

Key messages

An overview of Scotland's criminal justice system



 AUDIT SCOTLAND

Prepared for the Auditor General for Scotland and the Accounts Commission
September 2011



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Key messages

Background

1. The criminal justice system in Scotland consists of a complex set of legal processes based on principles of fairness, a respect for human rights, independent decision-making and a separation of powers between the State and judicial processes.

2. The system is adversarial in nature and must follow due process to ensure the protection of individuals accused by the State and the presumption of innocence until proven guilty.

3. This overview focused on the adult criminal justice system and the processes involved from when police identify someone they consider has committed some criminal activity until that person leaves the criminal justice system. Crime prevention and detection were not included. Prosecutorial and sentencing decisions are independent of government and were also not considered.

4. A large number of cases go through the criminal justice system involving many different people. For example, in 2009/10:

- 276,000 prosecution reports were submitted to the Crown Office and Procurator Fiscal Service (COPFS), of which 242,000 were submitted by the police and involved 278,000 people¹
- 137,000 accused people were processed through the courts, of which 121,000 (88 per cent) received some kind of sentence

- there were 825,000 victims of criminal activity and 477,000 citations were issued calling witnesses to appear at court
- over 8,400 people (excluding police officers and staff) were employed by criminal justice bodies to deal with this demand.

5. The aim of our audit was to provide an overview of how much public money is spent on Scotland's criminal justice system; determine what that money delivers; and identify where there is potential to improve efficiency and effectiveness. We will also use our findings to identify where more detailed performance audit work would be of value.

6. Evidence for this overview is based on analysis of national and local data, reviews of existing research, and interviews with staff from across the criminal justice system. Details of our audit methodology are provided in Appendix 1 of the main report.

Key messages

1 There have been significant changes to the criminal justice system since devolution, which have delivered major reform but have also contributed to its complexity. It is difficult to manage criminal justice processes as a whole system because of the number of bodies involved and their different accountabilities. However, joint working has improved in recent years.

7. Scotland's criminal justice system consists of a number of interdependent processes based on a complex combination of common

law, statute and guidance. Exhibit 1 (overleaf) provides an overview of an offender's journey through the criminal justice system.

8. What happens at each stage depends on decisions made by the accused, the various criminal justice bodies and individuals such as sheriffs. There are many routes through the system and what can happen at each stage varies; for example, the offender may appeal against their sentence.

9. There are three types of court in Scotland to deal with different levels of offending (High Court of Justiciary, Sheriff Court and Justice of the Peace Court) and two types of system for hearing cases: solemn and summary. Solemn cases are concerned with the most serious offences, such as murder, rape or serious assault and are decided by a jury. Summary cases deal with other criminal activity and do not have a jury. The vast majority (over 90 per cent) of cases going through the criminal justice system are summary cases. For this reason, this report focuses on the summary justice system.

