

# **‘Rethinking Criminal Justice in Scotland’**

## **Report of the Scottish Consortium on Crime and Criminal Justice**

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# **‘Rethinking Criminal Justice in Scotland’**

## **Report of the Scottish Consortium on Crime and Criminal Justice**

### **Foreword**

By Sir Russell Hillhouse, Chairman of the Consortium

This report covers some of the most critical issues in the fields of crime and criminal justice. We hope it will be seen by the Scottish Executive, the Scottish Parliament and the people of Scotland as a useful stimulus to open dialogue and to the development of a comprehensive policy for crime and criminal justice based on consistency, principle and the best available factual information.

The report draws together the experiences of the member organisations of the Consortium and of many of our associate members and is based on the studies carried out by our working groups. We are grateful to all who contributed to the groups’ work and especially to the group chairs (David Colvin, Antony Duff, Hildegard Wylezalek and Peter Young) and the researchers (Nancy Loucks, Gill McIvor and Jackie Tombs). The task of producing successive drafts of the report and its summary fell to Jackie Tombs and we are very grateful to her for creating such a coherent and comprehensive document from a complex mass of material.

The consortium would like also to record its gratitude to its Hon Secretary and Hon Treasurer, Gillian Bishop and Drummond Hunter, for their indefatigable efforts and to the charitable trusts, including the Hilden Charitable Fund and Lloyds TSB Foundation for Scotland, without whose generous funding this report would not have been produced.

RUSSELL HILLHOUSE

November 2000

# Section 1 Summary and Recommendations

## Introduction

1. **The Scottish Consortium on Crime and Criminal Justice** was formed in 1998 to take advantage of the opportunity for enhanced public debate about crime and criminal justice provided by the creation of the Scottish Parliament and Executive. Our aim is to reduce the incidence and alleviate the impact of crime in our society as far as is reasonably possible by whatever morally acceptable means can be shown to be most effective.

2. The Consortium brings together leading organisations concerned with crime and criminal justice in Scotland, including the Howard League Scotland, APEX Scotland, SACRO (Safeguarding Communities – Reducing Offending), the Scottish Human Rights Centre and Victim Support Scotland<sup>1</sup>. Based on a broad spectrum of experience and skills and the available factual information, our recommendations seek to promote open dialogue about the best ways to:

- reduce offending,
- increase community safety,
- ensure fair treatment for the victims of crime,
- enhance civil liberties, and
- increase the effectiveness of the juvenile and criminal justice systems.

3. A number of extremely important areas are not fully covered in this report. These include detailed consideration of victims' rights and needs, the function and operation of prisons and the health of prisoners, and the serious problems posed by the links between drugs, including alcohol, and crime. In addition, sentencing reform is, without doubt, crucial to how the criminal justice system can respond most constructively to offending. All of these issues are for future consideration.

## Our Vision

4. Our main conclusion is that the key to making significant reductions in the level and impact of crime lies in changing the way potential and known offenders relate to their communities, including victims, and to the wider society. These changes require the development and implementation of social and economic policies much wider than criminal and juvenile justice. The justice systems can, nevertheless, as part of a broader integrated social policy approach, contribute to reducing levels of crime.

5. We believe that a **whole problem approach** to crime and criminal justice is the way forward. Responses which address the whole of the problem – for victims, offenders and communities – work best because of the overwhelming evidence that:

- many offenders are also victims and that the prevention of offending must be accompanied by the prevention of victimisation, particularly amongst the young,
- most offenders have the capacity to change and can improve if they are given encouragement, guidance, and help. There are, however, a small number of difficult to reach offenders who either cannot (eg violent offenders with intractable behaviour problems) or will not (eg serious fraudsters making large amounts of money) change,
- custodial sanctions tend to be disproportionately harmful, particularly to young people and women, and do not make better citizens,
- community sanctions with a rehabilitative orientation are more effective than custodial sanctions in reducing offending,
- victims have legitimate needs for protection, information, compensation, consultation and fair treatment, and
- juvenile and criminal justice responses, if integrated within a wider social policy approach committed to enhancing the life experiences of all citizens, including children and young people, can contribute to reducing offending and victimisation.

6. In order to take full advantage of their potential contribution, criminal and juvenile justice interventions must help to give people the chance to make peace with, be accepted by and included within the community. For known offenders, justice interventions can promote acceptance and inclusion through processes which encourage offenders to accept responsibility for their actions, accept the need to change, express contrition and, where possible, make amends to the victim and the community. It is essential to build upon approaches to crime reduction which seek to include potential and known offenders within the community; approaches which necessarily involve the community and, where appropriate, the victim, in the process.

7. Many of these ideas come together in the concept known as restorative justice; an approach to dealing with offending which concentrates on repairing the harm done by crime. Restorative justice approaches emphasise: consideration and security for victims within the criminal justice system and access to services which help them to recover; rehabilitation of offenders by

providing opportunities for their integration within the community; and healing divisions within communities through mediation of neighbourhood disputes. These ideas underpin a number of sanctions currently available in Scotland and innovative restorative justice approaches have proved effective in other countries. There is considerable potential to further develop restorative justice within the Scottish juvenile and criminal justice systems.

## **Crime and the Community**

8. Section 2 describes how key indicators of social exclusion are highly related to patterns of offending and victimisation – most notably in the case of young people. We know that:

- young people under 18 years commit the majority of crimes and offences, and
- all too frequently young offenders have been victims first – before they become offenders – and this is particularly so for those young offenders who persist in criminal careers.

For many young offenders, however, offending is transitory and most adult offenders are ‘first time and only time offenders’ who never appear in the criminal statistics again. Priority must be given to:

- preventing victimisation and offending amongst young people,
- implementing crime prevention policies and practices which address the key facts about offending and victimisation,
- addressing the widespread use of illegal drugs and alcohol misuse amongst the young,
- developing a wider range of flexible juvenile and criminal justice responses which are appropriate for different kinds of offence and offenders, and
- responding in ways which take account of the needs of victims.

## **Criminal Justice and the Community**

9. Section 3 examines how the criminal justice system responds to offending. The majority of alleged offenders are, in fact, dealt with either by the police making conditional offers for motor vehicle offences or by the procurator fiscal making non-court disposals. Non-court disposals include referring offenders to diversion schemes which can involve victim-offender mediation (where they are available) and other measures which are inspired by restorative justice ideas. While it is certainly neither appropriate nor feasible to directly involve all offenders or all victims in face to face restorative approaches, we believe that there is an urgent need to rethink the appropriateness of the range of penal sanctions for offences, offenders and victims. We also believe that there is considerable potential to make more use of restorative approaches in response to adult offending since,

- if diversion can more frequently be coupled with reparation to victims, at least some of the harm done may be healed, and
- even in those cases where imprisonment will continue to be necessary to protect the public from the most serious offenders, prisoners should be encouraged to take responsibility for their actions and to make what amends they can to victims and communities.

10. The evidence is incontrovertible that, for the vast majority of offenders:

- community sanctions are the most effective in reducing re-offending and are dramatically less costly than imprisonment,
- imprisonment is by far the most expensive penal sanction in financial and human terms and is the least cost-effective option for crime reduction.

Imprisonment should, therefore, only be used where it is necessary to protect the public. We fully appreciate that moving to such a position will require taking account of the need to provide adequate protection for victims as well as securing public confidence. Nevertheless, limiting the use of imprisonment to the most serious offenders would:

- cost less, and
- have the potential to be more effective in protecting victims and the community.

Prisons could then concentrate on delivering ‘personal change programmes’ aimed at reducing re-offending by serious offenders.

## **Juvenile Justice and the Community**

11. Section 4 discusses how the Children’s Hearings System deals with the vast majority of young people aged up to 16 years (or 18 if they are already in the system) who offend. Welfare is the primary concern and social education the aim of the current system of justice for children and young people. With some adaptation, which would allow the system to explicitly take account of the needs of victims as well as offenders, there is considerable scope for:

- restorative justice approaches, including reparation to victims and family conferencing, to inform the Reporter’s use of discretion and be used as a condition of children’s hearings.

## At the Interface: Formal or Social Justice

12. Section 5 draws attention to some problems surrounding the interface between the juvenile and adult justice systems; in particular, the dramatic shift in approach for most 16 year olds as they pass from the children's hearings system to the criminal justice system. We welcome 'It's A Criminal Waste' – the Report of the Advisory Group on Youth Crime<sup>2</sup> – and the Scottish Executive's Response<sup>3</sup> which accepts the need for a 'bridging system for the future' to increase the range of disposals available to the hearings thus permitting the referral of as many 16/17 year olds as possible to the hearings rather than the courts. Nevertheless, we regret that the Government has not yet released sufficient funds to implement the full report.

13. Scotland still has one of the lowest ages of criminal responsibility in the world, even though most young people under 16 years are dealt with by the hearings system. The Scottish Executive accepts the need to review the age of criminal responsibility and is committed, in the medium to longer-term, to implementing a review of the case for raising the age to 12 years<sup>4</sup>. We welcome the proposed review but would like to see the case considered for raising the age of criminal responsibility to the same age as that in which young people move into the adult criminal justice system which we believe should be 18 years. This does not mean that young offenders should not be held accountable for their behaviour, rather that the context within which young people should be expected to accept that responsibility is the youth justice not the adult justice system. Victim Support would, however, wish to further consider the implications in detail of what such a change would mean for victims.

14. An area for concern within youth justice, somewhat ironically, stems from an increased emphasis on young people's rights; in particular to access to formal justice and due process. We welcome the prominence given to the rights of children and young people through the incorporation of the United Nations Convention on the Rights of the Child and the European Convention on Human Rights into Scots law. Nevertheless, we believe that an over-emphasis on formal justice and an under-emphasis on social justice is in danger of obscuring the most effective ways of giving excluded young people a chance to live a decent and law-abiding life within society.

## Working Towards Safe and Just Communities

15. Section 6 emphasises that 'truly preventive' approaches found in early intervention and primary prevention strategies are overwhelmingly supported by the evidence – from Scotland and other countries. We considered the principles and practices guiding key examples of effective crime reduction projects with known offenders and concluded that for both young and adult offenders:

- crime reduction strategies must focus on those life experiences and circumstances which lie at the root of offending behaviour,
- justice interventions aimed at reducing re-offending must address these experiences and help to change these circumstances,
- victims should be consulted about the appropriateness of their involvement in interventions,
- where possible interventions should involve repairing the damage done to the victims of crime, offenders and communities, so that
- 'justice in the community' can properly reflect the growing policy emphasis in Scotland upon social inclusion and social justice and the recognition that crime is a social issue that requires a fully integrated policy response to be effectively addressed.

16. Strategies which have been shown to help deflect young people from persistent and increasingly serious offending and to prevent crime in the community include:

- for young children, an expansion in pre-school education and family centres to provide support and practical help to isolated parents or to families under stress,
- for the schoolchild, avoiding bullying and exclusion from school and alternative provision when exclusion has, in the last resort, to take place, and
- for young people not in school, further education or training, or work, an outreach programme in every area that attracts the most marginalised youngsters and makes links with other forms of statutory and voluntary provision.

17. For those who have already become persistent or serious offenders, Annex 3 provides examples of promising work with offenders in Scotland. While evaluation of ongoing work is incomplete in some cases, the examples illustrate the potential which already exists to develop policies and practices which would significantly reduce the level of crime in the community. The Government's Social Inclusion Strategy promotes some of the initiatives that we endorse but it does not cover them all and we conclude that there is an urgent need for:

- a whole problem approach which develops integrated policies and practices to take account of the main risk factors for offending and effective ways of reducing these risks within communities, and

- a redistribution of public spending to place greater emphasis on preventive and restorative work, including improved services for victims. The scarcity of funding for existing preventive work contrasts sharply with the funding available for custodial institutions and limits the sentencing options available to courts.

## Justice In A Human Rights Context

18. In section 7 we note that change in our present systems is inevitable, particularly in light of devolution and the assimilation of human rights into Scots law. For example, it has become quite clear, in the relatively short period since the European Convention on Human Rights (ECHR) was incorporated into domestic law, that rights claims will continue to challenge and change aspects of the existing juvenile and criminal justice systems. While the direction of the change is as yet unclear, there is little doubt that human rights considerations will affect the way victims and offenders are treated and the extent to which the criminal and juvenile justice systems can be part of a co-ordinated policy to promote crime prevention and community safety through broader policies on social inclusion.

## Recommendations

**19. We recommend that the Parliament and Executive should promote a redirection of thinking, resources and sentencing policies in order to develop a whole problem approach to crime and criminal justice.**

Measures which challenge offenders with the consequences of their offending – for victims, for themselves and for communities – are the most promising way to prevent repeat offending. A key objective would be to repair the harm done to victims, rehabilitate and integrate offenders and heal divisions in communities.

**20. We recommend that the objectives of the Executive’s social inclusion policies should be extended to include an assessment of their likely impact on crime.**

Policies on the family, education, housing, health, youth and employment have profound consequences for the level of crime in communities, yet such policies seldom refer to the reduction of crime as an explicit objective. Given that the roots of persistent criminality begin early in life, a particular focus should be on child care policies, reducing exclusions from school and tackling the structural problems of high crime areas. Concentration of effort in these areas would pay disproportionate benefits to the wider community and would reduce victimisation and offending.

**21. We recommend that systems of evaluation should be developed for and applied to every service in the system, including courts and prisons, and that the results of these evaluations should inform future decisions on the development of the juvenile and criminal justice systems.**

Public discussion of criminal justice issues is too often based on emotion rather than understanding. To develop useful responses, we must understand which sanctions and interventions are effective in reducing crime and re-offending. We firmly believe that improvements in the system should be based on rigorous evaluations of the effectiveness of policies and practices in creating safer communities for all and that our services and initiatives should be judged on the extent to which they work towards these ends.

**22. We recommend the development of an integrated programme of research to assess existing and new initiatives and to contribute to the ongoing need to monitor and evaluate the findings from research conducted in Scotland and elsewhere.**

**23. We recommend a rapid increase in use of penal sanctions which offer the possibility of restitution for victims, offenders and communities.**

With suitable safeguards for victims, sanctions should, where feasible, be based in the community to maximise their impact. Although progress has been made, no area in Scotland has a full range of community sanctions available to the courts. Court decisions all too often have to be made in the light of what is available rather than what is the most effective or desirable. The success of the approach we recommend will depend on the rapid development of effective community projects so that a full range of community based options is made available to every Sheriff Court.

**24. We recommend the development of a comprehensive strategy to address the problem of fine default and that serious reconsideration is given to the introduction of a ‘unit fine’ system.**

The current over reliance on custody for fine-defaulters, remand and short term prisoners must be tackled as a matter of urgency. We believe that a dramatic reduction in the use of imprisonment is necessary but that this should be pursued in parallel with increased information and protection for victims. The percentage of prison receptions due to fine default remains unacceptably high and, while the introduction of supervised attendance orders to address this problem has had some impact, people who breach supervised attendance orders can now end up in prison for longer.

**25. We recommend that targets should be set for:**

- **the abolition of imprisonment for fine default,**
- **the expansion of bail services to all courts,**
- **the provision of alternatives to remand, and**
- **the reduction of short term imprisonment.**

For those who must go to prison to protect the public, we are encouraged by the rapid development of ‘personal change’ programmes in the Scottish Prison Service but we believe that their effectiveness in dealing with the most serious offenders must be severely limited by prison numbers. The majority of prisoners could be dealt with more effectively and economically by the expansion of personal change programmes in the community.

**Victim Support would wish victims’ rights to be fully taken account of in pursuing such a policy.**

**26. We recommend that a substantial part of the resources saved through reductions in the prison population be redirected to community sanctions including reparation and services which support victims.**

Custodial sanctions are not only ineffective; they are also extremely expensive. In 1998-99, the costs of various penal sanctions<sup>5</sup> were:

- 6 months in prison: £13,456
- average cost of a probation order: £1,450
- average cost of a community service order: £1,325
- average cost of a bail supervision scheme: £1,100
- average cost of diversion to a mediation and reparation scheme: £350.

**27. We recommend that victims’ rights be fully taken account of in the expansion of the restorative justice approaches we propose for the adult and juvenile justice systems.**

The interests of victims in the criminal justice system have been severely neglected. Information on the progress of cases has improved but much remains to be done to provide victims with rights to: respect and recognition, be heard, supply and receive information, participate in legal proceedings, protection, compensation, mediation, victim support, and legal aid.

**28. We recommend the development of a more equitable and coherent policy for the state payment of compensation to victims where reparation by the offender to the victim is not possible and where it is not feasible for victims to be involved with their offenders.**

Our proposals for extending reparation and mediation schemes – as a condition of a Children’s Hearings Order and as options available to the Procurator Fiscal or the Reporter – will only be possible in cases where it is appropriate for both victims and offenders.

**29. We recommend action to secure a significant increase in the use of compensation orders in appropriate cases.**

The only sentence courts can impose where the offender is required to make any kind of reparation to the victim is a compensation order, yet these orders currently account for less than one per cent of all sentences.

## **In Conclusion**

30. We believe that the Scottish Parliament and Executive, in making decisions about future policies on crime and the juvenile and criminal justice systems, should adopt a whole problem approach based on the evidence about what works best in reducing offending and preventing victimisation. In practical terms, and with proper recognition of the needs and rights of victims, this should involve immediate action to:

- increase rapidly the use of the most effective community sanctions presently available,
- substantially reduce the use of custody, and
- initiate action research projects designed to test the practical application of a wide range of restorative justice approaches for young and adult offenders.

## Section 2 Crime and the Community

### Offending and the dynamics of social exclusion

31. Understanding the circumstances in which offending occurs is necessary for the development of effective criminal and juvenile justice responses. A range of factors – personal, family, socio-economic, community and educational – indicate, from an early age, the circumstances in which children are at a high risk of developing criminal careers. These factors broadly correspond to the combination of linked problems – health, family, economic, educational and environmental – commonly taken as indicators of social exclusion. Social exclusion affects the life chances of children, young people and adults in all aspects of their lives, including their experiences of crime as victims and offenders. This section of the report comments on how social exclusion relates to offending, describes who the offenders are, highlights the links between offending and victimisation and concludes by focusing on the victims themselves.

### Public health and deprivation

32. It has been known for some time that two health related factors - aggressive or hyperactive behaviour in childhood and drug and alcohol abuse – contribute to law-breaking behaviour<sup>6</sup>. Recently, relationships between public health more generally and crime have been established and, in particular, a range of mental and physical health problems occurring in children have been found to be related to subsequent criminal behaviour. For example, one in five young people experience mental health problems and these problems are especially prevalent amongst young offenders<sup>7</sup>; one in five children dealt with by Reporters in the Children’s Hearings System have at least one type of disability or health problem<sup>8</sup>; and children and young people who are more persistent offenders have poorer physical health than those who do not offend<sup>9</sup>.

