

## **Final resource assessment – guideline on assault**

### **Introduction**

The Sentencing Council was set up on 6 April 2010 as the new, independent body responsible for developing sentencing guidelines and promoting greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. The Sentencing Council also has a key role to play in promoting public awareness and confidence in sentencing.

This document fulfils the Council's statutory duty 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<sup>1</sup>.

### **Rationale and objectives for the new guideline**

Feedback from sentencers and legal practitioners indicated that there is concern about the existing assaults guideline. The Council went back to first principles in relation to crimes of violence in developing a new guideline with the principal aim of promoting greater consistency of sentencing and thereby increasing public confidence in sentencing. This approach to the new guideline was taken to ensure that sentences relate appropriately to the differing degrees of gravity within the specific offence, the context of other offences of violence and, in addition, the wider sentencing framework relating to other offences.

The Council examined current sentencing practice for assault offences and recognised two key features. The first is that current sentencing does not always reflect the existing guideline; the second is that there has been a significant change in sentencing practice unrelated to the issuing of the existing guideline. Between 1999 and 2008, there was a general trend towards longer sentences for all assault offences but in particular for the comparatively less serious offence of causing actual bodily harm (ABH) for which the average custodial sentence length for adults increased by 39%.

Data relating to the sentences imposed in the Crown Court for offences in the assault guideline indicates that in a small number of cases the sentences imposed fell outside the guidance offence range but little of this occurred at the top of the range. However, currently information is not collected on why the court departed from the guideline and given the circumstances of a particular case, sentencing outside the guideline range may be justified. In extending flexibility around the lower end of offence ranges, the Council would hope to see fewer sentences outside the offence range, thus increasing consistency of sentencing as well as confidence in the guideline and the sentences passed.

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<sup>1</sup> Coroners and Justice Act 2009 section 127

The Council's aim is to improve proportionality in sentencing across the range of assault offences. The result is a guideline which maintains the availability of the existing sentences for the most serious offences while ensuring that sentencing for less serious offences is proportionate.

For that reason, the Council is proposing offence range upper limits which are the same as in the existing guideline for the most serious assault offences of causing grievous bodily harm (GBH) with intent and GBH. As a result, the impact of the guideline on average sentence lengths and the types of disposal used is minimal for offences of GBH with intent and GBH.

Furthermore, current sentencing data shows that there are relatively few offenders being sentenced near the top of the current ranges – the majority of offenders receive sentences which fall within the ranges of the middle and lower offence categories. The Council believes that current sentencing practice for the less serious assault offences of ABH and common assault is disproportionate to the level of harm involved in the commission of the offences. The proposed offence range upper limits for common assault and ABH aim to maintain the availability of appropriate sentences for serious offenders. For lower offence categories the guideline proposes lower ranges and starting points, more proportional within the context of the range of offences. Therefore, there is a greater impact on average sentence lengths and the types of disposal used for the less serious assault offences of ABH and common assault than on the more serious assaults.

The other two offences covered in the guideline are assault with intent to resist arrest, and assault on a police constable in execution of his duty. The expectation for both of these offences is that the level of harm caused would be consistent with that for common assault (which only requires the threat of the immediate use of force and no injury of any sort) and the seriousness is only increased on the basis of the offender's culpability. Should injury be caused, it is likely that more serious offences of violence will be charged and the sentence increased accordingly. The proposed offence ranges and starting points, which are higher than those for common assault but lower than those in the current guideline, reflect the Council's aim for proportionality. Again, the resource assessment anticipates an impact on average sentence lengths and the types of disposal used for these offences. The charge of assault with intent to resist arrest is rarely used and therefore the effect on resources of the guideline for this offence is minimal.

### **Changes to Guideline Sentencing Ranges between the Consultation and Final Guideline**

There are differences between the guideline sentencing ranges for ABH (s.47) and GBH (s.20) presented in the consultation stage guideline and the final guideline.

