

# Public Audit Committee

## 5th Meeting, 2021 (Session 6), Thursday, 30 September

### Community Justice: Sustainable alternatives to custody

#### Introduction

1. The Public Audit Committee will take evidence today from the Auditor General for Scotland (AGS) on his [Community Justice: sustainable alternatives to custody](#) briefing, which was published on 15 July 2021.
2. The AGS has prepared a note on the key messages from the briefing, which, along with a copy of the briefing, can be found in the Annexe.

**Clerks to the Committee**  
**27 September 2021**

**Annexe**

## BRIEFING PAPER BY THE AUDITOR GENERAL FOR SCOTLAND

### Community Justice: Sustainable alternatives to custody

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1. The Auditor General's briefing paper on sustainable alternatives to custody was published on the 15<sup>th</sup> of July 2021. This paper reflects some early analysis of developments, data and the role of stakeholders in the delivery of community justice. It draws predominantly on publicly available information. The intention is

to follow up this paper with further work on sustainable alternatives to custody, planned to take place in 2022.

2. Key messages from the briefing paper are:

- Scotland has one of the highest incarceration rates in Western Europe. The Scottish Government has an aim to shift the balance of sentencing, from prison to community-based sentences, to support the overarching aim to reduce reoffending. This shift in balance has yet to take place. The proportion of those who received a community sentence, as opposed to custody, was the same in 2019/20 as it was in 2016/17, 59 per cent.
- Community sentences are often more effective at reducing reoffending and less costly than prison sentences, particularly when it comes to sentences of under a year. In 2017/18 the reconviction rate for those who had served a sentence of a year or less was 49 per cent, compared with 30 per cent who completed a community sentence. The cost of the most often used type of community sentence is significantly lower than the cost of a prisoner place.
- In 2012, we reported that a lack of data made it difficult to assess the impact of Community Justice Authorities, or the effectiveness of community payback orders. Community Justice Scotland, and 30 Community Justice Partnerships, were established in 2017. It is not yet clear whether the new arrangements are working effectively. Community Justice Scotland has reported that data deficiencies mean progress against national community justice outcomes is still not being measured effectively.
- The paper highlights a number of important issues that the Scottish Government should consider in its approach to community justice (paragraph 13). These include developing a clear understanding of the factors that have contributed towards the slow progress in making the shift to a greater use of community justice, as well as the reasons for geographic variation in the use, cost and success of community sentences across Scotland. The intended wider outcomes of community sentences, beyond reducing reoffending should be clearly defined and appropriate data collected to allow an assessment of progress against these. The Scottish Government's Recover, Renew and

Transform programme may provide an opportunity to further progress a shift to sustainable, community-based alternatives to custody.

Annexe

# Community justice

Sustainable alternatives to custody



AUDITOR GENERAL 

Prepared by Audit Scotland  
July 2021

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# Contents



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Key issues	3
Community justice: Sustainable alternatives to custody	4
Endnotes	11

## Audit team

The core audit team consisted of: Nichola Williams, with support from other colleagues and under the direction of Mark MacPherson.

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## Links

-  PDF download
  -  Web link
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# Key issues