33. Relationships between problematic illegal drugs use and offending have frequently been established and this correlation has received more attention than any other health related issue. Despite the fact that problematic alcohol use shares much with problematic illegal drug misuse and is more widespread, there is substantially less research on its relationship to offending. From the available evidence, however, it is clear that, heavy alcohol use is associated with particular forms of anti-social behaviour, especially offences of violence. Moreover, many of the established links between substance misuse and poor health in general and socio-economic deprivation overlap with the links between offending and socio-economic deprivation; an overlap which at worst develops into a vicious circle reinforcing the relationship between poor health and offending<sup>10</sup>.

### Family stress and breakdown

34. The main family factors which put young people at risk of becoming offenders – poor parental supervision, harsh or erratic discipline, conflict between parents and parental criminality – appear to have intensified in the context of broader social and economic changes which have themselves complicated the parenting task and placed many families under extreme pressure. The resulting stress can take many forms including family breakdown, mental illness and other health problems as well as an increased likelihood of antisocial or criminal behaviour<sup>11</sup>.

35. Changes to the structure and income of families have also contributed to the problem of youth homelessness. There has been a vast increase in recent years in the number of households applying to Scottish local authorities as homeless, particularly from young people aged under 25 years. In important ways homelessness has been generated (however unintentionally) by changes in housing, social security, local taxation and labour market policies and, however measured, homelessness is a key contemporary social issue. Whilst we do not argue that homelessness causes crime, it certainly imposes another risk factor since, at the very least, defining some young people as ‘outside society’ (as homeless) leads to alternative ways of ‘surviving’<sup>12</sup>.

### Economic activity and the labour market

36. The impact of severe hardship, often through low incomes, long-term unemployment, lack of skills and/or lone parenthood, undermines the ability of many families to function effectively, to care adequately for children or to help both parents and children to stay out of trouble; in particular, the effort of coping with poverty can undermine the quality of parental care since it takes up much of the time and energy that parents could otherwise devote to children. There is no doubt that economic and environmental deprivation are powerful stress factors which can make it more difficult to be an effective parent<sup>13</sup>, thereby increasing the risk of offending.

37. Patterns of economic activity also play a vital part in generating circumstances in which crime appears to be a solution and in undermining attempts to reduce crime. Changes in the economy have transformed the labour market with particularly severe effects on young people, the long-term unemployed and their families, where many children are growing up in ‘no

work' households and on ex-offenders attempting to find work<sup>14</sup>. In relation to crime, youth unemployment is especially serious. Together with problems in the training and benefits systems for young people, high levels of unemployment and poverty have resulted in concentrations of young men, particularly in urban areas, who are not in work, not in a 'quality' training place, not in receipt of an adequate income and whose prospects are unlikely to improve in the foreseeable future.

### **Educational experiences and lack of skills**

38. In general, in Scotland as elsewhere, young people who do not achieve, who behave disruptively, who have little attachment to teachers and school and who persistently truant or are excluded from school, are more likely to offend and develop criminal careers than those who do not. The links between attainment and crime are well documented but those between truancy, exclusion and crime are more complex<sup>15</sup>. Nevertheless, prolonged truancy may indirectly increase the likelihood of an adult criminal career by damaging a pupil's educational attainment, leading to a lack of skills and consequent disadvantage in the labour market<sup>16</sup>. Persistent young offenders have frequently had particularly problematic educational careers with high rates of school exclusions due to troublesome behaviour<sup>17</sup>.

39. Positive school management policies, in particular policies which aim to minimise exclusions and trancies, can make a significant contribution to reducing the development of criminal careers. The most effective management policies include those which promote attachment to both teachers and the school, partnership with parents and the development of anti-bullying strategies, all of which have been shown to have preventive effects<sup>18</sup>.

### **Environmental conditions and poor housing**

40. Growing up in poor housing, particularly in public housing in deteriorated inner city areas and peripheral housing estates, has also been found to correlate highly with both offending behaviour and poor health, especially amongst young people<sup>19</sup>. As with other indicators of social exclusion, poor housing is concentrated in urban areas, notably Glasgow, other parts of West Central Scotland, Edinburgh and Dundee<sup>20</sup>.

41. Concentrations of poor housing in deteriorated inner city areas are indicative of high crime environments where young people are more likely to witness crime as a daily fact of life and where they are also more likely to associate with delinquent peers - two further key risk factors for offending amongst young people. For example, the 1996 Scottish Crime Survey found that those people living in the poorest council estates were around twice as likely to have been the victim of a violent crime in 1995 as those living in affluent areas with a high proportion of home-owners; they were also more likely to have had their homes broken into<sup>21</sup>. And young offenders are much more likely to have friends who offend than young non-offenders<sup>22</sup>.

42. To summarise, there are crucial connections between indicators of social exclusion and patterns of offending just as there are significant links to be made between offending and victimisation – a point discussed in more detail below. It must also be emphasised that there are, of course, many offenders – at all levels of offending – who do not suffer from social exclusion just as there are many people who experience forms of exclusion but who do not commit offences. Nevertheless, the correlation between adverse socio-economic circumstances and persistent offending is so strong as to justify serious and sustained attention.

## **Offenders : age, gender and ethnicity**

43. Before discussing the links between offending and victimisation, some reflection on key 'facts' about offending is necessary. The offending patterns discussed below draw on the three main methods by which crime rates have been estimated – statistics recorded by official agencies, victim surveys and self-report studies. All these sources provide valuable information about what is happening in relation to both criminal activity and the actions of the criminal justice system, even though none provides a fully accurate picture. The quality of the data collected for crime figures reflects not only changes in policing practices and priorities, what the law counts as crime and what the public tolerates but also the validity of the various statistical measures used and the range of possible interpretations.

44. The available crime figures show that in Scotland in the 1990s:

- the peak age of known offending is 18 years for males and 15 for females,
- the ratio of men to women is over 6 : 1,
- the ratio of young men to young women is almost 10 : 1,
- the crimes and offences committed by men are more serious than those of women,
- the crimes and offences committed by young men are more serious than those of young women,
- over 40% of all serious crimes appear to be committed by those under 21 years,
- well over three quarters of these offenders are male.

45. The crime figures clearly show that young men are responsible for a disproportionate amount of crime; indeed gender is one of the strongest predictors of offending. Official statistics show that there are also significant differences in the gender ratio for different offence types. In general, women commit less serious crimes and offences than men, with shoplifting and other theft by far the most common. This pattern of gender difference is supported by self-report studies even though self-reports suggest that the difference in the rate of offending amongst young men and women is not as marked as that found in official statistics. Self reports also show that the rate of offending for young women peaks earlier and recedes at an earlier age than that of young men; for example, it has been found that at ages 14-17 the male:female ratio of offending is just 1.4:1, but by the ages of 22-25 it is 11.1:1<sup>23</sup>.

46. Overall, the gap between male and female offending rates is narrowing<sup>24</sup>. In part, this is due to the substantial changes in young women's lives in recent decades<sup>25</sup> and, in part, to changes in the processing and treatment of female offenders by the criminal justice system<sup>26</sup>. Nevertheless, there is still a significant disparity between the offending rates of young men and young women. In Scotland in 1997, 1,590 males under 21 years were found guilty of violent crimes against the person compared with only 118 young women. This kind of disparity has increasingly been recognised as a consequence of a search for 'masculinity'<sup>27</sup>. Whatever the explanation, young men continue to commit a high proportion of all crimes and offences - a fact that must be addressed in any policies aimed at reducing crime rates.

47. There has been very little rigorous empirical research on the relationship between ethnicity and crime in Scotland though the indicators are that, in addition to lower employment levels, lower income levels, poorer quality housing, poorer quality health and higher rates of school exclusions, racial discrimination presents specific barriers to the inclusion of ethnic minority youth. There has been a steady rise in the number of recorded racial incidents in Scotland in recent years. From available information<sup>28</sup>, ethnic minorities appear to offend at a rate similar to or lower than their white counterparts and the gender pattern is similar - that is, males commit by far the largest proportion of all crimes and offences and their offending is more serious whilst women's offending is typically of a minor and transitory nature.

## **'Normal' deviance or criminal careers**

48. It is, nevertheless, clear from official statistics that most offending, including offending by young men, is relatively minor and transient. In addition, self-report studies conclude that young offending is far more widespread than the official statistics suggest. The vast majority of young offenders are 'temporary delinquents'<sup>29</sup> who usually commit minor crime in the company of others and where the rewards, both emotional and financial, are too small to encourage repeating the experiment. For many, then, delinquency is a passing phase and such young people are usually diverted from crime once the normal processes of adolescent development have been allowed to occur through school, family and local community links. These 'young offenders' have at least some positive community ties and can be expected to 'grow out of crime' as they 'grow into' the responsibilities of adult work, home and family<sup>30</sup>.

49. The 'normality' of youthful deviance is, however, increasingly complicated due to the use of illegal drugs, particularly where a mix of legal and illegal drugs are used in combination (eg alcohol, cannabis, Ecstasy, amphetamines). Drug and alcohol use amongst young people for experimental, recreational and social reasons is widespread and continuing to rise<sup>31</sup>. Around one in two young people (under 25) has used a prohibited drug at some point in their lives<sup>32</sup>. The use of illegal drugs - particularly cannabis - is, therefore, an increasingly normal aspect of young people's recreation, transcending class and gender boundaries rather than associated with particular deviant lifestyles and youth cultures<sup>33</sup>. For most of these young people their use of an illegal substance is their only crime and we believe that the criminalisation of so many young people is a matter which requires urgent reconsideration.

50. There are, however, strong associations between drug addiction and acquisitive crime. Drug addiction is a factor in 30-50 per cent of acquisitive crimes and, in those Scottish prisons where drug testing on admission has taken place, over 70 per cent of prisoners tested positive<sup>34</sup>. In a recent study in two Scottish towns, young people's drug use and its contribution to their offending was found to increase dramatically with age and drug addiction was the most common explanation provided by older age groups (22-25 years) for continued offending. Effective treatment has been shown to reduce the level of shoplifting and other drug-related crimes<sup>35</sup>.

51. While the evidence is that only a small proportion of crime is specifically drug-driven<sup>36</sup>, there are undoubtedly some young people for whom alcohol and illegal drug use and/or other offending is not simply part of 'normal' youthful activity but is more problematic - the offences committed are serious or persistent or, in rare cases, both. Concern about 'persistent' young offenders grew throughout the 1990s, particularly amongst children's hearings panel members who became increasingly frustrated by the lack of alternatives for dealing with juveniles repeatedly referred to the hearings system on offence grounds. In response, following a review of youth crime, the Scottish Executive recently announced plans to expand the range and availability of effective, quality-assessed, community-based interventions and programmes for persistent young offenders which can be used by reporters and the hearings system<sup>37</sup>.

52. Whatever definition of ‘persistence’ is used, the disproportionate extent of these young people’s other problems is clear. These problems include : alcohol and drug abuse; family dislocation and relational dysfunction; having to be admitted to residential care outside the family home; health problems; school exclusions; having nothing to do with their time; young pregnancies; referral to social work departments on welfare grounds at an early age; and referral to the hearings system on non-offence prior to offence grounds<sup>38</sup>. Moreover, while the lives of persistent young offenders give the impression of a mixture of chaos, sadness and boredom, “what they hoped for .. was to settle down, have families and find work. What they saw in the future was usually less rosy.”<sup>39</sup> For such potential persistent young offenders the findings from research evaluations indicate that, amongst other early intervention and preventive measures, appropriate juvenile and criminal justice interventions can help to reduce the chances of young people embarking on lengthy criminal careers and becoming repeat adult offenders<sup>40</sup>.

## Offenders or victims

53. Given these research findings on persistent young offenders, it is no surprise to find that many of the young people found in our prisons to-day have experienced severe problems from an early age. The most recent Scottish study shows that 45 per cent of young prisoners have previously been in residential care and 80 per cent of them have had experience of the hearings system<sup>41</sup>. In another study of young prisoners, half had been in care, two thirds had no educational qualification at all, two thirds were unemployed, 91 per cent of the males had misused drink and drugs and three quarters of these said they had had no help with that problem. Seventeen per cent of young males admitted to being abused, 7 per cent had attempted suicide, 10 per cent were self-harmers and 20 per cent lived “independently”, that is, they were homeless. Of the young women in custody, 49 per cent said they had been sexually abused, 37 per cent had attempted suicide, 76 per cent admitted drug or alcohol abuse, 85 per cent had no work experience and 39 per cent had children. But “These figures do not represent what happens in prison; they represent what could have been prevented.”<sup>42</sup>

54. More generally, young people have a broad experience of crime – as victims, witnesses and offenders – and criminal acts are committed against them with ‘alarming frequency’<sup>43</sup>. The 1996 Scottish Crime Survey found that 45 per cent of 12-15 year olds had been a victim of theft, violence, harassment or sexual harassment and a more in depth study of young people and offending in two Scottish towns found that 60 per cent of young people aged between 14 and 25 had been a victim of crime. Most typically these victimisations involved physical assault, theft or housebreaking. Yet many of these same young victims were also offenders; most 3rd and 4th year pupils in the two Scottish towns had offended<sup>44</sup>; and 31 per cent of young people in the 1996 Scottish Crime Survey had offended<sup>45</sup>.

55. Young people have extensive experience of crime as victims and as offenders and express high levels of fear, with young women being more worried about crimes involving physical assault than young men. Even though more young men than young women report being physically assaulted, young women are more likely to experience sexual harassment. It appears that the fear of violence expressed, particularly by young women, may be related to earlier life experiences and exposure to violence. This is consistent with the fact that all too many children and young people have experienced extensive abuse and many are ‘indirect victims’<sup>46</sup> who witness parental violence in the home and who can be traumatised through living in households which experience housebreaking.

56. All the evidence clearly demonstrates that the categories of ‘victim’ and ‘offender’ are seldom discrete and that high proportions of young people who end up homeless, in state care or penal custody, have had serious crimes committed against them by adults who will never be brought to trial. Experience of victimisation by adults often precipitates young victims’ first steps (for example, playing truant, running away, staying out late, going into care) into criminal trouble themselves<sup>47</sup>. For some young people this criminal trouble is transient but, for a small number, offending persists into adulthood. In addition, given the extent of victimisation amongst young people, it is hardly surprising to find that many adult offenders have also been crime victims and, particularly in high crime areas, victims and perpetrators of crimes are often one and the same<sup>48</sup>. There are other people – children, youths and adults – who also become victims of crime without ever breaking the law themselves. Regardless of whether crime victims are or ever have been offenders themselves or not, crime is a problem for them as victims.

## Victims

57. The main factors associated with victimisation show that people are more likely to be victims of:

- violent offences at the hands of a family member or close acquaintance, rather than a stranger, particularly for homicide or rape;
- property offences, the more they own goods that are easy to transport and sell; for instance cars, bicycles, televisions and computers;
- housebreaking, the more they leave their residence;

- an offence for the second time than they were for the first offence; and
- an offence, the more they live in or frequent certain places. Research in Scotland and elsewhere has consistently demonstrated that most crime is highly concentrated in and around a relatively small number of places.

58. Victims suffer physical and psychological damage as result of violent crimes and property crimes and typically experience feelings of fear, vulnerability, isolation, anger and guilt. Close relations, through indirect victimisation, can often suffer the same psychological damage as the victim themselves<sup>49</sup>. The most extreme damage is done to family members of homicide victims who feel completely helpless, confused and unable to comprehend what has happened<sup>50</sup>. Husbands, wives and the intimate partners of people who have been raped react with anger or suffer from feelings of powerlessness, vulnerability and guilt<sup>51</sup>.

59. Some victims are not only seriously traumatised by their experience but are also prone to revictimisation<sup>52</sup>. Around 40% of all crime in Scotland is suffered by 4% of all victims<sup>53</sup>. The vast majority of crime is therefore suffered by a small minority of victims. These victims are often the most vulnerable in our communities and typically live on low incomes, in poor housing, suffer poor health and live in fear of crime in high crime environments. Generally those most at risk are young people, women, ethnic minorities and the elderly. Recognition of the suffering of victims should not be limited to how they are treated in the criminal justice process: victims, as well as offenders, should be entitled to benefit from effective programmes of social inclusion. The social inclusion of victims into the community requires an integrated approach to policies across government, local authorities, voluntary and community organisations, health agencies and criminal justice agencies. The objective must be to effectively address both the fear and experience of crime and to respond effectively to alleviate the social, financial, emotional, physical and psychological consequences of crime.

60. Generic and specialist victim services, provided by or funded through the state, are required not only to help heal the social and psychological trauma caused by victimisation but also to work towards the prevention of revictimisation. However, unlike the rest of the United Kingdom and elsewhere, Scotland has been slow to develop services for victims, particularly for vulnerable and intimidated victims and victims of rape, sexual assault and domestic violence. Victim Support Services, which have been found to be a highly cost effective means of delivering much needed practical and emotional support in the aftermath of crime, require further development in our efforts to reduce crime and its impact<sup>54</sup>.

## Key Issues Arising

61. In developing a whole problem approach to the reduction of offending and its impact on victims and communities priority must be given to:

- preventing victimisation and offending amongst young people,
- implementing crime prevention policies and practices which address the key facts about offending and victimisation,
- addressing the widespread use of illegal drugs and alcohol misuse amongst the young,
- developing sufficiently flexible juvenile and criminal justice responses relevant to different kinds of offenders as well as more or less serious offences,
- responding in ways which take account of the needs of victims, and
- providing effective support systems for victims.

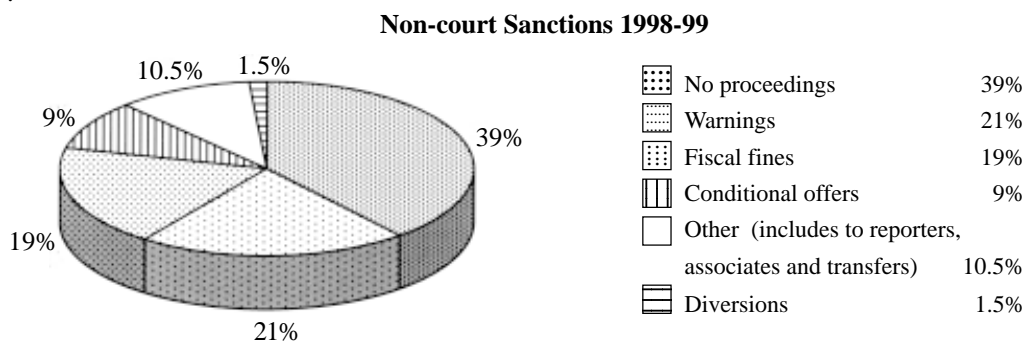
## Section 3 Criminal Justice and the Community

### In and out the criminal justice process

62. Before examining how the criminal justice system responds to crime, it is important to stress that many crimes and offences never enter the system at all because, for a variety of reasons, they are not reported to the police; only half of the crimes uncovered by the Scottish Crime Survey are reported to the police<sup>55</sup>. Of those crimes and offences that are reported to the police, some are not referred to the procurator fiscal because the police consider that no crime or offence has taken place and in some minor cases the police warn the alleged offender. In addition, the police make a large number of conditional offers of fixed penalties for motor vehicle offences without reference to the procurator fiscal (124,000 in 1998-99). Even the cases which are referred to the fiscal can drop out of the system at various stages in the process. In short, few of the crimes and offences reported to the police are actually prosecuted in the criminal courts and even fewer go to trial.

