

SCOTLAND'S CHOICE

**REPORT OF THE SCOTTISH PRISONS COMMISSION,
JULY 2008**

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WHICH FUTURE FOR SCOTLAND'S CRIMINAL JUSTICE SYSTEM?

The work done by this Commission over the past nine months has been both detailed and demanding. It has brought us to what we believe is a crossroads where Scotland must choose which future it wants for its criminal justice system.

Our priority has to be keeping the public safe. We must reduce the damage that crime has on victims and communities. This requires us to respond decisively and effectively when confronted by serious, violent crime. It requires us to use the best available evidence to work harder *and* be smarter in challenging and changing offenders and at tackling the underlying social and cultural factors that so often drive their offending and reoffending. Our current uses of imprisonment are making this extremely difficult. Scotland's prisons hold too many prisoners on short sentences where there is no real expectation of being able to punish, rehabilitate or deter.

If we can step back for just a moment, let us think about what future we want by asking: What might punishment in Scotland look like twenty or thirty years from now?

Here is one possible future:

- Scotland's prisons have fewer people in them than now; they hold only the most serious offenders, and those who present the greatest threat of harm.
- Our prisons are regularly included in lists of the top international models of safety and security.
- Prison staff regularly and expertly deliver the kinds of programmes that are most effective at producing change and accountability.
- There is a widely used and well-respected system of community-based sentences, the effectiveness of which is demonstrated by low reconviction rates.

- Communities possess high levels of hope and pride from smart investment in services that are both needed and desired locally.
- Scotland plays regular host to visitors from around the world who want to learn from our achievements.

There is another possible future, one to which our current path leads. In this future, there are many more prisons and yet they are just as overcrowded as the prisons of today. Dedicated and skilled professionals lack support and suffer from low morale, spending most of their time doing crisis management and buried in paperwork. The public's distrust of the criminal justice system reaches record levels. The most fragile communities are ignored and further weakened, ensuring the next generation will find its way into the criminal justice system and keep this cycle running.

We have to make a choice between these two futures. A negative future is not inevitable and a positive one is not unattainable. Both are possible. One requires us to do nothing at all; the other will require us to think differently about what we want punishment to do and to make some changes in how we go about achieving this.

In this report we document the path we are currently taking and propose a set of solutions aimed at moving us onto the path we should take. If this is to work, all of us – politicians, the judiciary, the media, professionals, communities, families and individuals – have to embrace the opportunity to change.



Rt. Hon. Henry McLeish, Chair

EXECUTIVE SUMMARY

THE CONTEXT

Scotland faces an important **choice** with regard to how it uses imprisonment. Its rapidly growing and overcrowded prisons are making it more difficult to secure public safety and respond effectively to serious crime. Imprisonment can have harmful consequences for prisoners and the communities to which they return.

The Scottish Prisons Commission was convened to take stock of the problems and develop solutions. The **principles** guiding its efforts were: punishment must be visible, swift and fair; communities should be at the heart of penal reform and action; prison populations must be controlled to achieve Scotland's wider strategic objectives; Scotland can be an international model.

The Commission's view was that gaining **control** over prison numbers is the necessary first step to limit its damaging effects and to focus efforts on more effective punishments.

How Do We Use Imprisonment? (p11)

In examining how the issue of prison numbers might be tackled, some striking facts emerged to underline the scale and complexity of the problem facing us. This section of the report reveals:

- Scotland imprisons more of its people than many other places in Europe.
- The prison population has increased in every year of this century; it is projected to reach 8,700 inmates by 2016.
- Increased use of prisons is the result of using it for those who are troubled and troubling rather than dangerous.
- Prisons draw their inmates from the least well-off communities.
- High prison populations do not reduce crime; they are more likely to create pressures that drive reoffending than to reduce it.

An Opportunity for Action (p17)

In seeking how we might make better use of imprisonment there is no need to reinvent the wheel. We know what works and what doesn't. The problem is not knowledge but action. Re-thinking our uses of prison provides us with an opportunity to:

- **Take crime seriously.** Overall, recorded crime rates are slightly lower now than ten years ago but there are important and worrying areas of increase, including in some types of violent crime. Scotland faces real problems with violence, alcohol and drugs. Current uses of imprisonment, however, limit the ability to use prison effectively to target the most serious forms of offending and to tackle the social problems that underlie them.
- **Engage the public in rational debate.** Public surveys show that people feel drug and alcohol abuse is a bigger problem than crime is, suggesting openness to a rational debate about crime and punishment. This will require, however, that people are provided with information about how and with what effect different forms of punishment work. Greater visibility of community sentences would improve public awareness.
- **Make evidence-informed policy.** We already have good evidence about what works; the challenge is to implement good practices more broadly and more effectively coordinate the work of different agencies.

SUMMARY OF RECOMMENDATIONS

The Commission's 23 recommendations represent a comprehensive and inter-dependent set of proposals which, taken together, offer a systematic and evidence-based response to the challenges that we face.

Rethinking Punishment (p26)

The evidence that we have reviewed leads us to the conclusion that to use imprisonment wisely is to target it where it can be most effective – in punishing serious crime and protecting the public.

1. To target imprisonment better and make it more effective, the Commission recommends that imprisonment should be reserved for people whose offences are so serious that no other form of punishment will do and for those who pose a threat of serious harm to the public.
2. To move beyond our reliance on imprisonment as a means of punishing offenders, the Commission recommends that paying back in the community should become the default position in dealing with less serious offenders.

Prosecution and Court Processes (p28)

In seeking to better target the use of imprisonment, it is essential to explore the whole of the criminal justice process; it is not just a question of sentencing and punishment; it is also a question of who to prosecute and when, and of who needs to be remanded in custody before trial or sentence. That requires the availability of suitable options at every stage in the process and it places a premium on avoiding damaging delays in the court process.

3. To make sure that court business is properly focussed only on those cases that need to be formally prosecuted, the Commission recommends that the Government extend the types and availability of effective alternatives to prosecution coordinated by enhanced court-based social work units.

4. To make the court and sentencing process more efficient, the Commission recommends that the Government legislate to place an onus on the Crown to seek to roll-up outstanding matters. 'Rolling-up' means gathering together all of an accused person's outstanding charges, and adjudicating and sentencing them at the same time.
5. To target more effectively the use of remand custody, the Commission recommends that the Government extend the types and availability of bail-related information and supervision services across Scotland, including electronically monitored bail conditions, operated through enhanced court-based social work units.
6. Recognising their age and stage of development – and the potential that young offenders may be negatively influenced by older prisoners – the Commission recommends that the Government explore options for detaining 16 and 17 year olds in secure youth facilities separate from older offenders and those under the age of 16.
7. To bring Scotland into line with international conventions and to deal more appropriately and effectively with younger offenders, the Commission recommends that the Government re-examine the case for diverting 16 and 17 year olds to Specialist Youth Hearings with a wider range of options than are presently available in the Children's Hearings System.

Sentencing and Managing Sentences (p31)

Scotland is a small country but patterns of sentencing – and provision of community sentences – vary greatly. If they are to command public support, both sentencing and the management of sentences need to be more consistent, transparent and intelligible to the public. They also need to be effective.

8. To drive forward consistency and improve the effectiveness of sentencing, the Commission recommends that the Government establish an independent National Sentencing Council (NSC) to develop clear sentencing guidelines that can be applied nationwide.

9. To lead the implementation of a new Community Supervision Sentence (see 11 below), develop improved services for ex-prisoners and drive forward changes in a diverse criminal justice system, the Commission recommends the establishment of a National Community Justice Council (NCJC).
10. To address the need for clearer communication with the wider public about sentencing and community sentences, the Commission recommends that the National Sentencing Council and the National Community Justice Council should be jointly charged with enhancing public understanding of, and confidence in, the credibility of both sentencing and the management of community sentences. The NCJC should work with the Scottish Prison Service and the Parole Board for Scotland to enhance public understanding of and confidence in the credibility of release and resettlement arrangements.
11. The Commission recommends that judges¹ should be provided with a wide range of options through which offenders can payback in the community, but that, where sentences involving supervision are imposed, there should be one single Community Supervision Sentence (CSS) with a wide range of possible conditions and measures. By payback, we mean finding constructive ways to compensate or repair harms caused by crime. It involves making good to the victim and/or the community whether by unpaid work, engaging in rehabilitative work that benefits both victims and the community by reducing reoffending, or some combination of these and other approaches.
12. To enhance clarity and consistency in sentencing and to promote a problem-solving approach in criminal justice, the Commission recommends the development of a 3-stage approach to sentencing and managing community sentences:
 - Stage 1: How much payback?
 - Stage 2: What kind of payback?
 - Stage 3: Checking progress and payback.
13. To increase the visibility, credibility and effectiveness of the new Community Supervision Sentence, the Commission recommends the establishment of progress courts that enable swift and regular review of progress and compliance with community sentences – and that deal robustly with offenders who do not pay back.
14. To reduce the use of short-term prison sentences, the Commission recommends that the Government bring forward legislation to require a sentencing judge, who would otherwise have imposed a sentence of 6 months imprisonment or less, to impose a Community Supervision Sentence instead, except in particular circumstances.
15. To provide judges with an additional option in sentencing and to keep certain offenders focussed on reforming, the Commission recommends that the Government bring forward legislation to enable a sentencing judge who has formed the view that a custodial sentence is appropriate, to consider whether it should be served as a conditional sentence. A conditional sentence means that the period of custody is imposed but suspended subject to the offender keeping to a strict set of conditions.

16. Conditional sentences represent a more appropriate and transparent use of tagging than the current Home Detention Curfew scheme which is used by prison governors to facilitate early release. Given that it raises concerns about clarity and transparency in sentencing, the Commission recommends that, subject to the **full** implementation of our other recommendations, the current Home Detention Curfew scheme should be terminated.

Community Justice, Prisons and Resettlement (p41)

Resettling prisoners so that they are less likely to reoffend – and less likely to be recalled to custody – is in all of our interests. It is a challenging and complex task that requires the cooperation of a wide range of agencies and professionals, as well as the support of the public.

17. To provide dynamic leadership in developing the status, visibility, quality, consistency and credibility of criminal justice social work nationwide, the Commission recommends that the National Community Justice Council (NCJC) should be charged with and resourced to undertake these tasks.

18. To ensure progress in developing services that are available nationwide to address the social and health related needs of many offenders, the Commission recommends that the Government promote recognition across all Government departments, all public services, all sectors and all communities of a duty to reintegrate both those who have paid back in the community and those who have served their time in prison.

19. To address offending behaviour and the underlying causes, the Commission recommends a more restricted and rational use of imprisonment to enable the Scottish Prison Service to get better at regulating prisons and prisoners, at using accommodation resources intelligently to incentivise prisoners to come off and stay off drugs (for example, by providing drug free wings) and at providing and prioritising rehabilitation.

20. To tackle rising rates of recall to custody of released prisoners, the Commission recommends that the Parole Board should be provided with additional options to better manage release and compliance with licence conditions, including drug treatment and testing services and extending electronically-monitored home detention.

Custodial Sentences and Weapons (Scotland) Act 2007 (p47)

21. The Commission recommends that, if the Act is to be implemented, its implementation must *follow* the implementation of this Commission's other recommendations and the achievement of reductions in the short sentence prison population. Thereafter, the provisions around risk assessment, conditional release and compulsory post-release supervision arrangements should be reserved for those serving 2 years or more. Those serving shorter sentences should be released under licence conditions and directed to support services.

The Open Prison Estate (p52)

22. The Commission recommends that preparing for release and training for freedom be retained and reinforced as the proper purposes of the open estate – not easing overcrowding. We are clear that Scotland will not have a world-leading prison service and a well-run open estate until we reduce the unnecessary, costly, damaging and dangerous overuse of custody.

Our Future (p56)

23. The Commission recommends that the Government pursue a target of reducing the prison population to an average daily population of 5,000, guiding and supporting the efforts of relevant statutory bodies in achieving it. Based on our analysis of the impact of implementing our recommendations, we calculate that it would be possible to reduce the prison population to this level by focusing the use of imprisonment on those who have committed serious crimes and constitute a danger to the public. Our report and our recommendations are not about saving money; they are about investing it wisely and securing better outcomes. Though long-term savings would result from better targeting and limiting the use of imprisonment, the Government and the people of Scotland should be left in no doubt that we first need up-front investment in better services in and for Scotland's communities.

PART ONE: **BACKGROUND AND PROCESS**

1.1 The Scottish Prisons Commission was convened in September 2007 to examine Scotland's use of prison in the 21st century. Its remit was to:

- Consider how imprisonment is currently used in Scotland and how that use fits with the Government's wider strategic objectives.
- Raise the public profile of this issue, providing better information to allow a deeper understanding of the options, outcomes and costs.
- Assess the impact for courts, prisons and community justice services of early release provisions of the Custodial Sentences and Weapons (Scotland) Act 2007.

1.2 The Commission spent nine months investigating the use of imprisonment in Scotland. In fulfilling our remit we have taken evidence from a number of people and groups (Annex A) and carried out a series of public events across Scotland (Annex B).

1.3 We prioritised exploring Scottish practice, visiting prisons and places where young people are held; observing local examples of offender management; travelling to community-based projects such as 218 in Glasgow and the Falkirk Criminal Justice Services, where extraordinary results are being achieved in ordinary ways. We also visited Helsinki, Dublin, Liverpool and New York to observe how others manage crime and offenders (Annex C).

1.4 Underpinning this review has been our consideration of the international body of research on the use of imprisonment and the causes and consequences of overcrowded prisons.

1.5 The membership of the Commission represented a range of perspectives and skills:

The Rt. Hon. Henry McLeish (Chair) – former First Minister of Scotland, Minister for Enterprise and Life Long Learning, Minister for Devolution and Home Affairs

Dr Karin Dotter-Schiller – Acting Director-General, Prison Service in the Federal Ministry of Justice in Vienna, Austria; founder member, International Corrections and Prisons Association

Sheriff Alistair Duff – Dundee; Chair, Dundee branch of the Scottish Association for the Study of Offending

Geraldine Gammell – Director, The Prince's Trust in Scotland

Richard Jeffrey – President, Edinburgh Chamber of Commerce; Chair, Edinburgh Tourism Action Group

Lesley Riddoch – broadcaster and journalist

Chief Constable David Strang – Lothian and Borders Police

1.6 Many people took up the opportunity to contribute to the review. The tight timescale meant that views had to be invited and offered within short deadlines and we are very grateful to all those who took the time to share the benefit of their knowledge and experience.

1.7 The Commission's work was supported ably by the Secretariat, and in particular its Secretary, Annette Sharp. The Commission is grateful to her and her team: Iain Harron, Joe Church, Joni Smith, and Laura Piper. The Scottish Centre for Crime and Justice Research provided valuable additional research support. Thanks also to Jim Kerr, Scottish Prison Service, for facilitating prison visits.

PART TWO: WHAT'S THE CHOICE?

2.1 Scotland's system of punishment is at a critical juncture: our prisons are overcrowded and expanding, reaching new highs in each successive year of the 21st century. This carries potentially devastating consequences for our communities and our nation. Prisons can increase the likelihood of reoffending more often than reduce it; they deepen the alienation of individuals from communities; they draw resources away from services and institutions that benefit all Scotland's citizens. It is an option to be used only as a last resort.

2.2 We now face a choice about how and for whom we will use prison. Scotland need look no further than its immediate neighbours to see how others have addressed prison populations and with what result.

- To the south, England is engaged in the most significant expansion of its penal system in UK history, where the addition of 30,000 prison spaces over the past decade has not reduced crowding.²
- To the north, in Scandinavia, high levels of social equality and welfare go hand in hand with low imprisonment rates.
- To the west, in Ireland, a small nation has emerged to become an economic leader, while imprisoning offenders at half the rate of the UK.

2.3 Scotland shares features of all these places, having both a strong commitment to social welfare and economic improvement, but it also has high numbers in prison and some areas of persistent inequality.

2.4 We believe that there is a real opportunity here for Scotland to choose a distinctively Scottish path, one which builds on local practices and institutions while looking to the best practices from abroad that can make our approach to punishment more meaningful, more efficient and more effective.

2.5 We also believe that what we make of this opportunity will have consequences for our ability to fulfil our aspirations in other areas central to a just and inclusive society, ranging from education and health, to the environment and the economy.

2.6 This report presents the Commission's work and includes its recommendations. Our review has shown us where we are failing, where we are doing well, and identifies strategies – from around the world and in our own backyard – for doing better.

2.7 In his speech launching the Commission, Cabinet Secretary for Justice Kenny MacAskill established a fundamental principle of our deliberations when he stated that, '[t]he Government refuses to believe that the Scottish people are inherently bad or that there is any genetic reason why we should be locking up twice as many offenders as Ireland or Norway'.³

2.8 Indeed, it is not inevitable that Scotland should have one of the highest incarceration rates in Europe.⁴ Scotland can do better. It can do better to support the safety and strength of communities. It can do better assuring the public that crime will have serious consequences. These convictions are built into the Commission's work and specified in terms of several guiding principles.

FIGURE 1: PRINCIPLES GUIDING OUR WORK

- **Justice requires punishment to be visible, swift and fair.**
- **Punishment should work to secure public safety and support victim recovery.**
- **Communities can and should be at the centre of a strategy for working with offenders.**
- **We should stabilise and reduce current prison populations.**
- **Scotland should aspire to become recognised internationally for just and effective penal practices.**

HOW DO WE USE IMPRISONMENT?

2.9 Our review shows that we are not using prisons mainly to tackle serious crime. Many in the current population are there for very short periods. This is often to provide communities with short-term respite. Sometimes this is because we find it more convenient to keep an accused in prison before trial because he has no fixed abode or finds it difficult to keep appointments. And sometimes we do not know what else to do with someone whose drug problem means they are unable to stick to the conditions of their parole licence or probation order. The problem is that none of these uses makes people better or communities safer.

2.10 These characteristic uses of our over-crowded prisons are mainly the result of creeping practices and system fragmentation, rather than any change in crime. But in this worrying fact lies also our greatest hope: the means of reducing the costs of imprisonment – to individuals, to communities, and to society – are within our control.

2.11 The Custodial Sentences and Weapons (Scotland) Act was passed last year in an attempt to improve practice and create more accountability in offenders and the criminal justice system. We have examined as part of our review whether implementing it in its current form would achieve these aims, and if not, how best to do so. We were also latterly asked to review the use of the Scottish Prison Service Open Estate. We present our coverage of these two issues in the last two sections of the report.

2.12 Our work has shown us that we have a unique opportunity to build a stronger and fairer system of punishment. We sensed a willingness among politicians and professionals, the public and the media to engage in discussing the reform of punishment in a way that transcends the culture of blame that has characterised earlier efforts. A rational public debate will strengthen our ability to take responsibility for our own failures and to implement a more successful approach.

How much are we using it?

2.13 Scotland imprisons more of its population today than it has since records of the imprisonment rate began. In 2006/07, there were 141 prisoners for every 100,000 people in Scotland. Less than ten years ago that figure was 118.

2.14 The Scottish imprisonment rate is near the top of European league tables for prison use. It should be of concern that Scotland's imprisonment rates are more similar to recent EU members and former Eastern-bloc nations such as Romania (176 per 100,000), Slovakia (158) and Bulgaria (148), than to members of the EU pre-2004 (Table 1).

TABLE 1: IMPRISONMENT RATES FOR SELECTED EU AND OTHER COUNTRIES IN 2005 OR 2006⁵ (Per 100,000 total population)

Luxembourg	167
Spain	144
England & Wales	144
Scotland	141
Netherlands	128
Portugal	122
Austria	105
Germany	93
Belgium	91
Greece	86
France	85
Northern Ireland	84
Sweden	82
Switzerland	79
Finland	75
Ireland (Eire)	72
Denmark	70
Italy	67
Norway	66
New Zealand	183
Australia	125
Canada	107
USA	754

2.15 The prison population has grown by more than 20% since the start of the 21st century, increasing from an average daily population of 5,833 in 2000/01 to 7,183 in 2006/07. This growth has been unrelenting: while in the 1990s there were some decreases in the prison population, this century has seen the population rising inexorably year on year. The Government estimates that with no changes in current practices, the prison population will grow steadily to 8,700 in less than ten years (2016/17). It has already peaked at over 8,000 on a number of occasions.

Who are we using it for?

2.16 This increase in Scotland's prison population is being driven by increased incarceration of women, those on remand, those serving short sentences and prisoners recalled for violating the terms of their

parole licence (Table 2). Between 1997/98 and 2006/07, females in prison have increased by 90% and remand prisoners by nearly 70%. Astonishingly, the number of people recalled on licences has soared by nearly 1,000% (and the recall rate for young people is double this). Not only have these groups, with the exception of short-term prisoners (discussed below), grown faster than the overall population, they have grown much faster compared to the overall increase.

