

CONSULTATION STAGE RESOURCE ASSESSMENT: YOUTHS

1 INTRODUCTION

1.1 This document accompanies the consultation document and draft Sentencing Youths Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery. It fulfils the Council's statutory duty, under section 127 of the Coroners and Justice Act 2009 to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.

2 RATIONALE AND OBJECTIVES FOR THE NEW GUIDELINE

2.1 In 2009 the Sentencing Guidelines Council (SGC), the predecessor body to the Sentencing Council, published a definitive guideline *Overarching Principles – Sentencing Youths*. It also produced offence specific guidelines for youths within its definitive robbery guideline, published in July 2006, and within its definitive guideline on the Sexual Offences Act 2003, which was published in April 2007.

2.2 The Sentencing Council published new adult guidelines for sexual offences in December 2013 and for robbery offences in January 2016. The Council decided that a different approach was required for sentencing youths and that it would be inappropriate to produce new youth guidelines as part of the adult guidelines. The existing SGC youth guidelines therefore remain in force. Recognising that the youth guidelines have become piecemeal and dated, the Council has reviewed youth sentencing as a separate project and is proposing to issue new consolidated guidance. The new offence specific youth guidelines cover sexual offences and robbery offences.

2.3 In addition to the offence specific guidelines, the Council also decided to update the Overarching Principles, with the aim of providing a comprehensive and accessible document on the general principles to be applied when sentencing youths.

3 CURRENT SENTENCING PRACTICE

3.1 The Overarching Principles guideline does not apply to any specific offence. Overall sentencing statistics for youths, alongside statistics for youths sentenced for robbery and sexual offences have been published on the Sentencing Council website at the following link:

<http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year>.

This document presents simple statistics to give an indication of the overall number of youths sentenced and the number sentenced for sexual offences and robbery offences. It also looks at the sentences which youths receive. Youth offenders are defined as those aged under 18 years of age.

3.2 The principles surrounding the sentencing of youths differ significantly from the sentencing of adults. The principal aim of the youth justice system is to prevent offending and reoffending by children and young people and to have regard for the welfare of the young offender.

3.3 Courts have a range of different sentencing options designed to address the needs of the young offender. Community sentences for youths include Referral Orders (ROs) and Youth Rehabilitation Orders (YROs). A RO requires the offender to attend a youth offender panel and agree a contract, containing certain commitments (for example, to repair any damage caused or to make financial recompense), which will last between three months and a year. The aim is for the offender to make up for the harm caused and address their offending behaviour. A RO is the mandatory sentence in a youth court or magistrates' court for most first time offenders who have pleaded guilty to an imprisonable offence.¹ A YRO can include one or more of 18 different requirements that the offender must comply with for up to three years. Some examples of the requirements that can be imposed are a curfew, supervision, unpaid work, electronic monitoring, drug treatment, mental health treatment and education requirements.

3.4 Young offenders can also be sentenced to custody (normally a Detention and Training Order; DTO) but it is only imposed in the most serious cases. When a custodial sentence is given, the aim is to provide training and education and rehabilitate the offender so that they do not reoffend. Sentences can be spent in secure children's homes, secure training centres and young offender institutions.

3.5 The number of youths sentenced at court in England and Wales has declined by 67 per cent, from 96,200 in 2004 to 31,500 in 2014 (Figure 1).

3.6 In 2014, around 1,900 youths were sentenced to immediate custody (mainly DTOs), approximately 21,500 were sentenced to a community sentence (including YROs and ROs) and 8,200 received other types of sentences (this includes discharges, fines and otherwise dealt with disposals).²