### The procurator fiscal's use of non-court sanctions

63. While the procurator fiscal has a responsibility to prosecute when it is in the public interest to do so<sup>56</sup>, the discretion to prosecute or not is a principal feature of the law in Scotland and changes in prosecution policy over the past twenty years have been central to widening the range of criminal justice responses to offending<sup>57</sup>. With the reports they receive, fiscals make use of the full range of non-court sanctions available to them as well as simply taking no action in a large number of cases. During the year 1998-99, fiscals decided on non-court disposals for 37 per cent (103,573) of the total number of reports received (280,413)<sup>58</sup>.



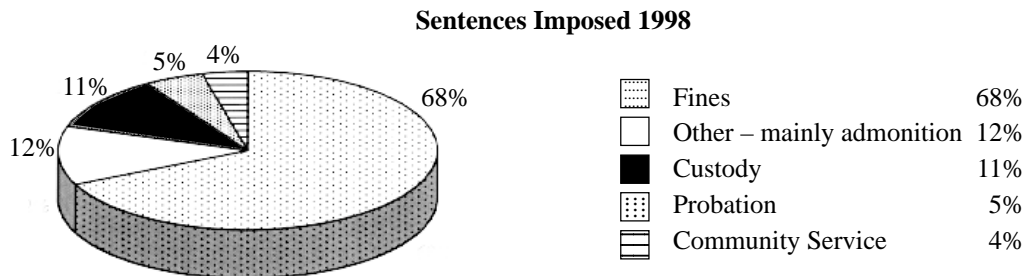
64. Of non-court sanctions, fiscals most frequently decided to take no proceedings – which means taking no further action at all – and least frequently to use a diversion. Unlike the other non-court sanctions, diversions are localised so that the full range are not available in all areas. Diversions can be to psychiatric<sup>59</sup> and psychological<sup>60</sup> services; reparation and mediation<sup>61</sup>; and to social work and related services<sup>62</sup>. There have been few evaluations of the effectiveness of diversion because of the small number of schemes but comparative analysis of reconviction among accused persons diverted to psychological treatment and those who were not diverted to such treatment, shows that fewer of those diverted to treatment were subsequently reconvicted<sup>63</sup>.

65. Diversion schemes were expanded on a pilot basis following the introduction, in 1997, of 100 per cent central government funding. The 18 schemes funded included generic social work schemes which provided services to a range of vulnerable individuals, schemes focused specifically upon substance misuse and mediation and reparation schemes. Evaluation of the pilot schemes showed widespread support among social work staff, procurators fiscal and accused for diversion though, as other studies of diversion from the criminal justice process have shown both in the UK and elsewhere, it appeared that procurators fiscal were often diverting accused who would otherwise have been dealt with by some other non-court sanction<sup>64</sup>. There is, therefore, perhaps a need to develop more specific criteria for the use of distinctive diversionary measures suitable to different kinds of offenders.

66. There is also scope for further extension of fiscal fines as a non-court sanction. These fines, introduced in 1987 and extended in 1995, range from £25 to £100. Given that fines average £89 in the District Courts and 11% of all cases are disposed of by means of an admonition, fiscal fines could be more widely used – as with other financial penalties they restore at least some of the damage done to the community if not directly to the victim. The costs involved in prosecuting the relatively minor crimes which fiscal fines can deal with far outweigh the benefits to society; in particular, these fines help to free up the criminal justice system to deal with more serious crime.

## Court sanctions

67. During the year 1998-99, there were 139,826 disposals made in Scotland's courts<sup>65</sup>. The fine remains by far the most commonly used sentence in Scotland, accounting for 68 per cent of sentences imposed in 1998 with an average fine of £172. The next most common penalty is an admonition, followed almost immediately behind by custody. Probation is next, followed by community service.



68. All penal sanctions, by definition, have punitive elements. We believe that it is essential that penal sanctions contain elements which are non punitive and constructive in helping offenders to address their problems and find solutions which permit them to live crime-free lives. From the available research evidence it is clear that the public in general and victims in particular are not as punitive as is often portrayed in the media; many victims would welcome the opportunity to seek some form of reparation or even reconciliation rather than punishment<sup>66</sup>. Penal policy which encompasses the positive aims of social inclusion for individual offenders and restitution to victims is the most humane and cost effective way forward, in both the short and longer term, of reducing crime and protecting the public.

69. The part which penal sanctions play in reducing re-offending and preventing custody is particularly important to the broader social policy agenda. Much of the debate surrounding the use of 'alternatives to imprisonment' has concentrated on whether such alternatives are punitive or non punitive as well as on the kinds of offences that are sufficiently serious to merit imprisonment and the kinds of offenders who require to be imprisoned in order to protect the public. However, when alternatives to imprisonment are being discussed we are not talking about alternatives to punishment but rather appropriate punishments. Community sanctions are not 'soft options' to custody – they are also punishments. This is their meaning and it is how they are experienced by offenders.

## Discharges

70. At the least serious end of the scale, sentencers can grant an **absolute discharge** under solemn and summary procedure provided that the penalty for conviction is not fixed by law. Absolute discharges can be referred to in subsequent criminal proceedings but in all other aspects a conviction is not recorded against the person. An **admonition** means that a person leaves the court without any penalty, although it does represent a warning and involves a conviction being recorded. Sentencers can also require an offender to find **caution** by obliging the offender to lodge a specified sum of money as a security for future good behaviour. If the offender remains of good behaviour over the specified period the money can be recovered with interest paid at the prevailing rate. Caution can be made as a condition of probation and can be used for any offence for which imprisonment is not being imposed. Admonitions and cautions, typically used in relatively non-serious cases where a formal conviction can be sufficient to mark the nature of the offence and warn the offender, play an important part in sentencing – they are the second most commonly used penal sanction.

## Penal sanctions in the community

71. Sentencers can make **deferred sentences** after conviction; there is no restriction on the length of time for which a sentence can be deferred and it can be deferred more than once. Deferral of sentence can be used to ensure a person undertakes a specific task or service related directly to circumstances of the offence, for example, attendance at a social work programme or making recompense to victims. Almost always deferment includes a requirement to be of good behaviour as a specific condition. At the end of deferment a disposal of the case must be made. The most recent research found that 37 per cent of deferments were disposed of by monetary penalties, 35 per cent by admonitions, 14 per cent by supervisory orders and 12 per cent by custody. Deferments - 6.4 per cent of the sheriff court cases studied - enabled treatment for offenders with particular problems, helped offenders take responsibility for their actions and provided a means to effect reparation to victims<sup>67</sup>.

72. The most frequently used sanction - the fine - accounted for 68 per cent of all sentences imposed in 1998, ranging in value from £5 to £70,000. Fines, which are clearly seen and used as punishments, are attractive because: they are relatively cheap and simple to administer<sup>68</sup>, generally do not cause major disruption to the lives of offenders, and are one of the least intrusive penalties. There are, however, two main problems about fines. First, the level of fines should be made to reflect the financial circumstances of individual offenders and their ability to pay. This is not just because of the further problems caused for and by offenders who cannot pay but as a matter of justice: it would be unjust to fine each of two similarly drunken drivers £500 if one is a millionaire and the other is poor – that would punish the latter much more than the former. We believe that the ‘unit fine’ system, where the level of fine for particular offences is assessed in units which are defined in terms of the offender’s means, is the best way to address this issue and should be reconsidered.

73. The second problem concerns ‘breach sanctions’ – that is, what should be done about those who fail to pay their fine. The vast majority of people (around 90 per cent) pay their fines, either without the need for further enforcement or following a means enquiry court. Around 10 per cent of offenders default on their payments and are imprisoned as a result; despite the decrease in the most recent prison statistics (for 1998), fine defaulters continue to represent a high proportion of prison receptions.

74. **Fine supervision** can be ordered for any person subject to a fine and the law requires that young offenders aged between 16 and 21 years must be placed on fine supervision before any period of imprisonment can be ordered in default of payment, unless the court is satisfied that supervision is impracticable. **Supervised attendance orders** (SAOs) can provide an additional measure to help with the problem of fine default. They can be made for offenders aged 16 or 17 whom the court considers unable to pay an appropriate fine, and for offenders over 18 who have had a fine imposed and either the court would order imprisonment in default or there has been a failure to pay in full or in part. The philosophy of the order is that it is a ‘fine on time’ since the offender has to undertake specific constructive activities, for example, work or education under the supervision of the social work department. Supervised attendance orders have had an impact upon reducing the use of imprisonment for fine default<sup>69</sup>. There is, however, a problem with breach of SAOs which can carry increased prison sentences as an alternative – people who were originally fined can now end up in prison for longer than before SAOs existed. We therefore believe that a comprehensive strategy must be developed to address the problem of fine default.

75. Courts can order a **compensation order** to ensure that victims receive financial compensation from the offender in appropriate cases. Compensation orders can be made in addition to other penalties, including imprisonment, and can take precedence over a fine. Compensation is the only sentence which the court can impose which aims to require the offender to make any kind of direct reparation to the victim. Victims believe that the compensation order provides recognition of their role in the criminal justice process and their need for restitution and offenders acknowledge the legitimacy of being required to compensate the victim for at least some of the injury, loss or damage caused by their behaviour<sup>70</sup>. Yet as a reparative measure, compensation orders have been extremely disappointing; in 1998, less than one per cent of all sanctions were compensation orders. We believe that immediate action should be taken to secure a significant increase in the use of compensation orders in cases where they can be effective.

76. We also await with interest the current Government consultation covering reported problems with the effectiveness of **non harassment orders** which aim to protect victims from further harassment in appropriate cases. Non harassment orders can be made in both the civil and criminal courts and breach of an order can lead to imprisonment. As presently used, however, they are capable of providing only limited protection for victims.

77. **Probation orders** are available to all people who have attained the age of criminal responsibility (8 years and over) and can be made in relation to any offence which does not carry a fixed penalty. An order must not be for less than 6 months and not more than three years. Probation orders are supervised by local authority social workers within a framework of practice provided by national standards. In 1998, probation orders accounted for 5 per cent of all disposals. Unlike England and Wales, probation in Scotland is not a sentence but rather the sentence/punishment is set aside for a time and can be avoided altogether if the outcome of the order is successful. The courts have a general power to attach additional requirements to a probation order if they are deemed to be reasonable, legally enforceable and capable of being supervised. Such requirements include: to undertake unpaid work, to reside at a specified address, or to participate in an intensive supervision programme. The latter typically involve offenders attending the programme for three days per week over a period of three – four months, with the emphasis of intervention upon the offending behaviour and circumstances which contributed to it.

78. The use of probation – either ‘standard’, ‘with requirements’ or ‘intensive’ – has increased significantly over the last decade, with this increase being largely attributable to the introduction of 100 per cent central government funding and associated national objectives and standards for probation supervision. The new funding mechanism has also had the effect of encouraging the creation of specialist arrangements for the delivery of criminal justice social work services and for encouraging a change in the focus of probation supervision from a welfare approach based upon offenders’ needs to an approach which requires offenders to accept responsibility for their offending within their social and personal context<sup>71</sup>.

79. Recent studies of probation in Scotland have yielded positive findings in terms of reductions in offending and intensive probation programmes have been particularly effective with young offenders<sup>72</sup>. Many of these programmes also provide personal change projects aimed at increasing offenders' accountability by facing up to the consequences of their behaviour. Probation has also been found to be effective with serious offences involving violence; for example, probation-based programmes aimed at the perpetrators of domestic violence produced lower rates of subsequent violence than other court disposals<sup>73</sup>.

80. While the sentence has been set aside in a probation order, the criminal law has been invoked because the offender has committed a wrong against the 'community'. The aim of the order is to assist the offender to face up to that wrong and its implications and to recognise the need for change – and to be offered support in making that change. A critical response to and focus on the offender's past crime as a wrong and the need to avoid such crimes in the future is vital to the effectiveness of probation supervision. Crime prevention is the key aim of probation and we believe that it should have a much more central role in the penal system.

81. **Restriction of liberty orders**, which may be imposed concurrently with a probation order and which may be enforced through the use of electronic tagging, enable the courts to require convicted offenders to be present at a particular location for specified periods of time. Electronic tagging can be used for offenders, aged 16 years and over, whose offence has not a sentence fixed by law. The order aims to restrict the liberty of the offender in the community and may, in addition, do this in a way which reduces the risk of re-offending where previous offending has been linked to particular locations or events. A restriction of liberty order can be made for any period of up to 12 months, though it may not exceed 12 hours in one day. The results from an evaluation of the pilot schemes for the electronic monitoring of restriction of liberty orders introduced in three Sheriff Courts in 1998 are encouraging in terms of preventing a custodial sentence and providing substantial cost savings<sup>74</sup>.

82. **Drug treatment and testing orders** (DTTOs), which became available in Glasgow on a pilot basis in November 1999, are community sentences which require treatment for drug taking offenders with regular drug testing and review by the courts. People who commit offences related to their drugs use may therefore be required to undergo treatment in the community when they might otherwise have received a custodial sentence. Preliminary research shows that they produce a marked decline from pre-sentence expenditure on drugs and number of acquisitive crimes and these orders are being geographically extended over the next few months. It is predicted that extensive implementation of these orders should pay for themselves by reducing health and crime related costs of drug dependence<sup>75</sup>. We believe that similar types of orders should be made available for offenders with alcohol problems. Sentences would require appropriate treatment for such offenders, including alcohol education courses which focus on skills, training and attitude change, together with regular alcohol testing and review by the courts.

83. **Victim-offender mediation** schemes come in many forms and are based on notions of restorative justice with the primary aim being to repair the damage done by the offender to the victim. The aims of the mediation process are that the wrong committed is recognised by the offender as well as others; that the offender accepts responsibility and censure and the need to make reparation for the wrong. Victim-offender mediation has shown positive results in terms of crime reduction and victim satisfaction with the justice system and we believe that the expansion of victim-offender mediation and reparation services throughout Scotland is a priority<sup>76</sup>.

## Legal alternatives to custody

84. **Bail** is used by the courts as an alternative to remand imprisonment. Various conditions can be applied to bail, for example, a condition of residence, exclusion from a certain area, a deposit of money with the court. However, prisoners on remand – either prior to conviction or following conviction but prior to sentence – represent around 45 per cent of annual receptions into custody<sup>77</sup>. Remand prisoners accounted for around 15 per cent of the daily prison population in 1998. Re-offending whilst on bail is very uncommon – 5 per cent of those with a charge proved in Scottish courts in 1998 were recorded as having offended while on bail<sup>78</sup> and bail supervision has been found to be effective in addressing the risk of offending while on bail for accused who might otherwise be held on remand<sup>79</sup>. We believe that, with proper consideration for the protection of victims and the public, priority should be given to the development of alternatives to custodial remand – bail projects are currently only available in Glasgow and Edinburgh. These have been evaluated and we welcome the Scottish Executive's plans to produce a model bail scheme based on that evaluation<sup>80</sup>.

85. Section 238 of the Criminal Procedure (Scotland) Act 1995 indicates that **community service orders** may only be used for an offender "convicted of an offence punishable by imprisonment" and the court may, instead of imposing a sentence of, or including, imprisonment or any other form of detention, sentence the offender to community service. The courts can sentence an offender over 16 years of age, upon whom they would otherwise impose a custodial sentence, to between 80 and 240 hours (or 300 hours in the higher courts) of unpaid work of benefit to the community. The hours must be completed within 12 months. As with probation, community service orders are supervised by the local authority social work departments and funded in full by central government under the 100 per cent funding initiative. In 1998, community service orders accounted for 4 per cent of all disposals.

86. Since their introduction in 1977, community service orders have received the support of the judiciary, though it appears that they have not always been used consistently as an alternative to custody<sup>81</sup>. However, the work conducted by offenders on community service is highly valued by the recipients, whether they be voluntary or statutory agencies or individual members of the public who are unable to carry out the work themselves. Many agencies - around one half in one survey<sup>82</sup> - encourage offenders to continue working on a voluntary or sometimes paid capacity after they have completed the work ordered by the court.

87. Offenders can experience community service as a punishment which exacts a 'fine on their time' whilst, at the same time, benefiting in practical or personal terms from the experience. Overall, offenders appear to gain most from placements in which they are brought into contact with the beneficiaries, in which they are able to acquire practical or interpersonal skills and in which they are able to carry out work that is clearly of value to and valued by the recipients. It has also been found that offenders who experience community service as more rewarding are less frequently reconvicted than those whose experience of community service is perceived as less rewarding and worthwhile<sup>83</sup>. Community service can therefore work as a reparative or restorative sentence in terms of providing reparation to communities (through the work done) and offenders (through the relationships formed and skills learned) and, indirectly, to some victims (as members of communities).

88. Probation supervision increasingly involves challenging offenders' attitudes and behaviour, encouraging the development of less anti-social thoughts and actions and assisting in the acquisition of problem-solving skills. Community service can also be a powerful vehicle for promoting, supporting and reinforcing such change both through the relationships offenders develop with their placement supervisors and sometimes with beneficiaries, and through the ways in which the order is managed. For instance a consistent but rigorous approach to enforcement which is clearly conveyed to offenders, and fairness and consistency in the supervisory process, will encourage increased compliance, at the same time serving to increase the 'legitimacy' of the community service officer or supervisor and engendering mutual respect.

89. Community service was first used in Scotland in a **probation order with a requirement for unpaid work** and this disposal has remained on statute alongside the direct community service order. An offender subject to this disposal has to comply with the work order as well as the conditions of a probation order. Such orders can only be made on offenders aged over 16 years who have been convicted of an offence punishable by imprisonment. Unlike community service, there is no stated requirement that the alternative for the offender is a custodial sentence. These orders offer considerable scope for offenders to benefit from the actual experience of completing a community service order within the context of probation supervision and have the same benefits.