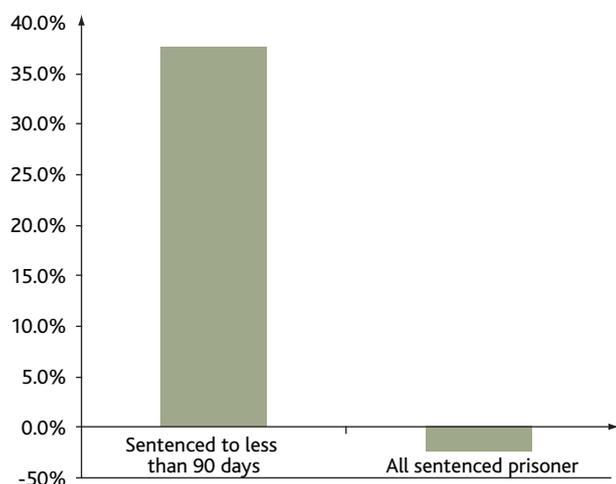
2.17 The Audit Scotland (2008) review of the prison population noted that the only category of prisoner not driving prison growth is long-term prisoners. They made up less of the average daily population of the prison population in 2006/07 than they did nine years earlier.

**TABLE 2: CHANGES IN POPULATION OF DIFFERENT CATEGORIES OF PRISONER (1997/98 TO 2006/07)⁶
(Groups where growth exceeds average are highlighted)**

CATEGORY	1997/98	2006/07	% CHANGE
Male	5,874	6,830	+16
Female	186	353	+90
Adults	5,016	6,176	+23
Young offenders	1,041	1,006	-3
Remand	927	1,567	+69
Sentenced	5,130	5,615	+10
• Recalled	51	519	+918
• Short-term	2,694	2,731	+1
• Long-term	2,367	2,366	-
Total prison pop.	6,059	7,183	+19

2.18 What the table does not bring out is the significant growth in prisoners serving very short sentences, such as those for 6 months or less. The impact and significance of such short sentences for the prison population cannot be fully grasped by taking a snapshot of the prison population on any given day (which is what the average daily population measures and is shown in Table 2).⁷ The picture is clearer if one looks at how much of the annual turnover of a prison is accounted for by those serving very short sentences. Figure 2 shows changes in receptions of prisoners sentenced to less than 90 days; in 2006/07 while there was an absolute decline in the numbers of prisoners directly sentenced to prison, the proportion of those going into prison to serve these very short sentences increased by more than 35%.

FIGURE 2: CHANGE IN RECEPTIONS OF PRISONERS SERVING VERY SHORT SENTENCES (1997/98 TO 2006/07)⁸



2.19 It is the view of the Commission that prison should be used for those whose crimes are serious and violent, and for those who present a real risk to our safety. And yet this breakdown of data shows we use prison for a very different purpose. Instead of investing in a system that can secure stronger, safer communities, a series of problematic and largely unnecessary uses of prison are revealed:

The remand problem – people not yet convicted of any crime or awaiting sentence:

More people went to prison in 2006/07 to await a trial or sentence (23,181) than to be punished (20,403). Too often the reason people are detained in this way is because of a practical concern about ensuring attendance at court or the need to complete paperwork to support a sentencing decision.⁹

The short sentences problem – people who are more troubling than dangerous:

Eighty-three percent of prison sentences in 2005/06 were for 6 months or less (and 57% of all prison sentences were for 90 days or less).¹⁰ More than a third of the people receiving custodial sentences of 6 months or less in 2005/06 received them for miscellaneous offences including common assault, breach of the peace, drunkenness, and breach of a court order.

The warehousing problem – a place to hold the damaged and traumatised:

Ninety percent of women in prison have drug and alcohol problems, and 75% have a history of abuse and major health problems.¹¹ The picture for male offenders and young people is similar.

The compliance problem – people who have broken rules rather than committed new offences:

The fastest growing prisoner group comprises those who have been recalled to prison for having failed to follow the rules of their parole, electronic tagging, or early release (a 258% increase since the start of the millennium, and nearly 1,000% higher than nine years ago).¹²

The youth detention problem – those who fall outside the Children’s Hearing System:

Not only does Scotland allow for children to be criminally prosecuted at a younger age than anywhere else in Europe, the Scottish prison system holds over 200 under-18s in prison, which is 40% of the number held in Italy, a country ten times larger than Scotland.¹³

The life-by-instalments problem – chronic reimprisonment of offenders: For thousands of offenders receiving custodial sentences in a given year it will be only the latest of many spells in prison. Nearly half of offenders receiving custodial sentences in 2006/07 had already been to prison three or more times; nearly one in six had been to prison more than ten times.¹⁴ More than two-thirds of offenders are reconvicted within two years of a custodial sentence.

The revolving door problem – failure to deal with all outstanding charges: Just under a quarter of offenders who were reconvicted within 2 years were reconvicted for offences committed prior to their index conviction.¹⁵

2.20 While overall recorded crime in Scotland has been on a downward trend, we see prisons around Scotland reaching record levels of overcrowding. The uses of imprisonment we have described partly explain why Scottish prison populations are moving in an opposite direction from crime. High recall rates, high use of remand, and the use of prison to tackle those with mental health and substance abuse issues mean prison is being used to deal with our own failures – in the criminal justice, social welfare and health systems.

2.21 It also means that there are fewer resources and less space to deal with serious offenders in need of treatment and punishment. Building more prisons, without taking action on its excessive use in the areas we have described, would significantly increase the financial and social cost of prison without improving its capacity to have an impact on reducing the reoffending of the most serious offenders.

FIGURE 3: HOW DO WE MEASURE IMPRISONMENT’S RETURN ON INVESTMENT?

Can we get more from what we are spending on imprisonment? The Scottish Prison Service had a net operating cost in 2006/07 of £280 million. It estimates that the annual cost of housing a single prisoner ranges from £31,000 to £40,000.¹⁶ We want our prisons to hold dangerous and serious offenders safely and securely, and to support their ability to lead law abiding lives when they are released. Only about one-third of prisoners manage to avoid reconviction for two years after being released. Does this level of success justify the level of investment or are there other options where we would be more wise to invest?

- If the average number of people held in prison were reduced by even 500, this would represent a notional annual saving to the taxpayer of £15 million to £20 million. Conversely, increasing the prison system by 700 places will cost an additional £21.7 million to £28 million annually to operate.
- The notional savings resulting from reducing the prison population by 700 would for example, be enough to fund a national roll-out of an internationally recognised initiative to wipe out illiteracy across Scotland.¹⁷
- Admitting and releasing prisoners entail significant costs. The high turnover in the prison population, added £2.5 million in administrative processing costs in 2006/07 compared to 2000/01, for a total administrative processing estimate of £8.8 million.¹⁸
- Improving the return on investment requires sustained support of research that can provide robust evidence on the cost implications of policies. A strong evidence-based focus will also allow for effective planning for future needs rather than dealing reactively to manage current crises.

2.22 These existing uses of imprisonment are both extremely expensive and counterproductive. People imprisoned for short periods, whether to await a trial or to serve a brief sentence, cannot be engaged in programmes known to reduce reoffending. For this group, an ever growing proportion of the overall penal population, time in prison has only negative consequences. It removes them from access to any healthy and supportive social networks in their communities. It substitutes in their place a group of fellow prisoners with major deficits and anti-social tendencies. It houses them in the parts of a prison where the architecture and security requirements discourage responsibility and encourage the dependence that arises from being told when to eat, sleep and bathe. We were not surprised to discover a large body of evidence showing that when such people return to their communities, they are more likely than those on community sentences, to be reconvicted and reimprisoned.¹⁹

2.23 We met a number of prisoners in Scottish prisons who had served more of these short sentences than they could count. In effect, we are expending on a prison system where offenders do life by instalments, and communities suffer from punishments that can offer no rehabilitation. While imprisonment will provide respite to a community for a short time, it can do very little to break the cycle of offending behaviour. Table 3 illustrates the extent of this phenomenon: more than half of offenders given a custodial sentence in 2005/06 had already been to prison; and nearly a third of all offenders had been to prison from three to ten times. This statistic alone provides stark support for the argument that short sentences have no impact on offending, and that many offenders are undergoing a lifelong process of institutionalisation.

TABLE 3: NUMBER OF PREVIOUS CUSTODIAL SENTENCES OF OFFENDERS GIVEN A CUSTODIAL SENTENCE IN 2006/07²⁰

Previous custodial sentences	2006/07
None	32%
1 or 2	21%
3 to 10	32%
Over 10	15%

The social and economic geography of punishment

2.24 Recent research on the Scottish prison population reveals that the reach of imprisonment is much more evident in communities that are already experiencing multiple forms of disadvantage and deprivation. Former prison governor and criminology professor Roger Houchin discovered that half of the population in Scottish prisons on the night of 30th June 2003 came from home addresses in just 155 of the 1222 local government wards in Scotland; that although the overall imprisonment rate for men in Scotland at that time was 237 per 100,000, for men from the 27 most deprived wards the rate was 953 per 100,000; and that about one in nine young men from the most deprived communities would spend time in prison before they were 23.²¹

2.25 The deprivation of their communities is reflected in prisoners' backgrounds (Figure 4). The severity and pervasiveness of drug and alcohol problems as well as histories of physical and mental health problems among the prison population is difficult to over-emphasise. These rates show how prison can act as the catchall for the social problems we have failed to deal with elsewhere. Although deprivation should not be accepted as an excuse for criminal behaviour, there is clearly a strong link between the two.

FIGURE 4: PRISONERS' BACKGROUNDS²²

<p>Compared to the general population, prisoners are:</p> <ul style="list-style-type: none"> • 13 times more likely to have been in care as a child • 10 times more likely to have been a regular truant from school • 13 times more likely to be unemployed • 2.5 times more likely to have a family member who has been convicted of a criminal offence • 6 times more likely to have been a young father • 15 times more likely to be HIV positive 	<p>In respect of their basic skills:</p> <ul style="list-style-type: none"> • 8 out of 10 have the writing skills of an 11 year old • 65% have the numeracy skills of an 11 year old • 5 out of 10 have the reading skills of an 11 year old • 7 out of 10 have used drugs before coming to prison • 7 out of 10 have suffered from at least two mental disorders • 2 out of 10 male prisoners have previously attempted suicide • 37% of women prisoners have attempted suicide
<ul style="list-style-type: none"> • For younger prisoners aged 18-20 these problems are even more intense; their basic skills, rates of unemployment and previous levels of school exclusion are a third worse even than those of older prisoners 	

2.26 The picture of imprisonment’s disproportionate impact on the least well off communities in Scotland is mirrored in international research. Prisons draw their populations from those areas having the highest levels of social and economic inequality. There are many neighbourhoods where almost everyone knows someone who has been to prison. And in prison inmates continue relationships they had on the outside, where these relationships support sustained criminal activity.

2.27 The regular flow of people going away to and coming back from prison fragments community life and creates a prison like environment for all community residents because of prisons negative impacts. We are aware of the impact of crime on victims and communities. But there is also an impact on the families²³ of offenders through increased chances of losing one’s housing, children going into care, engaging in further criminal activity, worse physical and mental health, poor educational attainment, reliance on public benefits, lowered life expectancy, and entrenching the cycle of crime and imprisonment through the generations.²⁴

FIGURE 5: WHAT DOES IMPRISONMENT SAY ABOUT THE HEALTH OF A NATION?

Nations that invest the most in prison invest the least in general social welfare.²⁵

'Higher welfare spending is always linked to lower imprisonment' and 'countries which increased the percentage of their GDP spent on welfare saw declines (or lower rate of increases) in their prison population.'²⁶

When we fail to invest in childcare, education and early intervention, we condemn ourselves to spending our money on prisons instead.

A robust and consistent body of research has provided strong evidence that political factors have more influence on high imprisonment rates than crime does.²⁷

Imprisonment rates are higher in countries with two-party political systems where the parties try to out-bid one another in terms of tough penal policies. The role that the media play in the debate is important too. The multi-party system and a changing social and political landscape in Scotland since devolution provides an opportunity to escape these damaging dynamics.

Countries with high imprisonment rates may be reacting less to a real problem of crime than low levels of trust and high levels of social insecurity.²⁸

The prison problem runs deeper than the penal politics and the penal system; it is also about relationships of trust or distrust between our political leaders, our public servants and our communities.

Scottish prisons are populated by people coming from the least well off communities.²⁹

High imprisonment rates deepen social inequalities and make it more difficult to strengthen the communities with the most needs.

AN OPPORTUNITY FOR ACTION

2.28 We know that many of the ways in which we currently use imprisonment are not effective for reducing crime or supporting communities (even for the limited purpose of providing some respite from troublemakers). The challenge now is to make better use of imprisonment, and to do this we have to develop a more robust and effective system of punishment that encompasses both prison and community-based sanctions. There is no need to re-invent the wheel in the pursuit of change: we know what uses of prison work to support reduced reoffending and accountability, and we know how effective the most well-designed and implemented community programmes are. There is robust and plentiful evidence on these issues. The problem is not knowledge but action.

Taking crime seriously

2.29 The safety of communities requires that we target our resources to deal with the most pernicious and harmful acts. The first point of action must be assessing the significance of Scotland's crime problem. This will allow us to focus our resources accordingly.

Recorded Crime in Scotland

2.30 Police recorded slightly fewer crimes overall in 2006/07 than they did in 1997/98.³⁰

2.31 Overall figures mask significant increases and decreases in specific categories of crime, though. There have been some remarkable declines. Records of crimes of dishonesty, the category for property crime, in 2006/07 declined for the ninth straight year with decreases for specific crimes as follows: housebreaking (-45%), theft from a lockfast place (-30%), and theft of or from a motor vehicle (-60%).

2.32 There have also, however, been increases in some areas of serious crime, although it is important to recognise that large percentage increases mask the fact that serious crimes are much smaller in number than other offences. Between 1997/98 and 2006/07, there has been an increase in recorded numbers of serious assaults (21% increase) and sexual assaults (including an increase in rapes of 47%). In addition, the police recorded 22 more homicides (for a total of 118) in 2006/07 than they did in 1997/98. The greatest growth has occurred in recorded crimes against public justice (94%), fire raising (84%), handling offensive weapons (63%), and 'other' crimes (63%). Drug crimes also rose (44%).

2.33 If these figures are an accurate reflection of changes in crime, then we are doing very well in some areas but must intensify our efforts significantly in other areas, particularly for violent crimes.

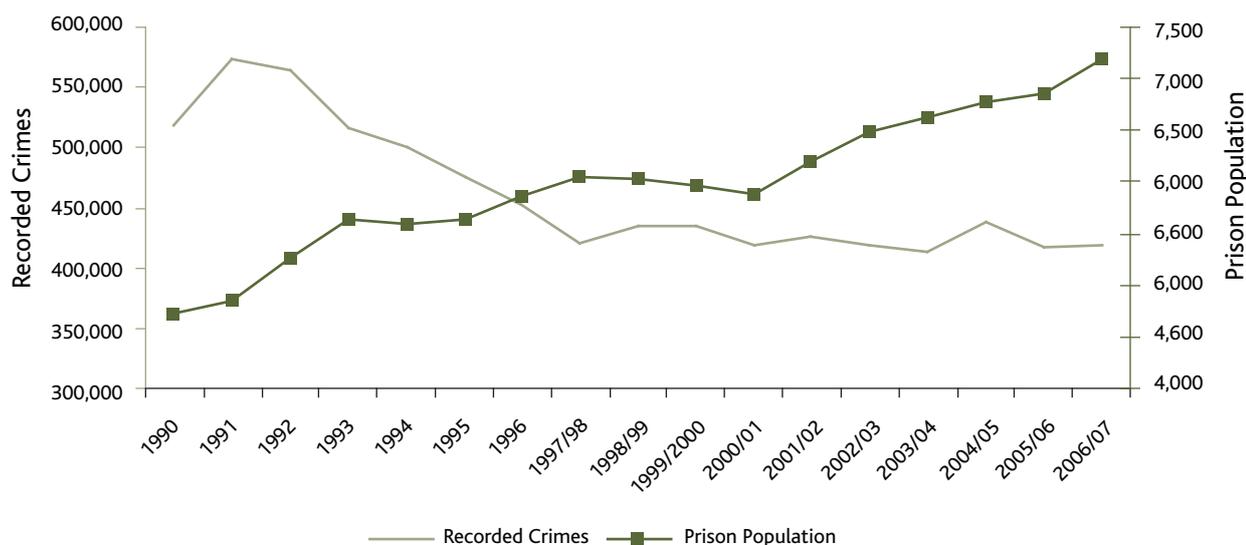
2.34 Crime statistics should be viewed through a very careful lens. 'Recorded' crime covers crime that is officially noted by the police, and will both under and over report changes in crime. For example, a concern about knife violence may lead to priority targeting of enforcement of weapons offences, meaning the rate of this crime will go up compared to earlier periods even if there are no more people carrying knives than previously. Similarly, some crimes, such as domestic abuse and rape are chronically underreported. The rising rate of recorded rapes may, however, reflect more willingness by victims to report it and better efforts by police and prosecutors in securing victim trust. Similarly, a crime against public justice is the kind of offence as likely to be affected by a change in policing priorities as it is by changes in actual behaviour.³¹

2.35 Even if we approach these figures with all due scrutiny, we cannot ignore that there is an upward trend for some of the most worrying crimes. Homicide, rape and serious assault are acts which require society's most severe punishment. We must strengthen our ability to prevent and to punish in these areas.

2.36 The Commission finds that the current drivers of prison overcrowding are severely obstructing efforts to do this, and must be addressed if we are to take serious crime seriously. Overcrowding of prisons, which is almost entirely occurring in areas holding short term and remand prisoners,³² necessarily strains prison resources and draws attention, and space, away from dealing with the issues presented by the most serious offenders. In addition, a series of short sentences increases the risk of a troubling offender becoming a very serious one. Tackling serious crime requires significant reduction if not elimination of the use of short custodial sentences in order to limit the criminal justice system's role in causing this to happen.

2.37 Figure 6 displays the relationship of recorded crime to prison population over nearly two decades, highlighting a consistent and worrying pattern: no matter what the crime rate was doing, the prison population was growing. When crimes increased (e.g. 1990 to 1991), the prison population increased; when crimes decreased, the prison population increased (e.g. 1992 to 1997/98); when crimes were stable (e.g. 1997/98 to 2004/05), the prison population increased. This provides a striking illustration to our finding that we are not using prison in response to crime.

FIGURE 6: CHANGES IN RECORDED CRIMES vs. PRISON POPULATION, 1990 TO 2006/07³³



Scotland's Crime Rate in International Perspective

2.38 We must face up to the particular and in some ways quite persistent problems of crime facing Scotland. However, we should not lose sight of the reality that Scotland is a long way from being an especially dangerous country, and should be careful not to give in to iconic but inaccurate portrayals of the country and its cities as exceptionally 'hard'. A country that attracted 2.6 million visitors from overseas in 2006 and where 9% of all employment is in the tourism sector clearly has much to offer the world.

2.39 Table 4 puts Scotland's experience of crime into international perspective. The data comes from the UN's International Crime and Victimization Survey (ICVS). Victim surveys are another source of crime data and generally capture more crime than appears in statistics recorded by the police, since they include crime that is not reported to the police.³⁴ Table 4 shows Scotland is well down the league table among developed countries for the latest available victim reports of sexual assault (with 0.6% of respondents reporting an experience of victimisation), and is only slightly above average for assaults and threats (3.8% reporting victimisation). The ICVS also reports on the rates of victimisation in major cities. City comparisons shows that Edinburgh (the designated ICVS city for Scotland) reported less sexual assault than New York, Helsinki, Copenhagen, Reykjavik, Istanbul, London, Zurich, Belfast, Oslo or Hong Kong. Assault and threat levels were similar to New York, Helsinki, Oslo and Berlin.

TABLE 4: INTERNATIONAL COMPARISONS OF CRIMINAL VICTIMISATION, 2003/04³⁵

Country	Sexual Assault	Assaults & Threats
Iceland	1.4	5.9
USA	1.4	4.3
Sweden	1.3	3.5
Northern Ireland	1.2	6.8
England & Wales	0.9	5.8
Norway	0.9	2.9
Switzerland	0.9	2.5
Ireland	0.8	4.9
Canada	0.8	3.0
Japan	0.8	0.6
New Zealand	0.7	4.9
Netherlands	0.6	4.3
Scotland	0.6	3.8
Denmark	0.5	3.3
Poland	0.5	3.0
Belgium	0.4	3.6
Germany	0.4	2.7
Greece	0.4	2.4
Luxembourg	0.4	2.3
Finland	0.4	2.2
Austria	0.4	1.8
Estonia	0.3	2.7
France	0.3	2.1
Italy	0.3	0.8
Portugal	0.2	0.9
Spain	0.1	1.6
Hungary	0.0	1.2
Australia	–	3.8
Average	0.6	3.1

2.40 The international picture shows Scotland is not the worst, nor is it the best, in terms of criminal victimisation. However, in terms of imprisonment rates, we are among the worst, and now is the time to bring our use of resources into line with the actual nature of our problems. Tackling serious, violent crime must be the priority for any society committed to the security and safety of its citizens.

Engaging the public through informed debate

2.41 We need public involvement and support in the effort to make punishment meaningful. There are promising signs that the public are engaging with the crime debate in a rational and informed manner.

Public Views about Crime

2.42 The Scottish Crime and Victimisation Survey (SCVS) collected the views of thousands of people in Scotland about their experiences of and feelings about crime and criminal justice.

