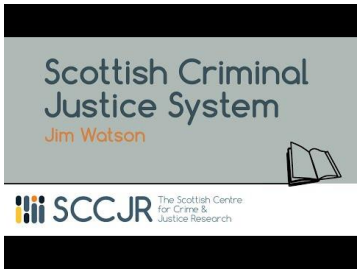
University of Glasgow
School of Education

SCCJR
The Scottish Centre for Crime & Justice Research



VIDEO by Jim Watson
PhD Research Student
University of Dundee/Edinburgh
Napier University

The Scottish Criminal Justice System

Background

The Act of Union 1707 between Scotland and England permitted Scotland to retain its separate legal system, which continued to be administered in Scotland. This meant that, even prior to devolution; the Scottish justice system had its own court system, its own police forces, its own prosecution service and its own prison and criminal justice social work services.

The 1998 Scotland Act devolved a range of powers from Westminster to the reconvened Scottish Parliament, which included legislative powers to administer the Scottish legal system. Legislative powers over some areas, including terrorism and legal safeguards for human rights, remain reserved to the United Kingdom. In addition, the Supreme Court, which was established in October 2009, sits as a Scottish Court to hear appeals from civil cases arising in Scotland, and also hears criminal cases where human rights are at issue. However, in most cases, final appeals relating to criminal cases continue to be heard by Scottish courts.

The 2008 Act also devolved executive powers to the Scottish Government. The Cabinet Secretary for Justice has overall responsibility for criminal justice in Scotland, which includes *"the justice system, security, access to justice, criminal law and procedure, civil law, the*

police, the legal profession, courts, sentencing, prisons and prisoners, victims and witnesses, reducing reoffending, youth justice, criminal justice social work, community safety, fire and rescue services, anti-social behaviour, drugs policy, violence reduction, anti-sectarianism and liquor licensing" (Scottish Government website.)

The Scottish Parliament is responsible for scrutinising the policy and legislative proposals of the Scottish Government, and the Justice Committee fulfils much of the scrutiny in relation to criminal justice. The remit of the Justice Committee is to "*consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.*" A Justice Sub-Committee on Policing was established to oversee the operation of the Police and Fire Reform (Scotland) Act 2012 as it relates to policing.

This is a very useful resource written by SCCJR criminologists which gives an overview of the Scottish Criminal Justice System:
(online chapter, 'The Criminal Justice System in Scotland' by Morrison, K., Buchan, J., and Wooff, A. (2021).

Legal framework

Civil Law

Scots Law is divided into two main categories: civil law and criminal law. Civil law (also referred to as 'private law') is, broadly speaking, about the rights of obligations of individuals and organisations (and not the state), and has been derived from the principles of Roman Law.

Criminal Law

Criminal law is a form of public law. Public law concerns the structure of government (such as constitutional law) and the powers, duties and obligations of officials and of citizens. Though crime generally involves an act against another person (or another's property), in legal terms it constitutes an act against the *state*. The state then has the power to impose an appropriate punishment on the individual who has offended. Criminal law is the primarily focus of this learning resource.

Legislation and Common Law

Scots Law is derived from both legislation (laws passed by the UK Houses of Parliament and Scottish Parliament) and *common* law. Unlike legislation, common law is not laid out in an authoritative document (such as an Act of the UK or Scottish Parliament). Instead, the common law on any topic is generally derived from a series of court judgements ruling on the application of common law principles.

Police service

Since 1 April 2013, Scotland has had a single national police force – the Police Service of Scotland (also referred to as 'Police Scotland'). This new police service replaces eight previously separate territorial police forces and associated agencies, such as the Scottish Crime and Drug Enforcement Agency. This was one of a number of reforms provided for in the Police and Fire Reform (Scotland) Act 2012.

The Police and Fire Reform (Scotland) Act 2012 set out the general duties of police officers:

- to prevent and detect crime
- to maintain order
- to protect life and property
- to take lawful measures, and make such reports to the appropriate prosecutor, as may be needed to bring offenders to justice with due speed
- to serve and exclude warrants, citations, etc.
- to attend court to give evidence.

What happens when a crime is committed?

We must remember that not all crime is reported to the police. There are various reasons why people might choose not to report a crime.

According to the Victims of Crime in Scotland Website, some of the reasons include:

- feeling that the police could not do anything about it
- considering the incident too trivial to report
- feeling that the police would not be interested
- fear of reprisals from those accused
- the crime was considered a private or family matter. This attitude might surface in the case of incidents of domestic abuse, sexual violence, child abuse and other crimes that typically occur in private, in the family home.