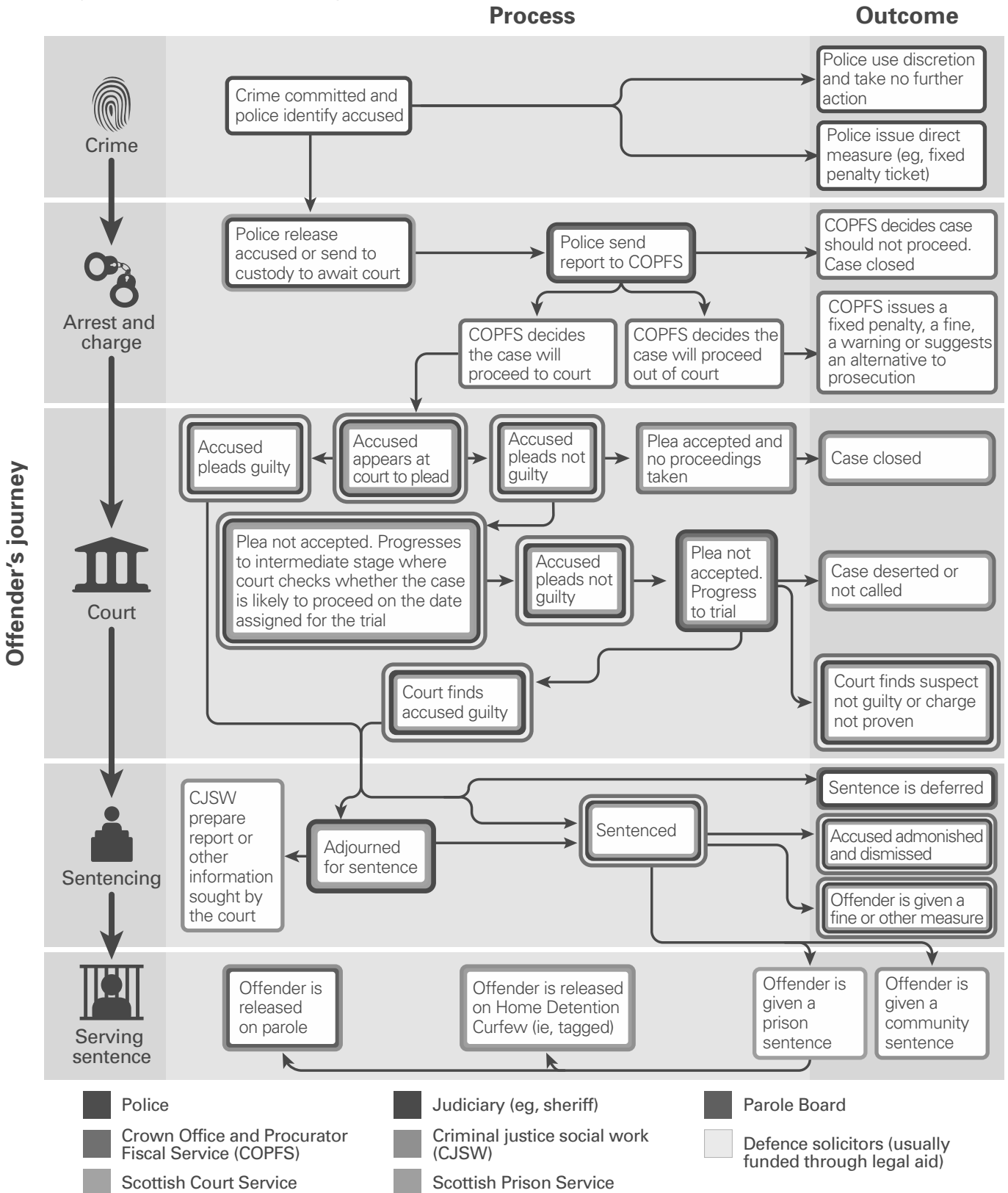
10. The criminal justice system is primarily focused on ensuring that each case is dealt with in accordance with due process and that the fundamental principles of fairness and integrity are upheld. While the rights of the accused are guaranteed by law, there is less in the way of guaranteed rights for other people, in particular victims and witnesses. Procurators fiscal act on behalf of the State, in the public interest, not on behalf of victims.

¹ All bodies who have responsibility for enforcing legislation in Scotland submit prosecution reports, for example, the Health and Safety Executive.

Exhibit 1

Overview of an offender’s journey through the criminal justice system

Scotland’s criminal justice system comprises many processes and is delivered by a range of bodies and individuals, with different possible outcomes at each stage.



Note: Coloured borders round the boxes signify the different bodies generally involved at that stage of the process.
Source: Audit Scotland

11. Scotland's criminal justice system has changed significantly since devolution. There have been 16 new acts relating to the criminal justice system, new offences and over 20 new criminal justice bodies created. This legislation has simplified some processes and led to significant reform in some areas, for example increasing the range of alternatives to prosecution. However, the range and volume of new legislation has also contributed to the complexity of the system. (See paragraphs 27 to 29 in the main report for more information.)

12. Many public, private and voluntary bodies and individuals are involved in delivering Scotland's criminal justice system. Given the importance of independent decision-making and the need to ensure the powers of the State are separated from those of judicial processes, the bodies involved have different accountabilities (Exhibit 2, overleaf).

13. The different roles and accountabilities mean that it is difficult to manage the criminal justice system as an integrated process. However, the reform of the High Court in 2004/05 and the introduction of summary justice reform in 2006/07 resulted in considerable improvements in how criminal justice bodies work together.

14. The Scottish Government is working to promote collective ownership of the system. This is being done at a national level through the Justice Outcomes Group, which includes senior representatives from most criminal justice bodies. At a local level, 11 multi-agency criminal justice boards were created in 2007 to oversee performance and improve efficiency of the summary system by facilitating joint working among the judiciary, the courts, procurators fiscal and the police.

15. Recent legislation has also introduced duties for some criminal justice bodies to cooperate, for example in relation to establishing Community Justice Authorities.

16. However, there is no overarching requirement on individual bodies to cooperate and there are limited sanctions if any particular body is slow in implementing agreed changes. Effective cooperation among the bodies relies to a large extent on the commitment from criminal justice bodies and good professional relationships. (See paragraphs 30 to 38 in the main report for more information.)

2 The operation of Scotland's criminal justice system cost an estimated £857 million in 2009/10. The revenue budget for the six main criminal justice bodies (excluding police) reduced by seven per cent in real terms in 2011/12; and the capital budget by 64 per cent. The scale of the budget reductions, combined with increasing cost pressures in some areas and limited control over demand mean there are risks to the long-term sustainability of services.