## The use and appropriateness of imprisonment

90. In 1998, 11 per cent of the total number of penalties imposed in Scottish courts were custodial sentences. Custody was imposed in 83 per cent of cases disposed of in the High Court, in 69 per cent of cases in the Sheriff Solemn Court, in 15 per cent of cases in the Sheriff Summary Court, in 19 per cent of cases in the Stipendiary Magistrates Court and in one per cent of cases in the Lay District Courts. Custody is therefore used not only for the most serious offences but also for offences which are unlikely to pose a real threat to public safety. Many of those in custody have not originally been sentenced to imprisonment but have been given a fine or other community penalty. Besides people who end up in custody after breaching a community penalty, people in default of fines make up almost half of all receptions into prison<sup>84</sup>. Yet the cost of imprisonment dramatically outweighs the cost of the average fine outstanding; imprisonment for fine default is far from a cost-effective use of custody.

91. This is not to say that all people in custody have not committed serious offences. Over two-fifths of the sentenced daily population of prisoners are there for a violent offence and a fifth have been convicted of crimes of dishonesty (e.g. housebreaking and 'other theft', including shoplifting). However, receptions into custody present a rather different picture. Only 13 per cent of direct receptions into custody are for offences of violence. The highest proportion of direct receptions is for dishonesty and the second highest for 'miscellaneous' offences such as breach of the peace, petty assault, and drunkenness. People who not yet been convicted of any crime - those on remand - make up 45 per cent of all receptions into custody and over 15 per cent of the prison population on any given day. Young offenders make up almost a quarter of all directly sentenced receptions into custody and about 15 per cent of the daily sentenced population. And, while only 5% of people in custody are women, almost four times as many of them are detained for 'other theft', mainly shoplifting, than the proportion of men detained for the same offence category<sup>85</sup>.

92. The use of imprisonment for **female offenders** has increasingly been questioned, particularly following the tragic series of suicides at Cornton Vale women's prison. Women's offending differs in important ways from that of men (see Annex 1). Most notably they offend much less frequently than men and, when they do, their offences are rarely violent and are generally less serious. Imprisoned women are typically marginalised women and the experience of custody further weakens or destroys

existing family and community ties; they are, for example, more likely than men to lose custody of a child and housing tenancies. Like male prisoners, their backgrounds are characterised by abuse, drug misuse, poor educational attainment, poverty, psychological distress, and self harm. These characteristics are, however, much more acute amongst female prisoners yet their offending is rarely a threat to public safety. The report, 'A Safer Way', includes a range of recommendations aimed at reducing women's imprisonment at the remand stage, as a response to fine default or at first sentence; in particular, the report recommends that the daily prison population in Cornton Vale should be reduced to 100 and that no young women under 18 years of age should be held in prison establishments by the end of the year 2000<sup>86</sup>.

93. In principle, imprisonment is intended as punishment rather than for punishment (see Annex 2). However, the mere fact of imprisonment has a wide range of implications well beyond those intended as punishment. Separation from society in itself reduces a person's ability to desist from offending on release: custody entails a complete loss of personal autonomy and responsibility, so the longer people spend in custody, the more institutionalised they become and therefore the more difficult the adjustment upon release, the more difficult to find employment, and any prior community and family ties have been at best fractured and at worst completely severed. Prisoners' families and children are also punished by the sentence. This is in distinct contrast to community programmes which are aimed at the acceptance of responsibility for behaviour, the strengthening of family support and contributing to the economic maintenance of their families. We therefore believe that there is an urgent need to radically reduce the use of imprisonment so that prisons are only used for the most serious offenders.

94. Undoubtedly there are some very serious violent and sex offenders for whom incapacitation of some kind – whether in prison or in a mental hospital – is the only possible penalty to impose in order to protect victims and the community. We welcome the MacLean Committee Report in relation to very serious violent and sex offenders, including those with personality disorders, and await with interest the Millan Committee Report on the operation of the Mental Health (Scotland) Act in relation to mentally disordered offenders<sup>87</sup>. We hope that the work of these Committees will assist in ensuring that prison in the future is reserved solely for those who have to be there in order to protect the public. We fully appreciate that moving to such a position will require taking account of the need to provide adequate protection for victims as well as securing public confidence. Nevertheless, limiting the use of imprisonment to the most serious offenders would not only cost less but would also have the potential to be more effective in protecting victims and the community. Prisons could then concentrate on delivering compulsory 'personal change programmes' aimed at reducing re-offending by serious offenders.

## Sentencing trends and variations

95. Sentencing **trends** in Scottish courts have shifted over the past ten years, though not in the direction of a reduction in the use of imprisonment. The use of community service orders doubled and probation orders almost trebled between 1988 and 1998. The increase in the use of probation orders has been most marked since 1992, that is, following the introduction of 100 per cent funding and national standards. Over the same time period the use of fines decreased substantially - from 78 per cent of all disposals in 1988 to 68 per cent in 1998. The use of admonitions increased from 10 to 12 per cent and imprisonment and detention increased steadily from 8 per cent of disposals in 1988 to 11 per cent of disposals ten years later<sup>88</sup>.

96. Whilst other possible changes - such as changes in the seriousness of offences - may have contributed to these shifts in sentencing patterns including the increase in the use of custody, the decline in the use of the fine can be largely accounted for by a decline in the number of cases reaching the court which once would have been fined but are now diverted to police fixed penalties or fiscal fines. In addition, the range of community sanctions available varies across courts. Some disposals - such as restriction of liberty orders or drug treatment and testing orders - are currently available only on a pilot basis in a limited number of courts whilst others - such as the types of requirements which may be attached to a probation order - will be dependent upon provision at the local level. The most direct impact of a lack of community sanctions on the use of imprisonment is evident where diversion schemes are not available.

97. There is also considerable regional **variation in sentencing**, beyond what can be explained by variations in the availability of disposals and regional variations in crime. While the use of the sentencing information system recently introduced in the Scottish courts will undoubtedly allow more consistency in sentencing<sup>89</sup>, it will do little to reduce the high reliance on imprisonment which has been a feature of Scottish sentencing for many years. Other jurisdictions have created Sentencing Commissions and/or adopted Sentencing Guidelines not only to address sentencing disparities but also to influence the use of imprisonment<sup>90</sup>. In fact, most jurisdictions outside Scotland make use of some form of sentencing guidance; Scottish courts are the exception in their relative lack of a framework for sentencing. Yet the existence of such a framework and fuller information about the range of sanctions is likely to increase judicial and public confidence in community penalties and lead to a reduction in the use of imprisonment. We believe that sentencing reform is, without doubt, central to redirecting the aims of criminal justice.

98. Apart from being very expensive in both economic and human terms, prison is the most severe sanction against crime in Scotland. We believe that imprisonment should only be used for the most serious crimes and in cases where the offender needs to be imprisoned in order to protect the public. With the exception of Portugal, Scotland and England and Wales have the highest rates of imprisonment in Western Europe<sup>91</sup>. Yet the average length of sentence for people received into custody in Scotland was 300 days for all adults in 1998, and even shorter for adult women and young offenders. Prisoners with such sentences are likely only to serve half of this time in custody so that the likelihood of them having time to benefit from a positive regime or programme in custody is small. A reduction in the number of short term prisoners and receptions would reduce pressure on prison staff and allow more time for work with longer term prisoners. We believe that in order to reduce the prison population targets should be set for:

- the abolition of imprisonment for fine default,
- the expansion of bail services to all courts,
- the provision of alternatives to remand, and
- the reduction of short term imprisonment.

Victim Support would wish victims' rights to be fully taken account of in pursuing such a policy.

## Criminal justice - at what cost?

99. Assessing the cost-effectiveness of the various penal sanctions is not straightforward given the significant human as well as economic costs to be considered. Nevertheless, financial cost comparisons are dramatic. In 1998-99, the costs of various penal sanctions were:

- 6 months in prison: £13,456<sup>92</sup>
- average cost of a probation order: £1,450<sup>93</sup>
- average cost of a community service order: £1,325
- average cost of SACRO's bail supervision scheme: £1,100
- average cost of diversion to SACRO's mediation and reparation scheme: £350

100. In relation to financial penalties between 20 and 30 per cent of fines imposed by sheriff courts are paid within the time allowed; around half require means enquiry court appearances. The cost of recovering a sheriff court fine at various stages of the process is:

- paid at the bar in one instalment: £0.97
- paid after receipt of a warning letter: £2.71
- paid after receipt of a warning letter, citation and subsequent appearance at an enquiry court: £38.19<sup>94</sup>

101. Recovery of financial penalties during 1998-99 included:

- fines to the value of £11,598,000 by sheriff courts (including sums remitted from the High Court)
- court fines, registered fines and compensation orders to the value of over £6.5million by district courts
- fiscal fines to the value of over £700,000.

102. By these measures, imprisonment is clearly by far the most expensive penal sanction and costs, on average, almost ten times as much as the next most expensive option. Indirect costs such as the cost to prisoners' families in lost income and the cost of visits increase this disparity<sup>95</sup>. In addition, given that admission and discharge are the most costly aspects of imprisonment in terms of resources, fine defaulters, remand and short sentence prisoners are disproportionately costly for the time spent in custody.

103. The financial cost of custody varies depending on what and how it is costed, but the human cost is immeasurable – separation from society and the subsequent difficulties in reintegration – and must be considered as a distinguishing factor in cost-effectiveness. Moreover, imprisonment is the least cost effective option for crime reduction. Rates of reoffending are generally higher following custodial as opposed to community penalties, so the total cost of subsequent offending will also be higher; the costs of re-offending to victims – the immeasurable effects on their mental and physical health – costs to property and the cost of the criminal justice process. Once the hidden costs such as the cost to prisoners' families and long term damage to victims' health are taken into account, the full expense of imprisonment is apparent and the case against its use, except in the most serious cases, is very strong indeed. Minimising its use as far as possible is more cost effective and more likely to protect the community and victims: with fewer offenders in prison, personal change programmes could be made available to all remaining serious prisoners who might then emerge less likely to re-offend<sup>96</sup>.

## Victims and criminal justice

104. The role of the victim throughout the criminal justice process has increasingly been recognised; without the co-operation of victims in reporting crimes to the police, in assisting with furnishing evidence to the prosecution, in helping to identify the offender and as acting as a key witness in court, most crime would remain unknown and unpunished. Indeed, the victim movement has been able to use the reliance of the criminal justice system on victims as a strong bargaining tool in its demands for fuller recognition by the state of the needs and rights of victims.

105. It is, however, important to make a distinction between victims' rights to support and services in the criminal justice system and the much deeper question of whether the criminal justice system ought to be victim-centred. There is no doubt that the criminal justice system should be concerned with the provision of services to victims and, in recent years, efforts have been made to ensure that victims in Scotland have accurate information about the progress of their cases<sup>97</sup> and adequate support throughout the investigative process and before, during and after trial, for example, through victim witness support projects<sup>98</sup>. The need remains, however, for a clear Government strategy on the delivery of services to victims in the criminal justice system. On the other hand, the question of whether a primary concern of the state and its agents should be to ensure that the offender compensates the victim and the wider community for the results and effects of the crime is not so straightforward, not least because many offenders are in no position to compensate their victims or the wider community.

106. We endorse the principles set out in the forthcoming European Framework Decision on Victims of Crime which will require that member states ensure victims' rights to:

- respect and recognition,
- be heard and to supply information,
- receive information,
- participate in legal proceedings,
- protection,
- compensation,
- mediation,
- victim support, and
- legal aid.

107. These principles reflect the increasing recognition of the role and rights of the victim and the fact that restitution and restorative justice are explicit concerns within contemporary criminal justice. Restitution, which in practice requires offenders to make some kind of reparation to their victims, is central to notions of restorative justice. Restorative justice is typically conceived of as a 'healing process' where each agency in the criminal justice process has a 'caring' function in relation to victims, offenders and the community<sup>99</sup>. It is also centrally concerned with the 'reintegration' of offenders into the community through penal sanctioning<sup>100</sup>. We believe that there is considerable scope for principles of 'restorative justice' to be applied throughout the criminal justice system and, with some amendment, to the youth justice system.

## Section 4 Juvenile Justice and the Community

### Principles

108. The Children's Hearings System deals with the vast majority of young people who offend aged up to 16 years (or 18 if they are already in the system). While the hearings system may deal with young persons up to the age of 18, the courts have the authority to deal with any 16 year old alleged to have committed an offence. In practice, the majority of 16 year olds who are charged with an offence are dealt with by the courts though under certain circumstances, for example, where the young person is already subject to supervision through the hearings system, the court may be required to seek the advice of a Children's Panel before disposing of the case.

109. The hearings system, "is not simply a justice system designed to deal with children who commit offences but is a system of justice for children in which their welfare is the primary concern."<sup>101</sup> Anyone who is concerned about the welfare of children can refer the young person to the Reporter to the children's panel but referrals for alleged offences must come from the law enforcement agencies, the police or the procurator fiscal, who may also make non-offence referrals. Referrals involving concern about a young person's welfare can be made on a number of grounds and come from a range of agencies. The main grounds of referral are often termed offence and non-offence grounds<sup>102</sup>. Referrals to reporters can be made by anyone and include the police, procurators fiscal, social work departments, education authorities, parents, health sources, Children in Scotland and members of the public; the vast majority of referrals have always come from the law enforcement agencies.

110. The role of the reporter (who is typically qualified in law or social work) is to sift referrals and make an initial decision about the appropriate future course of action; in particular whether the child referred may be in need of compulsory measures of care and, consequently, whether he or she should be referred to a children's hearing. Children's hearings do not function as a juvenile court but rather as an administrative welfare tribunal and in as informal a setting as possible. Hearings have no jurisdiction over questions of guilt or innocence and cannot proceed unless all parties understand and accept the grounds for referral; where the facts are in dispute the case must be referred to the appropriate court. When a case reaches a hearing, decisions are made by a Panel of three lay people, known as Panel Members, after deliberations involving the parents or guardians of the child, social work representatives and the child. Legal representation is not permitted although a lawyer may attend as a friend of the child or family.

### Referrals

111. In 1996/97, the latest year for which statistics are available, there were a total of 46,497 referrals to reporters<sup>103</sup> made in relation to 26,792 young people aged under 18. The majority of these referrals, 28,105, were made on offence grounds. The peak age of offence referrals for both boys and girls was aged 15 but the historical pattern of startling gender differences in offending remained; there were approximately 4 times as many boys referred for offences as girls, with rates of 107.3 and 32.9 per 1,000 population respectively. In addition, although the total number of offences referred showed a 3 per cent decrease on the statistics for 1995 and the referral rate has remained fairly stable for boys (under 16) since 1990, fluctuating around the low to mid forties, the rate for girls referred on offence grounds has increased from 9 in 1990 to 12 per 1,000 population under 16 in 1996/97.

112. On all grounds taken together, referrals of boys still outnumbered those of girls by a ratio of over 2:1 and, in general, the different gender pattern in grounds of referral was similar to previous years. For boys, 69 per cent of referrals were made on offence grounds; 19 per cent on care and protection grounds (which include being in moral danger, in lack of parental care, a victim of an offence, at risk, and living in the same household as an incest victim); and 7 per cent were on grounds of non-attendance at school. This proportional split for boys has not changed significantly in recent years. For girls, 48 per cent of referrals were made on care and protection grounds; 31 per cent on offence grounds; and 13 per cent were for reasons of non-attendance at school. Unlike boys, the proportional split for girls has changed slightly in recent years with an increasing proportion of referrals being made on offence grounds; 31 per cent in 1996/97 compared to 28 per cent in 1992.

# Decisions

113. Committing an offence or, indeed, any other ground of referral, is not in itself sufficient reason for a reporter to decide to refer a child on to a hearing. The underlying principle is always whether the child is in need of compulsory measures of supervision. The main decisions which reporters can make are to take no further action, to refer the case to the local authority for advice and guidance or to refer the young person to a children's hearing. Reporters' decisions, at the initial referral stage, are made on the basis of the referral information and, typically, on supplementary information from social work departments and schools, with limited direct personal contact between reporters and families. The most important factors taken into account by reporters at this stage include families' co-operation (or lack of it), school related issues, current social work input, evidential issues, the seriousness of any offence, any prior record of the offending young person, the attitude of the family, the young person's age, risk to the young person and aspects of family functioning (for example, relationships, aggression, presence of addiction).<sup>104</sup>

114. In 1996/97, 60 per cent of the 46,497 referrals to reporters resulted in no further action, 29 per cent were referred to a children's hearings and 11 per cent to social work departments. Of the children referred where no further action was taken, 16 per cent were already under supervision; 36 per cent were not thought to need compulsory measures of care; and in 6 per cent of cases there was insufficient evidence. Being in moral danger was the most common ground of referral where no further action was taken. The ground of referral most likely to lead to a hearing was for non-attendance at school (44.5 per cent of such cases).

115. Over time the percentage of cases which have received no further action – where the reporter sees no need for compulsory supervision or measures of care – has increased, from 44 per cent in 1985 to 60 per cent in 1996/97, and the proportion of cases referred to a hearing has fallen, from 45 per cent to 29 per cent over the same period. On all grounds, a total of 6,649 young people aged under sixteen were referred to a children's hearing in 1996/97 and the number of boys (4,228) was almost twice as high as the number of girls (2,421); rates of 8.0 and 4.8 per 1,000 population respectively. On offence grounds, a total of 2,863 young people were referred to hearing - with over 4 times as many boys (2,333) as girls (530); rates of 8.8 and 2.1 per 1,000 population in the age group respectively. For boys the highest rate was for 14 year olds at 23 per 1,000 population, and for girls the highest rate was for 15 year olds at 6 per 1,000 population.

116. Following a hearing, one of three decisions is typically made: to discharge the referral; to make a supervision order; or to make a residential supervision order. Of the 11,666 offences referred to a hearing in 1996/97, 17 per cent were not accepted and discharged by the hearing, compared to only 2 per cent of all referrals made on non-offence grounds. Of those where the grounds were accepted or established, the outcome in the majority of both types of referral was supervision. There were 110 secure accommodation authorisations made by hearings in 1996/97 with a further 140 being continued, representing a decrease of 24 per cent on 1995. These cases involved 155 boys and 95 girls; 81 per cent of them concerned young people aged 14 or 15.

117. Recent research sheds light on young people's previous involvement with the hearings system and on the interface between the hearings and the criminal justice systems. The vast majority of a cohort of 1155 young people referred to the hearings system had previously come to the attention of the reporter, with an average of eight previous referrals per child. Children referred for offences were likely to have first come to the attention of reporters between 5 and 11 years of age and many had previously been referred to the reporter on non-offence grounds, most commonly for non-attendance at school or risk associated with offences against children (Schedule 1 offences)<sup>105</sup>.

118. In all cases welfare is the primary concern and social education the aim of the children's hearings system. While the children's hearings system has worked well since it was introduced, much has been learned in recent years about positive approaches to dealing with young people. In particular, we believe that there is considerable scope for the introduction of restorative methods. These include family group conferencing and mediation resulting in reparation to victims which could be deployed at the discretion of the reporter or as an additional resource for children's hearings. These approaches concentrate on repairing the harm done to victims by offenders making satisfactory compensation to victims for their hurt and loss. Family group conferencing is being increasingly used in England and Wales in the fields of child protection and welfare as well as in new approaches to youth justice. As in other restorative approaches, family group conferencing gives victims a real voice in the process and empowers families and children to take responsibility for the actions of the child.