2.43 The most recent survey, in 2006, shows that some misunderstandings about crime persist, but reveals an important shift in how worried people are about it. Many believe that crime in their area has been stable or rising in the past two years, rather than declining as recorded crime statistics show, but the overall sense is that the public are vigilant of crime without being cowed by unwarranted fears of it.

Some key findings of the SCVS 2006 are:

- More people felt that drug (76%) and alcohol (65%) abuse are big social problems than felt this way about crime (56%).³⁶
- Fear of crime is reasonably low in Scotland. Only 3 in 10 people surveyed felt unsafe walking alone at night (and only 1 in 10 felt very unsafe).
- Most people are not worried about being victimised by serious violent crime, nor do they believe such crimes are common in Scotland.
- Half of respondents, a larger group than for any other type of offence, felt drug abuse and drug dealing are common crimes.³⁷
- In terms of victimisation, people worried most about having their vehicles vandalised than any other type of crime.³⁸

Public Views about Criminal Justice

2.44 The data on public attitudes about the criminal justice system, however, show some signs of scepticism and uncertainty about whether or not the system works efficiently, either to reduce crime or produce justice. Slightly more than 60% of respondents felt the criminal justice system does not deal with cases promptly and efficiently.³⁹ Providing the public with more information and more clarity about how punishment works would improve not just the realisation of justice, but its visibility as well. Some key research findings about public attitudes towards Scottish criminal justice have shown that:

- People have generally lenient attitudes towards first time offenders (*'we all make mistakes'*), but more hardened views of repeat offenders (*'for making a mockery of the system'*).⁴⁰
- There is a high level of intolerance of and frustration with petty crime and anti-social behaviour.

2.45 These views help explain why we are using prison to deal with people whose misconduct is noxious but not fundamentally dangerous. Although use of community sentences is increasing, failures can be punished with prison, and may have a higher chance of resulting in imprisonment where a judge feels an offender's breach amounts to scoffing at the rule of law.

2.46 **Two issues would significantly improve the public's level of knowledge of and faith in punishment: first, improving the visibility of the criminal justice system's activities and effectiveness, and second, raising awareness about the dynamic process involved in moving towards a life free of crime.**

2.47 As to the first issue, a major barrier to public understanding is the lack of visibility in the criminal justice system. In a study of Scottish attitudes of community sanctions, the evidence showed that '[d]espite the general belief that courts are too lenient and inconsistent, when asked to consider specific scenarios, respondents' opinions in terms of which forms of sentencing would be appropriate were broadly in line with what the court rulings would be'.⁴¹ This suggests that once the public has detailed information about the nature of problems an offender presents and the sanctions that are available, they would act as, and presumably approve of what, professionals already do.

2.48 The public also is provided little information about how effective, and just as important, what different punishments involve. Community punishment is often equated with picking up rubbish or some other activity generally viewed as marginal to paying back for the harm done or making a difference to community life.⁴² Similarly, there is little awareness of what happens in prison and the level of sophistication and effectiveness that the latest programmes now offer.

2.49 The second issue requires broad dissemination of the advances in knowledge we have gained into the process of desistance, that is, the process by which someone gives up crime completely. Desistance rarely happens in a single moment or as the result of one punishment; it is better characterised as a process marked by numerous small successes and failures. A single failure punished with a major sanction can have the effect of tipping a person into a more serious pattern of offending. Knowledge of the patterns of offending and the process of desistance enables the public to see when and how a community sanction or a custodial sentence is more appropriate. It would also allow court professionals to more effectively address dealing with wayward behaviour, being in a better position to distinguish seriously regressive behaviour from minor missteps.

Using evidence to inform policy

2.50 Overcrowding and excessive use of imprisonment are not taking place because we have no other options. As use of imprisonment has increased in every year of this century, so has use of community sanctions. We are using *all* forms of punishment *more*, but we may not always be using them to their best *effect*. This is not due to a lack of information and knowledge. Our effort to make punishment work better, for offenders and for the communities in which they – and we – live, is amply supported by a large body of research on effectiveness of prison and community punishments. Improving our performance does not require a revolution in practice; it calls for a more simple and practical effort to enhance the ability of the criminal justice system to deploy the best practices that we already know can work.

2.51 The Commission's review also provides an opportunity to take forward significant recent work in Scotland that has expanded the evidence base on improving the system of criminal punishment. These efforts include:

The Sentencing Commission's Bail and Remand Review (2005), which documented the problem of remand populations and provided specific recommendations for bail supervision and more notices of court dates;

Reforming and Revitalising – Review of the System of Community Penalties (2007), which identified the qualities of the best community penalties as being high quality, effective, immediate, visible, flexible and relevant;

Audit Scotland's Report on Managing Prison Populations (2008), which documented the causes of overcrowding and identified the inability to overcome crowding solely through new prison construction.

Sentences in the Community

2.52 In Scotland we already have evidence that reconviction rates for those on some types of non-custodial sentences are lower than for those serving a sentence in prison.⁴³ We also know that offender programmes are better provided in the community than in prison.⁴⁴ The qualities of community sanctions identified in *Reforming and Revitalising* are supported by the research literature and are found in models of best practice. We found examples of best practice in Scotland, and were particularly impressed by the Falkirk Criminal Justice Service (see Annex C). This service:

- Arranges the court schedule to allow for a problem-solving approach – Thursdays are used to hear all cases that could be appropriate for community service orders.
- Provides an immediate response – once a Community Service Order (CSO) is ordered, the person is given an appointment the same day to appear at a criminal justice office where the conditions of the order are explained to them. They begin the CSO the following Tuesday.
- Has partnered with local educational institutions and employers to provide relevant activities.
- Has achieved the support of local stakeholders and is staffed by enthusiastic personnel.

2.53 In developing proposals for change presented in the next section, we have taken account of research and practice to show how we might move from isolated cases of best practice to a nationwide system of effective punishment.

Prison Sentences

2.54 When does prison work? If prisons are to have a place in Scotland's system of justice we need to understand how and when they 'work', as well as when they do not.

PRISONS DO NOT WORK...

- **To scare people straight.** The use of short sentences to provide a 'short, sharp shock' is more likely to deepen criminal justice entanglement than to deter it.⁴⁵
- **Better than community sentences** to deter, to punish or to provide reparations to victims. Many offenders would prefer a short prison sentence as an easier option compared to a community sanction.⁴⁶ Those who have been in prison previously are more likely to prefer prison to a community sanction.⁴⁷
- **To reduce recidivism.**⁴⁸ The prison setting itself can be an obstacle to change. Recidivism can be addressed only when effective forms of treatment programmes are provided in prison.
- **To strengthen communities.** In families where one parent is in prison, other members of the family are more likely to engage in criminal activity, to go to prison, to rely on public benefits, to be placed in care, and to experience high levels of emotional distress.
- **When they are overcrowded.** Crowding forces prison staff to focus on basic population management issues and reduces the ability to work productively with offenders.

PRISONS MIGHT WORK...

- **To support reduced reoffending** when proven effective rehabilitation programmes are made available to all prisoners who have been adequately assessed to participate in them.⁴⁹
- **When they minimise the disruption to community reintegration of offenders.** A system of small, local prisons is one way to achieve this.
- **To keep offenders away from the public.** This would indicate its use where there is strong evidence that an individual presents a threat of serious harm or where the offences are so grave as to require isolation from the community.

FIGURE 7: CASE STUDIES IN IMPROVING AND REDUCING USE OF IMPRISONMENT

Finland

Finland moved from having one of the highest rates of imprisonment in Europe in the 1970s to having similar rates to other Scandinavian countries (which have some of the lowest rates in Europe) by the late 1980s and early 1990s. It is also considered a model for the operation of its prisons where prison life is normalised as much as possible to match life in the community; inmates have jobs and receive wages, may vote, and so on. It achieved reductions in its imprisonment rate through a range of factors including legislative change, judicial coordination and cooperation in issuing fewer custodial sentences, and political support (Annex C).

Ireland

The Commission's visit to Ireland was instructive (Annex C). It has a prison population around 3,200. This is less than half the size of Scotland's, although it has almost a million more people. Some of the key differences with Scotland include a legislative prohibition against imprisoning anyone under 18; strong judicial support for and use of alternatives to imprisonment and community sanctions; and probation supervision focuses on the keeping of appointments, reducing the likelihood of breaches. Plans for the construction of a 1,700-bed campus with housing for men, women and young people and a secure mental hospital may contribute to growth in the imprisonment rate.

Western Australia

The jurisdiction experienced a 43% increase in its prison population over ten years, had the highest reconviction rate in Australia, and spent the most on prison. The rising prison population was mainly caused by the use of short custodial sentences. The jurisdiction implemented a package of reforms designed to improve use of alternatives to custody and community sanctions. The reform anticipated to have the biggest impact on reduced imprisonment is the abolition of custodial sentences for 6 months or less. In the first 12 months following implementation of the first reforms, the Department of Justice reported a 13% decrease in the rate of imprisonment.⁵⁰

PART THREE: CHALLENGES AND CHANGES

RETHINKING PUNISHMENT

3.1 In this section of the report, we lay out what we see as the main challenges that lie behind Scotland's rising prison population and propose a number of changes to Scotland's criminal justice processes and practices. We believe that these changes would, if implemented, significantly reduce Scotland's prison population by better focusing the use of imprisonment on those who need to be there *in all of our interests*, making Scotland a safer and better place. The starting point and the touchstone must be this:

The Commission recommends that imprisonment should be reserved for people whose offences are so serious that no other form of punishment will do and for those who pose a threat of serious harm⁵¹ to the public.

3.2 These are the right and proper uses of imprisonment. Scotland's problems with violence signal the need not to use prison more, but to use it better and more effectively in pursuit of these purposes.

3.3 The use of imprisonment is the result of decisions at every stage of the criminal justice process from arrest through prosecution, the court process and, ultimately, sentencing. This last stage of the process – sentencing – is a particularly complex task that requires that judges develop not only legal knowledge but also problem-solving skills. Judges have to take into account a very wide range of factors in deciding how best to handle each individual case. In terms of the principles that guide them in this challenge, they have to somehow balance the need to send strong messages that make clear what is right and wrong and that deter would-be wrong-doers; the need to make the punishment fit the crime; the need to repair harm when this is possible; the need to rehabilitate the offender; and the need to protect the public.

3.4 If we are to use prisons properly **we need to break with the idea that the only real punishment is prison**. Imprisonment is a relatively recent invention – one that made sense at a time when society needed something to replace transportation to the colonies. In many respects it is a 19th century strategy that has difficulties tackling 21st century problems.⁵² It cannot be beyond our imagination to think of better ways of imposing punishment, of deterring offenders and others, of sending messages about right and wrong, of getting people to payback for their crimes, of repairing harm and of helping troubled people lead law-abiding lives. Some of these approaches can and should involve the offender having to give up something they value (their reputation, their money, their privacy, their free time, their freedom), some of them can and should involve the offender in paying back positively through facing up to what they have done, apologising, compensating the victim, doing unpaid work for the community, or working hard at tackling the problems behind their offending. In some cases, where both victim and offender are willing, restorative justice practices may have an important role to play.

3.5 Given our view that prison places should be reserved for those people whose offences are so serious that no other form of punishment will do and for those individuals who continue to pose a significant threat of serious harm to the public, it follows that in all other circumstances:

The Commission recommends that paying back in the community should become the default position in dealing with less serious offenders.

3.6 When issues of seriousness and dangerousness do not arise, the focus should be on finding the most appropriate and constructive way to get the offender to payback to the victim and/or society. In essence, payback means finding constructive ways to compensate or repair harms caused by crime. It involves making good to the victim and/or the community. This might be through financial payment, unpaid work, engaging in rehabilitative work or some combination of these and other approaches. Ultimately, one of the best ways for offenders to pay back is by turning their lives around. Perhaps surprisingly, offender rehabilitation is often a major concern of crime victims who want to make sure that no-one else suffers victimisation and who see the offender's rehabilitation as the surest way to secure this outcome.⁵³

3.7 Reducing the inappropriate use of custody and building the credibility and effectiveness of community-based payback depend on getting better and smarter at dealing with offenders swiftly and efficiently. This requires the different professionals and agencies involved to move beyond their silos and to accept shared responsibility for solving the problem of delivering better and swifter justice for offenders, victims and communities. This is a key theme that we develop further below but Figure 8 provides a simple example of the kind of approach that we need.

FIGURE 8: AN EXAMPLE OF PROBLEM SOLVING IN ACTION

- When we visited the Liverpool Community Justice Centre, we observed a case where Judge Fletcher was considering making a community sentence but needed more information about the offender's circumstances before deciding what would be the best approach to take. He asked the probation officer in the court to make enquires there and then and bailed the offender for 2 hours to allow this to happen.
- During his lunch with the Commission members, Judge Fletcher excused himself having received word that the probation officer had completed the necessary enquiries.
- Being satisfied with what the probation officer reported, the Judge was able to make a community sentence that afternoon.
- We were struck by this simple example because, under current Scottish practice, the same sorts of enquiries often take 3 or 4 weeks. With that sort of delay, the offender has to be bailed (risking offending on bail and failure to attend the sentencing hearing) or remanded in custody, driving up the prison population.

PROSECUTION AND COURT PROCESSES

Diversion from prosecution

3.8 In order for procurators fiscal to reach a judgement that it is in the public interest to prosecute a crime, they must be convinced that no other way of dealing with the crime can be found that is fair and appropriate. But the range of available alternative options for procurators fiscal in many areas is limited to various kinds of warnings and fines. Though the Summary Justice Reforms⁵⁴ are likely to increase the use of additional options, and though this is a welcome development, only a few areas have dedicated diversion schemes that can tackle problems linked to **minor** offending in a speedy and productive fashion.

3.9 Procurators fiscal nationwide need a wider range of options, including options involving mediation between victims and offenders, other forms of restorative justice and options that tackle the mental health, alcohol and drug related problems that often underpin minor offending. They also need up-to-date and accurate information about the services that are available.

The Commission recommends that the Government extend the types and availability of effective alternatives to prosecution coordinated by enhanced court-based social work units.

3.10 Making this kind of provision the norm nationwide would reduce the level of business in the courts to those cases that really needed to be dealt with in court. This would free up the courts to do their business more swiftly and more effectively; it would also provide a swifter and potentially more effective response to minor offending where it is linked, for example, to mental health and addiction problems. It avoids damaging people's future prospects by burdening them with a criminal conviction for a minor offence.

Court business

3.11 As we travelled around Scotland visiting prisons we heard time and again from offenders how they believed their sentence would not stop them from coming back to prison. Surprisingly this was not because they planned to commit any new crimes, but because of old crimes that had yet to be dealt with. Unfortunately, in the current system when a judge sentences an offender on one charge, he or she may not be able to do anything about any other charges the offender is facing – even if, as is often the case, he or she knows about them. This means that each charge is processed separately, requiring the offender to come back to court multiple times, and to be sentenced multiple times. To an offender, this creates a sense of hopelessness – 'why bother to cooperate with one sentence when no matter how well I do, I will be coming straight back?'. It leads to the possibility that an offender can do well on a community sentence and still receive a custodial sentence when coming back to court, despite not having committed any new offences. This presents another example of irrationality in our process that undermines the effectiveness of all sentences. It makes no sense that someone who is working hard and making a go of a community sentence should find that their effort has been pointless because an old case catches up with them. It is also extremely costly – and as recent cases have revealed sometimes dangerous – to transport convicted prisoners to and from court to face old charges.

3.12 In the information society of the 21st century, it should be possible, at least where guilt is admitted and no trial is necessary, to 'roll-up' all the cases that a person is facing so that they can get everything dealt with at once and get on with facing up to whatever sentence they get.

The Commission recommends that the Government legislate to place an onus on the Crown to seek to roll-up outstanding matters.

3.13 'Rolling-up' means gathering together all of an accused person's outstanding charges, adjudicating and sentencing on all charges at the same time. We think that this practice would give offenders more reasons for complying with their sentences. It would also make the business of the courts much more efficient – requiring fewer sentencing hearings and fewer pre-sentencing reports. It would mean speedier justice for victims too – though it would be important to keep victims informed about the process of 'their' case and how it had been dealt with.

The use of remand

3.14 We know that some of the most intensely crowded parts of the prison system are in areas housing prisoners on remand. This includes those awaiting trial and those who have been convicted and are waiting to be sentenced. The size of the remand population is growing faster than the overall prison population. Remand prisoners have been a steadily increasing proportion of all prisoners over the past decade. In 1997/98, 15% of the average daily population (ADP) of prison was made up of remand prisoners; last year remand prisoners accounted for 22% of the ADP (a total of 1,567 inmates).⁵⁵

3.15 Of those remanded in custody on 30 June 2006, between 21% to 47% did not end up serving jail sentences.⁵⁶ If they do not need custodial sentences, then it is hard to understand why they needed to be held in custody in the first place. Sometimes people are remanded in custody because that is the only safe thing to do, but often remands are the result of lack of information or lack of services in the community to support people on bail.⁵⁷ If judges are to avoid these unnecessary and costly remands they will need nationwide speedy access to information during bail hearings, and they need a wider range of bail options nationwide. These options should include community-based bail accommodation and, where it is necessary, tags and curfews on offenders in their own homes or in specialist bail accommodation. In order to reduce the number of accused persons failing to attend court, the costs

and benefits of a text-alert scheme reminding accused persons of court dates should also be explored.

The Commission recommends that the Government extend the types and availability of bail-related information and supervision services across Scotland, including electronically monitored bail conditions, operated through enhanced court-based social work units.

3.16 We recognise that reoffending on bail is a serious problem. One way to tackle this is to reduce the need to use bail in the first place by proceeding to sentencing when guilt is established rather than delaying cases for reports (see below). When a delay is absolutely necessary, better bail support and supervision need to be made available to reduce reoffending on bail and to get people back in court to face sentence.

16 and 17 year olds

3.17 The Commission explored the use of imprisonment in relation to 16 and 17 year olds. Figure 9 shows that Scotland imprisons an unusually high number of under 18 year olds in comparison with European neighbours. At present, when 16 and 17 year olds are sentenced to detention, not only are their family ties, educational chances and job prospects damaged, they are forced to form relationships with and, no doubt, learn from more experienced offenders. We know that, whatever their sentence, those aged under 21 are the most likely to be reconvicted; 54% are reconvicted within 2 years – the rates of reconviction for young people that are imprisoned together will be higher still. By contrast, of those aged over 30, only 34% are reconvicted.⁵⁸

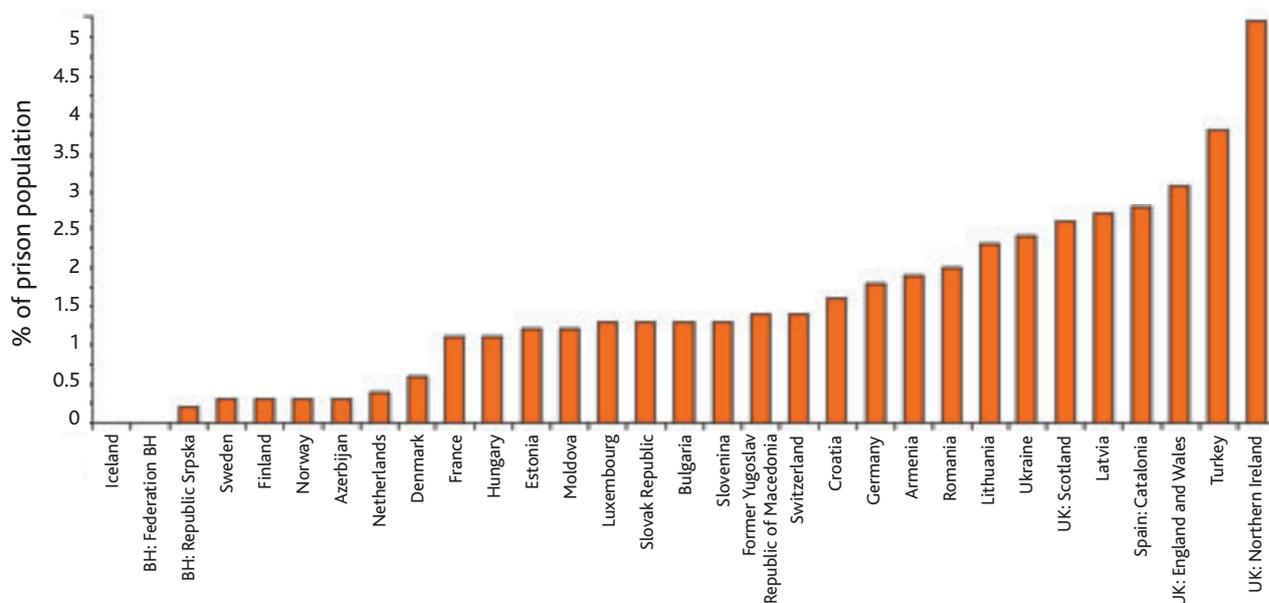
The Commission recommends that the Government explore options for detaining 16 and 17 year olds in secure youth facilities separate from older offenders and those under the age of 16.

3.18 Our remit did not extend to considering in detail the interfaces between the Children’s Hearings System and the criminal justice system. However, we note two significant concerns. Firstly, unlike in most other countries, at the age of 16, many young people who commit offences face a very abrupt transition from the Hearings System, where the emphasis is on helping them to develop and change, to the adult courts, where the emphasis is on punishing them. The suddenness of that transition makes no sense; young people judged not fit to decide what films they can watch or what drinks they can buy are nonetheless held fully accountable for their actions in adult court.