The changes were made in response to consultation feedback. It was suggested that there was a mismatch in the proposals between the ABH and the GBH ranges which would mean that certain cases on the borderline between ABH and GBH may be punished more harshly if they were charged as ABH than if they were charged as GBH. After careful consideration, the Council revised the sentencing ranges and starting points in the final guideline to ensure that this potential disparity was removed.

Changes have been made to the resource assessment in response to the changes in the guideline ranges. However, these changes are relatively small: the consultation

stage resource assessment estimated the effects of the proposed guideline on the assumption that the new guideline achieves its objectives. Therefore the problems which were identified during the consultation period were not reflected in the resource assessment estimates. As such, the elimination of these problems should not cause substantial differences between the estimates presented in the consultation and final stage assessments.

## **Key assumptions**

A full description of the methodology used to derive the results presented below is provided at annex A. This section gives a brief description of the key assumptions made.

### Statutory requirements

As stipulated by section 127 of the Coroners and Justice Act 2009, this resource assessment considers the likely impact of the guideline on the provision of prison places, the resources required for probation provision, and the resources required for the provision of youth justice services. Any resource impacts which may fall elsewhere are not included in this assessment. For example, there is a resource cost to enforcing fine payments and administering receipts from fines which is not measured in this document.

### Other assumptions

It is difficult to estimate the precise effects of the new guideline on sentencing practice because there is little good historical evidence of the effect that changing sentencing guidelines has on sentencing practice. The estimates in this resource assessment have been made by examining and comparing the current guideline sentencing ranges to the new sentencing ranges, considering current sentencing practice, and making assumptions about how sentencers will respond to the changed structure and wording of the new guideline.

Because strong assumptions have had to be made, the estimates of the impact of the new guideline are subject to a large degree of uncertainty. As a result a range of estimates is presented that reflects the sensitivity of the estimates to the assumptions made.

The assumptions that have most influence on the results relate to how the guideline is received by sentencers, and how they interpret it. At the high end of the ranges presented – in which there is the greatest degree of behavioural change – it is assumed that 95% of sentencers change their sentencing behaviour as intended by the Council. At the low end of the range - in which there is the lowest amount of behavioural change - 70% of sentencers change their sentencing behaviour as a result of the new guideline. Finally, across the range it has been assumed that there will be no change in behaviour with respect to out of court disposals.

Cost data has been provided by the Analytical Services Directorate at the Ministry of Justice.

All costs are expressed in 2010/11 prices. No attempt has been made to make adjustments for possible future changes in the efficiency of the criminal justice system. The costs quoted in this document refer to the resource impact per annum. Since the resource impact is assumed to be constant through time in real terms, the

implicit assumption is that the real cost of prison and probation services remain at current levels.

On this basis, a year in custody is assumed to cost an average of around £30,000, including local maintenance, but excluding capital build expenditure and overheads. The average cost of a community order is assumed to be around £2,800.

The final key assumption which had to be made regards the 'counterfactual' – that is, what sentencing practice would be in the absence of a new guideline. This is necessary because, to assess the change in resources required as a result of a new guideline, a baseline must be established for comparison in which the sentencing guideline does not change. The assumption which has been made is that, in the absence of the new guideline, sentencing practice in the future would be similar to sentencing practice in 2009<sup>2</sup>. This resource assessment therefore does not (and could not) take into account the impact of policies which have not yet been finalised, such as any changes that may result from the proposed policies in the recent Ministry of Justice Green Paper entitled "Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders". It also does not take into account any future changes in CPS charging standards.

## **Differences between the final resource assessment and the consultation stage resource assessment**

The methodology used to estimate the resource effect of the new guidelines has been updated in three ways since the consultation stage resource assessment was published.

First, during the consultation period, the full set of sentencing data from 2009 was released by the Ministry of Justice. It has therefore been possible to update all of the estimates to reflect the most recent data on sentencing practice.