## Section 5 At the Interface : Formal or Social Justice

### Principles

119. Important issues arise at the interface between the children's hearings and adult criminal justice systems, that is, where cases involving young people require to be reported jointly to the reporter and the procurator fiscal. Jointly reported cases include those where the alleged offence is serious, where the alleged offender is over 16 years but under supervision, where the young person is alleged to have committed an offence with an adult and cases involving road traffic offences where the young person has attained his/her 15th birthday and is liable to disqualification. In the cohort study, of the 113 young people jointly reported to reporters and procurators fiscal, 59 were dealt with by reporters and 54 by the fiscal. All of these young people had extensive histories in the hearings system and 89 of them had a criminal conviction within two years, with 1836 offence counts against them. Of these 89 young people, 31 had experience of custody before the age of 18<sup>106</sup>.

120. Jointly-referred young people dealt with by the procurator fiscal, the overwhelming majority of young offenders aged between 16 and 18 years, and all of those between 18 and 21 years are processed by the criminal justice system. There is, therefore, a watershed at 16 years old which marks a dramatic shift in philosophy and approach; from a juvenile justice system grounded on social education and welfare considerations to an adult justice system grounded on penal considerations. Unlike the welfare and social education approach which underpins the children's hearings system, a justice philosophy (whether punitive or liberal) underpins the criminal justice system. There are, therefore, two parallel youth justice systems in Scotland today which share neither a common understanding of justice nor common aims, though each contains elements of the other. Whereas the concept of 'need' dominates within the welfare model promoted by the children's hearings system, the concepts of 'rights' (the liberal version) or 'individual responsibility' (the conservative version) dominate within the justice model.

121. The welfare model attempts to address offending through meeting the needs of the offender and the most typical outcomes for young offenders dealt with by the hearings system are either 'no further action' or social work supervision. In contrast, the justice model aims to tackle offending by responding to the deed, the offence rather than its mitigating circumstances, and the most typical outcomes for young offenders dealt with by the criminal justice system are either 'non prosecutions' or a fine or custody. Inevitably, neither welfare nor justice is present in pure form in either the children's hearings or the criminal justice systems; instead, both are concerned with welfare and justice and reflect a mix of policies and practices which are often incompatible and sometimes contradictory.

122. Moreover, the typical age of transition from the children's hearings system to the criminal justice system is low by international standards and contrasts with the trend in other countries towards extending their juvenile justice systems to include young adults in response to major social and economic changes which, since the 1970s, have led to a significant expansion in the period of 'youth'<sup>107</sup>. The recent Report of the Advisory Group on Youth Crime recognises this shift and emphasises the "real and perceived contradiction between the approach adopted in the (hearings and criminal justice) systems to the young person"<sup>108</sup> and recommends a 'bridging system for the future' to increase the range of disposals available to the hearings thus permitting the referral of as many 16/17 year olds as possible to the hearings rather than the courts.

123. Such a bridging system would be consistent with article 3.1 of the 1989 United Nations Convention on the Rights of the Child, ratified by the United Kingdom in 1991, which states that: "In all actions concerning children, whether undertaken by public or private welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration." A child is defined as 'every human being below the age of 18 years' unless the age of majority<sup>109</sup> is attained earlier. We believe that the Scottish criminal justice system, which is under no obligation to make the best interests of young offenders a primary consideration, is not an appropriate context for dealing with the majority of 16 to 18 year olds.

124. Moreover, although the children's hearings system is based on welfare principles and the vast majority of young people under 16 years are dealt with by that system, Scotland has one of the lowest ages of criminal responsibility in the world. A child can be held criminally responsible at 8 years old, whereas in England & Wales the age of criminal responsibility is 10, in France 13, in Germany 14, in Spain 16 and in Belgium 18. Given that, in practice, because of the hearings system, very few children under 16 years old are, in fact, prosecuted in the criminal courts in Scotland, there would appear to be little problem in taking on board the United Nations recommendation that the UK give serious consideration to raising the age of criminal responsibility to bring the UK countries in line with much of Europe.

125. The Scottish Executive accepts the need to review the age of criminal responsibility and is committed, in the medium to longer-term, to implementing a review of the case for raising the age to 12 years. We welcome the proposed review but would

like to see the case considered for raising the age of criminal responsibility to the same age as that in which young people move into the adult criminal justice system which we believe should be 18 years. This does not mean that young offenders should not be held accountable for their behaviour, rather that the context within which young people should be expected to accept that responsibility is the youth justice not the adult justice system. Victim Support would, however, wish to further consider the implications in detail of what such a change would mean for victims.

126. The shifting emphasis between ‘needs’ and ‘deeds’ is, however, not only apparent between the children’s hearings and criminal justice systems but is increasingly evident within the children’s hearings system itself. For example, while the Children (Scotland) Act 1995 emphasises that consideration must be given to the welfare of the child at all times, this can be over-ruled where the protection of the public from serious harm is an issue, whether or not the protected harm is physical<sup>10</sup>. This increased emphasis on social protection together with a general move towards more punitive measures for some offenders has contributed to a ‘retreat from welfare’ and has led to more tensions and contradictions within contemporary youth justice.

127. These tensions have, somewhat ironically, been intensified due to increased concern for young people’s rights; in particular to access to formal justice and due process. At present, although safeguarders can be appointed to protect the interests of the child in the children’s hearings system, they do not take instruction from the child and there is no right of legal representation at public expense. Recent research shows that some panel members and professionals believe that there should be a right to legal representation and that legal aid should be available for parents and young people at hearings whilst others are against such a development<sup>11</sup>. The Report of the Advisory Committee on Youth Crime notes that those aged 14 – 18 years “should be represented and there should be a clear emphasis on due process.”<sup>12</sup>

128. The conception of children’s rights inherent in the hearings system is grounded on their welfare needs and includes the right to be heard, to be involved in the decision-making process, and to be treated with decency and respect. Concern with the legal rights of young people is based on their access to formal justice; a concern that has contributed to a focus on individual responsibility for offending and a tendency for crime control strategies to concentrate on personal accountability for the offence. And, while the children’s hearings system does not, in principle, differentiate between young offenders and other young people in need of care and protection and continues to exclude overtly punitive disposals<sup>13</sup>, it is possible that a ‘twin-track’ approach could develop, where the needs of younger first time or minor offenders are paramount but where the deeds of persistent and older offenders take priority. Such a development would be in the wrong direction. We welcome the additional resources which are being provided for the hearings system to deal with the more persistent offenders and believe that while it is clearly necessary to address the deeds of these offenders, needs should remain the paramount focus.

129. Research on persistent young offenders has consistently demonstrated the disproportionate extent of disadvantage experienced by these young people and their frequent victimisation at the hands of adults. We welcome the prominence given to the rights of children and young people through the incorporation of the United Nations Convention on the Rights of the Child and the European Convention on Human Rights into Scots law and do not under-rate the importance of public protection and legal rights. Nevertheless, policies which focus solely on individual responsibility and individual justice cannot have a significant impact on preventing and reducing re-offending. Given that the main factors associated with criminality are rooted in social and economic inequalities, an over-emphasis on formal justice and an under-emphasis on social justice obscure not only the social and economic realities which many children and young people experience but also the most effective ways of giving excluded young people a chance to live a decent and law-abiding life within society.

## **Young people and the criminal justice system**

130. Until the ‘bridging system’ proposed by the Advisory Committee on Youth Crime begins to have effect it is clear that, as at present, large numbers of young people between 16 and 21 will continue to appear in the adult justice system. Thus in 1998<sup>14</sup> the peak age for a criminal conviction remained at 18 years; 8 per cent of 18 year old males in the Scottish population had a charge proved against them for a crime, simple assault or breach of the peace<sup>15</sup> at least once. The total numbers of 16 and 17 year old males with a charge proved against them have fallen since 1988; by two fifths and one fifth respectively.

131. This pattern is due in part to a reduction of 16-17 year old males in the population and in part to an increase in the use diversion from court proceedings, particularly for less serious offences. For young women the trend has been different: while just over one per cent of 18 year old females had a charge proved against them in 1998, the number of females aged between 17 and 19 who had a charge proved per 1,000 population generally increased between 1988 and 1998<sup>16</sup>. And both young males and females aged 16 and 17 have a high risk of custody once they enter the adult justice system.

# Sentencing

132. The pattern of punishments imposed on young offenders in 1998 also varied with gender, reflecting both differences in offending patterns and sentencing practices. The penalties which a court can impose on young people aged between 16 and 21 include:

- absolute discharge
- fines
- compensation orders
- supervised attendance orders
- admonitions or caution for good behaviour
- probation including intensive probation
- community service
- detention in a young offender's institution.

For those between 16-18 the court, in certain circumstances, has a further option of remitting the young person to a children's hearing for advice or disposal although in 1998, as in other years, this option was very rarely exercised.

133. For young male offenders (under 21) the most common penalty imposed was a fine, followed by custody, admonition or caution, probation, and community service, in that order. Although the most common penalty imposed on young women was also a fine, the order of frequency for other penalties was significantly different; admonition or caution was the most common penalty imposed after a fine, followed by probation, and almost equal numbers were sentenced to custody or community service. Between 1988 and 1998 probation and community service increased by 6 per cent for young men but there was a 79 per cent increase in custodial sentences for young women over the same period.

134. Young offenders in custody generally make up around 15 per cent of the daily sentenced population in Scottish prisons, though they account for almost a quarter of all directly sentenced receptions into custody. The average daily young offender sentenced prison population was 712 in 1998; a decrease of 10 per cent overall on 1997, though an increase for young women<sup>17</sup> and an increase of 3 per cent in young offender remand receptions. The number of children aged 14 or over in custody on unruly certificates decreased<sup>18</sup>. The majority of children who entered the prison system on unruly certificates in 1998, as in most earlier years, were aged 15; there were four 14 year olds, sixteen 15 year olds, and twelve 16 year olds.

135. The majority of young prisoners are not in custody for serious crimes and are generally serving short prison sentences. For most of these young people, prison will at best do nothing to prevent future offending and at worst encourage the development of criminal careers. Community sanctions are much more likely to contribute to reducing re-offending and the protection of victims and communities.

### Justice and social inclusion

136. For both young and adult offenders, crime prevention has been shown to be more effective if the focus of specific strategies is on life experiences and circumstances which lie at the root of offending behaviour. Justice interventions aimed at reducing re-offending must, therefore, address these experiences and change these circumstances. These interventions necessarily involve the wider community and are increasingly concerned with, where possible, repairing the damage done to the victims of crime and/or the community. In addition, 'justice in the community' reflects the growing policy emphasis in Scotland upon social inclusion and social justice and the recognition that crime is a social and public health issue that requires a fully integrated policy response if it is to be effectively addressed. Unfortunately, the current fragmentation of justice and social work services works against this and simply introduces more boundary problems.

137. Recent interventions in Scotland go some way towards recognising that the aims of criminal justice should be linked with broader social policy aims and to 'some conception of what should count as a good society'. Key examples of these are discussed below together with some from other countries, notably from the USA where most research evaluations of the longer term effectiveness of programmes have been conducted. It should be emphasised here that this report concentrates on crime prevention strategies which are 'truly preventive' through early intervention with potential offenders (who are, as discussed in Section 2, often victims first) and those which are focussed on working with known offenders. There are, of course, other kinds of crime prevention projects, such as those which focus on reducing the opportunities for crime, which have also been found to be effective; particularly so when part of broader community wide crime prevention initiatives. There are also new 'Communities That Care' long-term early intervention and prevention programmes in Scotland which aim to build safer communities where young people are valued, respected and encouraged to achieve their potential. All these projects, while not discussed here, have an extremely important part to play in a whole problem approach to crime reduction.

### Early Intervention

138. Most adult offenders start committing offences as young people so that 'true prevention' should start early to be of greatest benefit. Early prevention involves not only identifying young children at risk as early as possible in order to correct their behaviour before offending sets in but also changing organisational, institutional, structural and cultural arrangements which may adversely influence the socialisation of young people and increase their risk of becoming offenders<sup>19</sup>. In addition, different preventive approaches apply at different stages in the social development of children and young people; for example, different family-based strategies apply to families with young children as opposed to families with teenagers.

139. The main forms of early intervention which have been particularly effective in preventing crime are:

- preventing teenage pregnancy,
- the provision of pre and post natal services,
- providing education and guidance for parenthood,
- providing pre-school education for children of disadvantaged parents together with support for families, and
- supporting families to avoid the admission of a child into care.

Most of these forms of **family intervention strategies** do not explicitly aim to reduce criminality but they all target key risk factors associated with offending and successful interventions tend to be those which target more than one risk factor and have multiple positive outcomes<sup>20</sup>.

140. Of the range of early intervention strategies, those which provide pre-school education for the children of disadvantaged parents have been shown to be particularly effective. The 'Michigan Perry Pre School Project' (USA), is the best known and one of the most cost effective early intervention inner-city crime and drug prevention strategies developed<sup>21</sup>. Twenty three years after completion, the programme had reduced the number of chronic offenders by 80 per cent. In addition, those children who attended the pre-school programme performed better in school and adult education, were more likely to secure employment, had much lower teenage pregnancy rates (about half) and fewer mental health, alcohol and drug problems. A cost-benefit analysis showed that the project cost around \$5,000 per child per year and that for every \$1 invested, \$6 was saved in future public expenditure<sup>22</sup>. All of these positive outcomes appear to be interrelated; that is, the success of pre-school seems to be not only early intervention, but also 'multiple solutions to multiple problems'.

141. The main characteristics of effective pre-school programmes, in this country and elsewhere, are :
- well qualified staff with special training in early childhood development, including an emphasis on the ability to change to meet the needs of children and their families as they become apparent,
  - child development based curriculum, with clearly stated goals allowing children to plan their own activities; these goals should include the encouragement of independence, the development of self esteem and the teaching of problem-solving and task persistence skills,
  - careful support, management and evaluation of the curriculum,
  - high teacher : pupil ratios (no more than 1:8), small classes (around 16 pupils) and preferably a two year minimum involvement for each child,
  - close collaboration of teachers with parents and the community, including close involvement at the programme design stage, and
  - integration with other local services and resources, particularly health, housing, education, social welfare and employment<sup>1 23</sup>.

142. Overall, and specifically in relation to reducing the risks of young people's involvement in crime, drug misuse, and other antisocial behaviour, evaluative research on early intervention and family support suggests that the most promising techniques are strategies which include:

- intensive home visiting by health professionals during pregnancy and infancy,
- education in parenting,
- high quality pre-school education, and
- training children to 'stop and think'.

143. A range of current initiatives throughout the UK are based on these findings and, while there is little hard evidence yet to demonstrate the impact of early intervention on later offending, there is evidence that initiatives such as 'Home Start,' which aims to support families with pre-school children, have had an impact on the risk factors known to be associated with anti-social behaviour and offending, such as child abuse and neglect and early behavioural problems at home and in school<sup>1 24</sup>.

144. In Scotland, the evaluation of the 'Strathclyde Community Nursery Initiative', which provided pre-school activities for under 5's and support for families, found that community nurseries successfully promoted children's development and targeted provision at the problems of deprivation; helped many children to overcome anti-social behaviour; made a significant contribution to preventing children from being taken into care; and helped parents to cope better with children<sup>1 25</sup>. In short, improvements were made in relation to many of the life experiences which put young people at risk of offending.

## Schools

145. School based strategies which have been found to have a positive effect on risk factors known to be associated with anti-social behaviour and offending, such as school failure, bullying and persistent non-attendance at school, are those based on the '**whole school' approach** originally developed in Norway. This approach concentrates on changing the organisation and 'ethos' of the school and, in particular, emphasises developing anti-bullying programmes, promoting good pupil-teacher relations to providing a sense of achievement for all pupils, applying clear and simple rules consistently and managing conflicts constructively.

146. For example, the 'Scottish Schools Anti-Bullying Initiative' set up in 1993 has encouraged the development of an extensive range of initiatives and the impact of anti-bullying initiatives on crime has been fully evaluated in relation to the 'Anti-Bullying Initiative, Norway'. The project reduced the prevalence of bullying by 50 per cent over 2 years and also decreased rates in theft, vandalism and truancy<sup>1 26</sup>.

147. The main factors which help to effect positive organisational change in schools include:

- the attitudes of school heads and staff, especially the willingness to change,
- the policies of public education authorities,
- the capacity of teachers to work together as teams,
- direct involvement of staff, pupils and parents,
- the ability to achieve the optimum balance between stability and change, and
- setting and maintaining realistic expectations<sup>1 27</sup>.

148. Close links between families and schools can reduce aggressive behaviour. For example, 'Lift' (Linking Interests of Families and Teachers), based in Oregon, USA, established with the explicit aim of preventing conduct disorders, has been a particularly influential programme. Other programmes, such as the truancy prevention scheme set up in Grampian Region in 1991, focus on the prevention of truancy as a risk factor associated with offending. Positive results in that scheme included a

reduction in the level of truancy, enhanced self-esteem and improved learning for the children - all risk factors associated with offending. The Grampian scheme, which aimed to detect and deal with truancy as early as possible, starting in primary school, involved counselling with parents to increase awareness of their role in helping the child to benefit from school, and work with children to develop social skills<sup>128</sup>.

149. The Scottish Executive's early intervention programme, which is supporting a range of projects to help children at the earliest stages of primary school who have difficulties in basic skills, aims to promote 'parents as partners' through the development of close home-school links and other approaches to ensure that parents can play a full role in the early stages of their children's education. This programme, together with the development of new community schools based on 'the inclusive school' concept which stresses the need for much closer working together between the school, other agencies, parents and the community, has the potential to have a significant impact on risk factors known to be associated with anti-social behaviour and offending as has the target to reduce school exclusions by one third by 2002. In addition, detached youth workers have been found to have a key role to play in the reduction of both truancy and school exclusions – both of which strong associations with offending.

## Responses to known offenders

150. Some interventions by justice systems have been shown to have a positive effect on reducing re-offending amongst known young offenders. Numerous research evaluations demonstrate that successful intervention programmes can significantly reduce re-offending if they are based on what is known as 'what works' principles<sup>129</sup>. Most of the research evaluations on longer term effectiveness have been conducted in other jurisdictions, notably the USA, where the juvenile and criminal justice systems take a different form from the Scottish systems. However, the basic principles underpinning effective programmes are the same regardless of context. 'What works' principles are generally applicable and they have been shown to work in a range of projects in Scotland.