17. The operation of Scotland's criminal justice system cost an estimated £857 million in 2009/10. Most police expenditure and activity is concerned with maintaining public safety, and the prevention and detection of crime, which are outside the scope of this audit. This figure therefore only includes the small proportion of police expenditure directly related to criminal justice activities.²

18. There is limited information on the costs of different processes and activities. However, costs can be substantial. For example, in 2009/10, the average cost of a prisoner place for a year was £31,703.

19. Using information provided by the different criminal justice bodies, we estimate that the average cost of processing a summary case through all the stages of the court system was about £2,100 in 2009/10 (Exhibit 3, page 5). This is an indicative cost, as costs will vary depending on, for example, whether the accused is held in custody or if interpreters are required.

20. New legislation and case law have cost implications.³ The increasing complexity of cases, for example the use of expert witnesses, is increasing costs in some areas. However, it is difficult to identify the full extent of these increasing costs. (See paragraphs 44 to 48 in the main report for more information.)

21. The criminal justice system is demand-led and understanding demand is not straightforward. For example, the level of recorded crime and the number of cases registered for court is falling, but the numbers of prison and community sentences are increasing.

22. Demand can also be unpredictable. For example, in March 2011, police and prosecutors in Lothian and Borders had to deal with eight murder investigations, an unprecedented level of major incidents at any one time. Such increases in demand can drive up costs across the system as extra court sitting days may be required to hear the cases and there may be significant legal aid fees to defend the accused.

23. Managing the level of demand is difficult for some bodies. While there is some flexibility to manage demand at the start of the criminal justice process, there is very little at the end.

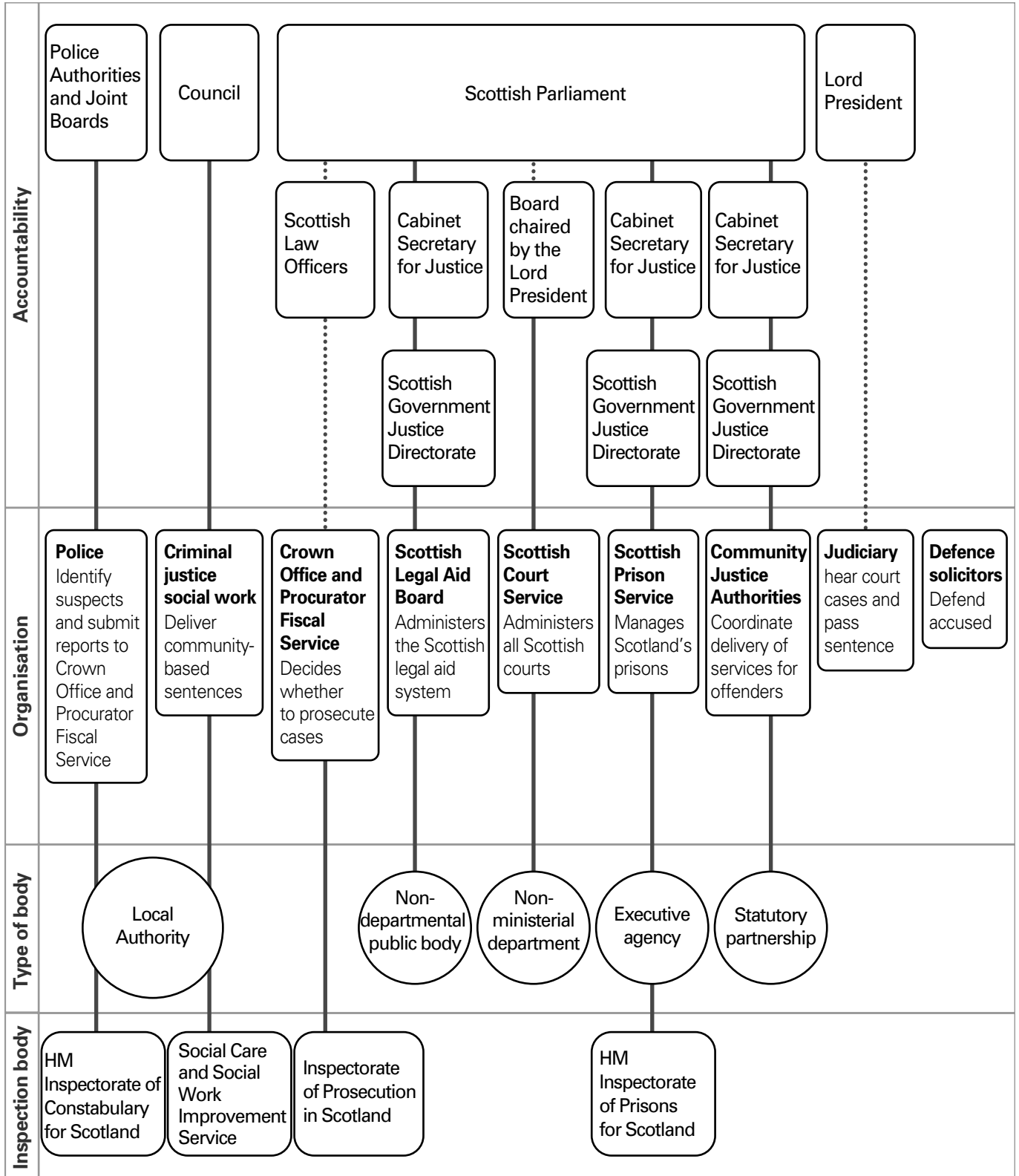
² Information supplied by ACPOS estimate this is about five per cent of police force expenditure. We have also included relevant elements of Scottish Police Services Authority expenditure.