This mismatch between the numbers of crimes reported to the police and the actual number of crimes that take place is known as the '*dark figure*' of crime.

In accordance with these duties, the police force has a responsibility to respond to criminal activity. When a crime is thought to have been committed, a victim or witness might report this to the police.

All crime that is reported to the police should be recorded, and statistics revealing the level of crime and types of crime are published each year. Some key findings from the latest Scottish Government's 2022-2023 report include:

- Crimes recorded by the police in Scotland in the year 2022-2023 were 289,462 Looking at longer term, the recording of crime remains at one of the lowest levels since 1974. However, there have been significant variations in relation to different crimes and offence types, including new offence types (for example, recently, crimes reported under coronavirus related legislation.
- '*Crimes of dishonesty*', which include housebreaking, theft by opening a lock fast place, theft from a motor vehicle, theft of a motor vehicle, shoplifting, other theft and fraud, accounted for 36% of total recorded crime (which is an increase of 11% from previous year).
- '*Damage and reckless behaviour.*' accounted for 15% of all crimes.
- '*Crimes against society'*, which include crimes against public justice (perjury, resisting arrest, bail offences, wasting police time), handling offensive weapons and drug offences, amongst others, accounted for 21% of all crimes.
- '*Non-sexual crimes of violence'*, which include homicide (murder, culpable homicide), attempted murder, serious assault, robbery and other acts of violence, accounted for 24% of all crimes.
- '*Sexual crimes'*, which include rape and attempted rate, sexual assault, crimes associated with prostitution, and some other sexual crimes, accounted for 5% of all crimes.

As shown in Figure 1 (below), when police have established that a crime has been detected, this triggers the criminal justice process. That crime and all those immediately involved with it become part of this process, and enter into the criminal justice system. When the suspect has been identified, the police have a number of options: they can use their discretion and take no further action; they can issue a direct measure (e.g. a fine); or they could decide to arrest and charge the individual accused of committing the crime. If the police decide to arrest and charge the individual, they will send a report to the Crown Office and Procurator Fiscal Service (COPFS) (see below) and the accused person will await court.

Crown Office and Procurator Fiscal Service (COPFS)

The COPFS is a department of the Scottish Government civil service which has responsibility for:

- the prosecution of crime (including decisions on whether criminal prosecution is appropriate in individual cases)
- the investigation of sudden or suspicious deaths

- the investigation of complaints against the police involving allegations of criminal conduct.

While it is technically possible for a private individual to bring a prosecution in some circumstances, instances of this happening are very rare. Virtually all prosecutions in Scotland are brought by the COPFS.

When an individual has been charged with a crime, the COPFS receives a report from the police. Other relevant authorities such as HM Revenue and Customs can also send reports to the COPFS. The decision on whether to then prosecute the accused rests with prosecutors fiscal, who are qualified solicitors and have received additional training to become public prosecutors. They must also decide in which court the prosecution should take place and whether to prosecute under summary or solemn procedure (see below for explanation of court system).

When considering whether to proceed with prosecution in individual cases, prosecution lawyers must consider:

- evidential considerations – is there sufficient admissible, reliable and credible evidence of a crime being committed by the accused?
- public interest considerations – e.g. the nature and gravity of the offence, the impact of the offence on the victim, and the personal circumstances of the accused.

As shown in Figure 1, prosecution lawyers have a number of options:

- no proceedings (e.g. a decision to take no action against the alleged offender will be appropriate where there is insufficient evidence or where it is not in the public interest to take action)
- various alternatives to prosecution can be offered in certain circumstances (e.g. warning letters or fiscal fines)
- prosecution in one of the criminal courts.