151. Briefly, the most effective programmes are likely to be those which:

- are community based and provide opportunities for community reintegration,
- target intensive services on offenders with a higher risk of re-offending (the risk principle),
- address problems and needs associated with offending (the need principle);
- match the style of the approach adopted to the nature of offending (the responsivity principle),
- use a variety of methods, are skills oriented and employ a cognitive behavioural approach which addresses thoughts, attitudes, feelings and behaviour,
- deliver intense treatment over at least six months (high dosage),
- ensure that aims are linked to the methods used, that adequate resources are available and that staff deliver the intended services in the intended manner (programme integrity), and
- are employment related.

152. In Scotland, these 'what works' principles informed the development of the 'National Objectives and Standards for Social Work Services in the Criminal Justice System'<sup>130</sup> and continue to provide the basis for ongoing practice with and services for offenders. Before outlining some of the effective programmes currently on the ground in Scotland, it is important to emphasise that the 'what works' principles have largely been derived on the basis of meta-analytic<sup>131</sup> studies of both 'demonstration'<sup>132</sup> and 'practical programs' which conclusively show that programmes and projects with a rehabilitative orientation can significantly reduce offending behaviour.

153. Programmes require to be carefully designed and implemented to provide those elements shown to be effective and to avoid those shown to be ineffective in reducing recidivism. If they are well designed, optimal combinations of programme elements have the capability to reduce recidivism by 40-50 percent and the programme elements required for such impact do not entail exceptional efforts or costs. High impact programmes involve relatively straightforward application of selected types of intervention (inter-personal skill training, behavioural programs, multiple services) that are fully implemented by appropriate staff over periods of at least six months<sup>133</sup>.

154. The programme elements which have been found to be effective in reducing recidivism also produce other positive outcomes. When considering the impact of interventions with offenders it is therefore important to assess effectiveness in terms of both the extent to which people are convicted of further offences and the nature and significance of the re-offending<sup>134</sup>. The examples described in Annex 3 – of interventions with young and adult offenders in Scotland – show that there can be a range of positive outcomes including a reduction in re-offending and/or a reduction in the seriousness of re-offending.

155. The projects mentioned in Annex 3 by no means cover all the positive work presently undertaken in Scotland<sup>135</sup>. They represent key examples of that work and, while some have not been on the ground sufficiently long to permit rigorous long term evaluation, they have been selected because the approaches used are based on ‘what works’ principles, because early outcomes are promising, and because the projects provide lessons particularly relevant to the development of future policy and practice in relation to reducing re-offending by young and adult offenders. The examples include mediation and reparation in the children’s hearings system, projects for persistent young offenders at the interface between the children’s hearings system and the criminal justice system, intensive probation projects aimed at the diversion of young offenders from custody, programmes for young offenders in custody, diversions from prosecution for adult offenders based on mediation and reparation, probation programmes aimed at the diversion of adult offenders from custody, and programmes for adult offenders in custody.

156. Realistically, prison can do little to change the reasons behind most prisoners’ offending, nor can it control the circumstances into which a person is released. For example, drug treatment programmes may be of some benefit, but they cannot change the fact that a person is likely to return to the same locality, the same friends, and the same domestic and social pressures which may have contributed to the drug use in the first place. **Throughcare**, such as contact with counsellors and drug agencies outside may be of assistance for those prisoners who choose to pursue such help after release, but again these agencies are limited in their ability to change a person’s social circumstances. Nevertheless, effective throughcare programmes can make a significant difference and we believe that there is an urgent need to develop further existing throughcare provision and to evaluate a few key model projects.

157. Used only as a sentence of last resort, imprisonment provides a means of removing the most serious offenders from society and, in so doing, provides the most complete protection from further offences. However, the exclusion from society of large numbers of less serious offenders is extremely expensive in economic and human terms, unnecessary in terms of protecting the public, and, at best, no more effective than community penalties in terms of punishment, deterrence and rehabilitation and, at worst, considerably less so<sup>136</sup>.

158. Of all possible interventions in working towards safe and just communities, prison is by far the most expensive and unequivocally the least effective. By definition, custody excludes offenders from society, at best for the length of their sentence and at worst for years subsequent to their release. Moreover, research has consistently demonstrated that penal custody:

- rather than reintegrating people into the communities where they must learn to live, results in increased alienation and greater risk of further offending. It leads to broken links with family, friends, education, work and leisure,
- neither prevents re-offending nor acts as an individual deterrent. For example, a straightforward look at reconviction favours community penalties over custody; within three years of sentence 79 per cent of people sentenced to prison re-offend, compared to 59 per cent of those sentenced to community service and 49 per cent of those who received a fine<sup>137</sup>,
- is of dubious value as a general deterrent since custody seems to be a fairly remote concept for most people. Paradoxically, young people with friends who have been in custody are themselves most likely to follow suit,
- may make less serious young offenders more dangerous on their return to society. While prisons provide society with immediate ‘protection’ from the offender, the majority of offenders pose no serious risks to the community,
- does not permit offenders to make restitution or reparation to either the victim or the wider community, and
- diverts resources from community based measures of social protection which are more successful at preventing or reducing re-offending.

We therefore believe that imprisonment should only be used to protect the public from the most serious offenders and that personal change programmes should be compulsory for such prisoners so that they are provided with the opportunity to lead crime-free lives on their return to the community.

## Crime prevention and the community

159. The focus in this report has been on what is often referred to as ‘social’ as opposed to either ‘situational’ or ‘community’ crime prevention. Typically, situational crime prevention strategies involve measures directed at specific forms of crime which involve the management, design or manipulation of the immediate environment in which these crimes occur in as systematic and permanent a way as possible, so as to reduce the opportunities for committing these crimes<sup>138</sup>. Situational measures include those which increase the effort of offending, increase the risks of offending and reduce the rewards of offending<sup>139</sup>. Community crime prevention encompasses both social and situational measures; that is, it aims to change the circumstances and life experiences which predispose individuals towards committing offences as well as reducing opportunities for doing so within a community framework.

160. Community crime prevention includes measures which focus on changing the social, economic and other demographic conditions which are believed to create and sustain crime in communities, including the development and strengthening of community institutions as well as measures which emphasise the need to involve members of communities in reducing opportunities for committing offences<sup>140</sup>. While the idea that the 'community' should be the focus of crime prevention measures has been around for some time, the specific impetus for the development of a wide range of community centred prevention strategies during the 1980s was, in an important way, fuelled by crime survey findings on victimisation patterns and trends and concentrations of victimisation in certain areas and on certain groups of people. For example, national and local surveys have consistently shown that people living in certain areas, especially inner city areas and poorer council housing estates, experience both street crime and household victimisation disproportionately.

161. The emphasis on community crime prevention strategies emerged for two main reasons: first, an increasing awareness of the impact of the fear of crime together with a belief that such fear is having a negative effect on community life and second, an increasing awareness that many people are affected by crime either as victims, as friends or relatives of victims, as offenders or as witnesses<sup>141</sup>. This has led to a focus on the role of informal social control exercised through the community. It is, however, equally important to remember that the criminal justice system itself has a role to play in the control of crime. The challenge is how to integrate a community safety approach to crime control with formal justice without either co-opting community institutions into an extended system of repressive control or of underestimating the importance of the law in underwriting community approaches to crime prevention.

162. Thus, just as a whole problem approach to understanding the factors which put people at a high risk of offending is required so too we need to develop a similar approach to preventing crime. Calls for an integrated approach toward crime prevention – involving education, employment, family, welfare, health care, and housing – are not new. Support for a fully integrated approach has been growing in Scotland as has an interest in developing reparative disposals based on notions of 'restorative justice'.

163. In 1999 the NCH Action for Children and Apex, in partnership with Glasgow City Council, adopted a whole problem approach with reparative elements in setting up an 'Integrated Supervision Project For Those Young People Who Are Involved In Offending And Therefore At Risk Of Custody Whether Immediately Or Through Early Entry Into The Criminal Justice System'. The project aims to "offer a series of realistic programmes which together form an exciting and challenging strategy for change. At a time when the fear of crime is high on the public agenda, the project commits itself to working in partnership with others to promote safer communities". It also aims to give "a high degree of recognition to consultation with communities on a wide range of issues including community safety, social inclusion, drug and substance misuse, as well as issues around young people and offending... (and to ensure) ... that the views of the community, including victims, are reflected in its service provision"<sup>142</sup>.

164. As far as offending is concerned, the project aims to effect change and reduce offending by targeting those young people aged between 15 and 21, who live in the Glasgow City Council area, and who are most involved in offending behaviour. The second main aim is to reduce the number of young people who receive secure accommodation placements and custodial sentences through working separately with two distinct groups of young offenders heavily involved in offending - those young people aged between 15-18 and those aged between 16-21. The third stated aim is to "reduce the number of victims in local communities" and one of the main objectives which the programmes aim to deliver is an explicitly stated reparative objective - to enable offenders to "acknowledge accountability within their community and consider the possibility of making amends or making a more positive contribution"<sup>143</sup>. Moreover, 'what works' principles - risk, needs, treatment modality, responsivity, programme integrity, community re-integration - form the basis of the programme. In other words, the NCH, Apex and Glasgow City Council project plans to address youth crime at all levels and to monitor and evaluate the project so that lessons can be learned.

165. To sum up, strategies which have been shown to have a preventive effect on people's offending include, for young children, an expansion in pre-school education and family centres to provide support and practical help to isolated parents or to families under stress; for the schoolchild they include combating bullying and exclusion from school and ensuring alternative provision when exclusion has, in the last resort, to take place; and for young people neither in school or further education or training or work, strategies include making sure that the local youth service has an outreach programme that attracts the most marginalised youngsters and makes links with other forms of statutory and voluntary provision. In the latter context, research has demonstrated that, with the decline in the unskilled job market and the fact that 16 and 17 year olds are ineligible for income support, it is vital that young people are given support and access to training and employment. It is also critical, given the body of research evidence which shows the high proportion of young offenders who are themselves victimised within the family, that "safe houses" are provided as places of asylum for those young people who can no longer cope with abuse or unresolved conflict within their own family<sup>144</sup>.

## The way forward

166. Our overall conclusion is that the key to making significant reductions in the level and impact of crime lies in changing the way potential and known offenders relate to their communities, including victims, and to the wider society. These changes require the development and implementation of social and economic policies much wider than criminal and juvenile justice but the justice systems can, as part of a broader integrated social policy approach, contribute to reducing levels of crime.

167. In order to take full advantage of their potential contribution, criminal and juvenile justice interventions must help to give people the chance to make peace with, be accepted by and included within the community. For known offenders, justice interventions can promote acceptance and inclusion through processes which encourage offenders to accept responsibility for their actions, accept the need to change, express contrition and, where possible, make amends to the victim and the community. It is essential to build upon approaches to crime reduction which seek to include potential and known offenders within the community; approaches which necessarily involve the community and, where appropriate, the victim, in the process.

168. While many effective crime reduction strategies for children, young people and adults are being promoted by the Government's Social Inclusion Strategy, the whole problem approach we recommend involves developing integrated policies and practices which not only take account of the main risk factors for offending and effective ways of reducing these risks within a community but which also redistributes public spending in a way which places greater emphasis on preventive and restorative work. In particular we believe that the Parliament and Executive should make funds available to initiate action research projects designed to test the practical application of a wider range of restorative justice approaches for young and adult offenders, many of which have proved effective in other countries.

169. The 'restorative justice conference', for example, which involves a process where all parties with a stake in a particular offence come together to resolve collectively how to deal with the offence and its implications for the future, aims to restore victims, offenders and communities<sup>145</sup>. These conferences take a variety of forms; family group, community accountability and diversionary conferences. Family group conferences were pioneered in New Zealand<sup>146</sup> where there has been an 80 per cent reduction in the number of young people in care for criminal or welfare reasons since their introduction in 1989. Almost all conferences have been able to reach agreement and advise on a penalty – normally apologies, reparation or community work<sup>147</sup>.

170. The potential exists to expand existing reparation and mediation schemes and introduce other innovative restorative justice approaches at various stages of the juvenile and criminal justice processes. These approaches could be used by reporters and fiscals, the children's hearings, the courts through deferred sentences or probation orders, and as a condition of parole release. For example, Thames Valley Police piloted family group conferences for young offenders as a part of a cautioning scheme. After two years of operation, re-offending by the offenders involved was reduced dramatically to 4 per cent compared with 30 per cent of those who had simply received a caution. Restorative justice schemes were extended nationally in England and Wales through the introduction of reparation orders in the 1998 Crime and Disorder Act. In Scotland, there is considerable support for the extension of victim-offender mediation schemes in the adult justice system and the use of family group conferences in the children's hearings system for young people who offend<sup>148</sup>.

171. The wider development of restorative justice approaches is only part of the solution. Policies on the family, education, housing, health, youth and employment have profound consequences for the level of crime in communities, yet such policies seldom refer to the reduction of crime as an explicit objective. We believe that the objectives of the Executive's social inclusion policies should be extended to include an assessment of their likely impact on crime. It is important to stress here, however, that the notion of community re-integration, which is central to social inclusion, conceptions of restorative justice and the effectiveness of programmes, is by no means unproblematic, particularly in dealing with the more seriously disturbed, serious and/or persistent offenders.

172. Many of these offenders, especially young offenders, prior to their involvement with the justice system, will have experienced progressive exclusion from any meaningful community into which they could possibly be reintegrated; they have frequently been abused by adults in early life; excluded from school; and denied access to the labour market. For these young people, where no moral community exists, it is important to create one that is meaningful to them; the 'foyer' movement provides an example of an "imaginative scheme for creating new communities for the excluded young"<sup>149</sup>. Moreover, while it is possible for some offenders to effect reparation to victims, there are many who are simply not able to restore anything to victims. There can also be a tension between the objectives of involving victims and attending to offender welfare<sup>150</sup>. Victims and offenders can both be helped to recover from the effects of crime but this will often have to happen in different and separate contexts and through the state (not only offenders and victims) taking social responsibility.

## Section 7 Justice In A Human Rights Context

173. The changing constitutional and legal context brought about by devolution and the incorporation of the European Convention on Human Rights (ECHR) into Scots law will inevitably bring about change in criminal and juvenile justice processes. The potential implications of ECHR for criminal and juvenile justice are difficult to foresee but they are likely to be far reaching. Thus the Minister for Justice has announced that a paper will be issued by the Scottish Executive this autumn as part of a consultation exercise on the need for a Human Rights Commission.

174. The creation of a Commission may be an effective way to create 'rights awareness' and avoid unnecessary court cases. A Commission may also help with other issues such as the compatibility of existing practices in relation to the disclosure of information by the prosecution to the defence with the ECHR. Any substantial increase in the requirement on prosecutors to disclose material as a matter of routine would be likely to have not only significant resource implications for the prosecution service and other criminal justice departments and agencies but also the way in which justice is delivered. The ECHR therefore provides an opportunity to reconsider existing processes and priorities for criminal justice and to assess the feasibility of developing a whole problem approach.

175. The ECHR establishes a number of rights relevant to the criminal process : the right not to be subjected to torture or inhuman and degrading treatment, the presumption of innocence, the principles of legality, the presumption of liberty except for reasonable arrest or lawful detention, the right to a prompt appearance in court, the right to prepare one's defence properly, the right to trial without unreasonable delay, the principle of equality of arms, the principle of non-discrimination, and the right to privacy. The rights specified are not exhaustive and, while the ECHR does not make specific reference to the rights of victims, it will allow our courts the opportunity to develop the law to protect and inform victims as a matter of right. Articles 2 (right to life), 3 (freedom from inhuman and degrading treatment) and 8 (respect for private life) are all relevant to victims as are other declarations of the Council of Europe. However, even within the Convention and in the judgements of the European Court on Human Rights, some rights are required to have priority over others and the principled approach is not about balancing; instead certain individual rights should be regarded as absolute whilst others should only be surrendered in certain extreme circumstances.

176. How then could a principled approach be applied in the day to day decisions made by officials involved in the criminal and juvenile justice systems in Scotland? One way would be to provide some guidance in the form of rules, presumptions or guidelines but this begs the question of who should determine the priorities and policies reflected in the guidance. Another way is for accountable bodies to establish policies and priorities through the application of general principles embodied in primary legislation.

177. Undoubtedly the human rights context provides the framework within which justice for offenders, victims and communities will change. We believe that this context provides the opportunity for the Scottish Parliament and Executive to make a significant impact on reducing the level of crime and victimisation in our society. This reduction can be achieved by adopting a **whole problem approach** in making decisions about future policies on crime and the juvenile and criminal justice systems. In practical terms, and with proper recognition for the needs and rights of victims, this should involve immediate action to:

- increase rapidly the use of the most effective community sanctions presently available,
- substantially reduce the use of custody, and
- initiate action research projects designed to test the practical application of a wide range of restorative justice approaches for young and adult offenders.

## **Annex 1 : Women and Offending**

1. Probation and community service are underused for women relative to men. For example, while the introduction of national standards and 100 per cent central government funding of criminal justice social work services brought about a marked increase in the use of probation for male offenders, until recently, this development has had relatively little impact on increasing the use of probation for female offenders. Community service is also used less with female offenders than with men, partly because community service tends to be conceptualised as a 'young man's punishment' and partly because child care responsibilities are perceived as making completion of a community service order more difficult for women. Women who are given community service do appear to encounter more practical difficulties and can accommodate a more limited choice of work placement but they are just as likely as men to gain something from the experience (McIvor, G., 2000).

2. More perplexing, perhaps, than the under-use of probation and community service with women offenders, however, is how they are used. Women who receive probation orders (and community service orders) are more likely to be first offenders than men and they have, on average, fewer previous convictions than similarly sentenced men (McIvor, G., 1992; McIvor G. and Tulle-Winton, E., 1993; McIvor, G. and Barry, M., 1998). This shortening of the sentencing tariff with women offenders effectively places them at risk of attracting a custodial sentence earlier in their offending careers and it could work against achievement of current government policy of moving towards decarceration for women offenders – see The Scottish Office, 1998.

3. The model of supervision promoted by national standards is based upon an understanding of, and is intended to address the issue of, offending among young men. This 'responsibility' model may be construed by social workers and by sentencers as being less appropriate for female offenders than the earlier model of supervision aimed at addressing offenders' 'welfare'. A crude distinction between the two models of practice may, however, conceal what is likely to be a more important distinction: that between a focus on problems and issues which have some direct or indirect bearing upon an person's offending and a focus on those that do not. This said, we actually know relatively little about 'what works' with female offenders since the majority of research has focused upon men. Increasingly the emphasis is on the value of gender specific programmes as a means of ensuring that the problems which women offenders have are appropriately addressed without being imprisoned - see McIvor, 2000.