³ For example, the Cadder ruling in October 2010 meant that any suspect questioned by the police had to have access to legal advice. The Scottish Government estimate that it could cost the Scottish Legal Aid Board £1-4 million a year.

Exhibit 2

The roles and accountabilities of the main criminal justice bodies

The separation of powers and independence of decision-making mean that criminal justice bodies have different accountabilities.



..... Independence of decision-making

24. Summary justice reform introduced direct measures to allow both the police and procurators fiscal to take less serious cases out of the criminal justice system earlier. However, the Scottish Prison Service has to accommodate every person sent by the courts, either to await trial or serve their sentence, and criminal justice social work services have to implement all community sentences (Exhibit 4, page 6).

25. The revenue budget for the six main criminal justice bodies (excluding the police), fell by seven per cent in real terms in 2011/12 to £771 million and the capital budget fell by 64 per cent to £59 million.

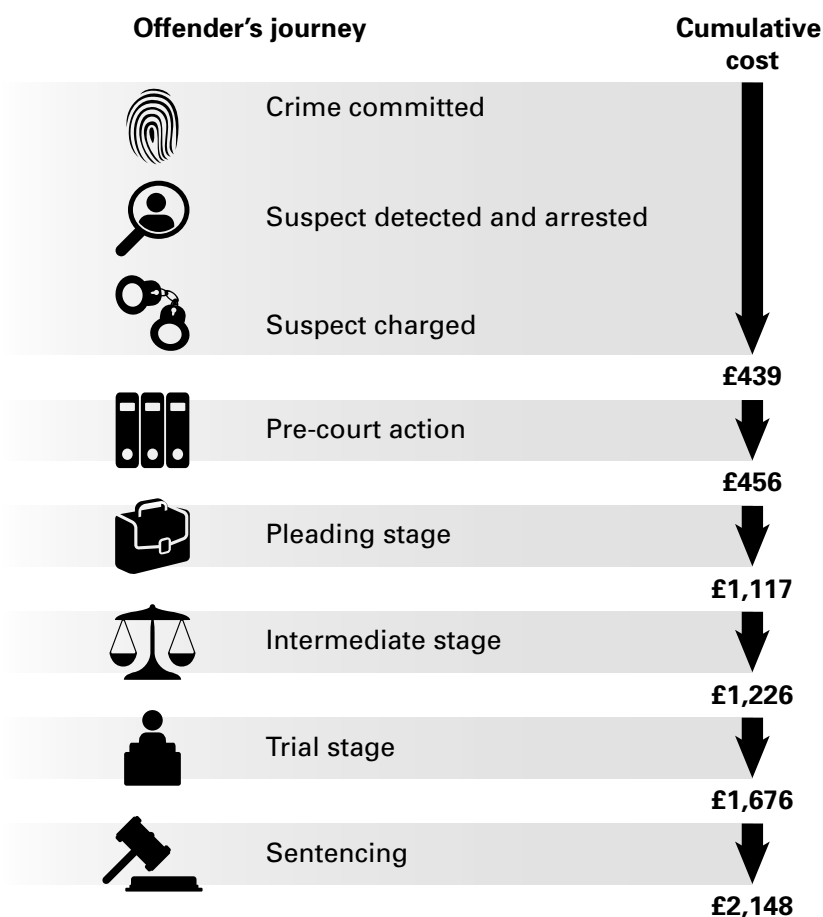
26. Criminal justice bodies responded to the 2011/12 reductions in revenue funding in a number of ways, including reducing staff numbers and investigating the potential to share services. The significant reduction in capital funding means that some planned improvements have been cancelled and there is less money available to develop and maintain a large estate. (See paragraphs 57 to 59 in the main report for more information.)