- 1** Scotland has one of the highest incarceration rates in Western Europe. Prisoner numbers were above prison operating capacity prior to Covid-19 and, although they fell during the middle of 2020, they have the potential to rise further in the coming years. For many prisoners, it is not their first time in prison.
  - 2** The Scottish Government has long had an objective to shift the balance of sentencing, from prison sentences to community-based sentences. This shift is intended to support the overarching aim to reduce reoffending, which in turn has the potential to reduce the costs to the individual, the taxpayer and wider society.
  - 3** Between 2016, when new community justice legislation was enacted, and 2018/19, the intended shift in sentence type – to community rather than prisons – had been going in the wrong direction across most crime types. In cases where offenders received either a community or custodial sentence, the proportion who received a community sentence fell from 59 per cent in 2016/17 to 55 per cent in 2018/19, before rising again to 59 per cent in 2019/20.<sup>1</sup>
  - 4** Although the factors that influence whether someone reoffends can be complex, community sentences are often more effective at reducing reoffending and less costly than prison sentences, particularly when it comes to sentences of under a year. Of those released from prison in 2017/18 who had served a sentence of a year or less, 49 per cent were reconvicted within a year, compared with 30 per cent who completed a community sentence. Scottish Government analysis on costs in 2016/17 showed the average prisoner place cost £37,334, while the most used community sentence, a community payback order, cost around £1,894.
  - 5** In 2012, we reported that a lack of data made it difficult to assess the impact of Community Justice Authorities, or the effectiveness of community payback orders. A new national body, Community Justice Scotland, and 30 Community Justice Partnerships were established in 2017. It is not clear whether roles and accountability arrangements are well understood and working effectively. And Community Justice Scotland has reported that data deficiencies mean progress against national community justice outcomes is still not being measured effectively.
  - 6** Covid-19 has had an impact on the whole justice system, including a backlog in court cases. As the throughput of court business picks up, the demand on community justice services is likely to increase. The Scottish Government has begun a Recover, Renew and Transform programme to focus on recovery and addressing this backlog. This work may provide an opportunity to further progress a shift to sustainable, community-based alternatives to custody.
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# Community justice

## Sustainable alternatives to custody



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### Introduction

**1.** Community justice involves the provision of community-based sentences and services aiming to reduce reoffending and promote social inclusion. The most commonly used community sentence is a Community Payback Order (CPO), often including a requirement to carry out unpaid work. This briefing paper looks at some of the developments in community justice since Audit Scotland last commented on the subject in the 2012 [Reducing Reoffending in Scotland](#)  report. This includes changes to legislation and the bodies involved, as well as some high-level analysis of sentencing, funding and reconviction data. We will follow up on the issues identified in this paper through performance audit work on community justice in 2022.

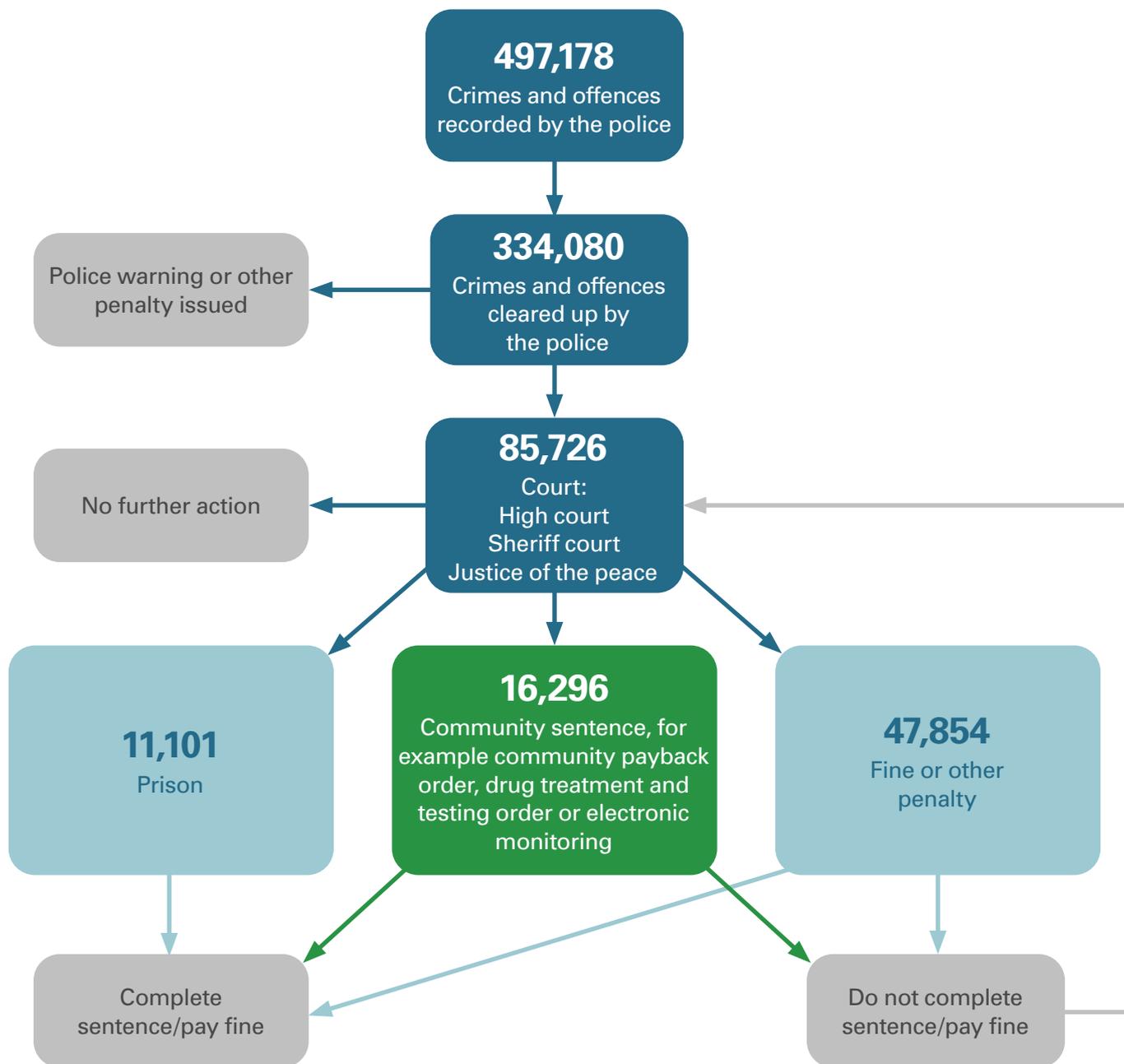
### Scotland's use of custodial sentences is one of the highest in Europe