## **Annex 2 : Justifications for Imprisonment**

1. Traditionally, the justifications for imprisonment have been based on its alleged aims: retribution, incapacitation, deterrence and rehabilitation. In many public debates about crime the retributivist view that the guilty deserve to suffer often surfaces. It is seldom clear, however, what they supposedly deserve to suffer or why; nor is it clear how this aim contributes to avoiding repeat offending in the future. What is clear is that, if guilty, offenders do deserve to be made aware of the condemnation of their fellow citizens for the crime committed.

2. The full range of penal sanctions – not only imprisonment – in condemning the crime and aiming to provoke feelings of remorse in the guilty, can cause offenders to face up to and recognise their wrongdoing and desist from repetition in the future. Condemnation and remorse are, therefore, arguably not sufficient justifications for the imposition of a prison sentence. On the other hand, another traditional aim of imprisonment – incapacitation – is justified on rather different grounds; the protection of the public since a prisoner cannot directly commit offences against people outside. Potential deterrence, both in the form of specific deterrence, in which being in prison prevents a particular individual from committing further offences, and general deterrence, in which the threat of prison prevents others from committing an offence, is another key aim of imprisonment though the research on the deterrent effects of imprisonment is inconclusive. And rehabilitation – in the form of either reformation or providing opportunities for change – has, over the past few decades, perhaps been the most controversial aim, yet it is the one which, potentially at least, is likely to have the greatest long term impact on crime prevention.

3. How these aims have been put into practice is another matter; so too is their effectiveness in making an impact on reducing crime. For example, while the incapacitation of specific offenders can restrict their offending against the community at large, offending and victimisation also occur in custody. Moreover, any attempt to make a significant impact on crime levels through incapacitation would require a massive increase in the prison population and, in this country, would involve imprisoning huge numbers of offenders for fairly minor offences. For example, Tarling, (1994), calculated that the prison population would have to increase by 25 per cent in order to achieve a 1 per cent reduction in the crime rate.

4. The evidence on deterrence suggests that the severity of a particular penalty has no more effect than the extent to which people believe they will be caught and punished. In 1998, less than 30 per cent of all crimes and offences recorded by the police reached the procurator fiscal, and 37 per cent of these resulted in no action – ‘no further proceedings’. Given these figures and the fact that only 37 per cent of the crimes uncovered by the Scottish Crime Survey are ever reported to the police in the first place (MVA, 1998), the likelihood of being caught and punished, for many crimes, is very small indeed. As for sentence severity, it is clear that tougher sentences have no significant deterrent effect (Von Hirsch, Bottoms and Wikstrom, 1999). Moreover, a policy of substantial increases in sentences leads to less proportionality in sentencing and therefore to decreased fairness. In other words, if more types of offences lead to severe sanctions, the sanctions will become less meaningful because they fail to reflect adequately the relative severity of the offences.

## Annex 3 : Responses to Known Offenders

### Mediation and reparation in the children’s hearings system

1. Reporters take no further action in relation to almost 60 per cent of young people referred to them on offence grounds. Sometimes taking no further action is because reporters feel that the offender does not merit referral to a children’s hearing and there are no suitable alternative interventions available to them. **The SACRO (Fife) Young Offender Mediation Project** was established in 1996 to provide reporters with an alternative to either issuing an official warning or referring a young person to a hearing where the youth is aged between 11 and 16 and charged with committing an offence and where the reporter considers that there is sufficient evidence. The project, which is guided by its three main principles of early intervention, inclusion of a victim perspective, and voluntary reparation, targets young people who are showing signs of developing a pattern of offending behaviour and is not intended for first time offenders. Its main aims are to : raise awareness of offending behaviour; provide an opportunity for young people to ‘make amends’; and to prevent re-offending. Most referrals are dealt with rapidly and, in most cases, in three interviews; the cost is therefore very low.

2. An early evaluation (System Three, 2000) found that most of the young people referred to the project were young males aged 14 or 15 and, although the project is aimed at 11-16 year olds, some even younger children were occasionally included. The project dealt with a range of offences, most typically theft, vandalism and assault. The individual programmes included three main options: young people could undertake a task for the victim or the wider community; they could meet the victim face-to-face to discuss their offending behaviour; or they could write a letter of apology and explanation to the victim. The victim, if agreeing to take part in the project, is responsible for deciding which option the young offender should undertake. In practice, the most common disposal was for the young person to undertake a task either directly for their victim or for the wider community. In terms of effectiveness, the evaluation concludes that the project’s main strengths are early intervention, the direct focus on young people’s offending behaviour and effecting reparation through involving victims. Similar projects are being considered in many areas in Scotland.

### At the interface between the children’s hearings and criminal justice systems

3. In response, in part, to a perceived lack of appropriate community based disposals open to the children’s hearings system for dealing with young ‘persistent’ offenders repeatedly appearing before a hearing, The Scottish Office, in partnership with local authorities, the police and voluntary bodies, supported two ‘demonstration projects’ since 1995 aimed at changing the lives of offenders.

4. The **Freagarroch Project**, designed and managed by Barnardos and based at Polmont and Alloa, aims to reduce the offending behaviour of young people between the ages of 12 and 17 years whose level of offending is frequent and becoming of concern to families and/or agencies within the community

Freagarroch provides individual programmes contributing to intensive supervision packages for young people with the specific objectives of:

- addressing their offending behaviour and attitudes to crime including implications of further offending;
- raising their awareness of the impact of crime on victims and provide opportunity for the offender to make amends directly or indirectly;
- supporting arrangements for their education each week day or help them find and continue in Youth Training and employment;
- diverting them into constructive leisure pursuits; and
- supporting parents in exercising appropriate care and control of their son/daughter.

The project is producing positive outcomes in relation to the main aim of reducing offending as well as in relation to the specific objectives including reparation to victims.

5. The other project, the **CueTen Project**, designed and managed by Apex and based at Glenrothes, which works with 'persistent' young offenders aged between 14 and 16, has been evaluated (Lobley and Smith, 1999). CueTen's main aims are to:

- provide an intensive, structured and individualised programme for persistent young offenders which uses the creation and development of employment and employment related opportunities as the principal focus through which all programme activity is channelled;
- complement the local authority's child care, criminal justice and education strategies and enhance existing statutory and non-statutory provision; and
- contribute to an immediate and long-term reduction in offending behaviour by the young people it involves.

6. In discussions between Apex and social work staff it was agreed that CueTen would accept referrals of young people aged 14-16:

- who appeared before, or are at risk of appearing before, a children's hearing on grounds of persistent or escalating offending;
- for whom statutory measures have not proved satisfactory or appropriate;
- who are at risk of custody or residential care, or in order to assist in the return to either home based or foster care supervision;
- with whom the programme has been fully discussed and explained and who have agreed to meet the responsibilities of the programme; and
- who live within the community of Fife, including those in foster care.

7. The focus of the formal activity during the first half of the 26 week programme at CueTen, which the young people attended on a more or less full-time basis, was on the world of work. During the second half the focus was on implementing the individual training plans developed towards the end of the first half. The young people attended the project on a part-time basis, spending the rest of the week on work placements, at college, or, where relevant, return to school on a part-time basis. At the end of the evaluation period a total of 86 young people had spent some time at CueTen, seven of them having attended in a second group after an earlier failure to complete the programme: 55 per cent of the young people completed the first half of the programme and 40 per cent (24) completed, or virtually completed, the entire programme - these figures are not greatly out of line with what other research has found (Lobley and Smith, 1999, vi).

8. In terms of effectiveness, the most positive findings in relation to re-offending were for the group of 24 'completers' for whom a follow-up period of at least 12 months was available. The total volume of known further offences by 'completers' was only 45 per cent of their previous year's total, compared with about two thirds for the comparison group and the 'non-completers' (the group who did not finish the programme). Only four of the 'completers' were offending at a rate that suggested the development of a long term criminal career. Moreover, the evaluation suggests that those 'completers' who continued offending went on to do so less seriously and less frequently than either the 'non-completers' or the comparison group. As far as resources are concerned, CueTen "appears to have been rather more cost-effective than the mix of supervision, group-work, residential care and custody received by the comparison group."(Lobley and Smith, 1999, viii)

9. The **NCH Court And Hearing Interface Project (CHIP)**, which was set up in Edinburgh in 1995, aims to provide a community based programme which will allow young people involved in serious or repeat offending to be supervised more effectively within the children's hearings system. The project's specific objectives are to:

- provide community based programmes for young people aged 15 - 18 referred from Edinburgh, Midlothian and East Lothian;
- reduce the rate of offending of young people referred;
- work closely with supervising social workers and families where appropriate;
- establish the project as a credible alternative to the criminal justice system for young people referred, and
- be able to demonstrate qualitative and quantitative outcomes for young people who have completed successfully.

10. The project focuses on 'core' work where the level of contact varies from once to three times per week and normally for an average of 9 months. Core work, which is undertaken in individual sessions, aims to help young people look at their offending and problems directly related to offending, to support them in making changes to their behaviour. In this context, the project makes use of programmes based on a cognitive-behavioural approach developed for work in the criminal justice system.

11. Additional services are also provided where the need is identified, for example:

- liaison with or referral to, other agencies who would provide assistance with problems such as drug use, accommodation or the benefits system;
- leisure activities in small groups or with the project worker; and
- informal 'drop in' contact either at a time of difficulty or simply for a chat.

The information routinely collected by the project shows that almost all of the young offenders who sustain contact beyond the first three months either do not re-offend or reduce their offending significantly.

12. The main aims of the **NCH East Renfrewshire Children's Hearings Project**, which was established in 1998, are to:
- provide intensive, structured and individualised community based programmes for young people aged 15 -18 years which will:
    - secure a demonstrable reduction in their offending behaviour during the time of their project use; reduce the likelihood of them being placed in residential or secure accommodation; offer a relevant package for 16 - 18 year olds diverted from the criminal justice system;
  - establish a credible community based project which will use recognised and innovative methods of working with young people aged 15-18 years old and which will secure the confidence of the children's hearings system, the courts, principal reporter, the social work department and the wider public;
  - reduce offending by providing individually tailor made programmes which will meet the needs of young people by challenging offending behaviour and attitudes, confronting young offenders with the consequences of their actions and by offering realistic and achievable opportunities for change;
  - contribute to the development of good practice in work with young people by the dynamic development of the structure, content and community base of the project and by the use of effective monitoring and evaluation processes; and
  - work in partnership and enhance the work of throughcare and aftercare teams in East Renfrewshire Social Work Department.

13. The programme which the project aims to deliver is explicitly evidence based on the 'what works' principles - risk, needs, treatment modality, responsivity, programme integrity and community reintegration. It is also consistent with the system of accreditation developed by NCH Action For Children to ensure quality of delivery and performance of programmes. Young people on the project are expected to have a minimum of two contacts per week over a period of from three to six months during which they undertake a number of individual or group modules based on self and project staff assessments of need and relevance. The first 12 months of the project's operation showed some immediate positive outcomes associated with the risk of re-offending: none of the 16 young people involved in the project was in secure accommodation (though three had been at the time of referral); and seven young people who completed the programme had their supervision orders terminated.

#### **Diversion of young offenders from custody**

14. NCH Action for Children (Scotland) currently runs community based alternative to custody intensive probation projects (IPP) in Edinburgh, Dundee, Highland and Inverclyde. All of these projects target young offenders who are at risk of receiving a custodial offence due to the severity of their offence and/or their previous offending history. The 16-21 year old age group is the focus of the Edinburgh and Inverclyde intensive probation projects and the Dundee and Highland projects focus on those aged between 16-25. A groupwork programme is common to all the projects though the balance between individual and groupwork methods varies as does the level of contact and duration of programmes. While all projects maintain their own systems for ongoing monitoring and evaluation, the **NCH Inverclyde Intensive Probation Unit (IPU)** has been evaluated providing information about the short term effectiveness of this type of approach with high risk of custody offenders (Jamieson, 2000). It is not possible to comment on longer term effectiveness because the evaluation was undertaken at a very early stage in the project's development.

15. The Inverclyde IPU was established in 1994 by NCH in partnership with Strathclyde Regional Council Social Work Department and with 100 per cent funding from The Scottish Office. The IPU's main aim is to provide a credible community based disposal for young offenders aged between 16 and 21 who have a serious risk of being sentenced to a custodial disposal. The intensive probation programme practised at IPU is premised upon 'what works' principles - risk, needs, treatment modality, responsivity, programme integrity and community re-integration. From the evaluation, an IPU order involved a minimum contact of sixty hours for each young offender and an average of 18 months probation order supervision. Contact with IPU was in concentrated episodes due to the programme's use of modular group-work and the modules selected for each young person were based on self and project staff assessments of need and relevance. Core group-work modules covered tackling offending, violence and assertiveness, drugs/alcohol and offending, men/women and their relationships, employment awareness, and community and offending. These group-work modules aimed to:

- reduce and positively influence the seriousness and frequency of offending;
- encourage and assist young people to take responsibility for their actions;
- assist young people to broaden their interests and engage in alternative lawful activities; and
- link young people with community resources, particularly in relation to education, employment and leisure.

16. Over the 16 month research period, of those referred to the IPU project and assessed as suitable for programme participation, 41 per cent were sentenced to a probation order with a condition to attend the IPU, 55 per cent were sentenced to custody and three per cent were sentenced to other disposals. In terms of effectiveness, 18 months after successful completion of IPU

orders, 33 per cent of probationers had not been reconvicted. The reconviction rate for those who successfully completed IPU orders was found to be 24 per cent lower than that of offenders sentenced to custody. (Jamieson, 2000, 88).

17. In addition, the “... probationers viewed and used the IPU as a forum to access help and advice”. Moreover, participation in and successful completion of IPU orders as well as the benefits derived from participation were “undermined by problems and difficulties probationers experienced” and, while “intensive probation should, undoubtedly, be premised on addressing offending, this should not be to the exclusion of the myriad of expressed needs and problems experienced by probationers .... intensive probation should form part of a wider and more coherent strategy to address factors identified as causal in offending behaviour”. (Jamieson, 2000, 89).

### **Programmes for young offenders in custody**

18. HM Chief Inspector of Prisons, in his 1998 ‘Report On HM Young Offenders Institution Polmont’, commented that “the new regime which had been introduced in Rannoch Hall was one of the most impressive initiatives for offenders that we had seen anywhere” (HM Inspectorate of Prisons, 1998, 1.2). As the largest Young Offenders Institution in Scotland, Polmont’s main purpose is to provide secure custody for all male offenders between the ages of 16 and 21 who receive a custodial sentence, some of whom are subsequently transferred to the Institutions at Glenochil or Dumfries. The criteria for entry to Rannoch Hall are that the offender is under 18 years of age and serving a first custodial sentence of between 6 months and 4 years. There is a full daily programme of activities including participation in a range of programmes specific to an individual’s needs as well as participation in education, group meetings and one-to-one meetings with individual Personal Officers.

19. The Report by HM Chief Inspector of Prisons comments favourably on the maximum population size of 26 in Rannoch Hall which “provides an ideal opportunity for staff and YOs to build up excellent relationships which in turn, might help influence future behaviour”. Other positive features include breaking down barriers between staff and YOs and keeping families fully involved as “part of the process of helping to prevent further criminal activity.” (HM Inspectorate of Prisons, 1998, 3.37). Indeed, one of the specific recommendations in the 1998 Report is that consideration should be given to extending the YO Treatment and Education Programme in Rannoch Hall “as a model for prison education and reform”. (HM Inspectorate of Prisons, 1998, 14.7 and 6.52). An evaluation of this programme would be most valuable, particularly in light of the evidence that some custody based programmes can contribute to a reduction in re-offending (see Lipsey, 1999b).

### **‘Diversions’ from prosecution**

20. The primary purpose of **victim-offender mediation and reparation programmes** is to make right the wrong done by enabling the victim and accused to reach a resolution of the alleged or actual offence which is acceptable to both parties. Mediation and reparation are not, therefore, explicitly concerned with reducing the risk of future offending on the part of the offender nor are they explicitly concerned with desert. Mediation and reparation can operate at different points in the criminal justice process, though in Scotland they have largely been used as alternatives to prosecution. Mediation may involve a face to face meeting between the victim and the accused or a shuttle negotiation in which the mediator negotiates back and forth between the two parties.

21. Research has generally reported high levels of victim satisfaction with mediation (especially if it involves direct victim-offender meetings), high completion rates for reparation agreements and, in some cases, modest effects upon recidivism. Further, the initial results from victim/offender mediation schemes suggest that victims are more satisfied to receive direct signs of remorse such as reparation and apologies, and to know and have input to the outcome of their case (which rarely happens when cases are processed through the courts). Ongoing research into schemes has found that both victims and offenders believed such diversion schemes to be procedurally fair and to result in more victim satisfaction.

### **Diversion of adult offenders from custody**

22. Men convicted in Scotland of violence against their female partners and who might otherwise have been imprisoned, have to attend a re-education programme – the **CHANGE** programme – as a condition of a probation order. The programme involves weekly group sessions over a period of 6 to 7 months. On the basis of a quasi-experimental design, the effectiveness of the programme against other penal sanctions – prison, standard probation, fines – was assessed. At one year post-intervention, female partners of men in the re-education programme reported a much lower prevalence (occurrence of at least one incident) – 33 per cent vs 75 per cent – and frequency (5 or more incidents) – 7 per cent vs 37 per cent – of violence perpetrated by their male partners compared to female partners of men who did not receive the intervention. This translates into a 56 per cent decrease in the prevalence of violence and an 81 per cent decrease in frequency. (Dobash et al, 1996).

## **Programmes for adult offenders in custody**

23. There has been a rapid recent development of ‘personal change programmes’ in the Scottish Prison Service (SPS). These programmes are based on substantial evidence that the techniques they employ can effect changes in behaviour and attitude. Prison programmes as currently offered are of most benefit for longer-term prisoners; the options available to those serving shorter sentences are extremely limited. To allow the personal change programmes to be effective with as many prisoners as possible, ie with shorter term prisoners while the courts still sentence people to short prison terms, there must be appropriate throughcare arrangements for continuing ‘treatment’ post-release; interventions at all levels must be integrated. We await evaluation of the effectiveness of current SPS programmes with interest.

24. The only evaluation of outcomes from SPS programmes to date is David Shewan’s examination of the drug reduction programme at HMP Saughton (Edinburgh). This evaluation found benefits to oral reduction prescribing in prisons (methadone treatment) combined with interventions towards behavioural change, in that decreases were evident in levels of use and injecting, and in the range of drugs used.

## **Annex 4 : Notes**

### **Section 1**

1. A number of other organisations and individuals have also been associated with the work of the Consortium, for example, by participating in working groups. The Consortium is funded by grants from Charitable Trusts.
2. Scottish Executive, 2000a
3. Scottish Executive, 2000b
4. Scottish Executive, 2000b
5. Most of these costs are published by the Scottish Executive, 2000c. The bail supervision and reparation and mediation schemes are run by SACRO.