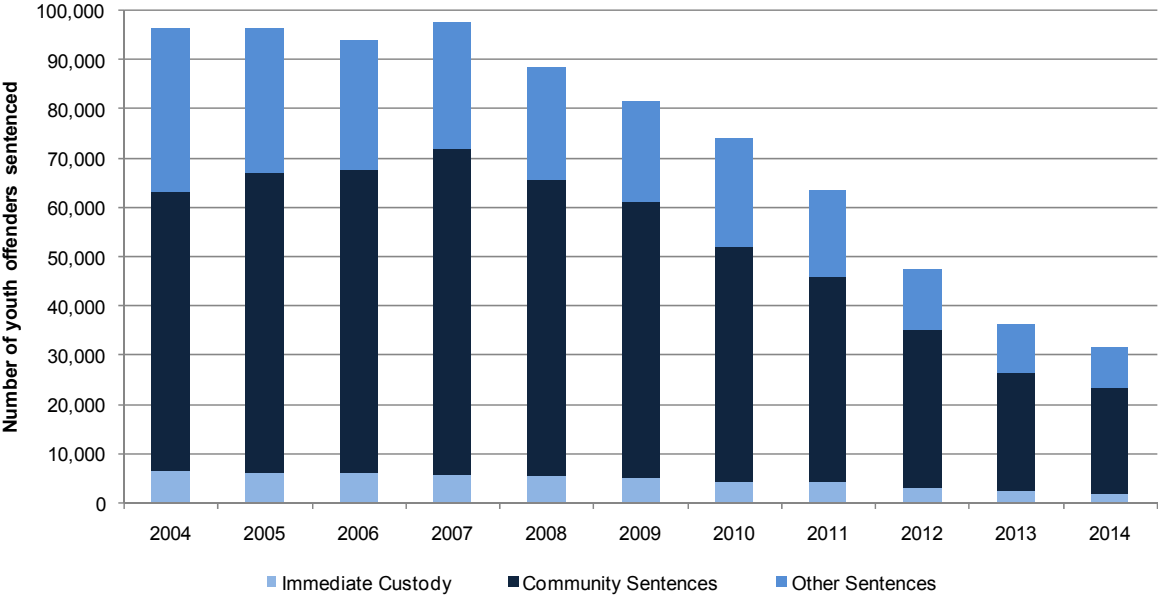
3.7 Over time, the number of young people sentenced to immediate custody has fallen from approximately 6,300 in 2004 to 1,900 in 2014, a decline of 71 per cent. The number of young people given a community sentence has also declined over time, from around 56,700 in 2004 to 21,500 in 2014 (62 per cent).

¹ Exceptions are for an offence where a sentence is fixed by law or if the court deems a custodial sentence, an absolute or conditional discharge or a hospital order to be more appropriate.

² These figures, and those presented in the rest of this bulletin, are taken from the Ministry of Justice (MoJ), Court Proceedings Database. It is not possible to provide a further breakdown of the disposal types (for example, how many community sentences were YROs/ROs), but further information is published in Youth Justice Annual Statistics:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495708/youth-justice-statistics-2014-to-2015.pdf (p36)

Figure 1: Trend in the number of young people sentenced, 2004-2014³



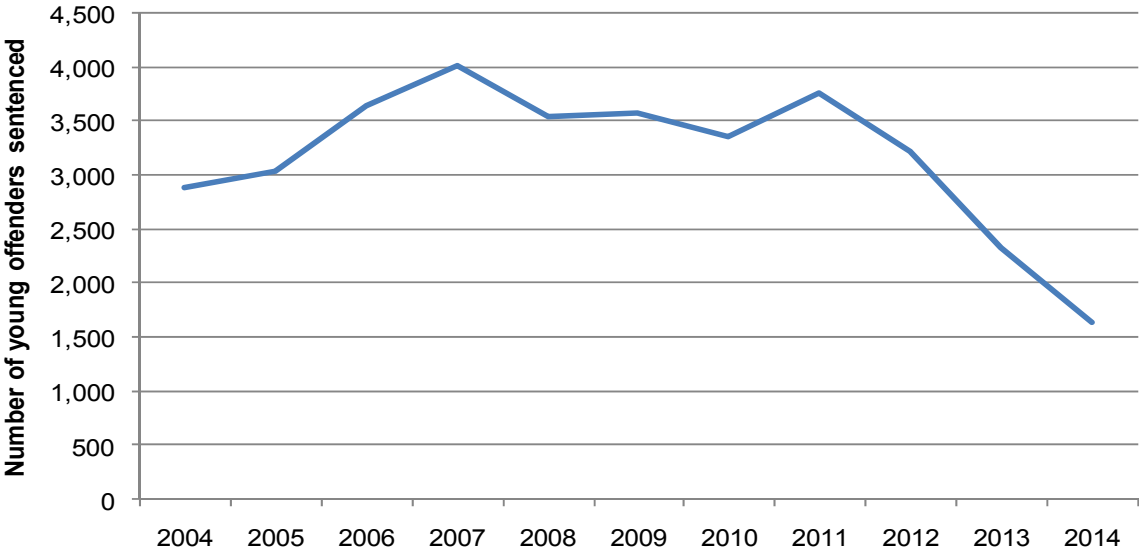
Robbery

3.8 Since 2007, the number of youth offenders sentenced for robbery offences has declined (Figure 2). In 2004 there were approximately 2,900 young offenders sentenced for robbery offences. This peaked at 4,000 in 2007 and has since declined to just over 1,600 in 2014.⁴

³ For details of data collection and methodology please see <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterlydecember-2014>. The figures relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