The Commission recommends that the Government re-examine the case for diverting 16 and 17 year olds to Specialist Youth Hearings with a wider range of options than are presently available in the Children’s Hearings System.

3.19 Secondly, Scotland’s age of criminal responsibility remains at 8 years of age, placing us significantly out of line with our European neighbours and calling into question our compliance with international conventions and agreements. We find that there is no persuasive argument whatever to support the view that an 8 year old child should be held fully accountable for his or her actions in an adult court.

FIGURE 9: PERCENTAGE OF PRISONERS UNDER 18 BY COUNTRY⁵⁹



SENTENCING AND MANAGING SENTENCES

Rethinking sentencing

3.20 We have heard much evidence from Scotland, the UK, Europe and North America which suggests that bringing about progressive changes in criminal justice requires the different professionals in the system – including police, prosecutors, judges, social workers, prison staff and others – to share a commitment not just to the ideas driving the change but also to working together to make it a reality. It follows that the detailed work on moving towards the basic position on the use of imprisonment that we set out above must involve all of the relevant people and professions in the justice system and must draw on their knowledge, experience and expertise.

3.21 Working out in detail how to make the constructive changes that we propose touches on complex issues about the proper roles of the Government, the Parliament and the Judiciary in making and interpreting the law. In the current Scottish system, judges decide what to do in individual cases in the context of limited guidance from the Court of Appeal. There is great merit in judges having wide discretion – not least because this keeps politics out of individual sentencing decisions. However, it is possible to let judges have discretion in individual cases without sacrificing consistency and public accountability. In many other jurisdictions, penal codes are established by legislation or bodies are set up to provide sentencing guidelines. To drive forward consistency and improve the effectiveness of sentencing:

The Commission recommends that the Government establish an independent National Sentencing Council (NSC) to develop clear sentencing guidelines that can be applied nationwide.

3.22 There is another important reason why we need a National Sentencing Council. Research has demonstrated and defence lawyers are well aware that similar cases are sentenced very differently in different courts – and even by different judges in the same courts. That is why defence lawyers end up 'judge-shopping' to try to get the best outcome for their clients. This is not just a waste of public resources – more importantly, it undermines public confidence in sentencing. The best way to address the problem of disparities in sentencing – which exists partly because judges get little guidance about sentencing and have little information about how their peers practice sentencing – is to use the National Sentencing Council to help to make the principles and practice of sentencing more transparent and explicit. This is not just about consistency across the country; it is also about consistency over time; we have seen an upward drift in both the number and the length of custodial sentences in Scotland in recent years.⁶⁰

3.23 However, in order for judges to sentence consistently and appropriately nationwide, our view is that a new body – a sister-body of the NSC with equivalent status – is required to ensure consistency in the full range of community payback options across the country. Though the detailed arrangements for providing these options could vary according to local conditions and needs, no judge should ever feel forced to send an offender to prison because a more appropriate community payback option was not in place.

The Commission recommends the establishment of a National Community Justice Council (NCJC) to lead the implementation of a new Community Supervision Sentence, develop improved services for ex-prisoners and drive forward changes in a diverse criminal justice system (see below).

3.24 The NCJC should involve representatives of the Community Justice Authority, criminal justice social work managers and other stakeholders. Appointed and charged by, but at arm's length from Government, the NCJC should provide national leadership in two key areas. Firstly, the NCJC would lead the implementation of the new Community Supervision Sentence (see below) – providing the range of robust and credible payback options that the courts need. Secondly, the NCJC would drive forward change for improved services for ex-prisoners, engaging with the Scottish Prison Service, the Parole Board for Scotland, and other stakeholders to ensure effective and joined-up working.

3.25 A frequent problem that we noted in our inquiry was that many of the professionals involved in sentencing, managing sentences and release and resettlement were at best reluctant and at worst fearful of engaging with the media. Though there may be good reason for this, in our view the media can and should play a key role in contributing to public debate about these issues. To that end, Scotland urgently requires a much more open dialogue between justice professionals and the media in which all parties play their respective parts responsibly and constructively.

The Commission recommends that the National Sentencing Council and the National Community Justice Council should be jointly charged with enhancing public understanding of and confidence in the credibility of both sentencing and the management of community sentences. The NCJC should work with the Scottish Prison Service and the Parole Board for Scotland to enhance public understanding of and confidence in the credibility of release and throughcare arrangements.

3.26 The *Local Crime Community Sentences* scheme⁶¹ run by magistrates and probation staff in England and Wales provides one useful example of how professionals can work together with communities to develop better understanding of and support for the justice system.

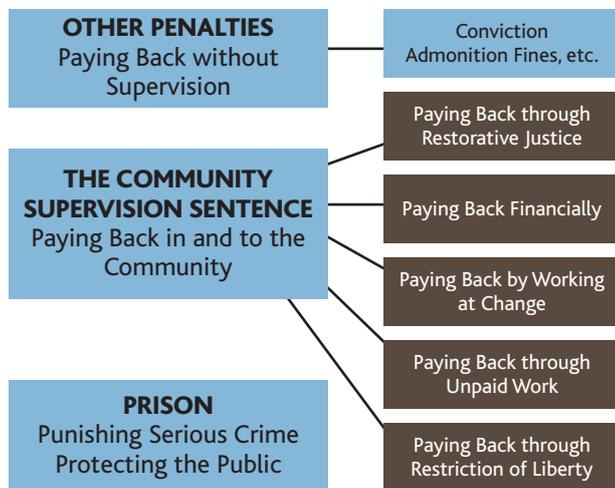
Community sentences

3.27 We heard a lot of evidence about a lack of public understanding of existing community sentences. The public know little about why these sentences are used, about what they mean for offenders, and about what they achieve. Indeed, they are only likely to hear about these types of sentence when they attract media interest – either because they seem unduly lenient or because an offender reoffends. This lack of information and lack of clarity does serious damage to the credibility not just of community sentences but of the justice system itself.

3.28 We also heard evidence for and against creating additional community sentences. Clearly it makes sense to distinguish sentences that do not require ongoing supervision and management by a qualified social worker (for example, admonitions, fines and compensation orders) from those that do (for example, supervised attendance, probation, community service, drug treatment and testing). Rather than extending the number of available sentences, our view is that the key challenge is to make community sentences more meaningful, visible and immediate in their operation and impact.

The Commission recommends that judges should be provided with a wide range of options through which offenders can payback in the community, but that, where sentences involving supervision are imposed, there should be one single Community Supervision Sentence (CSS) with a wide range of possible conditions and measures. By payback, we mean finding constructive ways to compensate or repair harms caused by crime. It involves making good to the victim and/or the community whether by unpaid work, engaging in rehabilitative work that benefits both victims and the community by reducing reoffending, or some combination of these and other approaches.

FIGURE 10: PAYING BACK IN AND TO THE COMMUNITY



3.29 Figure 10 summarises in simple terms the central role that the Community Supervision Sentence (CSS) can and should play in the proposed framework, and it outlines some of the different kinds of payback that might be involved when supervision is required. What we refer to as 'paying back by working at change' represents an important option when offenders have significant problems that underlie their offending. This type of paying back by making progress would be central to the CSS. Without tackling these problems – and confronting and challenging offenders' attitudes and behaviours – the CSS will not be effective in helping offenders to change. Figure 11 illustrates some of the types of problems that underlie offending and therefore some of the range of services that would need to be available nationwide to allow the CSS to provide rehabilitative opportunities. These problems do not disappear when someone goes to court or to prison; they wait at the door. Too often, services do not. Our evidence-gathering leads us to conclude that many members of the public understand very well that if these problems are not tackled then the chances of making real progress by turning lives around and reducing reoffending are limited or lost. Whenever a community sentence is imposed or a prisoner released, if we are to maximise the chances of real progress, then the support needs to be immediate and effective.

FIGURE 11: WORKING AT CHANGE: REHABILITATION IN THE CSS



3.30 In our evidence-gathering visits, we were repeatedly struck by the fact that making community sentences work depended on the commitment of the different agencies and professionals involved. It also depended on the professionals and agencies sharing a problem-solving approach to tackling crime and doing justice in the community. This is a theme we have already mentioned and to which we return below, but Figures 12 and 13 below illustrate some of the key findings from our local and international visits.

FIGURE 12: PROBLEM SOLVING PRACTICE IN SCOTLAND

- In Falkirk, local sheriffs, procurators fiscal, police and social workers meet bi-monthly in a **Criminal Justice Forum**.
- Their cooperation has enabled them to organise remand (sentencing) courts on Thursday mornings – and order offenders sentenced to community penalties to report to the Criminal Justice Social Work (CJSW) Office on Thursday afternoons. The court and the CJSW communicate electronically.
- The single CJSW office hosts community service, probation and drug treatment and testing orders, making it simpler for offenders to cooperate.
- Community service is not just immediate. It is also useful for offenders; it is organised to help them develop skills and qualifications while they pay back that can help them out of crime and into work. Connections have been made with a local college to facilitate this. CS is useful to communities in and through the work that the offenders do. Proceeds of sales of products from the CS workshop are regularly donated to suitable charities.
- Efforts are made to make the public aware of community service, for example through presentations at community councils and regular open days.

FIGURE 13: PROBLEM SOLVING COURTS

- The **Liverpool Community Justice Centre** aims to reduce crime and build public confidence in the justice system. It combines the powers of the courtroom with a range of on-site community resources to tackle the problems behind offending.

The on-site problem solving team includes the Judge, the Crown Prosecution Service, the Probation Service and the Youth Offending Team. Other on-site services address drug and alcohol problems, debt and housing issues. Volunteer mentors are available to provide practical support.

The Judge uses regular reviews to check up on and encourage offenders' progress.

- The **Red Hook Justice Centre** seeks to solve neighbourhood problems like drugs, crime, domestic violence and landlord-tenant disputes. A single Judge hears neighbourhood cases; the goal is to offer a coordinated approach to people's problems. An array of sanctions and services, including community restitution projects, on-site educational workshops, drug treatment and mental health counselling are rigorously monitored to ensure accountability. The courthouse engages local residents in 'doing justice' via mediation, Community Service (CS) projects that put local volunteers to work and a youth court where teenagers resolve actual cases involving their peers.
- In New York, the **Midtown Community Court** aims to make justice visible and swift. Community service projects are well-publicised and offenders start CS within 24 hours of sentence. Three out of 4 complete their orders. The use of CS has risen from 29% to 69% of cases since the court was established. Neighbourhood crime is down.

- Bronx **Community Solutions** seeks to reduce reliance on expensive and ineffective short-term jail sentences, and build public confidence that the system is holding offenders accountable and offering them the assistance they need to avoid further criminal conduct. The project is the USA's largest experiment in problem-solving justice.

Rather than the Midtown or Red Hook set-ups where they have their own separate community court, Bronx Community Solutions is run from within the Bronx's actual criminal court.

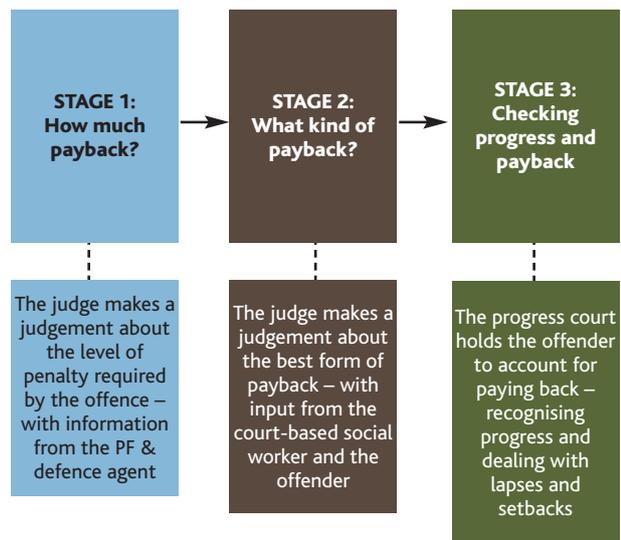
All judges in the Bronx have a broad set of sentencing options at their disposal, including drug treatment, job training, family services and mental health counselling. Offenders undertake community service work in local neighbourhoods. Project staff work with residents and community groups to create community service options that respond to local problems.

Sentencing and the management of sentences

3.31 The evidence that we reviewed, our visits and our own deliberations have stimulated some interesting ideas about how we might develop the structures and practices of making and managing sentences. At present, judges are often vulnerable to unfair criticism because the logic of the sentencing decision is not always transparent or accessible to the wider public. To some extent this is a result of the complexities of sentencing itself and of the different problems that judges face at each stage of the process. However, we believe that both the processes and the outcomes of sentencing decisions could be made more open and accountable.

The Commission recommends the development of a 3-stage approach to sentencing and managing community sentences: Stage 1: How much payback? Stage 2: What kind of payback? Stage 3: Checking progress and payback.

FIGURE 14: THE THREE-STAGE SENTENCING FRAMEWORK



- Stage 1: How much payback?** The judge uses information about the offence and the specific circumstances of the offence, provided by the procurator fiscal and the defence agent, to make a judgement about the **level of penalty** that is required. The key principle here is that the punishment must never be greater than is proportionate to the offence. Developing more detailed guidelines for making such judgements should be one task for the National Sentencing Council.
- Stage 2: What kind of payback?** The judge and a court-based social worker (and in some cases other specialists) discuss how best to solve the problem of finding the most appropriate and constructive **form of sentence** to enable the offender to pay back to the victim and/or society. This is a complex task in which the judge must make the final decision about which kind of payback makes best sense and about any issues of public safety that may arise and how that might be best managed.

In many cases better resourced court-based social work units, working day in and day out alongside the judges, would be able to get the information that judges need there and then, reducing delays and the need for bail or remand. In other cases, particularly where issues around risk of serious harm arise, it will be necessary for the case to be adjourned while social workers carry out more detailed enquiries. But the level of time it takes to carry out these enquiries should reflect the seriousness of the case.

Another key benefit of locating the responsibility for assisting the judge with the court-based social work team is that it would free up community-based criminal justice social workers from writing reports – enabling them to focus on making community supervision sentences work. Comparing 1991 to 1996 with 2002 to 2007, the number of reports completed by social workers has almost doubled;⁶² this means that social workers are buried under paperwork instead of being busy helping people sort out their problems. It also acts as a brake on the development of better supervision practice.

Looking beyond the role of the judge and the court-based social worker, our view is that offenders should be required to engage with the judge and the court-based social worker at this stage of the process to underline *their* responsibility to pay back. It is also the case that some kinds of payback just will not work without their agreement. For example, it is neither possible nor ethical to force people to change. But we are clear that if people refuse to pay back for their crimes, they must face the consequences.

In developing more detailed principles for making decisions about what forms of payback would be most appropriate in particular circumstances, the National Sentencing Council would play the lead role, but it would consult with the National Community Justice Council (NCJC) in this task.

- c. **Stage 3: Checking progress and payback.** The last stage is concerned with the ***management of community supervision sentences***. Once the community supervision sentence (CSS) is imposed, the process of implementing it must be immediate. Offenders should come to court expecting to start their sentence there and then; the offender's induction to the CSS should start as soon as the sentence is passed – literally immediately. And once the sentence is up and running, the offender must be supported in paying back and being held accountable for paying back in whatever way the court has decided. To make sure that this happens, we see merit in a new kind of 'progress court'. Because it would not be practical for all judges to preside in these progress courts, and because there is evidence that the experience of conducting these reviews requires and develops specialist knowledge and skills in judges,⁶³ our view is that particular judges in each area should carry out this specialised task. To make a clear link to Stage 2, they should be assisted by the court-based social worker who was involved at that stage.

The Commission recommends the establishment of progress courts that enable swift and regular review of progress and compliance with community sentences – and that deal robustly with offenders who do not payback.

Where there was a dispute about the facts concerning compliance and/or where penalties for non-compliance were likely to be used, the offender would be entitled to legal representation and legal aid.

The needs for more immediate information, for more immediate induction to community sentences and for the court-based social worker to play a key part in the progress court reinforce the case for significantly enhancing the resourcing of court-based social work units. Their roles in relation to diversion from prosecution and bail information and supervision further underline the point.

An important merit of the progress court is that it would end the current situation where the progress of community sentences is invisible to both judges and communities – and where they only hear about community sentences when they fail. Our view is that this skews perceptions and undermines both judicial and public confidence. As we have already indicated, other initiatives to make the payback involved in Community Supervision Sentences more visible will be required too. The public have a right to know – routinely – how much has been paid back and in what ways. This does not and should not mean stigmatising and shaming offenders as they go about paying back; to do so would be counter-productive. But it does and should mean that much greater effort goes into communication with the communities in which payback takes place.

There is a great deal of convincing evidence that the process of giving up offending is extremely difficult and complex – especially for persistent offenders.⁶⁴ Just as we understand that people who are dependent on drugs (including alcohol and tobacco) often relapse when trying to stop, so we need to better understand that for many offenders there will be lapses and setbacks too. It is in all of our interests that the new progress courts would deal with lapses and setbacks by the offender as swiftly and effectively as possible. Where these setbacks raise concerns about public safety, the progress court will need to take swift and proportionate action. But they would also have an equally crucial role in encouraging, recognising and supporting progress. As in the successful specialist drugs courts, the emphasis would be on persevering, where possible, in making community sentences work. Again, the National Sentencing Council would have a role in developing principles about how the progress court should operate, in partnership with the National Community Justice Council.

Short prison sentences

3.32 Figures 15 to 17 show respectively: the percentage of all custodial sentences passed in the Scottish courts that were for 6 months or less; the types of crime and offences for which short sentences are given; and how quickly and in what timescales ex-prisoners who have served different prison sentences return to custody after having been reconvicted.

FIGURE 15: CUSTODIAL SENTENCES BY SENTENCE LENGTH (2006/07)⁶⁵

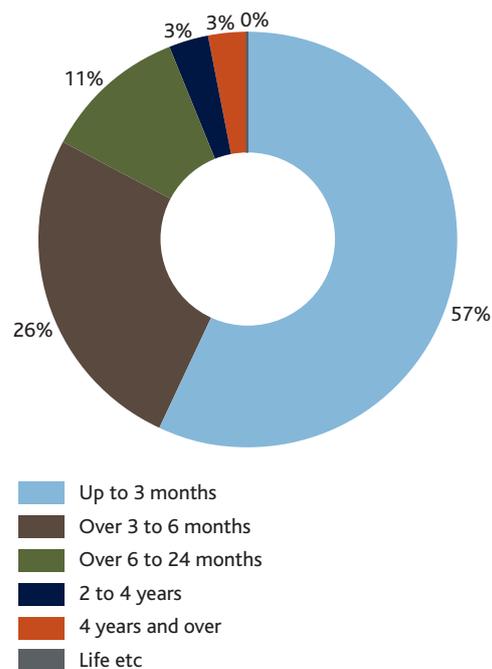


FIGURE 16: TYPES OF CRIMES AND OFFENCES COMMITTED BY SHORT SENTENCE PRISONERS (2006/07)⁶⁶

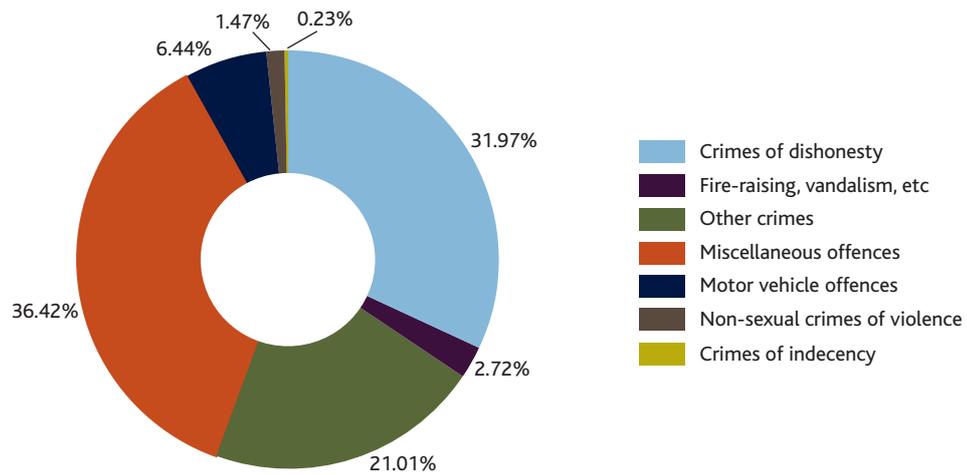
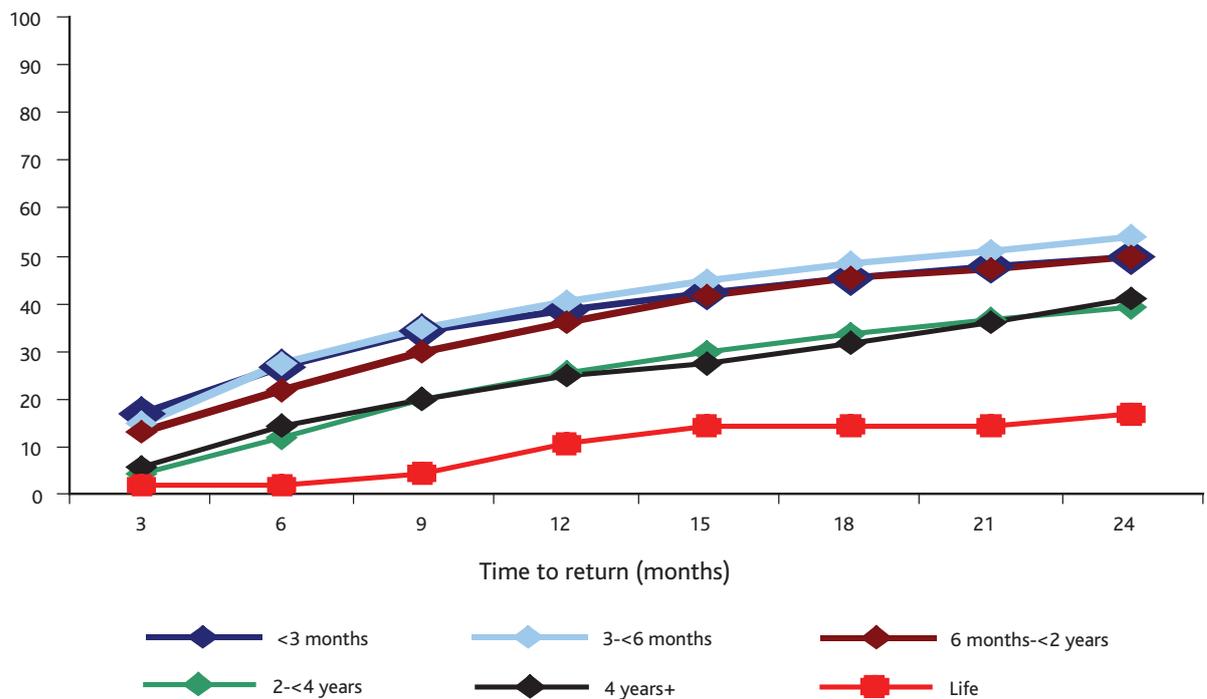


FIGURE 17: RETURN TO CUSTODY WITHIN 2 YEARS BY LENGTH OF SENTENCE⁶⁷



3.33 What these figures demonstrate is this. Firstly, 83% of all sentences passed in 2005/06 were for 6 months or less. Secondly, for the most part, these sentences are not dealing with very serious crimes; serious crimes of violence or indecency account for less than 2% of short sentences. Thirdly, we have already noted (above) that almost half of those receiving custodial sentences have been in prison more than three times before; and that between 15% and 22% had been in prison **more than ten times** before.⁶⁸ The problem of reconviction by those serving short term sentences is even more acute; those released from short sentences are reimprisoned more quickly and in greater number than those who serve longer terms.