**2.** Despite the Scottish Government's ambition to shift the balance of sentencing away from custody and towards community sentences, Scotland's incarceration rate is among the highest in Western Europe. One hundred and thirty-four people are in prison for every 100,000 in the population.<sup>2</sup> The Auditor General's 2019 statutory report on the [Scottish Prison Service](#)  (SPS) highlighted that the number of prisoners exceeded the operating capacity of Scottish prisons.<sup>3</sup> Prisoner numbers had been reducing, but annual population data showed an increase in both 2018/19 and 2019/20, with an average daily prison population of 8,198 in 2019/20.<sup>4</sup> Prisoner numbers fell below 7,000 during the middle of 2020, mainly as a result of a programme of early release and reduced court capacity in response to the Covid-19 pandemic. Numbers began to increase again later in the year, as the number of people on remand grew and courts began to re-open. Based on current sentencing patterns, as court capacity increases, the number of people in Scotland's prisons is likely to rise again. The SPS report also highlighted the pressure that high prisoner numbers are putting on the SPS budget, which had been decreasing in real terms. Funding for prisons began rising in 2018/19.

**3.** The impact of Covid-19, including court backlogs, pressures on finances and a delay in offenders being able to complete unpaid work hours, will add further stress to the system. The increases in prisoner numbers and associated increase in costs are unlikely to be sustainable and alternatives will be increasingly important, potentially leading to increased pressures on community justice services ([Exhibit 1, page 5](#)). Prison sentences, particularly those that are short term, also tend to be less effective at reducing reoffending than community sentences ([paragraph 8](#)).

### Exhibit 1 Justice pathway

Community justice is one of several potential pathways through the justice system.



Note: This represents a section of the wider justice system, which also includes other routes, such as diversion from prosecution before court proceedings begin. For a more complete picture of the full system see Community Justice Scotland’s justice system map, [https://communityjustice.scot/scottish\\_justice\\_system/](https://communityjustice.scot/scottish_justice_system/)

Figures represent the number involved in that stage, in 2019/20. Totals for each stage in the process do not equal the total from the previous step as the top two boxes represent the number of individual crimes or offences while the other boxes represent number of proceedings, charges or disposals, some of which may relate to multiple crimes. There are also other routes out of the system, for example, some of the crimes cleared up by the police will result in a police warning or other penalty, rather than proceeding to court, and a proportion of those going to court will not result in a guilty verdict or plea and sentence.