### **Section 2**

6. Audit Commission, 1996
7. NACRO, 1999
8. Waterhouse et al, 1999
9. Lobley and Smith, 1999, in their evaluation of the CueTen project in Fife, found that at least around 20% of their sample of persistent young offenders were known to have physical health problems.
10. NACRO, 1999
11. Utting et al, 1993; NACRO, 1995
12. Muncie, 1999
13. Utting et al, 1993. Both income distribution and the extent of relative poverty contribute significantly to family hardship and the risk of offending. The Family Resources Survey found that in 1996/97, 25% of the population of Scotland lived in households whose income was less than half the national average (the definition of relative poverty chosen by the European Community); 34% of all Scottish children and 41% of under 5s lived in households with incomes below half the UK. Waterhouse et al (1999) found that state benefit was the main source of income reported for just over half of the children’s families in their February 1995 cohort of young people referred to the Hearings System.
14. In 1998, registered unemployment in Scotland overall was 132,000 or 5.5% of the workforce, though in some areas it was 12.9%. Among young people between 18 and 24, registered unemployment was 7.25%, many of whom (4,000 out of 33,000) had been claiming benefits for over a year. (The Scottish Office, 1999, 5). Whilst unemployment amongst 16 and 17 year olds is effectively ‘hidden’, since these young people are not automatically entitled to unemployment benefit or income support and are therefore not recorded as being unemployed, it is estimated that there are at least 17,000 unemployed in this age group.
15. In Scotland, girls tend to be better qualified than boys; children’s qualifications are highly correlated with parents’ socio-economic background and parental age at leaving school; and though the proportion of school leavers in Scotland who achieve qualifications has risen steadily, ‘persistent truants’ gain few qualifications. Asquith et al, 1998.
16. In this context, the 1993 Scottish Crime Survey found a significant gender difference with 21% of girls having truanted or been suspended compared with 36% of boys – see Hammersley, 1994.
17. Lobley and Smith 1999; Jamieson, McIvor and Murray, 1999; and Waterhouse et al, 1999.
18. Graham, 1988; Rutter et al, 1979; Mortimore et al, 1988.

19. In the Scottish House Condition Survey of 1996, 25% of Scottish houses in both the public and private sectors were found to suffer from dampness and/or condensation and fewer than 10% achieved an energy rating at or above the current standard.
20. The Scottish Office, 1999, 9. In particular, while Glasgow has 12 per cent of Scotland's population, it shows high rates of social exclusion on the key indicators:
- 41 per cent of the children and families are dependent on income support
  - 30 per cent of the homeless population live there;
  - 42 per cent of the city's population live in areas of deprivation;
  - the city contains over 78 per cent of Scotland's most deprived areas;
  - unemployment runs at 19 per cent, the highest rate in Scotland;
  - 19 per cent of the Scottish population suffering from long term illness/handicap live in the city, the third highest concentration in the UK; and
  - Glasgow has 781 enumeration districts that fall within the most deprived 10 per cent of areas in Scotland; 7 times as many as in Edinburgh, over 8 times as many as in Dundee and 71 times as many as in Aberdeen.
21. MVA, 1998.
22. Jamieson, McIvor and Murray, 1999.
23. Graham and Bowling, 1995.
24. This narrowing gap is a relatively long-term historical trend found in many Western societies – see Smith, 1995.
25. Heidensohn, 1996.
26. Morris and Gelsthorpe, 1981; Hudson, 1993.
27. Campbell, 1993.
28. The Scottish Office, 1997.
29. Millham 1993, cited in Harding 1994.
30. Rutherford, 1986.
31. Miller and Plant, 1996; Ramsay and Percy, 1996.
32. Ramsay and Spiller 1997; Anderson and Frischer, 1997.
33. While cannabis remains the most widely used illegal drug and accounts for over 90% of all drugs seizures, amphetamine, LSD, ecstasy, crack and polydrug use have also been increasing amongst young people since the late 1980s. (Muncie, 1999; Parker, 1996; Parker and Measham, 1994). It is also clear from various studies including the 1996 Scottish Crime Survey that, "the upward trend in drug misuse has not yet peaked.", Anderson and Frischer, 1997, 6. The SCS found that the magnitude of the increase in drug use was similar among young men and women.
34. Her Majesty's Chief Inspector of Prisons for Scotland, 2000.
35. Jamieson, McIvor and Murray 1999.
36. Hough, 1996.
37. Scottish Executive, 2000b.
38. For example, many of the children referred for offending in February 1995 had prior referrals to the reporter on other grounds - most commonly for truancy or risks associated with offences against children (Schedule 1 offences). See Waterhouse et al, 1999.
39. Hagell and Newburn, 1994, 130.
40. For a fuller discussion of the 'normality' of much youthful deviance and research on 'persistent' young offenders see Tombs, 2000.
41. Louks, 2000.
42. Ramsbotham, 1998. These figures are based on a study of young prisoners throughout the United Kingdom.
43. Anderson et al, 1994.
44. Jamieson, McIvor and Murray, 1999.
45. MVA, 1998.
46. Morgan and Zedner, 1992.
47. Carlen, 1996, 1999.
48. Peelo et al. 1992.
49. Davis, Taylor & Bench 1995.
50. Spurgen 1998; Wortman, Battle & Lemkau, 1997.
51. Riggs and Kilpatrick, 1990.
52. Victimization risk, that is, the probability of re-victimisation, increases with each victimisation incident suffered by the victim – see Ellingworth, Farrell & Pease 1995. One event of housebreaking increases the possibility of another by a factor of four. The major share of victimisation by offenders is concentrated within a comparatively small segment of the population. Some 14% of adults experience about 70% of all crime.
53. The Scottish Crime Survey, 2000.
54. Maguire and Corbett, 1987.

## Section 3

55. MVA, 1998. See also Annex 2.

56. The Crown Office and Procurator Fiscal Service is the sole public prosecution authority in Scotland. It is now a Department of the Scottish Executive and is headed by the Lord Advocate assisted by the Solicitor General for Scotland. They are the Scottish Law Officers and are members of the Scottish Executive. Almost all prosecutions are brought by the Department 'in the public interest'; prosecutions brought by private individuals are very rare.

Procurators Fiscal have considerable autonomy in making decisions about individual cases, although the Lord Advocate determines significant matters of prosecution policy and Crown Office issues directions and guidance. The traditional position of the Lord Advocate as the independent head of the system of criminal prosecution and investigation of deaths was preserved in the Scotland Act. The Lord Advocate continues to be answerable only to Parliament and must act independently of any other person. The aim is to ensure that the administration of justice is impartial and free from all interference in order to secure the independence of the prosecution system and safeguard the liberty of the individual.

Procurators fiscal make many of the key decisions that affect how cases are processed in the criminal justice system: the decision to prosecute, on what charge or charges, by which form of procedure and the criminal court in which the case will be heard. The fundamental principle is that prosecution will proceed only where there is sufficient evidence in law and it is 'in the public interest': this standard applies both to commencing and to continuing criminal proceedings. Prosecutors exercise a high degree of discretion in making decisions about cases at all stages of proceedings.

57. For example, in 1998 the non prosecution rate was 37 per cent (Crown Office, 1999), compared with 7 per cent twenty years earlier (Moody & Tombs, 1982). Given that the prosecution of crime through the criminal courts is expensive in terms of resources, including police time and the significant demands on people who are victims and witnesses, the Stewart Committee on Alternatives to Prosecution (1980, 1983), urged fiscals to "give prime consideration to the alternatives (to prosecution) before opting for prosecution", (1983, para 2.11).

58. A total of 295,119 reports were received including sudden deaths of which 10 were homicides. To arrive at meaningful figures sudden deaths, with the exception of homicides, have been excluded. All figures are from Crown Office, 1999.

59. Duff and Burman, 1994.

60. Cooke, 1991.

61. Warner, 1992.

62. Stedward & Miller, 1989.

63. Cooke, 1991. Other research into diversions in Scotland has been largely descriptive, documenting the characteristics of cases referred to and accepted by the various programmes, the types of services provided and the views of key stakeholders towards diversion as an alternative to prosecution.

64. Barry and McIvor, 1999.

65. Of these, 993 were made in the High Court; 2,980 were made in the sheriff and jury courts; 75,628 were made by sheriffs sitting alone; 7,008 were made by in the stipendiary magistrates court in Glasgow; and 53,217 were made by lay justices in the district courts. Unless otherwise stated, the statistics in the remainder of this section are from Scottish Executive 2000c.

66. Zedner, 1997.

67. Nicholson, 1992.

68. For fuller cost information on the average cost of recouping fines and the amounts recovered see Scottish Executive, 2000c.

69. Brown, 1994. Supervised attendance orders, which are available to all sheriff and district courts, require the offender to undertake between 10 and 100 hours of specified activity supervised by the social work department, are, at present, being piloted in Dundee as an option at first sentence for 16 and 17 year olds who lack the financial means to pay a fine.

70. Hamilton and Wisniewski, 1996.

71. See Paterson and Tombs, 1998; Paterson and McIvor, 1998.

72. For example, following the introduction of national standards, offenders and supervising social workers viewed probation as having decreased the risk of re-offending in around two-thirds of cases (McIvor and Barry, 1998); lower reconviction rates among offenders who completed an intensive probation programme have been found compared with the rates of similar offenders sentenced to custody (Jamieson, 1997); and young offenders are generally positive about intensive probation programmes. The specific features of intensive probation which were highlighted included the clarity with which information was conveyed - enabling young people better to gain an insight into their behaviour - and the respect which was accorded to young people on the programme (Jamieson, McIvor and Murray, 2000).

73. Dobash et al, 1996 and section 6 of this report.

74. Loble and Smith, 2000.

75. Such diversion has been piloted successfully in Germany, Italy, and in some areas of the United States and research in the United States shows that every dollar spent on drug treatment programmes saves seven dollars during the treatment period and for the following year, largely from the resulting reduction in drug-related property crime. Drug treatment and testing orders have been piloted and evaluated in England and Wales. See Turnbull, 1999.

76. Annex 3 comments on the positive early indications from existing schemes in Scotland.

77. HM Inspectorate of Prisons for Scotland, 2000a.

78. Scottish Executive Statistical Bulletin 1999b.
79. MVA, 1999.
80. This supports HM's Inspectorate of Prisons for Scotland's approach in the thematic review, 'Punishment First – Verdict Later?', on the conditions of remand prisoners. The thematic review emphasises that “alternatives to custodial remand should always be considered first – though we recognise that credible alternatives must be available to the Courts.” (2000a, para 4, p 1).
81. McIvor and Tulle-Winton, 1993.
82. McIvor, 1992.
83. McIvor, 1992.
84. In 1998, 8,400 people were received into custody in default of a fine, compared to 12,355 receptions of people sentenced directly from court. This figure is, nevertheless significantly lower than the 10,720 receptions in default of a fine recorded in 1997 – a decrease of 22 per cent apparently due primarily to the increased use of supervised attendance orders.
85. Given the variation in the types of offender and the differential seriousness of the crimes for which they are imprisoned as well as the expense of imprisonment relative to other penal sanctions, the question of the appropriateness of and justifications for imprisonment have become increasingly important in the development of penal policy - see Annex 2.
86. Thus women are more likely than men to be convicted of failure to have a television licence, prostitution, shoplifting, fraud and social security fraud and their offending is usually of a minor and transitory nature. It is, almost always, rooted in poverty and/or drug and alcohol misuse. Financial penalties are, therefore, generally inappropriate penal sanctions for women who offend - see Annex 1.
87. It is clear that imprisonment is inappropriate in the case of many mentally disordered offenders, that is people with mental illness or learning disabilities. Yet prisons in Scotland currently hold high proportions of such prisoners. For example, a survey of prisoners admitted to HMP Barlinnie in 1998 found that 5 per cent had a psychotic illness, 21 per cent depression and 8 per cent anxiety disorders.
88. Scottish Executive, 1999b.
89. Hutton et al, 1996.
90. Guidelines emphasise basic principles of sentencing and ensure that sentencers have full information about the range of options available and their relative effectiveness. For example, New Zealand's Criminal Justice Act 1985 mandates a general limitation on the use of imprisonment. It further states a presumption of imprisonment for violent offences which merit sentences of five years or more, but a presumption of no detention for property offenders where the offence merits custody of seven years or less, except in special circumstances. In England and Wales the courts also use sentencing guidelines and an Advisory Council on Sentencing has recently been established.
91. Scottish prisons hold roughly 6,000 people on any given day in 23 different establishments (not including the remand unit at Zeist in the Netherlands). In 1999, this equated to 118 prisoners per 100,000 of the population in Scotland. While this compares to 125 in England and Wales, 729 in Russia, and 682 in the United States, equivalent figures in France, for example, were 89 per 100,000, in the Netherlands 75 per 100,000, and in Denmark (a country with the same population as Scotland) 66 per 100,000.
92. Unless otherwise stated figures come from Scottish Executive, 2000c.
93. This figure covers 'standard' orders and not those which include participation in intensive projects.
94. These costs are the same irrespective of the size of the fine.
95. Cost per person estimates are likely to be mediated by the fact that in practice staff costs are dispersed over several people rather than just one, particularly in prison. Recent research suggests that bail supervision could cost more per case, largely because, at present, most individuals supervised spend at least some time in custody on remand first. See MVA, 1999.
96. Louks & McIvor, 2000.
97. MVA, 1995.
98. Lobley and Smith, 1998.
99. Marshall, 1999.
100. Braithwaite, 1989.

## Section 4

101. Asquith and Docherty, 1999, 245.
102. Non offence grounds include that the child is:
- beyond control;
  - in moral danger;
  - lacking parental care;
  - a victim of an offence;
  - at risk;
  - living in the same household as an incest victim;

- not attending school;
- abusing solvents; or
- in the care of the local authority.

103. The number of referrals is much higher than the number of children because more than one ground or offence referral may have been alleged in relation to any particular child. This, and rounding to the first decimal point, also explains why numbers do not always add up. All statistics in this section are taken from The Scottish Children's Reporter Administration. For a fuller presentation and discussion of the statistics see Tombs, 2000.

104. Hallett et al, 1998, 39.

105. Waterhouse et al, 1999.

## Section 5

106. Waterhouse et al, 1999, 3.

107. In Scotland, the report in 1993 of the SASD Working Party on Offenders Aged 16 to 18 (SASD, 1993) recommended extending the hearings system to cover all young people up to 18. More recently, professionals and panel members expressed support for extension of the children's hearings system because of the vulnerability of those aged between 16 and 18 "and the possibility of speedy progress up the tariff in the adult system", Hallett et al, 1998, 117.

108. Scottish Executive, 2000a, 4.

109. The age of majority is 18 – see Age of Majority (Scotland) Act 1969.

110. The Children (Scotland) Act 1995, ss 16(5) and 17(5)).

111. Hallett et al, 1998.

112. Scottish Executive, 2000a, 25.

113. Hallett and Hazel, 1998.

114. The statistics on offences proved and penalties in this section are from Scottish Executive, 1999b.

115. Contraventions of the law are divided into crimes and offences, crimes generally being regarded as the more serious.

116. Apart from a dip in 1993 and 1994.

117. The statistics on young offenders in custody are from The Scottish Office, 1998a.

118. Unruly certificate arrangements apply to young people over 14 and, normally, under 16, although there is an upper age limit of 18 where the child is under a supervision requirement from a children's hearing.

## Section 6

119. Graham and Bennett, 1995.

120. Graham and Bennett, 1995; Tombs, 2000.

121. The project aimed to increase cognitive abilities and school achievement among disadvantaged children and to reduce the potential for future delinquency and criminal behaviour. Children of 3 years old were provided with high quality pre-school education for 2 years, home visits by a child's teacher to promote parental involvement, and monthly group meetings for parents to exchange views and support each other's efforts in child rearing.

122. Schweinhart, 1987.

123. Graham and Bennett, 1995; Canadian Council on Children and Youth, 1989; Schweinhart, 1987.

124. Utting, 1996.

125. Wilkinson, 1993, cited in Asquith et al, 1998.

126. Key components of this programme included: school personnel who received a 32 page booklet describing bully/victim problems and how to intervene effectively; parents who received information and advice; the public who were provided with access to a 25 minute video on bullying and its impact; and periodic questionnaires which were administered to school children to identify the nature and extent of bully/victim problems – see Olweus, 1991.

127. Graham and Bennett, 1995.

128. Asquith et al, 1998.

129. Palmer, 1994; McGuire, 1995; Lipsey, 1995; Loeber and Farrington, 1998.

130. The Scottish Office Social Work Services Group, 1991.

131. Meta-analysis is a quantitative technique for coding, analysing and summarising research evidence. It is a way of combining findings from a range of research evaluations which may vary in detail, such as the use of different outcome measures and sample sizes, and re-analysing their results. The method permits measurement of the effects of different programmes, comparison of different approaches to working with young offenders and an assessment of their relative effectiveness.

132. 'Practical programs' are distinguished from 'demonstration programs' - the former are those which are operated on a routine basis by youth justice service agencies and the latter are those set up to test innovative intervention concepts – Lipsey, 1999a, 639. 'Demonstration programs' typically show much higher effects on reducing recidivism - almost double in many cases.
133. Lipsey, 1999b, 163.
134. Tombs and Paterson, 1998.
135. See Asquith et al, 1998 for a full review of policies, projects and programmes and Tombs, 2000, for a fuller discussion of the examples referred to in this report.
136. McIvor, 1992; Moxon, 1998.
137. The Scottish Office, 1998a.
138. Hough and Roberts, 1998.
139. Clarke, 1992.
140. Lurigio and Rosenbaum, 1986.
141. Hope and Shaw, 1988.
142. NCH, Apex and Glasgow City Council, 1999, 5.
143. NCH, Apex and Glasgow City Council, 1999, 8.
144. Harding, 1994.
145. See, for example, Braithwaite, 1999; Marshall, 1999.
146. See Hudson et al, 1996.
147. NACRO, 1997.
148. Paterson and McIvor, 1999. Different conferencing models can and do have different objectives. These can include: redressing harm to victims; managing the offender in the community; and encouraging community involvement in the criminal justice process. There is, however, a risk that in attempting to achieve simultaneously a range of objectives which may be incompatible, conferencing fails adequately to deliver on any one. (McIvor, 2000) Thus Marshall (1999) notes that, while conferencing combines victim restoration, offender reintegration, individual participation and community involvement, and might therefore be seen as embodying all aspects of restorative justice, in the majority of cases, it may be neither practical nor desirable to meet all these ends at the same time. Of particular importance is the degree to which offenders feel involved in the restorative justice conference. Thus, a recent analysis of re-conviction rates following juvenile justice conferencing in New Zealand reveals that offenders who feel involved in a family group conference are less likely to be reconvicted than are those who find it to be a negative and shaming experience (Morris and Maxwell, 1999).
149. Carlen, 1999, 19.
150. Paterson and McIvor, 1999.

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