

# Scotland's criminal justice system

How crimes are dealt with by the police and COPFS. Plus, find out what happens at court and after a criminal verdict.

Last updated 22 Jul 2024

## Overview

When a crime is reported, the police or other reporting agency carry out an initial investigation. If there is enough evidence, then a report may be submitted to COPFS for consideration.

A procurator fiscal (prosecution lawyer working for COPFS), will assess the evidence. If there is enough evidence the procurator fiscal will decide what action to take, if any, in the public interest.

If the procurator fiscal decides that court proceedings are appropriate, they will decide what court should deal with the case.

At court, if a case proceeds to trial, a Judge, Sheriff, Justice of the Peace or a jury (depending on which court deals with the case) will hear all the evidence and will reach a verdict about whether an accused person is guilty or not. If an accused person is found guilty, the Judge, Sheriff or Justice of the Peace will make a decision about sentence.

## Reporting and investigation of a crime

If you are the victim of a crime, or if you have witnessed a crime, you should report the matter to [Police Scotland](#).

Information on how to report a crime to Police Scotland and the investigation of a crime once it's reported can be found on Police Scotland's website.

As a victim or witness, you have the right to [ask for information about your case](#). There are organisations that can give you support if you need it. View details of [support organisations](#).

## Bail and remand at court

If court proceedings are initiated against an accused and he or she appears in court, the court will decide whether the accused should be released on bail, remanded in custody or "ordained" or instructed by the court to attend at future court hearings. Those accused of a crime are entitled to apply for bail and the prosecutor is entitled to advise the court if bail is opposed or not.

The decision to grant bail or remand the accused in custody is for the court.

## If you're worried about an accused being released on bail

[Contact COPFS](#), your police liaison or your lawyer if you have any concerns about an accused being released on bail.

In some cases, an accused may be granted bail with special conditions, for example, a condition not to approach or contact a particular witness.

## Decisions by the prosecutor in criminal cases

When COPFS receives a report about a crime from the police or other reporting agency, before deciding what action to take, if any, in the public interest, the prosecutor will decide if there is enough evidence.

There must be evidence from at least two separate sources (corroboration) to establish that a) a crime known to the law of Scotland was committed and b) the accused was the perpetrator:

Evidence may come from, for example:

- eye-witness evidence
- fingerprint/DNA evidence
- CCTV evidence

In some cases, the prosecutor may instruct the police to carry out further investigations before making a decision.

Decisions on how to proceed in a case are for the prosecutor. In reaching that decision, Prosecutors will consider all the individual facts and circumstances of a case. The criteria for decision making and the range of options available to prosecutors are set out in the published Prosecution Code.

Actions available to the prosecutor include:

- Prosecution in court
- A Warning
- A fiscal fines
- A conditional offer of Fixed Penalty (for certain Road Traffic offences)
- A compensation offers
- Fiscal Work Orders
- Diversion from prosecution
- Referral to the Scottish Children's Reporter Administration
- No proceedings
- No proceedings meantime

## **Alternatives to prosecution**

The police can issue Fixed Penalties or warnings for certain offences without referring the case to COPFS.

Where the prosecutor decides that an alternative to prosecution is in the public interest, the accused might be given:

- a warning by the procurator fiscal
- a fiscal fine of up to £500
- a compensation order of up to £5,000
- a fiscal work order - this means the accused is offered the chance to carry out between 10 and 50 hours of unpaid work as an alternative to court proceedings
- a road traffic fixed penalty
- a diversion from prosecution - diversion is a process by which prosecutors are able to refer a case to social work or other identified agency as a means of addressing the underlying causes of offending when this is deemed the most appropriate course of action. Diversion from prosecution may be offered where the accused has an identifiable need and where it is in the public interest. Further information on the use of diversion can be found in the National Guidelines on Diversion, published on the Community Justice Scotland website.<sup>1</sup>

Alternatives to prosecution may be used where the Procurator Fiscal considers that it is in the public interest to take action, but prosecution may not be the most appropriate course of action.

