime he introduced was enforcing a regular exercise class for all inmates, which helped lead to an improvement in health and reduced re-offending. More recently the exercise has turned to dance and the prisoners have become a YouTube success with their Thriller dance routine. Byron Garcia chose to put the routines on YouTube to help bring attention to the success of the reforms introduced at the prison, and by the end of 2007 eight other prisons had introduced the exercise/ dance regime. Supporters have argued that the dancing regime gives the prisoners something to do and something they can be proud of, showing them that they can be productive.

Innovative high-tech prison:⁶⁶ A new high-tech jail in Lelystad, the Netherlands, opened in 2006 for low-risk offenders. The 150 capacity prison is divided into dorms of six where inmates sleep, eat and do their own washing and cooking. There are computers in the dorms which allow prisoners to plan their daily schedule including education, recreation and personal development. Each

⁶⁴ www.pride-enterprises.org

⁶⁵ Seno, A. "Dance is part of rehabilitation at Philippine prison", International Herald Tribune, 15/1/08

⁶⁶ BBC News online, "Dutch open 'Big Brother' jail" 19/1/06

prisoner has to wear a tag which sounds an alarm if he is not where he should be and as a result the inmate would lose credit points which can be used towards privileges such as extra phone calls or visiting times. A monitoring system can also detect aggression, though there are no cameras in the dorms and microphones cannot pick up conversations.

Dog-training:⁶⁷ A number of different prisons in America as well as some European countries have developed prison dog partnerships. The programme usually involves inmates training dogs which can then be placed with someone who needs a specially trained dog or providing basic training for dogs that have been left unwanted in animal shelters. The programme provides inmates with skills such as responsibility and patience as well as helping inmates give something back to society.

5.3 Policy recommendations

No-one sent to prison for less than three months

In the previous chapter we argued that District Courts/Justice of the Peace Courts should not be able to send people to prison in the first instance. As illustrated in this chapter there is little point in sending people to prison for sentences of less than three months, which in reality currently only means 6 weeks in jail. This is not enough time for rehabilitation and can end up pushing a person towards a career in crime rather than away from it. Therefore in addition to our recommendation for District and Justice of the Peace Courts, we believe that no court should send anyone to prison for a period of less than three months in order to allow the individual more time to engage in meaningful rehabilitation. In some instances this will mean that an individual is not sent to prison where they would have been otherwise, in other cases it may mean an individual receiving a longer custodial sentence. There is no good reason why some level of rehabilitation and training cannot be offered to a prisoner serving a sentence of three months. However should an individual breach the conditions of their original sentence, the court, has to be able to sanction prison. Therefore we would recommend that any sentence of less than three months should only be handed down if the individual breaches their original sentence.

⁶⁷ Prison Dog Project - www.pathwaystohope.org/prison.htm

In 2006/7 there were 3,430 receptions to adult prisons for a period of less than three months.⁶⁸ Under Reform Scotland's recommendations such receptions would not occur and the money saved could be re-invested in rehabilitation programmes as well as proper enforcement of community sentences. Prisoners serving sentences of less than three months account for 115 out of the average daily prison population of 7,376 and would therefore reduce the average daily prison population by approximately 1.5%.

More innovative rehabilitation including working with the private sector

In September 2008 the Justice Secretary Kenny MacAskill suggested that prisoners could instead be used as labourers on construction sites where they could earn money and therefore contribute to society rather than being a drain on the taxpayer.⁶⁹ Although there are obvious questions about workers having the necessary skills and qualifications to carry out such work, Reform Scotland does believe that more innovative rehabilitation programmes should be developed to help all prisoners, whether serving three months or ten years and could involve the private sector providing the necessary training to prisoners to not only meet shortages of labour within their professions but also helping to provide employment opportunities for offenders. Flexibility and responsibility at the level of the prison governor has to be the key to developing a successful system, as a one-size-fits-all approach will not work. Meaningful rehabilitation needs to be tailored to the individual taking account of education, training and social interaction as well as addressing issues such as drug and alcohol addictions and self esteem.

To help encourage prisons to develop such schemes, whether by learning from elsewhere or developing their own, we believe that incentive schemes could be developed whereby prisons are rewarded if they reduce the re-offending rates of their prisoners. For example in many businesses staff are encouraged to contribute towards the success of a company regardless of their rank because a share of bonus is also available to them.

68 Scottish Government, "Prison Statistics Scotland 2007/8", August 2008

69 BBC News online, "Offenders 'may get building work'", 9th September 2008

6. Conclusion

The maintenance of law and order is the foundation on which our society is built. There are a number of different elements that feed into Scotland's justice system that all have an impact on the crime rate and how safe people feel on the streets or in their homes. 'Power to Protect' examined only three elements of the criminal justice system and Reform Scotland believes that the reforms we have recommended for each of those areas can all contribute to a more effective and accountable justice system, which in turn will deliver lower rates of crime.

Certainly there are many issues in Scotland, such as alcohol and drug abuse, not to mention the strength of society as a whole, which need to be addressed to help cut crime. Many of these issues will be dealt with by future Reform Scotland papers. However, introducing reforms to the justice system which make it more decentralised, accountable and transparent and at the same time which work with and build up trust within local communities can have a huge impact on reversing long term increases in crime.

John F Kennedy said:

"Every society gets the kind of criminal it deserves. What is also true is that every community gets the kind of law enforcement it insists on"

Reform Scotland believes that the reforms set out in this paper will indeed help deliver the type of criminal justice system which Scotland wants and needs.

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