Source: Criminal proceedings 2019/20 data, and Recorded crimes in Scotland 2019/20, Scottish Government

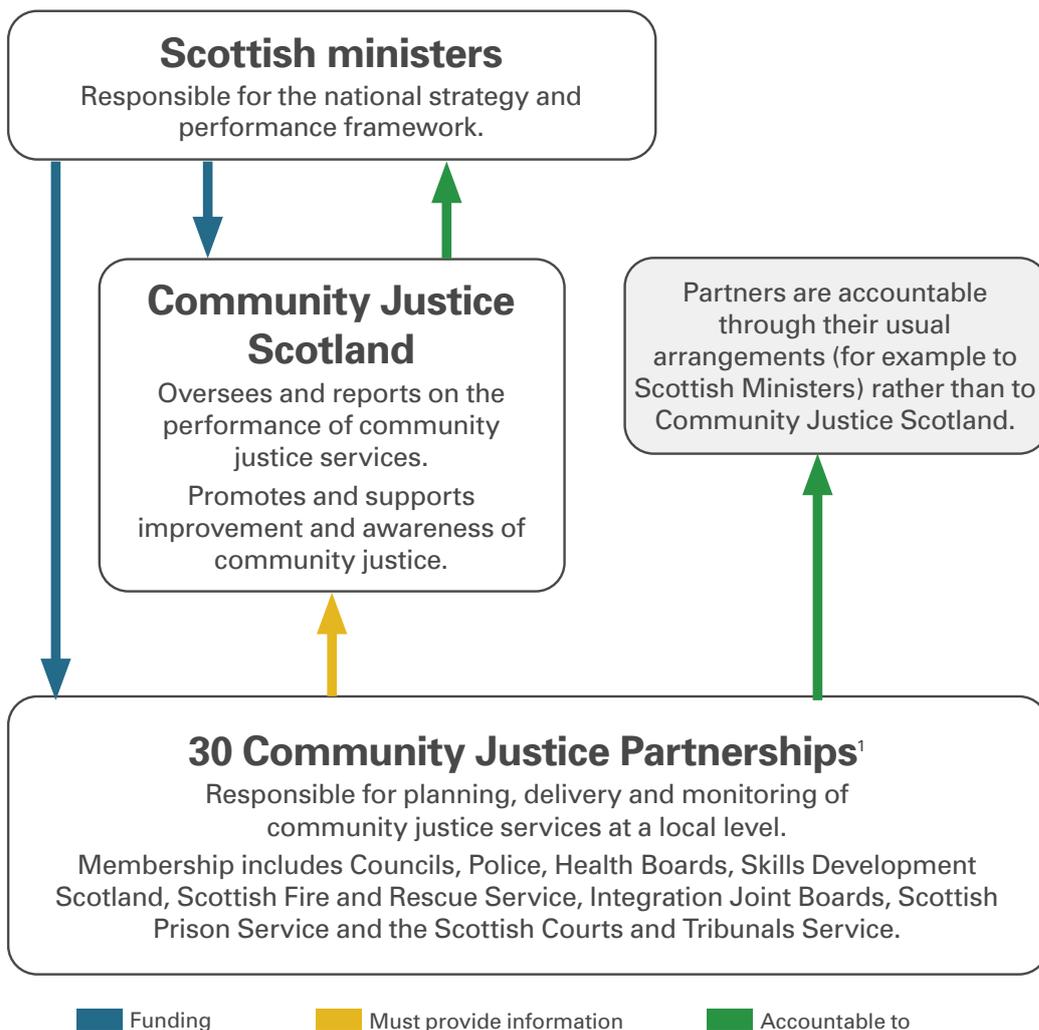
## New legislation for the delivery of community justice was introduced in 2016

4. The Community Justice (Scotland) Act 2016 was introduced following criticisms in Audit Scotland's [Reducing Reoffending in Scotland](#)  report and work by the Commission on Women Offenders.<sup>5</sup> Our report highlighted the complex governance and accountability landscape in community justice, as well as a need for a more strategic approach to planning and delivering services. New arrangements for community justice came into place in 2017. This involved disestablishing the eight Community Justice Authorities and replacing them with a national body, Community Justice Scotland, and 30 Community Justice Partnerships ([Exhibit 2](#)). Community justice services are now planned and delivered at a more local level. The judiciary is still responsible for making sentencing decisions and is independent from government.