27. It is too early to tell what impact reduced budgets will have on the level of service provided. However, taken together, the scale of the cuts; the length of time it will take for some planned changes to deliver savings; increasing cost pressures in some areas; and the limited ability of some criminal justice bodies to manage demand, all increase the risk to the long-term sustainability of criminal justice services.

Exhibit 3

The estimated cost of processing summary cases

The costs involved in processing a case through the courts increase at each stage.



Source: Audit Scotland

3 There are significant inefficiencies in the criminal justice system. The length of time taken to process summary cases through the courts has improved but many cases still repeat stages in the court process. Inefficiencies in processing cases cost the criminal justice system at least £10 million in 2009/10. Repeated delays in processing cases can also have a negative effect on people's confidence in the system.

28. The need for a fair and just justice system with a separation of powers does not mean that the criminal justice system cannot operate efficiently.

29. All criminal justice bodies acknowledge that there are inefficiencies in the system. The Scottish Government's *Making Justice Work* programme involves a range of criminal justice bodies and has identified a number of areas where efficiency could be improved, including improving IT systems and the way cases go through the court system.

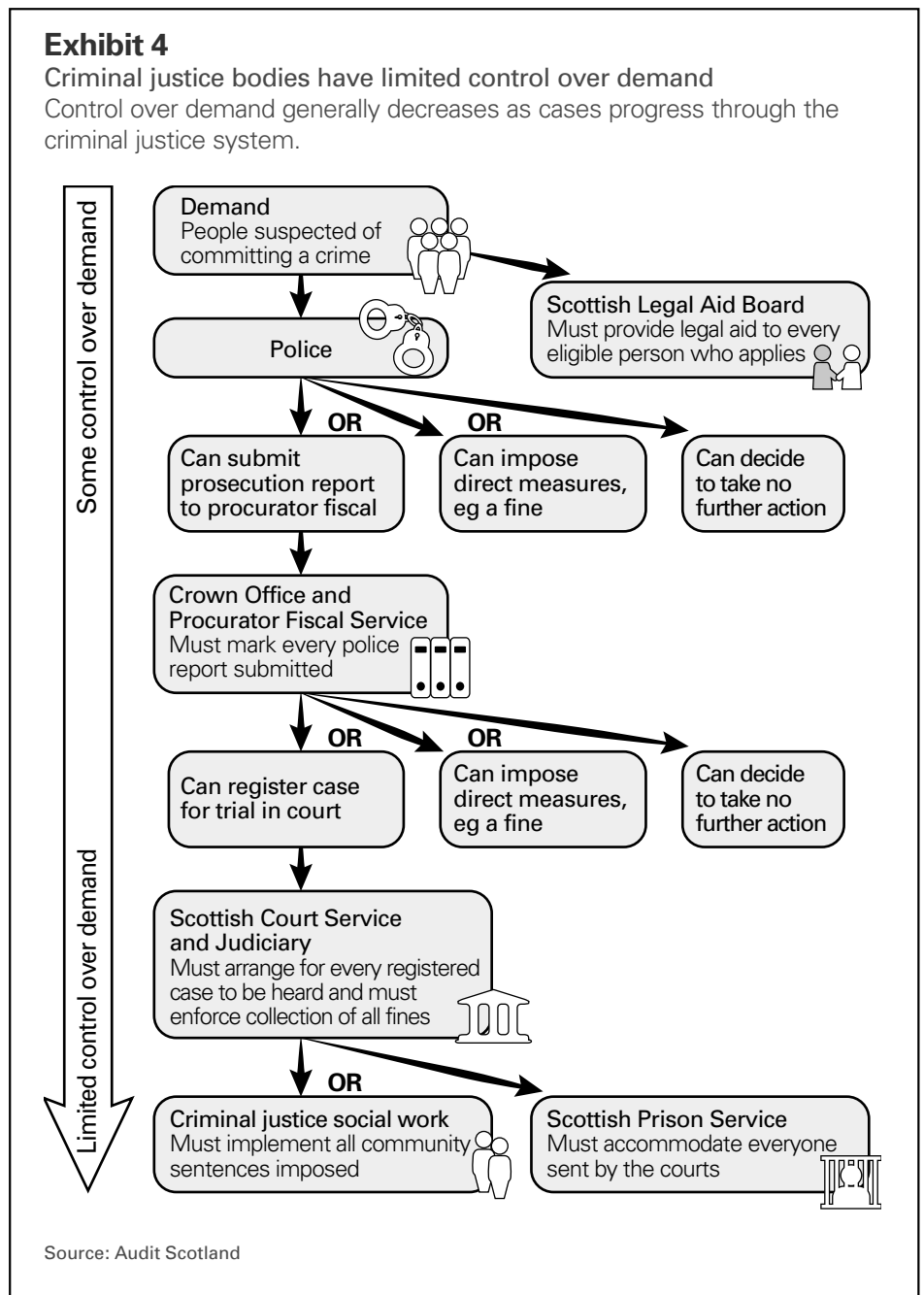
30. All of the main criminal justice bodies have developed their own IT systems to suit their own needs but they were often incompatible. The lack of compatible IT systems, combined with poor sharing of information, creates inefficiencies across the system.