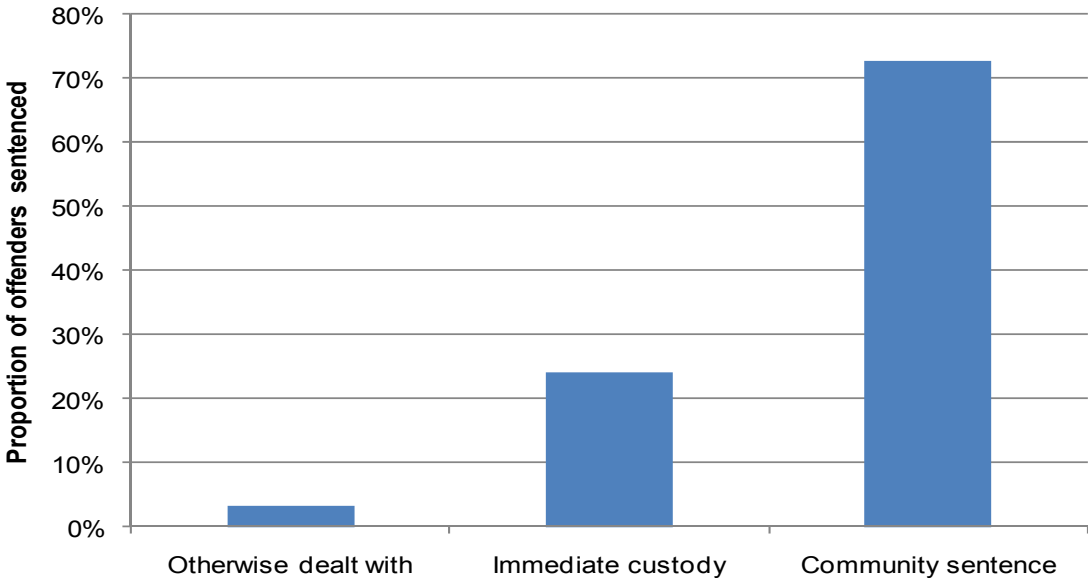
⁴ Robbery totals shown here differ from MoJ published statistics as these figures exclude offences of assault with intent to rob, which are included in MoJ figures.

Figure 2: Number of youth offenders sentenced for robbery offences covered by the guideline, 2004-2014



3.9 Community orders were the most frequent sentence outcome for youth offenders sentenced for robbery offences, comprising 73 per cent of all sentence outcomes in 2014 (Figure 3). Just under a quarter of offenders in 2014 were sentenced to immediate custody. This equates to approximately 400 young offenders.

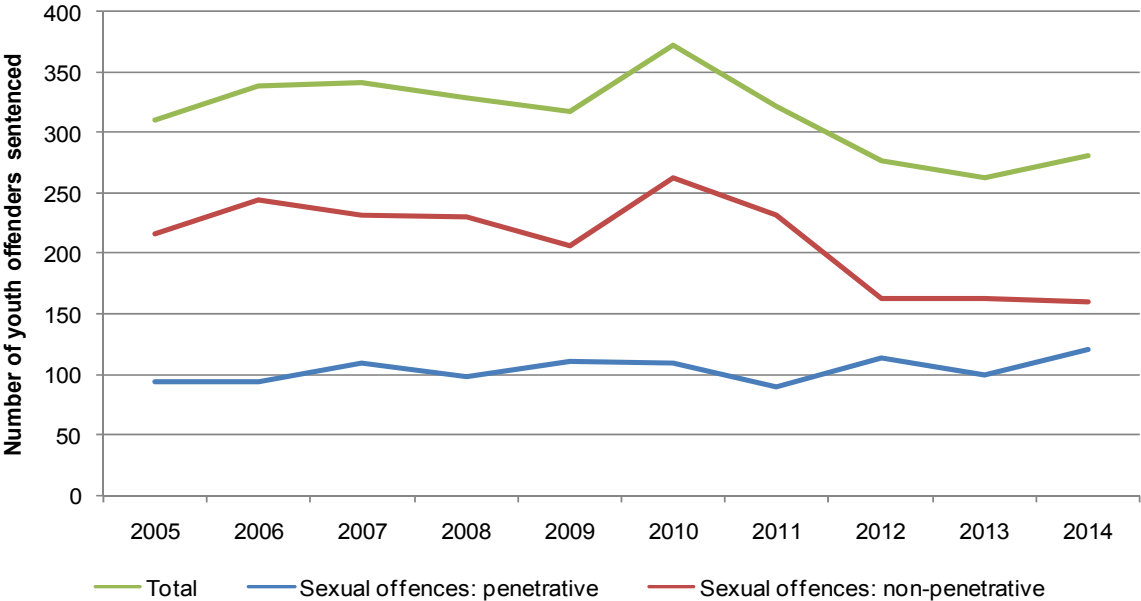
Figure 3: Proportion of youth offenders sentenced for robbery, by sentence outcome, 2014



Sexual Offences

3.10 Sexual offences have been separated into penetrative and non-penetrative offences in line with the draft guideline. Since 2005 there have been approximately 300 youths sentenced for sexual offences per year, with a slight decline seen since 2010 (Figure 4). In 2014, 57 per cent of these offences were non-penetrative.