### Exhibit 2

#### The bodies involved in community justice

Community justice is now largely planned and delivered at a local level, by Community Justice Partnerships, with a new national body responsible for reporting on performance and supporting improvement.



Note: 1. The three Ayrshire council areas have combined to form a single partnership.

Source: Audit Scotland

**5.** The 2016 [National Strategy for Community Justice](#)  aimed to shift the balance between community and custodial sentences, as well as addressing the underlying causes of offending. Many of those who commit crimes, and subsequently serve sentences – prison or community-based – face particular challenges. For example, they may have experienced difficult family backgrounds, poor educational outcomes and, for many, homelessness. A 2017 SPS prisoner survey found that one in four prisoners had been in care as a child.<sup>6</sup> And those from the most deprived communities are disproportionately represented in the prison population. Even with support and ‘purposeful activity’, prison will not be the best way to address these problems.<sup>7</sup> Of course, the ability to provide the right combination of punishment and tailored support in an alternative setting (for example, in the community) is dependent on the capacity of local services, particularly criminal justice social work services and the third sector. Community Justice Partnerships are responsible for planning and commissioning community justice services to meet the needs of their local area.

### **There is little evidence of a shift towards the use of community-based sentences, or of improved outcomes**

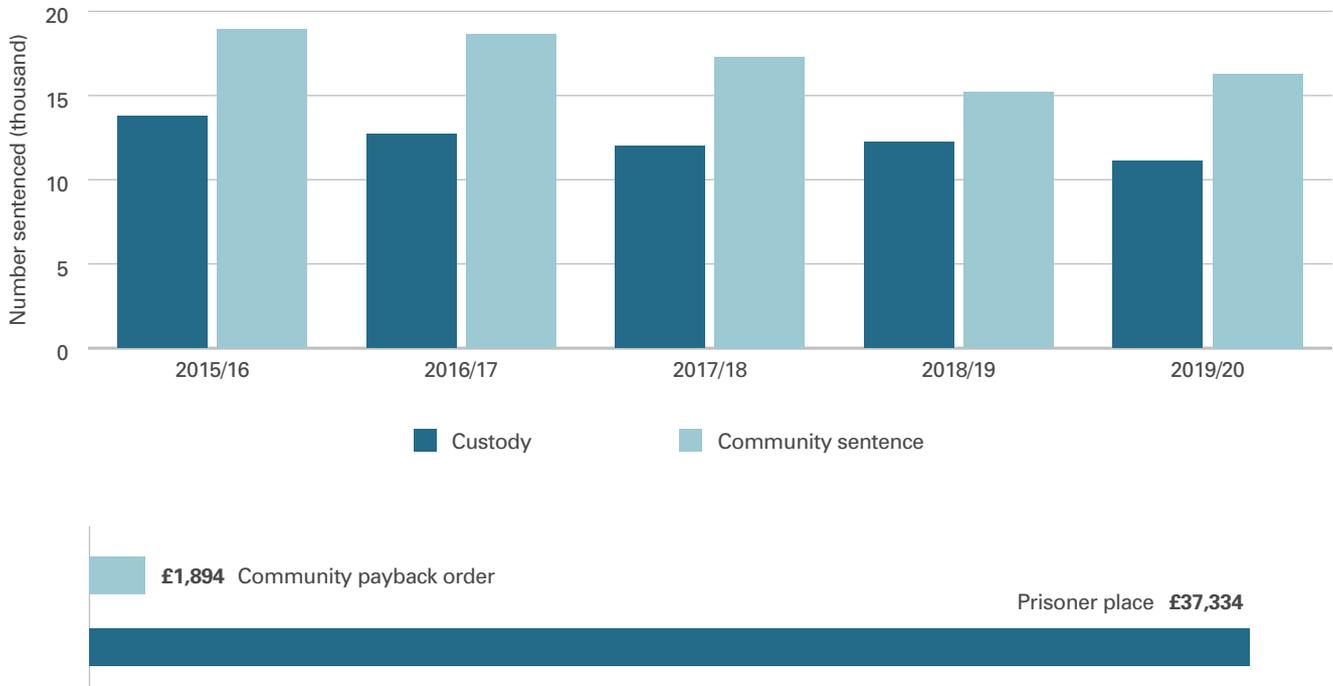
**6.** The number of recorded crimes and the number of people being convicted of crimes have both fallen in recent years. More people receive community-based sentences than custodial sentences. But, when we look at national data for all crime types and compare those receiving community sentences to those receiving custodial sentences, the proportion receiving community sentences was the same in 2019/20 as in 2016/17, after having fallen in 2018/19 ([Exhibit 3, page 8](#)).<sup>8</sup> Sentencing data shows geographic variation in the use of community sentences. The number of CPOs per 10,000 population in 2019/20 ranged from 16 in East Renfrewshire to 69 in Clackmannanshire.<sup>9</sup> A number of different factors could influence the trends in types of sentences the judiciary decide to use, including changes in the types of crime being committed and legislative or policy changes, such as the presumption against short-term sentences.<sup>10</sup> Sentencing decisions are also impacted by the nature and circumstances of the offence, the offending history of those involved and the offender’s personal circumstances.

