

11. The Criminal Justice Process

11.1 Outline of the Criminal Justice Process

On receipt of an allegation that an offence of rape or sexual assault has been committed the Police Service of Scotland will carry out an investigation into the circumstances. That investigation is likely to involve: statements being obtained from the person who has experienced rape or sexual assault and witnesses; forensic medical examination of the person who has experienced rape or sexual assault; exploration of relevant technological evidence (e.g. CCTV footage, social media messages) and arrest and interview of the accused person.

If the investigating police officers form the view that there is sufficient evidence to prove that the offence has been committed and that the accused person committed it, a report (known as an SPR2) will be submitted to the Procurator Fiscal. In the majority of cases, which involve an allegation of rape, the accused will be reported to the Procurator Fiscal whilst held in police custody.

The Procurator Fiscal will consider the content of the SPR2 in order to decide: if the report discloses a crime known to the law of Scotland; if there is sufficient admissible, credible and reliable evidence; and if prosecution is in the public interest. If all three questions are answered affirmatively then the accused person will appear in court.

In cases involving an allegation of rape or particularly serious sexual assault accused persons will firstly appear 'on petition' in the Sheriff Court with jurisdiction over the place where the offence is alleged to have taken place. If the accused person is granted bail the prosecutor is required to serve an indictment on the accused person within 10 months and the trial must commence within 12 months. If the accused person is remanded in custody the indictment must be served within 80 days and the trial must commence within 140 days.

All cases, which involve an allegation of rape, are heard in the High Court of Justiciary. A jury of 15 members of the public will decide if the accused person committed the offence. If the accused person is convicted the Judge will pass sentence on the accused person. The offence of rape carries a maximum sentence of life imprisonment.

Cases, which involve an allegation of serious sexual assault, are likely to be heard in the Sheriff Court by a Sheriff sitting with a jury. Again the jury will decide if the accused is guilty and the Sheriff will pass sentence. The maximum sentence that can be imposed is 5 years imprisonment.

Other cases, which involve an allegation of sexual assault, are likely to be heard in the Sheriff Court by a Sheriff sitting alone. If an accused person is remanded in custody when he/she first appears in court the trial must commence within 40 days. The Sheriff will decide if the accused person is guilty of the offence and will also

pass sentence. The maximum sentence that can be imposed is 12 months imprisonment.