3.34 Given that the average number of days served in short sentences (under 6 months) is just 24.2 days,⁶⁹ it is obvious that prisons can do little or nothing in that time to reduce the likelihood of offending – but, by breaking positive ties and building negative ones, the very experience of imprisonment can do a great deal to increase reoffending.

3.35 It could hardly be clearer that short-term imprisonment fails to end criminal careers. So, while short sentences may seem to provide welcome respite, any effect is fleeting and in the medium and longer term they clearly fail to protect the public and to safeguard communities. Short sentences are not a solution to the problem of persistent offending; they are a cause of it.

3.36 Although our view is that the introduction of the Community Supervision Sentence and the approach to sentencing outlined above could make significant contributions to tackling the problem of short sentences, these measures in themselves will not be enough to make paying back in the community the default position. This requires legislation.

The Commission recommends that the Government bring forward legislation to require a sentencing judge, who would otherwise have imposed a sentence of 6 months imprisonment or less, to impose a Community Supervision Sentence instead, unless he or she is satisfied that a custodial sentence should be imposed having regard to one or more of the following circumstances:

- a. **violent and sexual offences that raise significant concerns about serious harm**
- b. **when the offence constitutes a breach of bail conditions**
- c. **when the offender is already subject to a Community Supervision Sentence and/or has a significant history of failing to comply with community supervision or conditional sentences (see below)**
- d. **when the offender is subject to a release licence**
- e. **when the offender does not consent to rehabilitative elements in a Community Supervision Sentence**
- f. **any other sentence of imprisonment then being served by the offender.**

3.37 If a custodial sentence of 6 months or less is imposed, the judge will require to state when imposing the sentence the reasons, with reference to these circumstances, why only a custodial sentence could be imposed.

3.38 A risk in taking this legislative approach is that where judges currently impose custodial sentences of less than six months, they will simply impose longer sentences to make sure that offenders still go to prison. This might increase rather than reduce the prison population. Another risk is that Community Supervision Sentences might become too heavily loaded with requirements that increase the likelihood that they will be breached. Our position is that these risks can and must be explicitly acknowledged and addressed through dialogue with judges and others; the National Sentencing Council would need to play a key role in this dialogue.

Conditional sentences

3.39 A considerable and compelling body of international evidence⁷⁰ which is further supported by our own evidence-gathering, suggests that prisons are at their best in dealing with longer-term prisoners. Where seriousness and dangerousness require longer prison sentences, these sentences allow prison staff and prisoners opportunities to develop relationships, to plan for the sentence, and to create opportunities for the prisoner to tackle his or her problems and to change. We also heard that effective risk assessment and risk management takes time and skill; if we want it to be done safely, we cannot expect it to be done quickly. To allow prison staff to focus more effectively on longer-term prisoners by providing an additional mechanism to reduce the use of prison sentences, we see considerable merit in the introduction of a new sentence that sits directly between community sentences and custodial sentences. For these reasons:

The Commission recommends that the Government bring forward legislation to enable a sentencing judge who has formed the view that a custodial sentence is appropriate, to consider whether it should be served as a Conditional Sentence. A Conditional Sentence means that the period of custody is imposed but suspended subject to the offender keeping to a strict set of conditions which may include any combination of:

- a. **Electronically monitored home detention ('tagging').**
- b. **Unpaid work of benefit to the community.**
- c. **Payment of financial penalties.**
- d. **Participation in rehabilitative activities.**
- e. **Other conditions required to reduce risk of serious harm.**

In deciding that a Conditional Sentence should not be imposed and that a custodial sentence must take immediate effect, the judge may have regard to the following circumstances:

- a. **violent and sexual offences that raise significant concerns about serious harm**
- b. **when the offence constitutes a breach of bail conditions**
- c. **when the offender is already subject to a community supervision sentence and/or has a significant history of failing to comply with community supervision or conditional sentences**
- d. **when the offender is subject to a release licence**
- e. **when the offender does not consent to rehabilitative elements in a conditional sentence**
- f. **any other sentence of imprisonment then being served by the offender.**

3.40 Once again, the National Sentencing Council would need to play a key role in establishing clear principles to be applied to such decisions.

3.41 If the conditions of a conditional sentence were broken, the progress court may require the suspended custodial sentence to be served in full, although it should take into account whatever payback the offender has undertaken in the community up to that point.

3.42 There is a risk that the introduction of a Conditional Sentence would send a confusing message to the wider public, blurring the boundary between prison sentences and community sentences. However, the Commission's view is that there is merit in having a sentence that sits precisely between a Community Supervision Sentence (as described above) and a prison sentence. In a Conditional Sentence, the threat of prison is more immediate and more specific than for a Community Supervision Sentence; the custodial sentence hangs over the head of the offender who knows exactly what he or she can expect in terms of prison time if they do not stick to the conditions. All the time that the sentence is running, the prospect of having to finish it in custody remains in place to keep the offender on track. To this end, offenders subject to Conditional Sentences would be subject to regular reviews in the progress court.

3.43 As a sentence imposed by a judge, the Conditional Sentence represents a more appropriate and transparent use of electronically monitored home detention than its current use by prison governors to facilitate early release. Though we recognise that the current Home Detention Curfew Scheme (HDC) plays a useful role in reducing overcrowding, it is fundamentally inconsistent with the clarity and transparency in sentencing that the public need – and with the right of judges to determine sentence.

The Commission recommends that, subject to the full implementation of our other recommendations, the current Home Detention Curfew scheme should be terminated.

COMMUNITY JUSTICE, PRISONS AND RESETTLEMENT

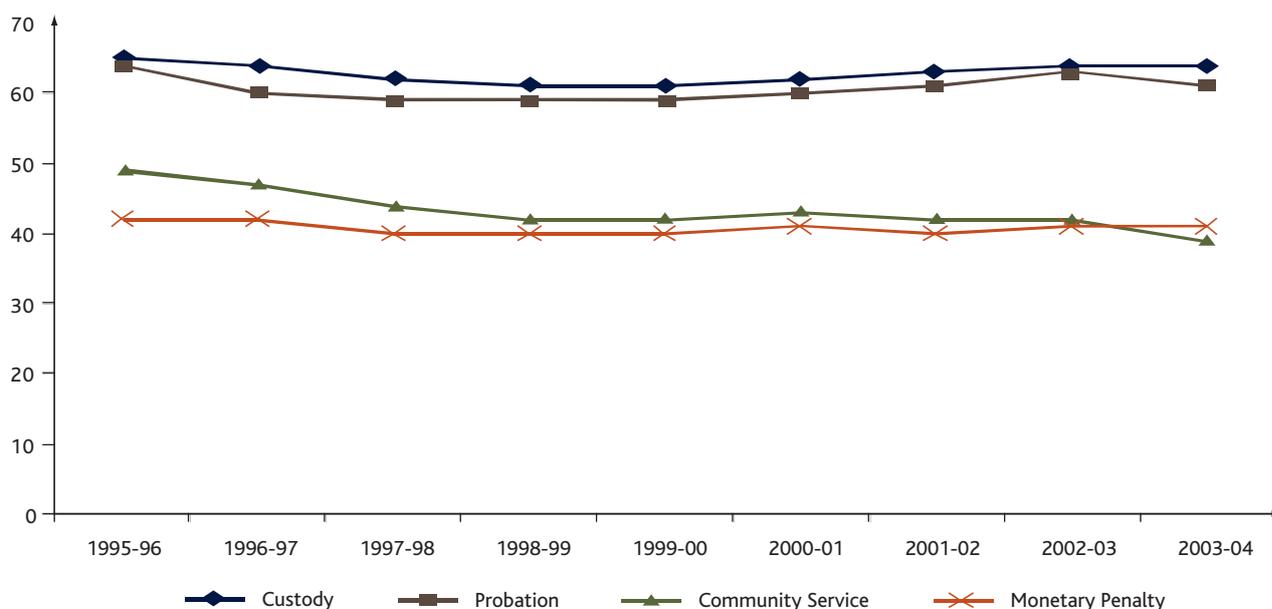
Reconviction rates

3.44 In Scotland in recent years, legitimate concern has been expressed about the rates of reconviction of sentenced offenders and this has affected public confidence in the effectiveness of sentencing, of prisons and of criminal justice social work services. In recent years, rates of reconviction for those sentenced to prison and probation show little change, but rates of reconviction for community service have been falling.

3.45 If we look at Scottish rates of reconviction in international context, what is surprising is how little reconviction rates vary across the English-speaking world, despite very different systems of sentencing and punishment.⁷¹ Criminological research suggests that there is an obvious reason for this. The most important drivers of offending and reoffending are beyond the reach of the penal system; some suggest that recognition of the social and cultural causes of reoffending makes it unwise to overstate the role that the penal system can play in reducing reoffending.⁷² To do so, it is argued, is to risk bringing the penal system into public disrepute by ramping up and then failing to meet unrealistic expectations.

3.46 Scotland's well-respected Violence Reduction Unit has promoted the development of a prevention-focused public health approach to reducing crime, rather than expecting the justice system to solve social problems. Moreover, the analysis of the current use of imprisonment that this report has provided makes clear that when the penal system is used to tackle social problems, we end up with prisons over-flowing with the needy, the troubled and the troubling. Scotland's enduring and growing problems with the imprisonment of women lend support to these arguments.

FIGURE 18: RECONVICTION RATES IN SCOTLAND⁷³
(Percentage reconvicted within 2 years)



3.47 While we see merit in these arguments, we refuse to allow this to be an excuse for failing to get the best out of our justice system. We have seen evidence here in Scotland and elsewhere of excellent practice *and* of poor practice in tackling reoffending. Scottish reconviction rates may reflect deeper social problems and they may be in line with those of other countries, but this does not mean that we should settle for poor outcomes of imprisonment or community sentences. Put simply, the challenge is to strive continuously to make the best of Scottish practice the norm nationwide, and to make Scottish practice the best in the world.

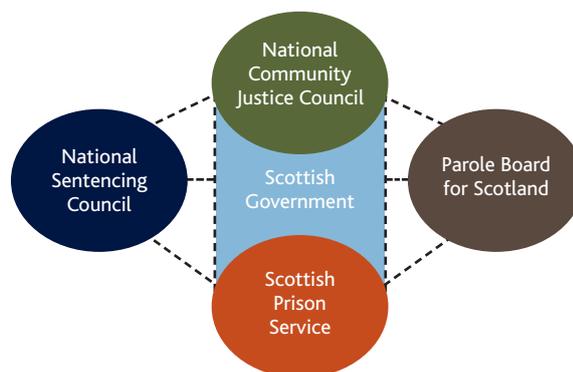
3.48 However, systems and practices do need to be rooted in realism and in the best available evidence about how to tackle reoffending. The evidence tells us that the reality is that prisoners and offenders under community supervision very often face serious and chronic disadvantage and exclusion which plays out in many and varied ways; typically, they face serious problems with accommodation, drink, drugs, housing, relationships, money and work – and these problems underlie their offending.⁷⁴ While it is right to focus on repairing the harms that crime causes, it is equally important to tackle the ills that provoke it. They are not easy problems to solve; it takes time, skill and patience to tackle these kinds of issues. But if joined-up services, intelligent strategies and effective practices are not in place nationwide, then the chances of offenders reoffending will not be reduced and that means we all suffer – victims, offenders, families and communities.

Community justice and criminal justice social work

3.49 In an attempt to encourage the development of more joined-up services, strategies and practices, in 2005 the Parliament passed the Management of Offenders (Scotland) Act which set up eight Community Justice Authorities (CJAs) and charged them with developing plans to reduce reoffending through coordinated efforts involving prisons, police services, local authorities, health boards, voluntary sector organisations and others. The Act also established a National Advisory Body (NAB), chaired by the Cabinet Secretary for Justice, to approve the local plans. The CJAs and the NAB have been in operation for less than two years. Though it is too soon to assess their successes and failures, we remain concerned about the capacity of the CJAs to deliver on reducing reoffending, given their very limited powers and resources.

3.50 Leaving aside these new organisational structures, we have identified a need for renewed vision, visibility and leadership of these services. Community justice and criminal justice social work services are pivotal to making the reforms proposed above work; these services need to be credible and to enjoy the confidence and support of Scottish judges and Scottish communities. This requires the proper resourcing of community justice and criminal justice social work – not just in financial terms, but in terms of boosting the specialist knowledge and skills of the workforce, their integration and standing within the criminal justice system, and their standing and status *within* local authorities and local communities too. As we have already noted, it also requires a fundamental shift in the duties of the criminal justice social worker away from report writing and form filling and into the delivery of real support and robust supervision to offenders. Rather than being so busy writing reports that they cannot effectively supervise the offenders that the courts and prisons send their way, we need to find ways to release their key professional skills in helping troubled and troubling people comply with supervision and helping them tackle their underlying problems. That way, social workers can play their vital part *centre-stage* in a joined-up justice system that is more immediate, more efficient and more effective.

FIGURE 19: JOINED-UP JUSTICE



The Commission recommends that the National Community Justice Council (NCJC) should be charged with and resourced to provide dynamic leadership in developing the status, visibility, quality, consistency and credibility of criminal justice social work nationwide.

3.51 It is equally clear to us that social workers supervising community sentences and released prisoners cannot tackle offenders' complex and varied problems on their own. In particular, we received concerning evidence about the need for improvements in community-based health care alternatives for offenders with mental health and/or drug and alcohol issues. We were surprised and disappointed to learn, for example, that around 70% of prisoners being released in Scotland do not have a GP.⁷⁵ For a long time, these social and health related needs – and the role that their neglect plays in driving the use of imprisonment – have been recognised in connection with women offenders. But they are common amongst men who offend too. Making support available to ex-prisoners is not just the job of social workers; it is in society's interests that all public services – education, employment, health, housing and so on – play an active part in helping ex-offenders to lead a law-abiding life in the community. Communities also need to play their part in giving people who have served their sentence a fair chance for a fresh start. Without a fair chance, ex-offenders are more likely to return to their old 'friends' and their old ways.

3.52 The Commission finds that the lack of progress in developing services that are available nationwide to address the social and health related needs of many offenders condemns our prisons to deputising for health and welfare services. That is wasteful and wrong and it has to change. The Commission further finds that if public services and local communities exclude ex-offenders, all of us suffer because the likelihood of reoffending is increased. Ultimately, turning lives around is the best way to protect the public.

The Commission recommends that the Government promote recognition across all Government departments, all public services, all sectors and all communities of a duty to reintegrate both those who have paid back in the community and those who have served their time in prison.

FIGURE 20: PROMISING DEVELOPMENTS IN SCOTLAND

- **Sacro's Community Links Centre (CLC)** in Edinburgh works with short-term prisoners to assist their resettlement. Prisoners are visited in prison shortly before their release so that the needs that lie behind their offending can be assessed. Plans are then developed to address these needs. Once released, ex-prisoners can access a 'one-stop shop' in the community where they can access the supports and services that help them to tackle issues around benefits, housing, health and employability services.

- The Wise Group's **Routes out of Prison** project employs ex-offenders and people with experience of disadvantage as Life Coaches to support short-term prisoners just before and after their release. When released service users are signposted to other relevant agencies and, if job-ready, also work with employment consultants on finding employment or training. Initial evaluation findings show that Life Coaches make connections with a high proportion of prisoners, including those with complex needs, and that the most salient aspect of the support for many service users is the quality of the relationship with their Life Coach.

- The **218 Project** in Glasgow works with women offenders to address the root causes of their offending. It offers a person centred programme of care, support and development designed to stop women offending by tackling the issues that drive it, including drugs, alcohol, abuse and poverty.

218 works with women at any and every stage in the criminal justice process – at arrest, before prosecution, on bail, on community sentences and during and after imprisonment.

The service involves a holistic approach that tackles the issues that arise in relation to their offending behaviour, including a structured programme as well as one-to-one interventions.

Prisons

3.53 We were not asked to explore prison regimes and conditions. Rather, our task was to consider how imprisonment is used. That said, we did note with concern some evidence which we received about the manner in which Key Performance Indicators and financial incentives and disincentives in the Scottish Prison Service might contribute to problems with overcrowding. We were surprised to discover, for example, that when prisoner numbers exceed the contracted limit for a prison, the prison receives £10 per prisoner for every night that the extra numbers are accommodated. Similarly, 'under-occupancy' means that the prisons 'lose' £6.50 for every 'empty bed'. Though we recognise the reasons behind such financial systems, arguably they send the wrong message. Likewise, we note that the contract terms which a previous Executive agreed with Serco (the private company who run Scotland's only existing private prison) make the costs of exceeding agreed prisoner numbers at HMP Kilmarnock prohibitive. This means that despite the current over-crowding crisis, HMP Kilmarnock continues to operate under its capacity.

3.54 We were even more troubled by evidence, not least from prisoners and ex-prisoners themselves, about the levels of illegal drug misuse and illicit use of mobile phones in prison settings. We are well aware that similar problems exist in all jurisdictions – and are in large part an inevitable consequence of forcibly co-locating and confining offenders with drug problems and those involved in the drugs trade. However, we do not accept that these abuses can or should be tolerated – tacitly or explicitly – and we applaud those prisons that have made progress in addressing these issues. Over-crowded prison systems too often are forced to settle for keeping people securely in custody and maintaining order.

The Commission recommends a more restricted and rational use of imprisonment to enable the Scottish Prison Service to get better at regulating prisons and prisoners, at using accommodation resources intelligently to incentivise prisoners to come off and stay off drugs (for example, by providing drug free wings) and at providing and prioritising rehabilitation.

