

REPORT

To: SOCIAL WORK (OPERATIONS AND SERVICES) SUB COMMITTEE		Subject: THE SENTENCING COMMISSION FOR SCOTLAND: REPORT ON THE USE OF BAIL AND REMAND
From: DIRECTOR OF SOCIAL WORK		
Date: 4 OCTOBER 2005	Ref: JS/LMcK	

1. **Purpose of Report/Introduction**

To advise committee of the content and recommendations of the Sentencing Commission for Scotland Report on the Use of Bail and Remand.

2. **Background**

2.1. The Sentencing Commission for Scotland is an independent judicially led body, which was set up by the Scottish Executive.

2.2. The Commission was launched in November 2003 with a remit to review and make recommendations to the Scottish Executive on a number of topics, including the:

- use of bail and remand
- arrangements for early release from prison and supervision of prisoners on their release
- basis on which fines are determined
- effectiveness of sentences in reducing re-offending
- scope to improve consistency of sentencing.

2.3. The members of the Sentencing Commission are appointed by Scottish Ministers. The Rt. Hon. Lord MacLean was invited to chair the Commission and The Director of Social Work for North Lanarkshire Council is a member of the Sentencing Commission, invited in a personal capacity.

2.4. The Sentencing Commission was asked by the Scottish Executive to consider the use of bail and remand as a priority.

2.5. The Commission published a consultation paper on the use of bail and remand on 28th June 2004 and the consultation period ended on 30th September 2004.

2.6. The Sentencing Commission for Scotland Report on the Use of Bail and Remand sets out the findings and recommendations following the consultation process.

3. Proposals / Considerations

- 3.1. The Report provides an extensive and detailed overview on the use of bail and remand over nine sections which explore the following areas :
- Introduction
 - The Extent of the problem
 - General issues of Bail and Remand
 - Role of the Police and Procurator Fiscal
 - Court decisions – Pre-trial and During Bail
 - Reviews and Appeals in respect of Pre-trial decision
 - Breach of Bail
 - Bail Post-Conviction
 - Recommendations
- 3.2. The Report also contains three Annexes which contain the consultation paper, a copy of the consultation distribution list and an extensive analysis report on the consultation responses by Linda Nicholson of the Research Shop (a firm specialising in public sector social research).
- 3.3. The report notes disappointment that just over 10% of those to whom the consultation paper was issued in fact replied. North Lanarkshire Council was one of the respondents.
- 3.4. The report highlights that several overarching themes emerged from the consultation process. These included:
- the perception that bail is not respected by alleged offenders and that the system appears to be too lenient;
 - the view that bail and remand issues cannot be addressed in isolation from the whole criminal justice system;
 - a concern that the number of people remanded in custody should not increase as a result of any changes made.
- 3.5. The main objectives of the review were to seek to achieve:
- A reduction in offending by those who are granted bail
 - A reduction in the number of individuals released on bail who fail to appear in Court when required to do so, or otherwise breach the conditions of bail
 - A reduction in the remand population without compromising the safety of the public.
- 3.6. The report makes a total of 38 recommendations for change which the Commission believes would bring about improvements in the way the system currently works. A summary is attached to this report as an appendix. The report will be considered by the Scottish Executive.
- 3.7. This is a particularly complex area of the justice system as a balance is required between protecting the rights of the accused to be treated fairly whilst recognising the interests of public safety.
- 3.8. The recommendations made within the report should make a positive improvement within the areas of bail and remand

4. Financial/Personnel/Legal/Policy Implications

- 4.1 At present there are no financial or personnel implications for the council. However, if and when the recommendations are implemented, there may be implications for the Council.

5. Recommendation

- 5.1. Committee is asked to
- i. note the contents of the Sentencing Commission for Scotland Report on the Use of Bail and Remand
 - ii. request the Director of Social Work to provide a further report to Committee once the recommendations have been considered by the Scottish Executive.



Jim Dickie
Director of Social Work
13 September, 2005

NOTE: (A copy of the report has been placed in the Member's Library).

For further information on this report please contact Susan Taylor, Manager Children Families and Justice (Tel: 01698 332032) or Jim Scullion, Service Manager, Justice (Tel: 01698 332040)

Appendix 1

The Sentencing Committee for Scotland Report on the Use of Bail and Remand (2005)

Summary of Recommendations

References in brackets after each recommendation relate to the paragraph of the report which records the recommendation in more detail

1. We recommend that the Scottish Executive should gather detailed evidence to enable a decision to be made about expansion of the arrangements for bail supervision and if the evidence supports it, bail supervision arrangements should be made readily available across the country. (3.9)
2. We recommend that where the procurator fiscal opposes the grant of bail, the court should be obliged to consider whether the accused would be suitable for bail subject to supervision before it makes any decision to remand the accused in custody. (3.9)
3. We recommend that if the outcome of piloting electronic monitoring of those on bail is positive, it should be extended across all courts as soon as reasonably practicable. (3.12)
4. We recommend that a court should be able to order an electronic monitoring condition in any case where it considers that this would improve the prospects of an accused person not offending while on bail or of appearing in court when required to do so and should not be restricted only to those who would otherwise be remanded in custody. (3.12)
5. We recommend that practical steps are taken to remind accused persons of court appearance times and dates. (3.13)
6. We recommend that the current form of bail order is redesigned and that it specifies the date of the accused person's next court appearance in summary proceedings. (3.14)
7. We recommend that to improve public awareness of decision making, reasons should always be given for the decision on whether to bail or remand an accused person and that steps are taken to ensure that those reasons are kept separate to ensure that, in summary cases that proceed to trial, they do not come to the attention of the trial sheriff or magistrate. (3.15)
8. We recommend that consideration should be given by sheriffs principal to devising court programming procedures to speed up the court process in the custody courts and to limit the number of bail applications a sheriff or magistrate is expected to consider in a single sitting. (3.16)
9. We recommend that the current factors to which a court must have regard in deciding whether or not to grant an accused bail, should be included in statute. (3.17)
10. We recommend that a requirement on an accused person to notify the court of any change of residential address should be added to the list of the standard conditions of bail. (3.20)
11. We recommend that the current bail condition prohibiting contact with a named individual(s) is modified to include, where appropriate a prohibition on the accused from visiting a particular area, as opposed to a particular address. (3.20)