**7.** Funding for prisons is around three times that for community justice. In 2021/22, £460 million was allocated to prisons and £133 million to community justice.<sup>11</sup> The average cost per person is generally much higher for prison than community sentences ([Exhibit 3, page 8](#)). Around 80 per cent of community justice funding goes to councils’ community justice social work services.<sup>12</sup> Community justice funding makes up less than five per cent of overall justice funding, and there has been little change in recent years.

### Exhibit 3

#### Community justice versus custody – sentencing and costs

More people are given community-based sentences than custody, but the proportion has not increased.



Note: CPO cost data does not include costs of some additional services that may be accessed as a consequence of requirements imposed within the order and is based on dividing estimated expenditure on CPOs by the number delivered. The cost of a prisoner place is based on a three-year rolling average.

Source: Scottish Government criminal proceedings data 2019/20. Costs of the criminal justice system in Scotland dataset 2016/17.

8. The Scottish Government's reducing reoffending policy notes that evidence shows community sentences are more effective at preventing reoffending than prison sentences.<sup>13</sup> The latest reconviction data (2017/18) shows that 40 per cent of those released from prison were reconvicted within a year.<sup>14</sup> When broken down by length of sentence, the shorter the sentence, the higher the reconviction rate. Of those who had been given sentences of less than one year, 49 per cent were reconvicted within a year, the same rate as the year before. In comparison reconviction rates for community sentences were much lower, 30 per cent down from 32 per cent the year before. Reconviction rates are also likely to be affected by things like the type of crime committed and whether the person has a prior history of offending. The data also shows that the more convictions someone has had in the past, the more likely they are to be reconvicted after serving their sentence. There is a lack of published data on wider outcomes for people completing either type of sentence, including future employment or health.

#### Roles, accountability arrangements and reporting on performance have changed under the new arrangements, and it isn't yet clear how effective these have been

9. During the Scottish Government consultation on the proposals for the 2016 Act, stakeholders raised concerns about accountability arrangements. Some felt that the new arrangements may be just as cluttered and complex as the previous ones. Other issues included the need for clarity of the role of Community Justice

Scotland and its powers, whether funding would be sufficient to shift the balance and a gap around the important role played by the third sector.

**10.** The Reducing Reoffending in Scotland report recommended that the Scottish Government should improve the range of performance measures to assess the effectiveness of those involved in reducing reoffending. The Scottish Government published an outcomes, performance and improvement (OPI) framework in 2016.<sup>15</sup> This aimed to ensure the new community justice model was better able to measure, understand and evidence success. However, Community Justice Scotland's 2021 community justice outcome activity report found a lack of suitable data to measure progress against national indicators.<sup>16</sup> As a result, Community Justice Scotland was unable to definitively assess progress towards national outcomes, including whether Community Justice Partnerships are having an impact on improving outcomes for offenders.