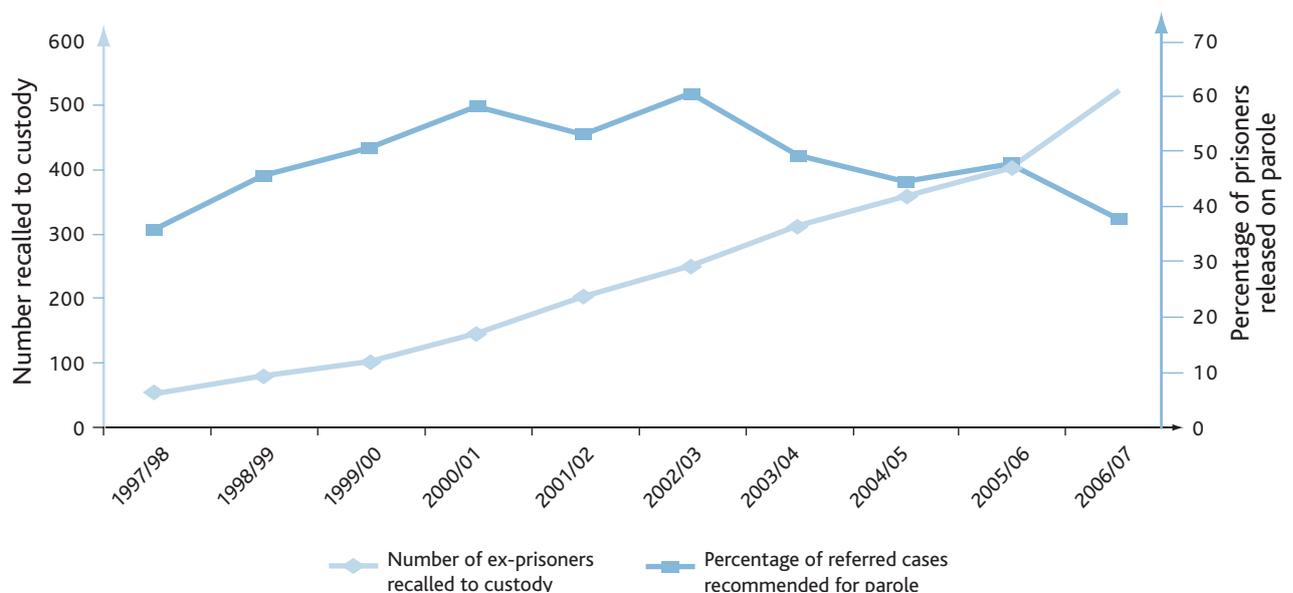
Parole and recall

3.55 We also heard worrying evidence about the number of ex-prisoners on release licences being returned to prison not because of reoffending but because they had not stuck to the other conditions of their release licences. As Figure 21 (below) indicates, and as we have already noted, recall rates are rising rapidly while the percentage of prisoners being granted parole is falling. Research in other countries suggests that these changes may be less to do with managing real risks to the public than with those concerned becoming more defensive and risk-averse for fear of being blamed when things go wrong.⁷⁶ If this is the case in Scotland then we should all be concerned – firstly because people may be in prison who do not need to be there and secondly because this may well damage them and their prospects for successfully resettling in the community when they do get out. Once again we need to be clear that this harms all of us.

3.56 We believe that further research is required to explore issues around decision-making about release from and recall to prison in Scotland. However, we do not need research to convince us that the Parole Board needs to work closely and constructively with the Scottish Prison Service to ensure that prisoners are gaining access to the necessary offence-related programmes and with criminal justice social work services to continuously improve ex-prisoners compliance with release licences. If, as we have noted above, offenders on the Community Supervision Sentence will face lapses and setbacks, the same is true of ex-prisoners. Managing these lapses and setbacks constructively in the community, when they do not suggest significant risks of serious harm to the public, requires that the Parole Board is granted more powers and more options when dealing with people who have not kept to their licence conditions. This should avoid unnecessary recalls to prison, particularly where the recall is the result of an offender's problem with alcohol or drugs.

The Commission recommends that the Parole Board should be provided with additional options to better manage release and compliance with licence conditions, including drug treatment and testing services and extending electronically-monitored home detention.

FIGURE 21: PERCENTAGE OF PRISONERS RELEASED ON PAROLE AND NUMBER RECALLED TO CUSTODY⁷⁷



PART FOUR: CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) ACT 2007

Background

4.1 The Cabinet Secretary for Justice asked us to consider the implementation of the Custodial Sentences and Weapons (Scotland) Act 2007. The 2007 Act, if implemented will significantly alter release arrangements that apply to prison sentences. The existing system (under the Prisoners and Criminal Proceedings (Scotland) Act 1993) determines an offender's release by length of sentence, not the risk to the public that he or she may pose. The system is difficult for the public to understand. Political and public debate has not been helped by a persistent confusion between unsupervised and unconditional release. The current early release arrangements are shown in Annex E. It is a misconception that the 1993 Act allows unconditional release; at present every released prisoner remains liable to recall to custody to serve the 'unexpired' part of their sentence if they reoffend before the release licence expires. But, the 1993 Act does mean that for those sentenced to less than 4 years, release at the halfway point is automatic and, in most cases, there is no compulsory post-release support or supervision.

4.2 So the present situation is that release can be automatic and unsupervised, or automatic and supervised, or discretionary and supervised. This lack of clarity in what sentences and post-release 'conditions' actually mean undermines the credibility of the criminal justice system. There is consensus across all political parties and key stakeholders that the automatic, unsupervised and unsupported release of prisoners should end.

4.3 The Cabinet Secretary set us an objective to compare the underpinning rationale with current law and practice, including the impact for courts, prisons and community justice services of the early release provisions of the 2007 Act.

The principles of the 2007 Act are to:

- end the current inflexible system of automatic and sometimes unsupervised release determined by sentence length not risk;
- provide a clearer, more understandable system that will increase public confidence, enhance public protection and reduce reoffending through end to end management of sentences;
- take account of public safety by targeting risk;
- have victims' interests at its heart; and
- fulfil society's expectations for punishment and deterrence but also give offenders rehabilitative opportunities.

4.4 The 2007 Act while ending unsupervised release, does **not** end automatic release. There will still be automatic release at the three-quarter point of the sentence if not before and it is important that public expectations are not raised. Replacing the current arrangements with a combined sentence that includes a specified 'custody part' and a specified 'community part' may assist in providing a clearer, more understandable system for managing offenders. The Act does provide greater scope for the effects of the sentence to be explained and this may help improve public knowledge and understanding of the criminal justice system. However, the Act still permits the sentence that the judge passes in court to be altered in its effects by decisions taken by 'Scottish Ministers' (meaning officials in the Scottish Prison Service) or by the Parole Board. So, plea-bargaining, reduction in sentence for early plea of guilt and release on home detention curfew continue to muddy the waters and undermine the credibility of the system.

Evidence

4.5 Most of those who gave evidence to us supported the *principles* of the 2007 Act but thought there were significant problems with some of the *measures* it contains. Clarity in sentencing was considered to be crucial in building confidence in the criminal justice system and there was overwhelming support for a statutory requirement on judges to explain publicly the effect of sentences, but the potential for lack of clarity noted above was widely recognised. Other concerns included:

Risk assessment: Under the proposed arrangements in the Act, for every sentence of 15 days or more, an assessment will have to be made of the risk of releasing the offender at the half way stage as opposed to keeping him or her in prison for a period up to the three-quarters stage of the sentence, to protect the public. It will be highly artificial to have such a process at the lower end of this sentence range. Almost by definition, the risk to the public from someone sentenced to 15 days will be low. The protection of the public from keeping a person in prison for 12 days rather than 8 is negligible. As sentence length increases, there is some significance in the extra length of time that might be served in prison under the proposed new arrangements in terms of public safety. More worryingly, the time spent on considering the risks and licence requirements of very short sentence prisoners will swamp the system and deflect attention from those prisoners whose risk or harm *is* significant. These considerations already take place under existing arrangements for sentences over four years and for certain sex offenders. This is the group where public protection issues are most significant. Extending the arrangements down to 15 days will not yield a proportionate increase in public safety – and may jeopardise it by overburdening the system and distorting its proper focus.

Licence conditions: The proposals in the Act state that 'The licence conditions will enable provision for a variable and flexible package of measures including supervision if required'. But how meaningful is a package that can be created while the prisoner is in custody for as little as two weeks and under licence for as little as another two? If the answer is that there will simply be a good behaviour condition for this level of sentence, it starts to look more and more like the present system.

Continued detention: It is proposed that if a prisoner serving 15 days is considered an unacceptable risk to the public at the half-way point, his or her case will be referred to the Parole Board. To consider the case properly, papers will need to be prepared and sent to the Board, including a report from the judge. All this will take time and would require the Board to hold an oral hearing at which the prisoner would be in attendance. The Parole Board's consideration, decision-making and provision of the written decision will take at least a further two weeks by which time the shorter sentences would have ended. While there would be more time with longer sentences, over 80% of sentences imposed in a year are for 6 months or less. The right of review by the Parole Board would therefore be meaningless in a substantial proportion of cases given the time needed to process the case properly and fairly. Recently published expert legal opinion suggests that this may leave Scottish Ministers open to legal challenge⁷⁸ and potentially to claims for damages.

4.6 These reservations are important. But equally, there is clear evidence that release without support and, where need be, supervision leads to many offenders returning to chaotic lifestyles with no family support, home or services. It is therefore no surprise that reoffending rates are high and that many offenders end up serving a life sentence by instalments. We strongly support end-to-end sentencing and support for **all** offenders on release from prison.

Impact

Prison population: It was estimated that the Act would, if implemented, increase the prison population by between 700 and 1100. The increase in the prison population since the Act was introduced – and the increase in the number of short-term prisoners suggest that these estimates may need to be recalculated. Moreover, if judges use the new power to impose custodial parts of over 50% to a significant degree, the increase will be higher still since this was not allowed for in the initial projections. This creates the risk of serious overcrowding or costly investment in new prisons. This will require additional resources which may be diverted to prisons from elements of the criminal justice system that may be more effective in reducing crime; the police, expanded drug treatment programmes and the more focussed community supervision sentences that we have proposed.

Courts: The new arrangements will have a minimum impact on the courts. However, there could potentially be an increase in the number of appeals against sentences. Any increase is almost certain to stem from those offenders who are given more than the 50% minimum custody part. There was widespread support for the courts to make clear in open court the effect of the sentence. Such transparency in sentencing, and what it actually means in practice, should build public confidence in the system.

Community Justice Services: In relation to the community, the proposals would see all offenders (except the few on short sentences of less than 15 days) being subject to a custody and community sentence. When the offender moves to the community part of the sentence he or she will be subject to licence conditions and supervised, where necessary, by criminal justice social work services. The costs to local authorities would come from the much higher numbers of offenders subject to some form of community intervention or supervision during the community part of the combined sentence.

The monitoring and supervision of all offenders in the community is crucial to reducing reoffending. It is important to re-integrate an offender back into the community and to continue the rehabilitation process after a period in custody. There will need to be adequate resources in place to provide the levels of supervision and support required if public confidence is to be enhanced. In cases where the risks of harm to the public are not great, support may not need to be provided by a qualified social worker. But low risk of harm prisoners can be at high risk of reoffending (in minor ways). Many will need support and encouragement to keep on the straight and narrow. Community justice services will need to work creatively with offenders, families, voluntary agencies, other public sector agencies and communities to work out how best to support such offenders.

Key Findings

- Joint working in risk assessment has significant resource implications and the high number of short-term sentences could have the unintended and unfortunate outcome of diverting resources from those who require intensive risk assessment.
- The level of 'supervision' required should be proportionate and tailored to the risk of both harm and of reoffending that each individual offender presents.
- Prison numbers could increase by between 700 and 1100 (that is, 2 new prisons).
- Assessment of the risk of serious harm would not be possible for the majority of offenders spending less than 6 months in custody. Short-term offenders instead need an assessment of needs.
- Situations and circumstances change when an offender goes back into the community, so social work, police and voluntary agencies must be resourced to continue assessing and addressing risk and need.

Recommendations

- If the Act is to be implemented, then consideration should be given to a staged implementation prioritising those sentenced to 2 years or more (6% of custodial sentences⁷⁹). If and only if more short-term sentences are replaced with community sentences, then the practical problems with implementing the Act will be diminished.
- Those sentenced to less than 2 years (94% of custodial sentences⁸⁰) should be released conditionally *and* with support and supervision at the halfway point of the sentence.
- Supervision need not always be undertaken by qualified social workers where low levels of risk of harm permit others to take the lead.

- The Act should not be implemented until the resources are in place for joint risk and needs assessment and supervision/support in the community.

Summary Recommendation:

4.7 Having reviewed the evidence about the likely impact of the Act on the prison population and about its workability in terms of the effective management of prisoners in custody and on release, we have some serious concerns about the Act. In our view, the main problem with the Act is that the 14-day lower limit is simply not practicable. The Commission supports the main principle of the Act; that all released prisoners should be supported in the community on their release so as to assist in their resettlement and reduce their offending. Given the Commission's recommendations concerning using community supervision sentences and conditional sentences.

The Commission recommends that, if the Act is to be implemented, its implementation must follow the implementation of this Commission's other recommendations and the achievement of a reduction in the short sentence prison population. Thereafter, the provisions around risk assessment, conditional release and compulsory post-release supervision arrangements should be reserved for those serving 2 years or more. Those serving shorter sentences should be released under licence conditions and directed to support services.

PART FIVE: THE OPEN PRISON ESTATE

5.1 The Cabinet Secretary for Justice also asked us to examine the role of the open prison estate, in the light of the Robert Foye case. In that case, an offender absconded from an open prison and raped a 16-year-old girl.

5.2 We visited Castle Huntly on 14 February 2008 and were given a presentation by the then Governor, Ian Whitehead, and other key establishment staff, including those who work at Noranside Prison. The members were also given a tour of the establishment and had the opportunity to see the range of services available to offenders.

The role of the open prison estate

5.3 In April 2007, Castle Huntly and Noranside prison were integrated into a single establishment, HM Prison Open Estate. The two previously independent sites were merged to provide distinctive prisoner services and in order that the resources used gave best value across both sites. Geographically, Castle Huntly is in Longforgan, 3 miles west of Dundee; whilst Noranside lies 10 miles north east of Forfar in Angus. Both institutions hold low supervision adult male prisoners serving 18 months and over, including life sentence prisoners; all of whom have been assessed as suitable to serve part of their sentence in open conditions. Dependent upon sentence length, prisoners can spend up to 24 months in open conditions although the average length of stay is 6 to 9 months. Prisoners are provided with employment training and transitional throughcare while working towards a structured reintegration into society.

5.4 The capacity within the open estate has increased since 2006 with the introduction of the Extended Home Leave (EHL) and Continuous Cell Occupancy (CCO) schemes. Extended Home Leave allows selected prisoners up to 7 nights' access each month to their home community. The current accommodation has increased from 425 to approximately 519 places.

Supervision system

5.5 The 'Prisoner Supervision System' is the process by which different levels of supervision requirement are allocated to each individual prisoner during their time in either closed or open prisons. The supervision levels are High, Medium and Low. After initial allocation of supervision level on admission prisoners are reviewed annually until they attain low supervision status. The process is designed to monitor and support behaviour whilst in prison but is **not** designed to assess risk of harm to the public.

Criteria for transfer to the open estate

5.6 Transfer to the open estate is governed by a number of formal rules, guidance and other administrative arrangements. Long-term and life sentence prisoners, will have gone through the Enhanced Integrated Case Management process to inform on risk assessment and management. There are also qualifying periods for long-term and life sentence prisoners to access the open estate based on length of sentence as part of the Prisoner Supervision System. There is no minimum qualifying period for short-term prisoners.

5.7 In all cases, the prisoner must have no outstanding warrants; have low supervision status; and have no identified high offence-related needs which cannot be met in the open estate.

Absconds from prison

5.8 Despite the increase in the number of offenders accessing the open estate, the number of absconds is reducing. It is also important to remember that of those who do abscond, only a small proportion go on to reoffend during the period they are unlawfully at large. In 2007/08, there were 55 absconds from the open prison estate. In the same year the average daily population was 487 and the total number of prisoners who went to the open prison estate was 793.

Key Findings

5.9 We recognise that the prison open estate is an integral part of the rehabilitation process. However, **the open estate is in the community**. There are no walls or fences and prisoners have access to both the local community and to the community they intend to return to on release. While the SPS acknowledges that managing and minimising risk of harm to the public is paramount, there can be no doubt that high prison numbers mean there are pressures to move prisoners through the system to alleviate overcrowding elsewhere in the estate.

5.10 As we have already argued, prisons will always be needed for serious and dangerous offenders. Allowing long-term prisoners **controlled** access to the community is a proven method of assessing their suitability for and preparing them for release on licence. However, **the transfer of an offender to an open prison must only happen when all criminal justice agencies are satisfied that his or her risk can be managed in that setting**. While it will never be possible to totally eliminate risk, there must be effective joined-up assessment procedures and risk management plans in place.

5.11 Our view is that the Scottish Prison Service is not and cannot be solely responsible for the offender's rehabilitation. If it is accepted that moving offenders to the open estate is in fact the first step in moving them back into the community, then other key agencies need to play a part in managing the risk and needs of the offender. Only an in-depth review into risk assessment processes and of individual decisions would reveal whether or not the current risk assessments and checks in place are adequate. We would, however, make the following observations:

- Access to the open estate should be primarily for those serving a life sentence or a long-term determinate sentence (of 4 years or more).
- All identified risks and needs must be sufficiently addressed through interventions *before* an offender qualifies for a transfer to the open estate.

- A comprehensive community risk management plan, including home background details, should be developed and be in place *before* an offender transfers to the open estate.
- The open estate should review the risk assessment and risk management plan as soon as possible after transfer to ensure that trigger behaviours in respect of escalating risk are identified and to plan how to address these behaviours should they arise.
- There should be a more clear correlation between risk of harm/reoffending and the prisoner supervision system. **An offender could be designated 'low supervision' in a closed establishment but require a higher level of supervision in the open estate.**
- Temporary release licence conditions should link to the risk management plan and there should be resources in place to monitor response.
- **During home leave visits offenders should be subject to licence conditions specific to their individual risks and needs.** These might include requiring them to attend appointments with partnership organisations in the community, working with organisations to help them access work or training and, where appropriate, place restrictions.
- Joint arrangements should be agreed with partnership organisations such as the local authority criminal justice social work services, the police and other service providers to ensure that the offender's risks and needs are addressed within the open establishment itself and in the wider community.

Summary and Conclusion

5.12 Though there is no doubt that the Scottish Prison Service made mistakes in its management of Robert Foye. In many respects his case provides a stark and tragic example of why imprisoning too many people makes the community less safe rather than more safe. In recent years, the open estate has been used to ease overcrowding as well as to prepare long-term prisoners for release.⁸¹ There is evidence in the SPS internal report on the Robert Foye case that there were problems in communication and record-keeping both within the prison and between community-based social work services and the prison service (about his home circumstances).⁸² It appears that the decision-making in this case focussed too much on Foye's security classification and too little on the risk of harm that he posed to the public. These weaknesses in systems and practices arose despite the fact that Robert Foye was a long-term prisoner who had already committed a serious violent crime, who had already absconded once from the open estate, who had failed a drug test in prison, and in respect of whom there was intelligence that he had threatened to offend. In short, he was exactly the kind of prisoner that we believe that prisons exist to punish, to hold securely, to risk assess accurately and to rehabilitate effectively. Risk assessment and rehabilitation are not perfect processes: Not all risks are predictable and it is far from easy to rehabilitate serious offenders. But in the Robert Foye case, these processes failed – with dreadful consequences.

5.13 However, given the overarching purpose of our work, it is crucial to note that the context of the Foye case was that **the prison service resources were stretched to the limit by over-crowding. To allow this situation to continue is to compel the Scottish Prison Service to divert time and energy away from detaining and rehabilitating serious offenders to dealing with the troubled and the damaged.**

5.14 Scotland needs a prison service that is world-leading in detaining serious offenders and helping them to change. Scotland also needs a well-run open estate because it is not in the public interest to release long-term prisoners from closed institutions without preparing them for release and training them for freedom. Our view is that prison population pressures have distorted the proper function of the open estate.

The Commission recommends that preparing for release and training for freedom be retained and reinforced as the proper purposes of the open estate – not easing overcrowding. We are clear that Scotland will not have a world-leading prison service and a well-run open estate until we reduce the unnecessary, costly, damaging and dangerous overuse of custody.

PART SIX: OUR FUTURE

6.1 Our current uses of imprisonment are not working. The reliance on prison to hold people for short periods only increases the chances of them coming back, again and again. **In 2006/07, nearly 7,000 offenders who received a custodial sentence had already accumulated between them 47,500 prior spells in prison.**⁸³ Nearly one in six of these offenders had already been to prison on *more than ten previous occasions*. What is this use of imprisonment accomplishing: rehabilitation, punishment, deterrence?

6.2 The answer is none of these things. Prison is not making these people better or more sorry about what they have done, and while we continue in these efforts we are only diverting resources from other areas essential to the health of society. Money invested in prisons could be better spent in communities and on nurseries, schools, youth services and hospitals. In the longer term, these institutions stand a better chance of reducing crime than prisons do.

6.3 The Commission has been determined to base its recommendations on the best available evidence on the most effective ways to bring about the outcomes we all desire. We know from the research that there is only so much we can do within the criminal justice system to improve the situation. One of the most significant findings to emerge from the evidence base tells us that when our justice agencies do not work together, then minor instances of ineffective practice snowball into major problems with substantial negative impacts on individuals, communities and prison populations. To make this work there will need to be a continuing programme of education and professional development for **all** those who constitute the criminal justice system.

6.4 The proposals that we have presented in this report are aimed at improving the immediacy, appropriateness and effectiveness of punishment. Their implementation will enable the allocation of resources where they are most needed and most likely to make a difference. **Based on our analysis**

of the impact of implementing the recommendations, we calculate that it would be possible to reduce the prison population by as many as three to four thousand offenders who have not committed serious crimes and do not constitute a danger to the public. This reduction could not be achieved immediately but would begin to occur once recommendations are implemented. Those that need to be in prison should continue to go to prison. This is not about saving money. It is about investing it wisely and securing better outcomes. Though long-term savings would result from removing those who present no significant threat to public safety from the prison population, the Government and the people of Scotland should be left in no doubt that we first need up-front investment in better services in and for Scotland's communities. That is what our communities need if we are to take crime and punishment seriously.