31. For example, a pilot in Glasgow found that almost a third of the accused scheduled to appear at the sheriff court were already in prison for a separate offence. However, the Crown Office and Procurator Fiscal Service did not know they were in prison and the Scottish Prison Service did not know they were due in court. (See paragraphs 65 to 70 in the main report for more information.)

32. Criminal justice bodies collect a lot of data on their activity and performance. However, the data they collect relates to their own operations. This leads to differences in definitions and what is measured. For example, a person given two prison sentences for separate charges on the same day is counted as two sentences in court statistics but only one in prison statistics.

33. The Scottish Government developed a criminal justice management information system to assess the progress of summary justice reform. This represents a significant improvement in joining up criminal justice data and enables performance to be analysed at both local and national levels.

34. Despite these improvements, there is no mechanism to track individuals through the system, whether they are offenders, victims or witnesses and there are limited assessments of quality or costs. This makes it difficult to evaluate the cost effectiveness of different activities or to plan improvements across the whole system.



35. The length of time taken to process criminal cases through the summary courts has improved but the process is still inefficient. The Scottish Government's national indicator to increase the percentage of (summary)

criminal cases dealt with within 26 weeks by three percentage points by 2011 has been met. In 2010/11, 74 per cent of criminal cases were dealt with within 26 weeks, an increase of eight per cent since 2006/07.

36. However, many cases do not progress through the courts as planned. Exhibit 5 shows that of the 323,284 times cases were at summary courts in 2009/10:

- 42 per cent (137,230 appearances at court) progressed as planned – that is moved on to the next stage in the process or the accused pled guilty at the pleading stage

- 37 per cent (119,477 appearances at court) resulted in the case having to repeat a stage in the process. This usually happens because the accused or witness did not turn up, the procurator fiscal or defence agent were not fully prepared or because evidence had not been shared.⁴ This is commonly referred to as court ‘churn’. We estimate this cost around £10 million

- nine per cent (29,594 appearances at court) resulted in the accused changing their plea to guilty at the intermediate or trial stage.⁵ It is a fundamental principle of Scots law that the accused can plead guilty at any time. We estimate that these late guilty pleas cost around £47 million in 2009/10