12. We recommend that the customary practice of remanding in custody those accused persons of no fixed abode should cease and that every case should be considered on its own facts and circumstances. (3.21)
13. We recommend that, if the Scottish Executive is minded to accept the recommendation of the McInness Committee (no. 44) relating to the release of an accused on an undertaking to appear at a particular court on a particular date in a particular time, when the police liberate an accused on such an undertaking, they should be given the power to impose both standard and special conditions with the accused's agreement. (4.11)
14. We recommend that there should be close monitoring by Her Majesty's Chief Inspector of Constabulary and the prospective independent inspectorate for the Crown Office and Procurator Fiscal Service of compliance with the Lord Advocate's guidelines governing the roles of the police and procurators fiscal in relation to bail. (4.13)
15. We recommend that bail information schemes should be available in all courts. (5.10)
16. We recommend that a court should be obliged to grant bail to an accused person whose release on bail is not opposed by the Crown and that statutory provision should be made to remove any uncertainty about that. (5.11)
17. We recommend that to help reduce inconsistencies in the grant and refusal of bail the following practical steps should be taken. (5.13)
 - Consistent application of the Lord Advocate's guidelines to procurators fiscal.
 - More training of the professional judiciary by the Judicial Studies Committee, including information relating to the use of bail information and bail supervision schemes.
 - Provision of up-to-date guidance from Appeal Court (to replace the "Wheatley Guidelines").
18. We recommend that to enable the number of persons remanded in custody to be reduced, facilities similar to those provided at "218 Time Out" in Glasgow should be available in other parts of the country for young and adult, male and female accused persons. (5.14)
19. We recommend that the High Court of Justiciary should consider issuing additional procedure rules and guidance relating to the conduct of bail reviews in terms of section 30 of the Criminal Procedures (Scotland) Act 1995. (6.8)
20. We recommend that bail review for an accused placed on supervised bail should be encouraged. (6.9)
21. We recommend that the Crown reviews its policy in relation to bail reviews under the provisions of section 31 of the Criminal Procedures (Scotland) Act 1995 and considers whether it should make that policy public. (6.11)
22. We recommend that the law should be clarified so that a bail appeal on behalf of either the Crown or the accused does involve a complete re-hearing of the questions as to whether, and if so on what conditions, the accused should be admitted to bail. (6.19)
23. We recommend that the High Court of Justiciary issue practice guidelines for practitioners as to the matters that should be borne in mind and followed when preparing for and taking part in bail appeals. (6.20)

24. We recommend that the High Court of Justiciary issue at the earliest opportunity guidance as to the factors to which the Court will have regard and the approach that it will take in dealing with bail appeals. (6.22)
25. We recommend that programming procedures should be evolved in the High Court of Justiciary to ensure that those members of the judiciary who are to hear bail reviews and bail appeals are given a sufficient opportunity to look through the relevant papers before hearing bail reviews and bail appeals. (6.23)
26. We recommend that reasons should always be given for the decision in a bail review and bail appeal. (6.24)
27. We recommend that the High Court of Justiciary should review the procedures it currently follows for listing the hearings of bail appeals. (6.26)
28. We recommend that if a Summary Appeal Court is established, it should have power to deal with bail appeals relating to summary criminal proceedings but that the High Court of Justiciary should retain jurisdiction to deal with all bail appeals. (6.27)
29. We recommend that there should be a presumption against the police liberating for reporting a person who is alleged to have committed an offence involving a breach of a bail condition. (7.6)
30. We recommend that the Lord Advocate gives consideration to adopting a policy under which there is sufficient evidence to prove that the accused has failed without reasonable excuse to appear in court, there should be a presumption in favour of criminal proceedings being taken in respect of that offence. (7.7)
31. We recommend that the Lord Advocate gives consideration to issuing an instruction to procurators fiscal that there should be a presumption against accepting a not guilty plea to a charge of failure to appear in court. (7.8)
32. We recommend that those who abuse bail through further offending or otherwise should always be the subject of a court disposal. (7.9)
33. We recommend that the court should always state explicitly what has been done in respect of a bail aggravation. (7.10)
34. We recommend that in summary proceedings a charge of failing to appear in court when required to do so should be dealt with on a separate complaint and that the proceedings for such failure should be dealt with as quickly as possible. (7.11)
35. We recommend that before an accused who is alleged to have breached a bail condition is again released on bail, the court must first obtain an assessment of the accused's suitability for bail from a Bail Supervision Scheme. (7.12)
36. We recommend judicial guidance relating to the granting of bail to an accused between conviction and sentence should be kept up-to-date. (8.2)
37. We recommend that as soon as practicable the High Court of Justiciary should issue detailed guidance relating to interim liberation. (8.8)
38. We recommend that every effort should be made by the High Court of Justiciary and the Scottish Court Service to build on the improvements made in recent months in addressing the backlog of criminal appeals. (8.11)