The Commission recommends that the Government pursue a target of reducing the prison population to an average daily population of 5,000, guiding and supporting the efforts of relevant statutory bodies in achieving it.

6.5 These improvements, which we believe would substantially improve our response to crime, can only take us so far towards the future we envision for Scotland. Our high prison populations need to be addressed in themselves, but they are symptomatic of far deeper problems beyond the reach of this Commission's remit. Even with the most effective use of prison, we will not be free from its harms unless we make progress in these areas. These include:

6.6 Drugs, alcohol and health: We have noted throughout that the problem of drug and alcohol misuse that afflicts this country is disproportionately reflected in prison populations. Men, women and young people in prison all have significantly higher rates of drug and alcohol problems, and higher rates

of physical and mental health problems than the general population. Prisons will continue to act as a dumping ground until we develop more sustainable approaches to tackling our drug and alcohol problems through health and education services, and through supporting action in communities and families.

6.7 Violence: Violence has profound and long lasting consequences for individual victims, for the communities in which it takes place and for society. Securing the safety of its citizens is one of the first and foremost purposes of the state. Prison has a central role to play, but it can too easily worsen the problem when used too quickly for minor offending. Adequate punishment of violent offending is a necessary element of a violence strategy but one which, on its own, can have at best a very limited impact on offending. The deeper problem lies in our culture and history. Criminal justice practitioners already understand this and some have embraced more holistic and joined up efforts to develop effective strategies. The Strathclyde Police's Violence Reduction Unit provides an excellent example of this. Their adoption of a public health perspective allows for better coordination of preventive and enforcement activities.

6.8 Respect in the community: Communities resent high levels of disrespectful and disturbing behaviour but too often feel abandoned and left with no choice but to accept it. Vandalism, littering and anti-social behaviour are too common in too many areas, but they should not be tolerated. The seeds of serious offending are planted in environments that are chronically neglected, and where low level problems are accepted as normal. We are right to be angry and to demand action on these issues. Where communities are proud of themselves and of their surroundings they are more likely to feel safe, respected and informed. Where they feel well supported by public services and reassured about how crime is being tackled, they are more tolerant and more willing to let people pay back, make good and get on with their lives.

6.9 Families and responsibilities: Families have a key role to play too. We all understand that parents and other care-givers play the largest part in helping their children grow up with a proper sense of right and wrong and with respect for themselves and for others. But for all sorts of reasons, even the best parents and care-givers struggle at times and need support. We need to make sure that such support is available and that it builds on people's strengths and releases their potential and the potential of their children. That is one of the best ways to invest in a safer Scotland.

6.10 Connecting research to policy: Making a positive difference in these areas as a society requires a research base which addresses the key analytical issues. While the Government and its agencies produce an extensive amount of descriptive information, there is a need for more reflective, analytical and longitudinal work that helps us understand the importance of these statistics and the impacts of our practices. On some questions we have deep knowledge, while for others we are surprisingly bereft of data and analysis. There has been recent investment in developing academic and independent research within Scotland, and such efforts should be continued and evolved to support better policy and improve the ability of isolated agencies to work together as a system towards common goals.

6.11 In this report we have attempted to map out a pathway to the positive future that we want rather than a bleak future that is forced upon us because of our failures to act decisively in relation to our use of imprisonment. In 20 or 30 years' time, future generations might look back upon this as the moment when Scottish politicians, professionals, journalists and people made difficult, brave and bold decisions – based on evidence and analysis rather than hysteria and sentiment – that to use prisons most wisely is to use them sparingly; and that imprisonment is only one part of the answer to our crime problems.

ANNEXES

A. WRITTEN EVIDENCE

- Women in the Criminal Justice System, report by the Joint Faiths Advisory Board on Criminal Justice
- Alternatives to Custody, paper by the Joint Faiths Advisory Board on Criminal Justice
- RSE Working Group Submission to the Scottish Prisons Commission, Royal Society of Edinburgh
- 'Alternatives to Prison – report of a conference organised by Encounter and the Royal Society of Edinburgh'
- Letter from Prof. Sheila Bird, Medical Research Council, Vice President, Royal Statistical Society to Chair Prisons Commission, re misuse of statistics, etc.
- 'Evidence to the Scottish Prisons Commission from the Visiting Committee for Polmont Young Offenders Institution'
- 'Recovery and Change from Offending Behaviour using a Recovery Management Model under a Recovery Oriented Systems of Care', submission from Fraser Ross of Smart Recovery
- 'Rethinking Imprisonment in Scotland: The Dilemma for Prison Reform and the Challenge Beyond' Alec Spencer, submission to the Scottish Prisons Commission
- 'Crime & Justice in Scotland 2005/06, A second Review of Progress' Scottish Consortium on Crime and Criminal Justice
- 'Women in Prison in Scotland, An Unmet Commitment' Briefing Paper, Scottish Consortium on Crime and Criminal Justice
- 'The Cost of Unnecessary Imprisonment' Scottish Consortium on Crime and Criminal Justice
- Correspondence from Cornton Vale Over 21s Visiting Committee to Kenny MacAskill and Cathy Jamieson re. women prisoners
- 'Not Seen. Not Heard. Not Guilty. The Rights and Status of the Children of Prisoners in Scotland', Scotland's Commissioner for Children and Young People, Report, Young Person's version
- 'Faith in Throughcare in Scotland's Economically Poorest Communities'
- Note on Women in Prison for the Scottish Prisons Commission, from the Scottish Consortium on Crime and Criminal Justice
- Note on Custodial Sentences and Weapons (Scotland) Act 2007 from the Scottish Consortium on Crime and Criminal Justice
- 'Risk Management and Public Safety', Risk Management Authority

B. ORAL HEARINGS AND PUBLIC EVENTS

Oral hearings

24/1/08 Evidence Session 1

- COSLA (Convention of Scottish Local Authorities)
- Lothian and Borders CJA (Community Justice Authority)
- SACRO (Safeguarding Communities, Reducing Offending)

31/1/08 Evidence Session 2

- SPS (Scottish Prison Service)
- Parole Board for Scotland
- Scottish Prison Officers Association
- Victim Support Group Scotland

5/2/08 Evidence Session 3

- ACPOS (Association of Chief Police Officers)
- HM Chief Inspector of Prisons
- SCCCJ (Scottish Consortium on Crime and Criminal Justice)
- Families Outside
- ADSW (Association of Directors of Social Work)

26/2/08 Evidence Session 4

- Conservative Justice spokesperson: Bill Aitken
- Labour Justice spokesperson: Pauline McNeill
- Liberal Democrat Justice spokesperson: Margaret Smith

1/5/08 Evidence Session 5

- RMA (Risk Management Authority)
- PGA (Prison Governors' Association)
- Women's Aid

List of public events

1. Marryat Hall, Dundee, 19 May
2. Netherbow Theatre, High Street, Edinburgh 20 May
3. Mitchell Library, North Street, Glasgow, 27 May
4. King's College, Old Aberdeen, 28 May
5. Town House, Inverness, 29 May

C. HIGHLIGHTS OF SELECTED COMMISSION VISITS

Liverpool Community Justice Centre

The Commission visited the Liverpool Community Justice Centre on 21 February 2008.

At this Centre, the aim is to tackle the causes of crime in the area, as well as dealing with the crimes themselves. They serve 80,000 people living in the local authority wards of Anfield, Everton, County and Kirkdale.

The Community Justice Centre, officially opened in October 2005, combines the powers of a courtroom, run by Judge David Fletcher, with a range of community resources, available to all North Liverpool residents as well as victims, witnesses and offenders. The Centre deals with problems with anti-social behaviour and cases involving 'lower level' crimes committed in North Liverpool that affect quality of life for local people, such as vandalism and graffiti.

The Judge has a range of powers and can sentence offenders in a way that benefits the community, although he can also issue custodial sentences where appropriate and necessary. He works with a 'problem solving' team of experts drawn from a range of agencies, such as the Crown Prosecution Service, Probation Service and Youth Offending Team, together with specialists providing advice and support on drug and alcohol issues, housing and debt. He can also offer support to offenders from volunteer mentors, able to provide practical support in carrying out their sentence and achieving their longer term goals.

Together they aim to make sure offenders repay their debt to the local community, while at the same time addressing the underlying issues that contribute to their offending. The team may make recommendations for extra support such as a drug treatment programme, or debt counselling, either through the centre or at other locations.

The Judge takes a personal interest in offenders and meets them for regular reviews while they are carrying out their sentence, where it involves a community penalty such as an unpaid work order.

Key findings for the commission

- The Commission was impressed that the Judge can interact with the 'problem solving' team so that sentences are immediate, meaningful and can be spelled out to defendants as soon as possible in the criminal process.
- It was impressive how the Judge could monitor offenders on community sentences by regular and rigorous review hearings, and in the event of a break down of the sentence, take immediate steps to return offenders to court.
- The Commission was impressed by the fact that all the key agencies which comprised the 'problem solving' team were housed in the same building ensuring that proactive liaison between them was immediate resulting in speedy outcomes compared to the Scottish system. The problem solving ethos that permeated the Centre was particularly impressive.
- Although the Judge and his team are committed to listening and responding to the views of residents to identify and understand their concerns they admitted that they have faced some difficulty in terms of fully engaging the community due to the 'grass' culture which is prevalent in the area which the Centre serves. Nonetheless, they hold regular meetings with two reference groups representing local residents, businesses and young people, to help them decide priorities for the work the centre tackles.
- The Centre's overall aim is to reduce crime and build confidence in the criminal justice system. While the Commission was impressed by the Centre it was difficult to assess how far they had come in achieving those aims given that no formal evaluation of their success had taken place as yet.

- There was a refreshing overall sense of enthusiasm from all the agency workers housed in the Centre to view their role as working for the Judge rather than solely their own particular organisation.

Visit to Ireland

The Commission had a successful visit to Ireland in April when Members of the Commission had informative discussions with a number of officials from the Department of Justice, Equality and Law Reform, the Irish Prison Service, the Irish Probation Service and the Irish Youth Justice Service.

The members also had the opportunity to meet Judge Michael Reilly, Inspector of Prisons, and Judge Mary Martin, Chair of the National Commission on Restorative Justice.

The Department of Justice, Equality and Law Reform fulfils a number of responsibilities in relation to prisons policy including:

- ensuring that the Irish Prison Service supports the aims and objectives of the Minister and the Government in relation to the management of offenders.
- ensuring that the regulatory framework which governs the operation of the Irish prison system is kept up to date.
- encouraging best practices, including appropriate mechanisms of accountability for the Irish Prison Service.
- promoting community safety through the effective management of offenders, in accordance with the law, sentences and sanctions issued by the courts.

Key Irish Prison Stats 2006:

- Total Expenditure – €389m
- Staff – 3,140
- No. of Institutions – 14
- Average daily prisoner population – 3,191
- Committals – 12,157
- Cost of keeping an offender in custody – €91,700

The Children Act 2001 makes it illegal to order the detention of a child (with effect from 1 March 2007) under 18 years to a prison. In addition, the Act has been amended so that:

- responsibility for detention schools has been transferred from the Minister for Education and Science to the Minister for Justice, Equality and Law Reform;
- the detention school model i.e. an individualised model of care and reintegration will be extended to include 16 to 17 year olds.

St. Patrick's Institution accepts sentenced and remand 16 to 21 year old males on committal from the courts and on transfer from other prisons. The Irish Youth Justice Service is undertaking a capital development programme for new detention schools – on completion all 16 and 17-year-olds will be removed from St Patrick's Institution and will become the responsibility of the IYJS. At the time of the Commission's visit there were around 200 young people in St Patrick's – 21 under 16 and 46 under 17.

Alternative sanctions

Those that we met suggested that there is no excessive use of imprisonment as a sanction in Ireland. Of the 120,000 or so convictions in its criminal courts in 2006 less than 10% resulted in imprisonment. The courts appear to make liberal use of alternative sanctions including fines, community service, probation and suspended sentences. In saying that, the timing of physically being placed on a community disposal was similar to the Scottish system – it could range from a few weeks to a few months.

The Irish Youth Justice Service, set up in 2005, funds organisations and projects providing services, including Police and Probation Projects, to young people aged under 18 years who find themselves in conflict with the law. Their remit is to improve the delivery of youth justice services and reduce youth offending. This challenge is met by focussing on diversion and rehabilitation involving greater use of community based interventions and the promotion of initiatives to deal with young people who offend. Providing a safe and secure environment for detained children and supporting their early re-integration back into the community is also a key function.

It was acknowledged that prisoners serving less than 12 months exhibit very limited improvement in terms of rehabilitation as opposed to long-termers. 75% of sentences were for less than 1 year. Irish Prison Service staff believed that you need at least 4 years to make a positive difference in terms of an offender's behaviour. They are in the process of rolling out a pilot 'Integrated Sentenced Management' which is similar to the Integrated Case Management system run by SPS.

Like Scotland there is a large problem in terms of alcohol/drug abuse with offenders in Ireland. Ireland's prison population also has growing problems in terms of mental health issues, especially the female prison population.

Key findings for the Commission

- The Commission was impressed with the decision to bring in legislation which meant that no child under 18 would be detained in prison.
- They also found the notion appealing to establish something akin to the Irish Youth Justice Service.
- The Commission was impressed how the courts appear to make liberal use of alternative sanctions to custody, particularly the suspended sentence.
- In Ireland the prison you're sent to is primarily dictated by your family circumstances (location etc). This does not always happen in Scotland and it appealed to the Commission.
- In terms of community disposals the Commission was impressed by the fact that probation workers would ensure that offenders would keep to their appointments etc, by going to their accommodation to encourage them to attend.

Visit to New York

The Commission visited three projects in New York in April; the Midtown Community Court, the Red Hook Community Justice Centre and Bronx Community Solutions. The Commission also had the opportunity to meet with Chief James Tuller, a Commanding Officer of the NYPD, to discuss policing history/developments within the city.

Midtown Community Court

Launched in 1993, the Midtown Community Court targets quality-of-life offences, such as prostitution, illegal vending, graffiti, shoplifting, fare-beating and vandalism. Typically in these cases, judges are forced to choose between a few days of jail time and nothing at all – sentences that fail to impress the victim, the community and the defendants that these offences are taken seriously. In contrast, the Midtown Community Court sentences low-level offenders to pay back the neighbourhood through community service, while at the same time offering them help with problems that often underlie criminal behaviour. The Court works in partnership with local residents, businesses and social service agencies in order to organise community service projects and provide on-site social services, including drug treatment, mental health counselling, and job training.

The Court aims to 'make justice visible' by making offenders doing community service wear bright blue vests, etc. Offenders at Midtown pay back the community through visible community service projects – painting over graffiti, sweeping the streets, and cleaning local parks.

The court also aims to 'make justice swift'. Immediate sentencing sends the message to offenders that crime has consequences and that they will be held accountable for their actions. Offenders often begin their sentences within 24 hours of appearing before the judge. The Court's compliance rate is 75 % for community service which is the highest in the city.

Previously community sentences were solely issued by the criminal courts in Manhattan at a rate of 29%. Since the Midtown Community Court opened this has risen to 69%. In conjunction with aggressive law enforcement and economic development efforts, the Court has had an impact on neighbourhood crime: prostitution arrests dropped 56% and illegal vending is down 24%.

Red Hook Community Justice Centre

The Red Hook Justice Centre, launched in 2000, seeks to solve neighbourhood problems like drugs, crime, domestic violence and landlord-tenant disputes. At Red Hook, a single judge hears neighbourhood cases that under ordinary circumstances would go to three different courts – Civil, Family and Criminal. The goal is to offer a coordinated, rather than piecemeal, approach to people's problems. The Red Hook judge has an array of sanctions and services at his disposal, including community restitution projects, on-site educational workshops, drug treatment and mental health counselling – all rigorously monitored to ensure accountability and drive home notions of individual responsibility.

The courthouse is the hub for an array of unconventional programs that engage local residents in 'doing justice'. These include mediation, community service projects that put local volunteers to work repairing conditions of disorder and a Youth Court where teenagers resolve actual cases involving their peers. The idea here is to engage the community in aggressive crime prevention, solving local problems before they even come to court.

Bronx Community Solutions

Bronx Community Solutions is an initiative that seeks to apply a problem-solving approach to non-violent cases in the Bronx. Its goal is to provide judges with increased sentencing options for non-violent offenses such as drug possession, prostitution and shoplifting. By combining punishment with help, Bronx Community Solutions seeks to reduce the Bronx's reliance on expensive and ineffective short-term jail sentences, and build public confidence that the system is holding offenders accountable and offering them the assistance they need to avoid further criminal conduct. The project, the largest of its kind, is the nation's most ambitious experiment in going to scale with problem-solving justice.

Rather than the Midtown or Red Hook set-ups where they have their own separate community court Bronx Community Solutions is run from within the Bronx's actual criminal court. All judges in the Bronx have a broad set of sentencing options at their disposal, including drug treatment, job training, family services and mental health counselling. Offenders will be assigned to community service work in neighbourhoods throughout the Bronx. Project staff will work with residents and community groups to create community service options that respond to local problems.

Key findings for the Commission

- The immediacy of the overall community court system. Offenders can be sentenced by the Judge to a community disposal and directed to the community service team (within the same building) to start it. This can take a matter of minutes.
- Visibility of community service. Offenders are seen 'paying back' to their communities for their offending behaviour.
- The range of options and disposals available to the Judge.
- The swiftness and effectiveness of the sentencing process. The Judge sits with access to a screen divided into 4 sections:
 1. Lists the complaint/offence.
 2. Lists the offender's previous convictions/ outstanding warrants.
 3. Lists the social needs of the offender – housing, addictions, etc.
 4. Advice from the Resource Coordinator on what they think should happen to the offender.

This contributes to the swiftness in sentencing without the judge having to plough through reports or request further reports.

- The rise and effective use of viable community alternatives in terms of both the offender and the public.
- The overall reduction in crime in New York through the 'Broken Windows' and CompStat approaches.
- There is a high level of public confidence in the system. Before Red Hook opened, only 11% of residents had a positive view of the court system compared to recent surveys indicating that over 70% express approval of the Justice Centre.
- In a survey of 500 Midtown residents conducted 2 years after the court opened, 56% said they'd be willing to pay more taxes for a community court.

Visit to Finland

The Commission visited Helsinki on 6-7 June and met with officials from the Ministry of Justice in Finland, the National Institute of Legal Policy, the Probation Service, the Criminal Sanctions Agency, the Prison Service, the Police and the Ministry of the Interior. The Commission also visited Suomenlinna Open Prison where they had the opportunity to talk to offenders.

The Commission found the Finnish principles of imprisonment fairly liberal in that it should only include the loss of liberty. There is no mention of 'punishment' or 'deterrence' within their legislation unlike in Scotland. The conditions in prisons are arranged so that they correspond to living conditions in society – work, housing etc – they aim to maintain a 'normality principle'. Indeed, at the open prison on Suomenlinna offenders were paid around €200 per week to carry out stone masonry.

The goal of the enforcement of imprisonment is to reduce recidivism and increase the prisoner's ability to lead a life without crime by promoting the prisoner's life control and resettlement into society. It also aims to prevent committing new crimes during the sentence. There appears to be a notion that in order to tackle violent crime you need social interventions.

Sentence plan

With the exception of very short sentence prisoners, a sentence plan is drawn up for each prisoner in Finland which covers allocation, activities, prison leaves and conditional release. It covers the whole prison term and also the parole period. By observing the plan the prisoner will gain certain benefits/ incentives, e.g. transfers to the open estate, prison leaves, allocation to an institution outside prison and early release under supervision. In terms of conditional release:

- first timers are released after half of their sentence;
- reoffenders are released after two thirds of their sentence;

- If the offence is committed under age 21 the offender is release after serving one-third.

Front and back door

Both 'front and back door' strategies are used in Finland. 'Front door' strategies include the increased use of alternatives to unconditional imprisonment, for example community service and electronic monitoring. 'Backdoor' strategies include early release and conditional release. If an offender who breaches his community sentence conditions is sent to custody he or she will receive further conditions on his or her release from prison.

Juvenile justice

Juvenile justice has also been liberalised. Criminals aged 15 to 17 can only be imprisoned for extraordinary reasons. Additionally, first time prisoners who have committed their crime before the age of 21 are released after serving just one-third of their sentence. Children under the age of 15 cannot be charged with a crime. Young offenders who have committed their crimes between 18 and 20 years of age can still be punished with a life sentence for a very serious crime such as murder but the sentence is routinely commuted and the prisoner released as early as 10 to 12 years into the sentence. Adult life sentence prisoners can be released after serving 12 years of their sentence. In practice a life sentence prisoner serves around 14 to 16 years in custody.