Second, we received feedback during the consultation period which suggested that improvements could be made to the estimates of the resource effect of the new guideline on the probation service. As a result, the sensitivity of the estimates to variation in the severity of the community orders which are awarded has been tested. This has resulted in much greater uncertainty bounds surrounding estimated resource impacts on the probation service. The additional work is described in greater detail in the appendix.

Third, the estimation procedure has been updated to reflect changes which have been made to the sentencing ranges for ABH and GBH.

## **Assessment of the resource implications of the new guideline**

The first part of this section considers the resource implications for the prison and probation services and so relates to sentencing for offenders aged 18 or over. The second part then considers the effects of the new guideline on the resources required for the provision of youth justice services.

### **Impact of the new guideline on the resources required for the provision of prison places and probation provision (for offenders aged over 18)**

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<sup>2</sup> At the time of writing, 2009 is the most recent year for which comprehensive published data is available from the Ministry of Justice Court Proceedings Database on sentencing practice.

### GBH with intent s.18

Around 1,500 adults are sentenced for GBH with intent a year.

No change is expected in the use of the various types of disposals for cases of GBH with intent.

It is expected that, as a result of the new guideline, there will be a small increase in the average sentence length of offenders sentenced for GBH with intent. This is estimated to result in a requirement for between 20 and 60 additional prison places.

The changes outlined above are expected to result in an increase in costs to the prison service of between £0.7m and £1.9m a year and a small annual increase in costs to the probation service of less than £0.1m (due to increases in the length of time offenders spend on licence).

### GBH s.20 (incorporating racially or religiously aggravated GBH s.29)

Around 4,100 adults are sentenced for GBH a year.

Each year, it is estimated that there would be between 50 and 90 fewer custodial sentences for GBH. Instead, these sentences would be community orders. However, at the most severe end of the sentencing scale, it is expected that some sentences will rise by a small amount. The aggregate effect is expected to be a requirement for between 10 and 20 additional prison places.

The changes outlined above are expected to result in an increase in cost to the prison service of between £0.2m and £0.5m and an increase in costs to the probation service of between £0.1m and £0.3m.

### ABH s.47 (incorporating racially or religiously aggravated ABH s.29)

Around 12,900 adults are sentenced for ABH each year.

Each year, it is expected that there would be between 400 and 900 fewer custodial sentences for ABH. Instead, these sentences would be community orders.

Some sentences which would have been community orders under the current guideline are expected to become fines. Each year, it is estimated that between 400 and 1,000 sentences will change in this way.

The aggregate effect of these changes would be anywhere between a change in the use of community orders of between a decrease of 100 and an increase of 100<sup>3</sup>.

The reduction in the use of custodial sentences, alongside an expected decrease in average custodial sentence lengths, would result in a reduced requirement for prison places. It is estimated that between 80 and 200 fewer prison places would be needed.

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<sup>3</sup> This figure does not appear to agree with the narrative. This is due to rounding errors. The same caveat applies to other figures in this resource assessment.

The changes outlined above are expected to result in an annual cost saving to the prison service of between £3m and £6m and an annual cost increase to the probation service of between £0 and £2m.

#### Assault with intent to resist arrest s.38

Around 200 adult offenders are sentenced for assault with intent to resist arrest each year.

Each year, it is expected that there would be between 10 and 30 fewer custodial sentences for assault with intent to resist arrest. Instead, these sentences would be community orders.

Some sentences which would have been community orders under the current guideline are expected to become fines. Each year, it is estimated that between 0 and 10 sentences will change in this way.

The aggregate effect of these changes would be an increase in the use of community orders of between 10 and 20.

The reduction in the use of custodial sentences, alongside an expected decrease in average custodial sentence lengths, would result in a reduced requirement for prison places. It is estimated that between 0 and 10 fewer prison places would be needed.