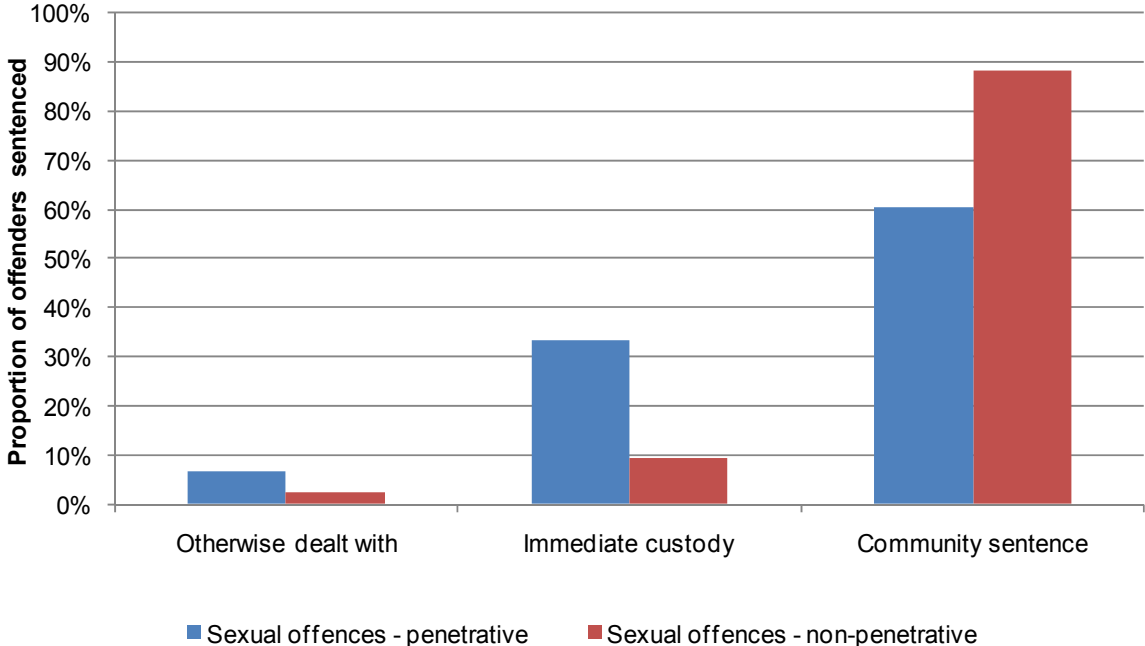
Figure 4: Number of youth offenders sentenced for sexual offences covered by the guideline, 2005-2014⁵



3.11 Of those young offenders sentenced for a penetrative sexual offence, 60 per cent received a community sentence and 33 per cent were sentenced to immediate custody in 2014 (Figure 5). In comparison, 88 per cent of young offenders sentenced for a non-penetrative offence received a community sentence and nine per cent received immediate custody. In total this equates to around 60 young offenders sentenced to custody for sexual offences in 2014.

⁵ The Sexual Offences Act 2003 came into force in May 2004. Prior to this, the offences presented in Figure 4 would have been charged under different legislation. Therefore the figures are only presented from 2005, so not to mislead. The offences included are: rape, assault by penetration, rape of a child under 13, assault by penetration of a child under 13 (grouped as ‘penetrative sexual offences’) - Sexual Offences Act 2003, s.1, 2, 5 & 6; sexual assault, and sexual assault of a child under 13 (grouped as ‘non-penetrative sexual offences’) - Sexual Offences Act 2003, s.3 & 7.