This way, the accused accepts responsibility for the crime but will not have a formal criminal conviction recorded against their name, witnesses are not required to attend court to give evidence, and courts are freed up to deal with more serious cases

<sup>1</sup>As at 14 July 2023 the circumstances in which diversion may be selected as an appropriate outcome in the public interest are under review by COPFS.

## **If a case goes to court**

## Preparing a case for court

Preparing a case for court can take time. It's important for everyone involved in the case that it has been properly prepared and all the information is accurate.

### Witness interviews

Sometimes COPFS needs to interview witnesses about the case, to help prosecutors prepare for a court case.

Defence lawyers may request to interview witnesses too.

The statement taken at this interview is called the 'precognition statement'.

Find out more about precognition statements.

### If a case proceeds to court and you're called as a witness

If you are cited to give evidence in a criminal court case as a witness, you'll get an official letter - called a 'citation' - by either:

- COPFS
- a defence lawyer - the lawyer who represents the accused person

Find out about being a witness at court.

## Pleading

At the start of a criminal case the person accused of the crime will be asked how they intend to plead to the charges they face. The accused, usually through their defence lawyer, will either:

- admit the charge and plead guilty
- deny the charge and plead not guilty
- continue the charge without plea for a limited period of time for further investigations

If the accused pleads not guilty, a date will be fixed for a trial when evidence in the case will be heard.

## Where cases take place

### The High Court of Justiciary

The High Court of Justiciary hears the most serious cases, including all cases of rape and murder.

There are no limits on the length of prison sentence or the fine the High Court can impose.

Trials are heard by a judge and jury. The judge decides the sentence.

The High Court also deals with all criminal appeal cases.

### Sheriff courts

Sheriff courts deal with other criminal cases, which are heard:

- by a sheriff and a jury - these are called solemn proceedings
- only by a sheriff - these are called summary proceedings

In a solemn case, the court can sentence an accused person up to 5 years in prison or impose a fine of any amount.

In a summary case, the court can sentence an accused person up to 12 months in prison or a maximum fine of £10,000.

Examples of the types of cases that the Sheriff court might deal with include:

- assaults
- driving under the influence of drink or drugs
- breaches of the peace

## Justice of the peace courts

Justice of the peace courts deal with less serious offences, including more minor road traffic offences, which can't be dealt with by the police or prosecutor by a fixed penalty.

The judge is called a justice of the peace. There is not a jury.

The maximum sentence a JP can impose is a fine of £2,500 or send someone to prison for up to 60 days.

Find more information about courts on the [Scottish Courts and Tribunals Service](#) website.

## Outcomes of a case

If an accused pleads not guilty and a trial is fixed, the Judge, Sheriff, Justice of the Peace or jury must reach their verdict (reach a decision) after all the evidence has been heard:

In a criminal court case the possible verdicts are:

### Guilty

This means that there was enough evidence to prove 'beyond reasonable doubt' that the crime took place and the accused person committed the crime or part of the crime.

If the accused is found guilty after trial or pleads guilty, the Judge, Sheriff or Justice of the Peace will decide on the appropriate sentence for the accused.

Sometimes sentencing does not happen immediately. Sometimes the case is adjourned, otherwise known as sentence deferred, to allow the Judge, Sheriff or Justice of the Peace to get more information to assist with their sentencing decision. This could be more information about the crime or information about the accused.

### Not proven or not guilty

Both these verdicts have the same effect and mean the accused is acquitted of the charge.

### Finding out the verdict

If you were not at the court case, as a victim or witness you can [ask for information about what happens with the case at court](#).

## Sentencing

### What happens after a guilty verdict

After an accused has plead guilty or been found guilty after trial, the Judge, Sheriff or Justice of the Peace has to decide what sentence to imposed on the accused.

Sentencing is a matter for the court. Further information on the sentencing options available to the court is available on the [mygov.scot website](#)

If you are the victim of a crime in solemn proceedings, you may be entitled to make a [victim statement](#) for the Judge or Sheriff to consider before sentencing the accused.

Find out more about what happens [after the verdict](#).