The changes outlined above are expected to result in a cost saving to the prison service of between £0.1m and £0.2m a year and an increase in cost to the probation service of between £0.0m and £0.1m a year.

#### Assault on a police officer s.89

Around 8,300 adults are sentenced for assault on a police officer each year.

Each year, it is expected that there would be between 200 and 600 fewer custodial sentences for assault on a police officer. Instead, these sentences would be community orders.

Some sentences which would have been community orders under the current guideline are expected to become fines. Each year, it is estimated that between 500 and 1,200 sentences will change in this way.

The aggregate effect of these changes would be a reduction in the use of community orders of between 300 and 600.

The reduction in the use of custodial sentences, alongside an expected decrease in average custodial sentence lengths, would result in a reduced requirement for prison places. It is estimated that between 20 and 60 fewer prison places would be needed.

The changes outlined above are expected to result in a cost saving to the prison service of between £0.7m and £1.7m a year and a change in costs in the probation service of between an increase of £0.1m and a decrease of £0.7m a year.

#### Common assault s.39 (incorporating cases of religiously or racially aggravated common assault s.29)

Around 44,000 adults are sentenced for common assault each year.

Each year, it is estimated that there would be between 1,300 and 3,000 fewer custodial sentences for common assault. Instead, these sentences would be community orders.

Some sentences which would have been community orders under the current guideline are expected to become fines. Each year, it is estimated that between 1,600 and 3,800 sentences will change in this way.

Finally, it is estimated that there will be a small shift towards the use of conditional discharges for sentences which are fines under the current guideline. This is expected to affect between 400 and 900 sentences a year.

The aggregate effect of these changes each year would be between 1,300 and 3,000 fewer custodial sentences, between 400 and 900 fewer community orders, between 1,200 and 2,900 additional fines, and between 400 and 900 additional conditional discharges.

The reduction in the use of custodial sentences, alongside an expected decrease in average custodial sentence lengths, would result in a reduced requirement for prison places. It is estimated that between 150 and 350 fewer prison places would be needed.

The changes outlined above are expected to result in a cost saving to the prison service of between £4m and £10m a year and a cost impact to the probation service of between a saving of £1m and an increase in cost of £4m a year.

### **Impact of the new guideline on the resources required for the provision of youth justice services (offenders aged under 18)**

The new assaults guideline applies to sentences for adults only. The Council has not recommended that sentences refer to the assault guideline when sentencing youth offenders for assault offences given the different statutory provisions. Nevertheless, in the absence of an assaults guideline for youths, it is possible that sentencers may consult the adult guideline when sentencing a juvenile, to remind themselves of some the key considerations of sentencing for assault offences. This could lead them to come to a different view of harm and culpability, and could potentially influence their sentence. Any changes are likely to be small because the sentencer should always refer to the 'Overarching Principles – Sentencing for Youths' guidance. The Council intends to issue a youth specific guideline for assault in due course, at which point a separate resource assessment will be produced. The following narrative explores the potential effect on youth sentencing until the youth-specific guidance is issued.

In 2009, a total of around 13,700 youths were sentenced for the types of assault covered under the current sentencing guideline. Sentencing practice for youths is considerably different to that for adults. For cases of assault the vast majority of youths are sentenced to youth rehabilitation orders (84%). Most of the remainder receive custodial sentences (8%) or conditional discharges (5%). Custodial sentences for youths are for a minimum of four months. In addition, sentences can only be given in 2 month blocks, and most are for one year or less (84% of custodial sentences).

It is unlikely that the changes to the assaults guideline will have a significant effect on sentencing for youths and therefore the resources required for the provision of youth justice services are not expected to change. The main changes that are expected to occur for adults are cases where short custodial sentences (usually less than 3 months) become community orders, and where community orders become fines. These changes would not apply to youth sentences because there are no custodial sentences for youths of less than 3 months (the minimum term for youths being 4 months), and fines are very rarely given to youths.