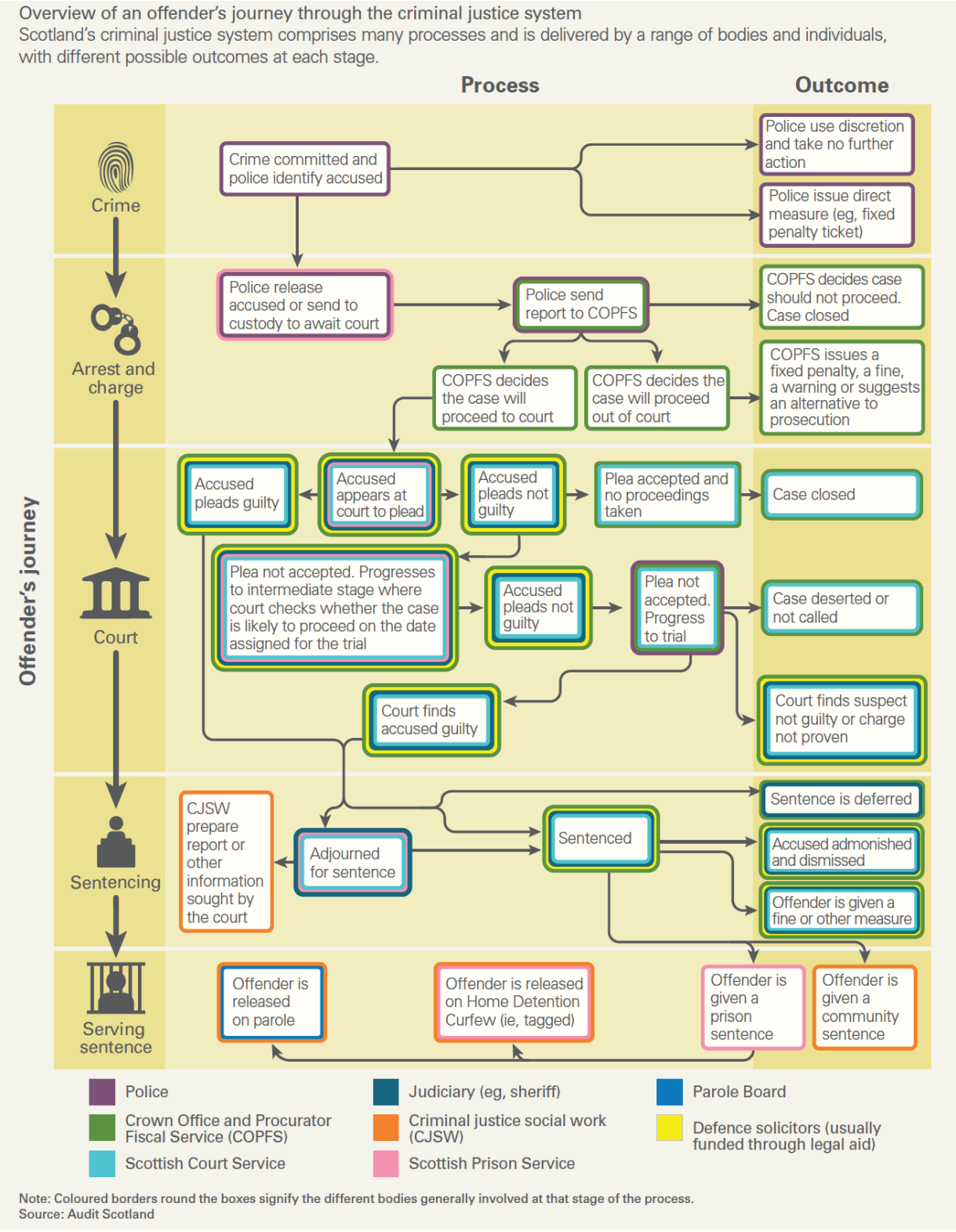


Figure 1. Source: Audit Scotland (2011) An Overview of Scotland's Criminal Justice System

Criminal Court System

If the COPFS decides to proceed with prosecution, they will also make a decision about which court the accused will appear in to face the charges.

The Scottish Court System is administered by the Scottish Courts and Tribunals Service (SCTS). Scotland has as a three-tier criminal court system. There are, in order of precedence, the High Court of the Judiciary (the High Court), the sheriff courts and justice of the peace courts. The UK Supreme Court can also become involved in some criminal cases because of its role as the ultimate court of appeal in relation to 'devolution issues'.

Criminal procedure

There are two types of procedure under which an individual can be tried: **solemn and summary procedure**.

Solemn procedure involves the most serious cases. The accused would appear in either a sheriff court or in the High Court and the trial would be conducted with a jury.

Summary procedure is used for less serious offences and may ultimately lead to a trial before a sheriff, or in justice of the peace courts, before a bench of one or more lay justices. In Glasgow's Justice of the Peace court, cases are also heard by legally qualified stipendiary magistrates (who are also solicitors or advocates). Trials under summary procedure are conducted without a jury.

Before a case reaches trial, the accused individual will first appear in court, where he or she will be asked to plead either *guilty* or *not guilty* to the charges faced. Should he or she plead *guilty* to charges faced, then there would be no need for a full trial; the next stage would be sentencing. If the accused originally pleads *not guilty*, they have the right to change their plea at any time. If, during the trial, the accused pleads *guilty* then the trial will be stopped.