No political control

The absence of direct political control was critical to the Finnish transformation. Despite the enormous changes in Finnish criminal justice, crime has never been an important political issue with none of the major parties taking it on as their agenda. It seems that even Finnish victims of crime seem to be satisfied with that approach. Victims' organisations act as support groups, not political lobbies. Also, the media in Finland tend not to sensationalise crime stories. The majority of reporting is done through 'quality papers' whose line is sensible in the main. The tabloids are not taken too seriously.

Key findings for the Commission:

- Bringing in legislation that directly focuses on reducing the prison population.
- The liberal concept behind the role prisons should play – only loss of liberty, prisoners' rights, 'normality principle'.
- The Commission was impressed with the power Finnish Judges have of commuting custodial sentences to community sentences.
- Interesting concept of parole and the 'backdoor policy'.
- The Commission was impressed by how Finland treats its juvenile offenders, especially the notion that you would only imprison someone between 15 and 21 if it was absolutely necessary.
- The fact that crime is not a political issue and there appears to be cross-party agreement on the key issues and drivers.
- Refreshing attitude of the Finnish media in terms of not sensationalising crime related pieces.

Visit to Falkirk Council Criminal Justice Service

Members of the Commission who visited Falkirk in May were immediately struck by the enthusiasm and drive of the entire Community Service team there. They witnessed a programme of activity which seemed to them to be more immediate and effective than is the case in other areas of Scotland.

In terms of the delivery and timing of community disposals, most people who receive Community Service Orders in Falkirk are actually starting work on them within a week. In addition, initiatives undertaken in conjunction with Falkirk College have led to the delivery of a service which not only benefits offenders but also the community itself. Courses such as 'Fresh Start' and the Construction Site Competence Scheme increase the opportunity for offenders to learn so that they can pursue and lead a life in which their offending will decrease or even stop altogether.

Thursday Court: Key to the effective disposal of CSOs in Falkirk is the fact that most are made on a Thursday at what is known as a 'Remand Court'. As soon as a person is sentenced to undertake a community sentence, the social worker present in Court instructs them when to attend, later in the day, at the Criminal Justice office, in close proximity to the Court.

There, the terms and conditions of Community Service Orders are explained to them in addition to any local arrangements. They are also given Health and Safety leaflets to read later before attending a Health and Safety course on the following Tuesday. They are also told on which day they will be required to attend for work – at least once a week. A further assessment of the risk of reoffending and harm will also be carried out at this first interview when a placement is also identified.

The building in which the Service operates is also shared with the offices serving Probation Orders, Drug Testing Treatment Orders and 'Fast Track', – Falkirk's means of administering the drugs conditions of Probation Orders. The benefits of having all these services co-located makes the supervision of Court Orders much more easily managed.

In recognition of the specific issues pertinent to women, a single sex group has been established in Falkirk to offer a safe, non threatening environment for women to offer each other positive support and to explore issues particular to them, to receive support and be taught new skills.

Getting qualified: A joinery workshop is available which offers basic woodworking skills and monies raised from the sale of any goods is given to local charities thereby enhancing the usefulness of the scheme to the community in general. This is backed up by an evolving publicity and information programme to raise the profile, in the Falkirk community, of the effectiveness of the scheme.

In order to allow offenders to gain recognisable qualifications which might help their employability, the Health and Safety qualification was expanded to include the Construction Site Competence Scheme which is now necessary for employment in the construction industry.

Fresh Start: To further the prospect of employability in a wider context, it was decided to establish three 10 week modules to address the needs of the service users, particularly relating to literacy and numeracy. Initially, these took place at the local Criminal Justice Office but have now been moved to the College campus.

The course was named 'Fresh Start' so as not to bring specific attention to this being a course for people on Orders of the Court. This also allowed clients to join the mainstream college, availing themselves of the facilities and opportunities there, and helped to break down barriers. As a result, some have now considered full time college courses once their Orders had finished. One person has moved to full time employment as a Phlebotomist, one has commenced a University Arts course and another is keen to undertake a Business Management course once his Order is completed. Additional benefits have been the increased confidence of the attendees and their enthusiasm to comply with the other, more work related aspects of their Orders so as not to jeopardise their college course.

All round support: Before all these developments were undertaken, liaison took place with the local Sheriffs through the bi-monthly Criminal Forum meetings hosted by the Sheriffs and attended by Criminal Justice Social Work, Sheriff Clerks, Procurator Fiscals, other court officials, solicitors and the police. These proposals were discussed and the view of the Sheriffs was open and encouraging thereby allowing the Falkirk Council Community Service Orders scheme to develop a different way of working, deviating from the strict interpretation of National Standards.

Local Sheriffs have given support to this and are also keen to support the Falkirk Council Community Service Orders scheme in other ways such as attending open days, and taking an interest in the work and placements undertaken. They have also adopted a 'recall' practice recalling to court at regular intervals those who are in breach of their Orders, to monitor progress. This has been experienced as positive and motivating for some service users.

The Falkirk Council Community Service Orders scheme also has a high presence at the National Community Service forum, which is open to all those working within Community Service Orders in Scotland. At the early meetings, it was evident that different areas had different practices and some focus was given to trying to use good practice from all the areas. A working party was established to look specifically at Health and Safety and one of the Falkirk Council Community Service Officers took a lead role on this. A folder was compiled with the practice from each contributing authority, so that others can locate which practice suits their scheme best and adopt this.

Key findings for the Commission:

- Contrary to the mixed messages that the Commission had previously heard from other stakeholders about the delivery and timing of community disposals the Falkirk model seemed to be far more immediate and productive than is the case in other areas of Scotland.
 - The majority of people receiving Community Service Orders are starting their work within 7 days on average.
 - The Commission was impressed by the bi-monthly Criminal Forum meetings that were undertaken which included Criminal Justice Social Work, Sheriff Clerks, PF's other Court Officials, Solicitors, Police and the local Sheriffs.
 - Good examples of best practice abound ranging from the college 'Fresh Start' courses to the Construction Site Competence Scheme.
- It was evident that there was a high degree of enthusiasm and drive from the entire Falkirk Community Service Team to deliver a service that would not only benefit offenders but also the community.
 - It was the first time the Commission had heard about the 'National Community Service forum' which was surprising given the nature of their deliberations.

218 Centre (Glasgow)

The Commission visited the 218 Centre on 13 May 2008.

The 218 Centre was established in Glasgow in August 2003 with the aim of providing a range of services for women in the criminal justice system primarily within the boundaries of Glasgow City Council. Based on a single site, the Centre provides a day service and supported accommodation. In addition to prescribing facilities, it offers support – residential or daily – for detoxification.

It provides residential and community based resources in a safe environment to women aged 18 years of age or over who have involvement in the criminal justice system, who are assessed as particularly vulnerable to custody or reoffending and who may have a substance misuse problem. The Centre is run by Turning Point, an organisation in the voluntary sector which provides support for those with complex social needs, particularly in relation to drug and alcohol issues.

218 is a service for women involved with the criminal justice system which is designed to address the root causes of women's offending. It offers programmes of care, support, and development designed to stop women's offending by tackling substance misuse and the trauma and poverty that drive it. 218 is regulated by Care Commission guidelines for day services for adults, and for residential services to people with drug or alcohol problems.

The objectives of 218 are to:

- provide a specialist facility for women who are subject to the criminal justice system;
- provide a safe environment for women in which to address offending behaviour;
- tackle the underlying causes of offending behaviour;
- help women to avert crises in their lives; and
- enable women to move on and reintegrate into society.

Women from Glasgow can access 218 from the courts, from prison, or as part of a criminal justice order. They can be referred or can refer themselves as long as they have been in custody – even police custody – at some time in the previous 12 months. Any agency can refer women to the service. The purpose of 218 is to provide both diversion from prosecution and an alternative to custody.

Key findings for the Commission:

- One of the significant attributes of 218 is the importance of providing a service able to deal with all the issues a woman may face, in one place. Workers from a range of disciplines (service managers, project workers, health professionals) are located together and required to work together as a team while retaining their own identity and working to the ethos of their own professional background.
- The significant rise in alcohol abuse of service users presenting at the 218 Centre over the last 2 years.
- The figures the Commission were shown (via a christo analysis) indicated that the 218 Centre was making a significant impact in helping women with a range of issues, particularly in terms of reducing their criminal involvement and drug/alcohol abuse.

- Women who continue along the path of addiction and offending are likely to end up in custody if they fail to receive some sort of support. 218 has developed a model of intervention based on a recognition of the needs of women in the criminal justice system, which attempts to respond to those needs and in doing so, aims to tackle the root causes of offending behaviour.
- The Commission were impressed by the enthusiasm of the 218 staff and their desire to deliver an effective and unique service. The 218 staff make a concerted effort to link services across a number of areas.
- The service users that the Commission members spoke to actively praised the regime at 218 and believed it addressed their needs. Support was made available to enable women to address problematic substance use, from both health and addiction workers. This was viewed by service users and staff as a crucial component of the service.
- The Commission were struck that given the apparent successes which the 218 Centre appears to deliver it was disappointing that it was the only project of its kind in Scotland.

D. SENTENCING OPTIONS – CURRENT DISPOSALS AVAILABLE TO THE COURTS

Levels of Court and Sentencing Powers in Scotland

There are four different levels of court within Scotland. We have the High Court, Sheriff and Jury Court, Sheriff Summary Court and District Courts (which in some areas of Scotland are now called Justice of the Peace Courts). Each of these levels of court have different maximum sentencing limits – these are noted below:

High Court – unlimited imprisonment and unlimited fines. All community sentences apart from Supervised Attendance Orders.

Sheriff and Jury – up to 5 years' imprisonment and unlimited fines. All community sentences.

Sheriff Summary (which means the sheriff sits alone and decides both guilt/innocence and sentence) – up to 12 months' imprisonment and fines of up to £10k. All community sentences.

District/JP Courts⁸⁴ – up to 60 days imprisonment and fines of up to £2.5k. Able to use Probation Orders and Supervised Attendance Orders.

Community Sentencing

Scotland currently has one of the most extensive ranges of alternatives to custody in Europe. Listed below are the main community sentences (alternatives to custody) available in Scotland.

Probation Remains the standard and most frequently used community disposal. The main purpose of probation is to work with offenders to prevent or reduce their reoffending by combining oversight and control with help to learn new behaviours and to deal with problems associated with offending (rehabilitation). Probation Orders can be used very flexibly by the courts and additional conditions can be attached to them, for example: requiring the offender to undertake unpaid work; imposing an electronic monitoring requirement; requiring financial recompense to the victim or attendance at a specialist programme such as alcohol or drug treatment. An offender can be placed on probation for a period of between 6 months and 3 years. 8,400 probation orders were made in 2005/06.

Community Service Orders⁸⁵ Legislation restricts Community Service Orders to convictions which would otherwise have resulted in a sentence of imprisonment or detention. An offender given a community service order is required to carry out unpaid work of benefit to the community for between 80 and 240 hours in summary proceedings and 300 hours in solemn proceedings. Work placements, which are organised and supervised by local authority staff take many forms. Approximately 5,900 community service orders were imposed by courts in 2005/06.

Supervised Attendance Orders: SAOs are intended as an alternative to custody for fine defaulters (people who do not or cannot pay court imposed fines). They have been available nationally since 1998. The philosophy of the SAO is a fine on time. The participant is required to undertake a programme of activities which aim to stimulate the constructive use of time and can include an educative element or involve unpaid work in the community. Offenders who do not meet the terms of the Order are subject to disciplinary proceedings and may find themselves back in court facing a custodial sentence. The maximum number of hours for one order is 100, to be completed within 12 months. In 2005/06, 3,849 SAOs were made by courts.

Restriction of Liberty Orders ('Tagging'): Restriction of Liberty Orders (RLOs) have been available to courts across Scotland since May 2002. They were piloted in Scotland from 1997, and a positive evaluation led to the decision by Ministers to make the Order available throughout Scotland. The offender, who must be 16 or over, may be restricted to a particular place or places for up to 12 hours per day for up to 12 months. Compliance with the order is electronically monitored by a commercial contractor by means of an unobtrusive transmitter (tag) worn by the offender on his or her ankle. 984 RLOs were imposed in 2005/06.

Drug Treatment and Testing Orders: The Drug Treatment and Testing Order offers an intensive regime of drug treatment and testing with regular review by the courts. It targets those people whose offending is linked to their drug problem – for example those who steal to fund their drug habit. The intention of a DTTO is to help offenders overcome a drug addiction, thereby reducing or eliminating the need to offend. Offenders subject to a DTTO are required to undertake regular drug testing and treatment. They also reappear before a Sheriff every month to account for their behaviour. DTTOs are available in the High Court and Sheriff Courts throughout Scotland.

An independent evaluation of the Drug Treatment and Testing Order pilots found it to be effective in tackling the kind of substance misuse that can lead to involvement in crime – for example, after six months on an Order, average expenditure on drugs decreased from an average of £490 per week pre-sentence to an average of £57 per week. The evaluation, 'Drug Treatment & Testing Orders – Evaluation of Scottish Pilots', is available at www.scotland.gov.uk/cru/kd01/green/dtts-00.asp. A more recent evaluation of the longer-term impacts of DTTOs found that the order was having a very positive impact upon reoffending rates. For example, after two years almost half of offenders subject to an order had no further convictions. This is a major achievement given the offenders who receive a DTTO will usually have a long history of criminal behaviour with many previous convictions and custodial sentences. This full evaluation report can be read at:

<http://www.scotland.gov.uk/cru/resfinds/rfdt-00.asp>.

E. CURRENT EARLY RELEASE ARRANGEMENTS

Discretionary early release on licence (parole) has operated in Scotland since 1967. The existing statutory regime is contained in the Prisoners and Criminal Proceedings (Scotland) Act 1993 ('the 1993 Act'), as amended. The 1993 Act has been frequently amended since it came into force on 1st October 1993, most recently by the Management of Offenders etc. (Scotland) Act 2005 ('the 2005 Act') which received Royal Assent on 8th December 2005. The 2005 Act introduced a scheme of Home Detention Curfew. It also ended 'unconditional' early release for sex offenders serving sentences of 6 months or more and less than 4 years. With the exception of these recent changes, early release from prison is governed by sentence length.

'Early release' is the term given to the present system which permits the release of a prisoner, on either a discretionary or an automatic basis and either with supervision or without, prior to the expiry of the sentence of imprisonment imposed by the court. The current arrangements are:

- prisoners (short-term prisoners) sentenced to less than a 4-year term of imprisonment, unless made subject to a supervised release order, are released automatically and without supervision after serving one-half of their sentence;
- prisoners (long term prisoners) sentenced to 4 years or more may be released on licence after serving one-half of their sentence if this is directed by the Parole Board for Scotland and must be released on licence after serving two-thirds of their sentence;
- prisoners (extended sentence prisoners) subject to an extended sentence are released on supervised licence; and
- prisoners sentenced to life imprisonment may be released on life licence after serving in full the 'punishment part' of their sentence imposed by the court, if this is directed by the Parole Board.

Where any prisoner is released early, he or she remains liable to recall to custody for the remainder of their sentence if they breach a condition of licence. Once a short-term prisoner has served one-half of their sentence, the Scottish Ministers are under a duty to release them without supervision unless such a prisoner has been made the subject of a supervised release order imposed at the date of the original sentence, provided that they are not a sex offender (see paragraph below) whose offence was committed after 30 September 1998. On release a short-term prisoner is not under any form of compulsory supervision but may be returned to custody by the courts under section 16 of the 1993 Act if he or she commits another imprisonable offence before the expiry of the original sentence.

The Management of Offenders (Scotland) Act 2005 introduced new provisions for sex offenders sentenced to a period of imprisonment of between 6 months and 4 years. These require such short term sentence prisoners to be released on licence, rather than being released unconditionally, at the half-way stage of their sentence.

Once a long-term prisoner has served one-half of their sentence they may be released on licence. The decision rests with the Parole Board. Where the Parole Board recommends release the Scottish Ministers are under a duty to release the prisoner. The Parole Board decides the licence conditions. The licence, unless previously revoked, expires at the sentence end date (i.e. the date on which the full sentence imposed by the court expires).

Once a long-term prisoner has served two-thirds of their sentence the Scottish Ministers are under a duty to release them on licence. Again, the Parole Board decides the licence conditions. The licence, unless previously revoked, expires at the sentence end date. A long-term prisoner (in the same way as a short-term prisoner) may be returned to custody by the courts under section 16 of the 1993 Act if he or she commits another imprisonable offence before the sentence end date.

The Management of Offenders etc. (Scotland) Act 2005 amended the 1993 Act to allow certain short- and long-term prisoners sentenced to 3 months or more to be released on home detention curfew (HDC). This is a form of conditional release and was implemented for certain short-term prisoners in July 2006.

An extended sentence may be imposed on certain offenders convicted of a sexual or a violent offence. All prisoners subject to an extended sentence are released on licence. Where the 'custodial term' is less than 4 years the prisoner is released automatically at the half-way stage of the custodial term and is on licence until the end of the 'extension period'. Thereafter, during the remaining half of the 'custodial term', the prisoner is 'at risk' of being returned to custody by the courts under section 16 of the 1993 Act in the same way as any other short-term prisoner (with the exception of short-term sex offenders).

Where the 'custodial term' is 4 years or more the prisoner may be released after serving half of this term if the Parole Board recommends (in effect, directs) early release. If the Board does not recommend release the prisoner will be released after serving two-thirds of the 'custodial term'. In either case the licence, unless previously revoked, does not expire until the end of the full extended sentence imposed by the court, i.e. the custody part and the extension period.

Where a person is sentenced to life imprisonment the court is required to specify the 'punishment part' of the life sentence. When the punishment part has expired the prisoner has the right to require the Scottish Ministers to refer his or her case to the Parole Board. In practice the case is referred to the Parole Board to enable it to consider the prisoner's case on the expiry of the punishment part or as soon as practicable thereafter. In its consideration of life prisoner cases the Parole Board sits as a Tribunal with a legally qualified member in the chair. The prisoner has the right to an oral hearing and to legal representation. If the Parole Board does not direct release it must set a date to carry out a further hearing within a 2 year timescale. If the Parole Board directs release, the prisoner is released on a life licence. This will stipulate a number of conditions which they must adhere to; failure to do so can result in them being recalled to custody where their case for re-release would again be considered by the Parole Board.

The release licence of any prisoner can be revoked and the prisoner returned to custody. Having been informed of a possible breach of licence by either local authority social workers or by the police, Scottish Ministers can issue a warning letter to the offender (for 'minor' breaches), refer the matter to the Parole Board for it to take a decision on whether or not the offender should be recalled to custody, or, if the nature of the breach suggests significant risk, can recall the offender to custody without referring the matter to the Parole Board in the first instance. Where revocation is recommended by the Parole Board the Scottish Ministers are obliged to revoke the licence and, where the person is at liberty, to recall the person to custody. This involves the individual being apprehended by the police and returned to prison.

Where an offender's licence is revoked their case will be referred to the Parole Board unless they receive another custodial sentence. (If the Board was involved in recommending that the licence be revoked then different members of the Board will consider this reference.) If the Parole Board is satisfied that the offender does not require to continue to be detained it will direct immediate re-release and the Scottish Ministers are under a duty to release the offender, on licence, as soon as is reasonably practicable. Where the Parole Board does not direct immediate re-release the offender is liable to be detained until the end of the sentence imposed by the court (plus any during which the prisoner was unlawfully at large) but may subsequently be further reviewed by the Parole Board for release on licence, normally on an annual basis, depending upon how much of the original sentence remains to be served.

F. CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) ACT 2007

The Custodial Sentences and Weapons (Scotland) Act 2007 received Royal Assent on 19th April 2007. The custodial elements of the 2007 Act were intended to end unconditional early release for offenders serving sentences of 15 days or more. Its policy purpose was that where the courts had decided that prison is the appropriate punishment, the measures in the 2007 Act ensure that the sentence is able to be tailored to address the risk and needs of the offender in a way that contributes to reducing reoffending and enhancing public safety. The intention was that an offender's sentence would be managed in an integrated way, beginning in custody and continuing on into the community, allowing a structured plan specific to the individual's needs to be followed. The arrangements in the 2007 Act are:

- Apart from offenders who are sentenced to 14 days or less, a **combined structure** for managing sentences comprising a period in custody (the custody part) and a period on licence in the community (the community part). The custody part will be a **minimum** of 50% of the sentence.
- It will be made clear at the time of sentence that the **minimum** custody part will be 50% of the total sentence. This will be for the purposes of punishment and deterrence. However, the court will have the power to increase the statutory minimum 50% if required in any particular case.
- Offenders will be subject to continuous review during the custody part. Where Scottish Ministers consider that an offender should not be released at the end of the custody part on grounds of risk, they will refer such cases to the Parole Board with a recommendation that the offender should be kept in custody for longer.
- At the end of the custody part, the offender will be on licence for the entire community part of the sentence. The licence conditions will enable provision for a variable and flexible package of measures including supervision if required and will detail what obligations the offender has to meet.
- Once an offender is released on licence the Scottish Ministers will be solely responsible for deciding to recall an offender to custody for a serious breach of a licence condition and where he or she presents an unacceptable risk to public safety. The decision to continue to detain a recalled offender will be taken by the Parole Board.

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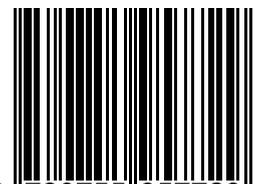
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