Figure 5: Proportion of youth offenders sentenced for sexual offences, by sentence outcome, 2014



4 SUPPORTING EVIDENCE

4.1 To support the development of the guideline the Council has undertaken various analytical exercises. These exercises help to improve the Council’s confidence in the likely resource effects of the proposed new guidelines and reduce the risk of unintended consequences. These exercises include:

- Research with 21 sentencers in 2012 to understand the general approach taken to sentencing youths.
- An online survey to explore the themes identified in the early interviews in 2012. In total 138 magistrates and district judges completed the online survey which sought their views on current guidance and preferences for future guidance.
- Sentencers’ responses to the draft Overarching Principles and draft sexual offences and robbery guidelines have been explored in a two stage qualitative research exercise in 2015 and 2016. In 2015, exploratory research was carried out with 18 sentencers, focusing on the Overarching Principles and early drafts of the sex and robbery guidelines. This research was supplemented by consultation with a small number of sentencers, practitioners and legal advisers to assist in the further development of the guidelines. A second stage of research was carried out in 2016 in which 26 sentencers (11 magistrates, 10 district judges and five Crown Court judges) were asked to sentence different scenarios using the draft sexual offences and robbery guidelines. By comparing these sentences to the sentences given under the current guidelines, the Council will gain a greater understanding of the effects the guidelines may have on sentencing practice.

5 RESOURCE IMPACT

5.1 The Council's aim in developing these guidelines is not to change sentencing practice but to make the guidelines more accessible and useful to sentencers and to promote a more consistent approach to sentencing.

5.2 For first time offenders who have pleaded guilty to an imprisonable offence, a Referral Order (RO) remains the mandatory sentence in both of the new guidelines.⁶ There is greater flexibility to receive subsequent ROs under the new guideline, compared to the existing guidance (due to a change in legislation). Therefore the Council does not anticipate any inflationary impact for first time offenders.

5.3 The existing SGC youth sexual offences guidelines covers a narrow range of sexual offences:

- Sexual activity with a child;
- Causing or inciting a child to engage in sexual activity;
- Engaging in sexual activity in the presence of a child;
- Causing a child to watch a sexual act;
- Sexual activity with a child family member; and
- Inciting a child family member to engage in sexual activity.

These guidelines include indicative starting points and ranges for sentencing a 17 year old offender.

5.4 The new guideline is designed to cover all sexual offending and can be used for sentencing any offender under the age of 18. The difference in scope makes it very difficult to compare the two guidelines directly. Like the existing guideline, the new guideline aims to set out when the custody threshold has been crossed. However, under the new guideline there is now a significant focus on offender mitigation (rather than offence mitigation). As a result the Council does not anticipate more offenders receiving a custodial sentence than currently.

5.5 The existing SGC robbery guideline covers street robbery, robberies of small businesses and less sophisticated commercial robberies whereas the proposed new guideline is designed to be used for any robbery offence and any offender under the age of 18. The proposed robbery guideline sets out the offence related aggravating and mitigating factors as before, but now has a much stronger focus on offender mitigation. As a consequence it is not anticipated that more offenders will receive a custodial sentence than currently.

5.6 The existing SGC robbery guideline includes a sentencing table which replicates the SGC's adult robbery guideline but with reduced sentences. The sentencing table is intended to be used for sentencing 17 year old offenders; where the court has a younger offender before them the guideline advises reducing the starting point in recognition of the offender's age or immaturity.

⁶ The only time a mandatory referral order does not apply is if the committed offence carries a sentence fixed by law, if a custodial sentence is more appropriate (i.e. in very serious cases), when a hospital order is more appropriate or when an absolute or conditional discharge is more appropriate (i.e. in less serious cases).

5.7 The Council considered adopting a similar approach to the SGC's approach for robbery, but concluded that such a guideline does not usefully assist a court in sentencing offenders younger than 17. In addition the Council wanted to ensure that sentencers have a framework to use that allows a consistent approach to be adopted but did not prevent the sentencer from taking a very individual approach to sentencing, accounting for the offender's age and/or maturity, their previous offending behaviour, and their personal background. As a consequence, the new sexual offences and robbery offence guidelines do not set out starting points and sentence ranges when sentencing young offenders to custody.

5.8 The Council does not anticipate that the guideline will have an effect on the number of community orders or custodial sentences imposed, or the length of community or custodial sentences. As a result, no significant impact on correctional resources is anticipated.

6 RISKS

6.1 The guideline is not intended to affect the average severity of sentencing, and as such, no resource effect is expected. However it is possible that sentencers do not interpret the new guideline as intended which could have an impact on resources.

6.2 The Council takes precautions in issuing new guidelines to try to reduce the likelihood of this occurring. Prior to the guidelines' release, research is conducted with sentencers to assess the likely effect of the guidelines on sentencing practice and consultees can provide their views of the likely effect of the guidelines.

6.3 The Council also uses data from the Ministry of Justice and where feasible the Crown Court Sentencing Survey⁷ to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

⁷ However, only a small proportion of youths are sentenced in the Crown Court, where the offence is particularly serious.