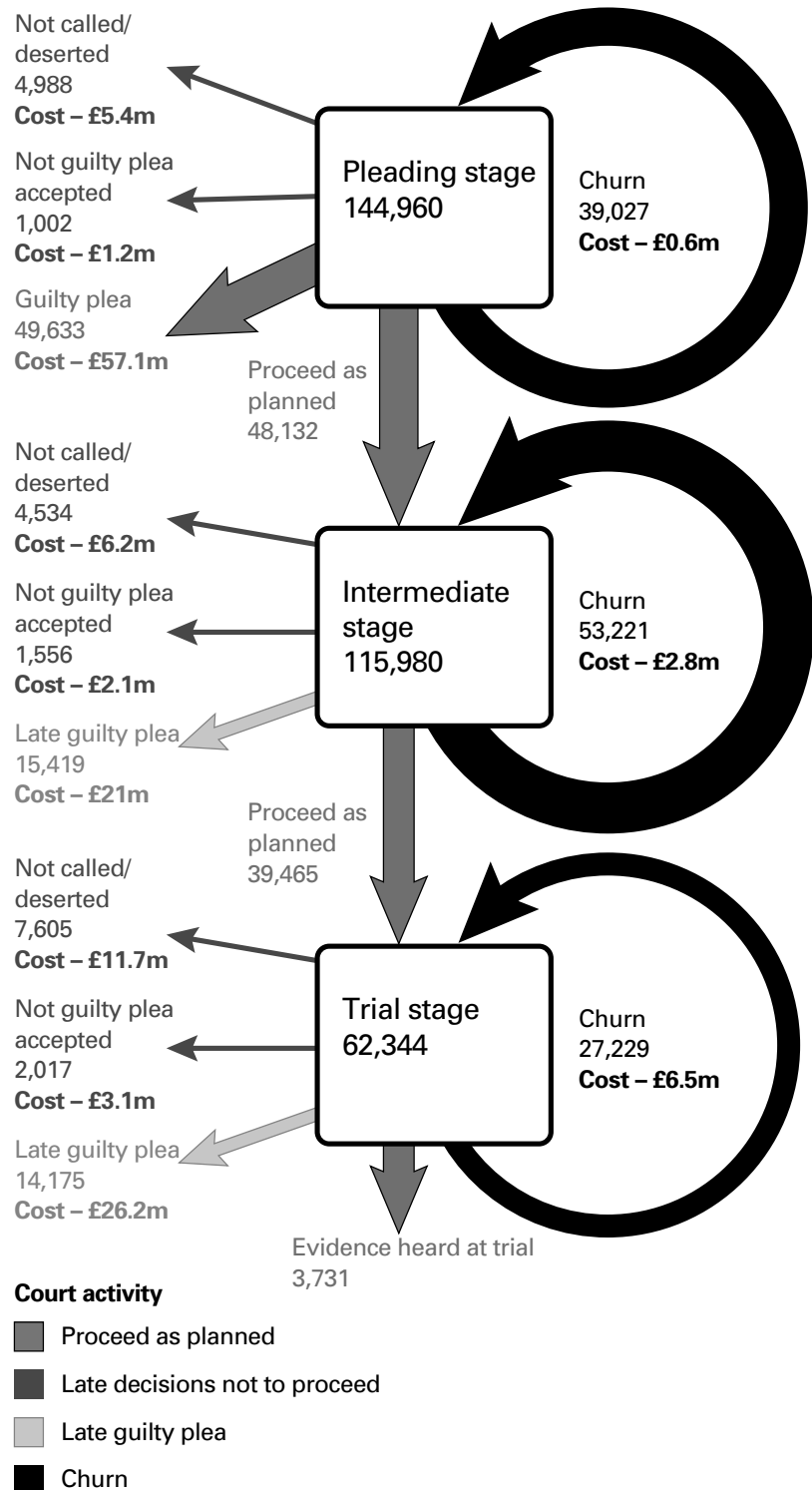
- seven per cent (21,702 appearances at court) resulted in the case leaving the system as it was either not called, deserted or a not guilty plea was accepted by the procurator fiscal. This means that the individual procurator fiscal decided not to proceed with the case after it had been ‘marked’ for court (that is, after a procurator fiscal decided the case should be heard in court). We estimate these late decisions not to proceed cost around £30 million.

Note: the coloured boxes match the colours in the exhibit.

Exhibit 5

The extent and estimated cost of delays in processing summary cases through court in 2009/10

Using the estimated costs in Exhibit 3, repeating stages at court cost the criminal justice system around £10 million in 2009/10 and late decisions not to proceed cost an additional £30 million.



Note: The remaining five per cent of times cases were at court, ‘other’ outcomes were recorded. Source: Audit Scotland

4 Measurement exercise: Recorded reasons for court diet continuations and adjournments, Summary Justice Reform National Working Group, 2010.
 5 This includes ‘no evidence led, adjourned to sentence’ at the trial stage.

37. In the interests of ensuring fair justice, there will always be occasions when a case will be resolved late. However, many of these delays are avoidable. Reducing delays and inefficiencies would reduce the volume of cases in the system and could deliver cash savings. However, there are few incentives to do so and limited sanctions for avoidable delays.

4 Reoffending is a continuing problem in Scotland. There has been little progress towards the Scottish Government's national indicator to reduce reconviction rates, which have fallen by less than one per cent in the last three years. We estimate that in 2009/10, around £81 million was spent by criminal justice bodies (excluding the police) directly on services to reduce reoffending. This is less than ten per cent of total criminal justice expenditure. The availability of services to support offenders varies across the country and information on the effectiveness of services is limited and inconsistent.

38. Most people who are convicted in court have offended before. In 2009/10, of the 9,372 people who received a prison sentence, over two-thirds had five or more previous convictions.

39. Each person who reoffends creates additional costs to the criminal justice system. Research by the UK government in 2002 estimated that every prisoner who reoffended cost the criminal justice system £65,000. In 2006/07, 6,890 people in Scotland were released from custody and more than 4,200 had reoffended within two years. The costs to the Scottish criminal justice system resulting from this level of reoffending have not been estimated, but they are likely to be similarly high.

40. Reducing reoffending has been a policy priority for the Scottish Government for a number of years, and there have been various legislative and policy initiatives to address the problem. The Scottish Government set a national indicator to reduce overall reconviction rates by two percentage points to 42 per cent by 2011.⁶ However, there has been little progress, reconviction rates have fallen by less than one per cent in three years.

41. Most criminal justice spend is directed towards processing cases through the system and implementing sentences, rather than supporting people to stop reoffending. It is difficult to identify the exact proportion of spend, but we estimate that in 2009/10, £341 million was spent on processing cases through the court system and £281 million was spent on providing prison or community sentences. Only £81 million was spent by criminal justice bodies (excluding police) directly on services to reduce reoffending.⁷ This is less than ten per cent of total criminal justice expenditure.