Verdicts

There are three verdicts available to a judge (under summary procedure) or jury: guilty, not guilty, and not proven. The implications of a not proven verdict are the same as a not guilty verdict in that the accused is acquitted and is generally free from further prosecution on the matter in question. This latter verdict is unique to Scotland. Under these circumstances, it is at this point this individual's involvement with the criminal justice system will cease.

Criminal Proceedings in Scotland 2020-21, a statistical bulletin for the Scottish Government, provides data on court proceedings during the year 2020-21. The outcomes for these court proceedings include:

- 91% of people proceeded against in court were convicted after being found guilty of at least one charge (46,497 people).

- Conviction rates were highest for motor vehicle offences
- 3% were acquitted on a '*not guilty'* verdict
- Around 1% per cent were acquitted on a '*not proven'* verdict.
- 5% either had a plea of '*not guilty'* accepted or their case was deserted by the prosecution

There is a large variation in the number of charges that are proven depending on the type of crime/offence. For example:

- For all motor vehicle offences, 95% of people had charge proven
- 87% of people charged with homicide had the charge proven
- Nearly half of people accused of rape or attempted rape were acquitted.

*But, remember, these figures only represent the cases that have actually *made it to court*. As explained, many crimes will never reach this stage. The police may not detect the crime in the first place, or will not be able to identify a suspect. Also, the case might be disposed of at an earlier stage, e.g. if the police or COPFS issue a direct measure. As an example, although the percentage of rape cases in which the outcome is a *guilty* verdict is very low, the percentage of *actual* cases of rape that occur which are successfully prosecuted in court is even smaller.

Juries

Juries are only used in the Scottish criminal justice system where a case is tried under solemn procedure. In such cases, the judge or sheriff decides questions of law, with the jury deciding questions of fact. In summary cases, both of these functions are performed by the sheriff, justice of the peace, or stipendiary magistrate (if in Glasgow).

A jury in a Scottish criminal case is made up of 15 people. A simple majority is required to deliver a guilty verdict. This means that at least eight members of the jury must agree.

Courts

As a trial court, the High Court's jurisdiction covers the whole of Scotland in respect of all crimes. It has exclusive jurisdiction to try the most serious crimes such as treason, murder and rape and, in practice, deals with other serious crimes such as armed robbery, drug trafficking and sexual offences involving children. Although based in Edinburgh, it is peripatetic (which means it can sit in different parts of the country). However, when it sits as a court of appeal, it only does so in Edinburgh.

In appeal cases, three judges will sit to hear the case where the appeal is against conviction, and two judges will sit where the appeal is against the sentence alone.

Sheriff courts are more limited in the sentences they can impose, though specific powers vary according to whether conviction has been by solemn or summary procedure. Justice of the peace courts have the most limited sentencing powers.

The Scottish Sentencing Council has a range of helpful and interactive resources about sentencing, specially created for Modern Studies learners and teachers. Have a look here!

https://www.scottishsentencingcouncil.org.uk/about-sentencing/education-resources/

Prison System

When an individual is handed a custodial sentence, they are placed in the custody of the Scottish Prison Service, which is responsible for their custody for the duration of their sentence. See **SCCJR 'What is prison for?** 'and **SCCJR 'Who's in prison? A snapshot of Scotland's prison population'** for more information.

Criminal Justice Social Work (CJSW)

Criminal justice social work is carried out at the local authority-level (there are 32 local authorities in Scotland) by specialist criminal justice social workers. In England and Wales, similar services are provided by a National Probation Service and by regional (and privatised) Community Rehabilitation Companies.

CJSW services are provided as part of local authority social work services. The services provided include the provision of:

- social enquiry reports to assist courts with the sentencing of offenders
- community sentences (e.g. community payback orders)
- supervision for offenders released from custody on licence.

Therefore, a convicted person who has been given a community-based sentence will have this implemented and overseen by CJSW services. The CJSW services work with a range of other agencies and private and voluntary organisations in order to provide these services.

CJSW services also work closely with the Scottish Prison Service (SPS) to provide a range of services to people serving a prison sentence and maintain their contact when the person has been granted their liberty and re-joins the community. Likewise, some prisoners are granted early release under a Home Detention Curfew, whereby they wear an electronic ankle 'tag' that monitors their compliance with curfew conditions. In Scotland, all electronic monitoring is provided by a private sector contractor; currently, G4S holds the contract.

One of the reforms introduced under the Management of Offenders etc. (Scotland) Act 2005 was to establish eight Community Justice Authorities (CJAs). Each local authority is included in one of these CJAs which oversaw the work of CJSW in each local authority, and were responsible for appropriating funding to various projects across their jurisdiction. CJA's functions also included creating area plans to for reducing re-offending, to report annually on how successfully it is achieving its aims, and to promote good practice in the management of offenders.