### **Work is under way to address some of the challenges in community justice**

**11.** In response to Covid-19, the Scottish Government Justice Board established a Criminal Justice Board to lead on a programme of work called Recover, Renew, Transform (RRT).<sup>17</sup> This work is bringing together the key criminal justice organisations to focus on recovery and transformation activity, including the courts backlog. One of the RRT workstreams is focused on community justice. The Scottish Government has allocated an extra £50 million for the RRT programme in 2021/22, £11.8 million of which is going to criminal justice social work services.

**12.** Community Justice Scotland is looking at improving the OPI framework, as required by section 18 of the Community Justice (Scotland) Act 2016. This includes consultation with community justice partners and stakeholders to identify the changes required to be able to report more effectively on progress against outcomes both locally and nationally. Community Justice Scotland plans to make recommendations to the Scottish Government, with a new framework to be implemented in 2022. The Scottish Government will also undertake a review of the Community Justice Strategy by November 2021, in line with the requirement in section 16 of the Community Justice Act, to determine what changes might be required.

### **There are a number of issues the Scottish Government will need to consider**

**13.** Issues that the Scottish Government will need to consider and understand in taking forward any revised approach to community justice include:

- Whether all stakeholders involved in the planning and delivery of community justice have a shared understanding of lines of accountability and areas of responsibility.
- The reasons for geographical variation in use, cost, and success, of community sentences, as well as an understanding of variation in costs between different community justice interventions.

- The factors that influence sentencing pathways and decisions and what has contributed towards any progress made in increasing the use of community sentences, as well as the slow progress overall in shifting the balance from custody to community sentencing.
- The basis on which funding allocations to community justice partnerships are determined, and the extent to which this does or should reflect potential increases in demand that might come from a move towards more community sentences and the recovery from Covid-19.
- Whether the intended outcomes of community sentences, beyond reducing reoffending, have been clearly defined.
- Whether the data being collected to assess outcomes is appropriate, including whether the data needed is both available and allows comparison between areas.

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# Endnotes



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- 1 The 2016 community justice strategy focuses on shifting the balance between community and custodial sentences. Therefore, we have excluded those who received a fine or other sentence.
  - 2 World prison brief, Institute for Crime & Justice Policy Research, April 2021.
  - 3 **The 2018/19 audit of the Scottish Prison Service**,  Audit Scotland, September 2019.
  - 4 Scottish Prison Service annual population data, 2019/20.
  - 5 Commission on Women Offenders: Final report 2012.
  - 6 Prisoner Survey 2017, Scottish Prison Service, December 2017.
  - 7 Purposeful activity includes activity to develop learning and employability skills, life skills, resilience and improve well-being. It can include things like work, education, counselling and vocational training.
  - 8 Excluding those who received a fine or other sentence.
  - 9 Criminal justice social work statistics: 2019 to 2020, Scottish Government, March 2021.
  - 10 The Presumption against short periods of imprisonment (Scotland) order 2019 extended the presumption against the use of short-term prison sentences from those less than three months to those less than twelve months.
  - 11 Community justice funding includes funding for Community Justice Scotland, as well as the delivery of community justice services. Prison funding includes costs associated with operating the prison system as well as providing services for those in custody.
  - 12 Some of this funding will then be paid to third sector organisations for the delivery of community justice services.
  - 13 <https://www.gov.scot/policies/reducing-reoffending/> .
  - 14 Reconviction rates – offender cohort: 2017 to 2018, Scottish Government, October 2020.
  - 15 Community Justice Outcomes, Performance and Improvement Framework, Scottish Government, November 2016.
  - 16 Community Justice Outcome Activity Across Scotland Annual Report 2019/20, Community Justice Scotland, March 2021.
  - 17 The Justice Board includes Scottish Government Directors and heads of partner justice organisations and is responsible for monitoring progress against the Scottish Government’s justice vision and priorities.

# Community justice

## Sustainable alternatives to custody

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[www.audit-scotland.gov.uk/accessibility](http://www.audit-scotland.gov.uk/accessibility) 

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