42. This is an underestimate of the amount of public money spent supporting offenders. Offenders are likely to receive support from a wide range of public services which are not specifically offender services but may help reduce reoffending, for example NHS drug treatment services. In addition, considerable police activity is directed towards preventing offending, some of which will be focused on existing offenders.

43. People who repeatedly offend often have many different problems, such as a limited education or training, no paid work, nowhere to live or problems with drugs or alcohol. Meeting these needs requires a wide

range of services, some of which are provided by the wider public sector, others by the voluntary sector.

44. Services to support offenders are delivered both in prisons and in the community. Prison-based services vary among prisons and are mostly directed towards long-term prisoners. There is no legal requirement for the Scottish Prison Service to provide support to short-term prisoners (those sentenced to four years or less) who form the majority of the prison population. (See paragraphs 107 to 111 in the main report for more information.)

45 The Scottish Government provides a grant of around £100 million a year to Community Justice Authorities to distribute to councils in their area. This funding is for both implementing the community sentences ordered by the courts and delivering wider support services to reduce reoffending. The wider support services include, for example, support for addiction, supported accommodation or employment services. However, services to support offenders vary across the country. Information on the full range of services available is limited, both locally and nationally.

46. There have been a number of evaluations of individual initiatives designed to support offenders to reduce their offending behaviour. These are providing increasing evidence that a more person-centred approach can be effective in reducing reoffending.

47. There is some evidence of unmet demand for services to reduce offending behaviour. However, without clear information on the current level of provision, the gap between what is provided and what is required cannot be determined.

⁶ This indicator measures the number of people who are reconvicted within two years of completing a sentence. The baseline was set in 2007, so was based on reconvictions of people first convicted in 2004/05.

⁷ Figures based on proportion of criminal justice social work spend plus estimated prison spend on rehabilitation as detailed in *Scottish Prison Service: Correctional opportunities for prisoners*, Audit Scotland, 2005.

48. Performance information on both the level of reoffending and the effectiveness of services to reduce offending is limited and inconsistent. This means that the cost-effectiveness of different initiatives to reduce reoffending cannot be compared. (See paragraphs 120 to 123 in the main report for more information.)

49. Funding arrangements for services to support offenders are complex, in particular given the high level of voluntary sector involvement. Reduced budgets pose a risk to some services as public sector bodies may prioritise their spending on those services they are legally required to deliver. Voluntary sector services may therefore be at particular risk.

50. The way criminal justice social work services are funded does not provide a financial incentive to reduce reoffending. The Scottish Government grant is based largely on activity (eg, number of community service orders) over the preceding three years. While the funding formula needs to recognise the demand for criminal justice social work services, this arrangement means that if a particular area is successful in reducing reoffending it could receive less money as there will be fewer community sentences imposed by the courts. The Scottish Government is planning to revise the funding formula. (See paragraphs 124 to 128 in the main report for more information.)

Recommendations

This report is intended to provide an overview of the criminal justice system in Scotland. We did not look at any individual part of the system in sufficient depth to enable us to make specific evidence-based recommendations. However, there are a number of areas where there is clear potential to improve the efficiency and effectiveness of the criminal justice system. In particular, there needs to be significant improvement in:

- how well victims and witnesses are supported and kept informed about what is happening in their case
- the availability of cost and performance information to support the effective management of both individual organisations and the system as a whole. This would improve understanding of the reasons behind inefficiencies in the system and variation in performance across the country
- the efficiency with which summary cases are processed through the court to reduce substantially the number of cases which repeat stages and the number of cases which are resolved later than necessary
- how services for offenders are funded and delivered across the country to ensure they meet demand and are focused on the most cost-effective approaches to reducing offending behaviour.

51. The Scottish Government and criminal justice bodies acknowledge the importance of addressing these issues and are beginning to address them. We recommend that they build on the recent progress in joint working and, as a matter of urgency, collectively identify, agree and implement actions to deliver the necessary improvements. This joint approach should ensure that the work undertaken delivers benefits across the system as a whole and avoid the risk that changes designed to improve the process in one part of the system have a negative effect on a different part.

52. Delivering significant improvements to the efficiency and effectiveness of Scotland's criminal justice system requires continued strong leadership from all the criminal justice bodies. Agreeing measures for the system as a whole, which recognise cost and quality as well as time, and holding relevant bodies and individuals to account for their performance and contribution to these measures would support this process.

53. The Auditor General and Accounts Commission will consider the findings in this report and, in consultation with criminal justice bodies and other stakeholders, identify where more detailed performance audit work would add value. This is likely to be in one of the areas identified above where there is a clear potential to improve value for money.

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