The CJA's were later dissolved by The Community Justice (Scotland) Act 2016 in favour of a more local arrangement for community justice, and which put a legal duty on a set of statutory partners in each local authority area to engage in a planning process. The legislation also established a new national body, Community Justice Scotland which aims to provide leadership for the community justice sector; offer opportunities for innovation, learning and development; provide independent assurance on the delivery of improved outcomes; and provide improvement support where required.

The Management of Offenders (Scotland) Bill was introduced to the Scottish Parliament in 2018 which includes measures to enable new technologies to be used to expand the available forms of electronic monitoring - and to allow this sort of monitoring to be used more often as part of community sentences and of release licences. At the time of writing the Bill was making its way through the Scottish Parliament stages.

If a person fails to meet the conditions of their community-based punishment or post-release supervision, they may have to return to court and face further punishment, including the possibility of imprisonment.

CJSW's also provide Throughcare which is the provision of a range of social work and associated services by community or prison-based social work staff to prisoners and their families from the point of sentence or remand, during the period of imprisonment and following release into the community. A range of prisoners are subject to statutory supervision following release:

- Those sentenced to more than 4 years up to and including life sentences
- Those sentenced to less than 4 years but subject of extended sentences
- Sex offenders sentenced to less than 4 years
- Those subject of Supervised Release Order

Throughcare services have a primary objective of public protection, by assessing risk and providing appropriate interventions. They also help prisoners to prepare for release and to resettle into their community.

Young people in the criminal justice system

The criminal justice system for children and young people in Scotland is quite different from that of adults. For more information about the Scottish approach to offending by young people, including details of the Children's Hearing System, see **SCCJR 'Youth justice'**.

Further Reading

Association of Directors of Social Work (ASDW) (2018) Media Briefing on Criminal Justice Social Work Services in Scotland. Available from here https://socialworkscotland.org/wp-content/uploads/2018/06/Criminaljustice.doc

Audit Scotland (2011) *An Overview of Scotland's Criminal Justice System*. Prepared for the Auditor General for Scotland and the Accounts Commission, September 2011. Available from: http://www.audit-scotland.gov.uk/docs/central/2011/nr_110906_justice_overview.pdf

Graham. H (2018) Explainer: The Management of Offenders (Scotland) Bill. What it covers and Why? Published in SCCJR Blog. Available from: https://sccjrblog.wordpress.com/2018/03/01/explainer-the-management-of-offenders-scotland-bill-what-it-covers-and-why/

Morrison, K., Buchan, J and Wooff, A. (2021). The Criminal Justice System in Scotland: In The Oxford Textbook on Criminology (2nd). Oxford: Oxford University Press. https://learninglink.oup.com/access/case2e-student-resources#tag_all-chapters

National Audit Office (2012) *Comparing International Criminal Justice Systems*. Briefing for the House of Commons Justice Committee, February 2012. Available from: http://www.nao.org.uk/wp-content/uploads/2012/03/NAO_Briefing_Comparing_International_Criminal_Justice.pdf

SCCJR (Armstrong, S. and Eski, Y.) (2011) *Scottish Crime, Punishment and Justice Cost Trends in Comparative Context*. Available from: http://www.sccjr.ac.uk/wp-content/uploads/2012/12/International-Justice-Comparisons-for-Audit-Scotland-FINAL.pdf

Scobie, G. and McCallum, F. (2013) *The Scottish Criminal Justice System: The Police*. SPICe Briefing 13/42. Available from: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_13-42.pdf

Scottish Government (2017) *Justice in Scotland: Vision and Priorities*. Available from: https://www.gov.scot/publications/justice-scotland-vision-priorities/

Scottish Government (2022) *Criminal Proceedings in Scotland, 2020-21.* A National Statistics

Publication for Scotland. Available from: https://www.gov.scot/publications/criminal-proceedings-scotland-2020-21/

Scottish Government (2023) *Recorded Crime in Scotland, 2022-2023*. An Official Statistics Publication for Scotland. Available from: https://www.gov.scot/publications/recorded-crime-scotland-2022-23/

Updated 2023

SCCJR's learning resources for schools (Modern Studies) were initially developed by Rebecca Foster and Greg Duncan. They are regularly reviewed and updated by SCCJR researchers. Any queries (including notes of broken links, ideas for development and new topics) about these resources should be sent to enquiries@sccjr.ac.uk)

Citing this resource: SCCJR (2023) TITLE, Online