The major possible change to sentencing for youths could be changes to the requirements stipulated by youth rehabilitation orders. If sentencers perceive that the punishment element of adult sentences for some of the less severe forms of assault has reduced, then they may also reduce the punishment element of some youth sentences.

Very strong assumptions would need to be made to quantify this impact. Assumptions would have to be made about how the individual elements of youth rehabilitation orders may change, but there would be very little basis for these assumptions because the new guideline makes no specific reference to changes to the requirements of community orders for adults or youths.

However, to give an impression of the size of any potential effects, it is informative to consider the costs of provision of youth justice in general. The total cost of implementing youth sentences in 2010 was around £655m, of which around £349m was spent by Youth Offending Teams and around £306m was spent on the secure estate.

Sentences for the types of assault covered by the guideline composed 17% of all youth sentences in 2009. Assuming the cost of sentencing youths for assault are similar to the average cost of sentencing of youths generally, then around £110m would have been spent on youth sentences for assault in 2009/10. Finally, around 40% of overall spending on youth justice is on custodial provision, which is unlikely to be affected by the new guideline. If a similar split applies to spending on sentences for assault, this would mean around £70m would have been spent on community sentences for youths who had been sentenced for assault.

Any changes in sentencing for youths that result from the new assault guideline are likely to be marginal. It is therefore likely that its resource implications on youth justice services would be a very small part of this £70m.

## **Annex - Methodology**

This section describes the methodology that was used to arrive at the main quantitative estimates presented in this resource assessment.

### **General approach**

An analytical model was developed to generate estimates of the change in sentencing practice which may result from the new sentencing guideline, and the resultant resource implications for parts of the criminal justice system. To create its estimates, the model followed the following process:



1. Data was considered on the sentences which were passed for cases of assault in 2009, the most recent year available. (These will be later referred to as the 'actual sentences'.)
2. A hypothetical scenario was constructed which considered what sentencing would have looked like in 2009 had the new guideline applied. This was achieved by applying a 'transformation rule' to each sentence passed in 2009<sup>4</sup>, which attempted to map the current sentencing guideline onto the new sentencing guideline. This process tended to preserve the general shape of the distribution of sentences, but transposed it up or down. (The sentences generated by this process will be referred to as the 'hypothetical sentences'.)
3. The cost of each actual sentence and each hypothetical sentence were calculated using MoJ data on the cost of various types of sentences. All the data considered so far was then incorporated into a results table.
4. Various calculations were then performed on the results table to produce the outputs which are presented in this resource assessment. For instance, by filtering the table so it includes only sentences for common assault, and then summing the number of 'actual' custodial sentences and the number of 'hypothetical' custodial sentences, it is possible to derive the estimated total change in the use of custody for cases of common assault.

To clarify how this methodology works an excerpt of the results table described at step (3) is presented in Figure 2. The full version of this table has around 71,000 rows – one for each adult sentence passed in 2009 for the cases of assault covered by the guideline. It should be clear that, by manipulating the data in this table in appropriate ways, it is possible to derive the results presented in the main body of the resource assessment.

**Figure 2. Illustration of the outputs of the analytical model**

Sentences passed for assault in 2009					'Hypothetical sentences' (What the sentence <i>would have been</i> if the new guidelines had applied)			Change in cost
Date of sentence	Offence type	Disposal type	Sentence length (if prison)	Cost of sentence	Disposal type	Sentence length (if prison)	Cost of sentence	
Jan 2009	GBH	Immediate custody	5 years	£76,000	Immediate custody	5.6 years	£85,100	+£9,100
Aug 2009	Common assault	Immediate custody	112 days	£6,700	Community order	-	£3,800	-£2,900
...	...	...	...	...	...	...	...	...

### Uncertainty

Any estimates about the resource implications of the new guideline are subject to a large amount of uncertainty because it is not possible to predict exactly how sentencers' sentencing behaviour will change in response to the new guideline.

<sup>4</sup> The transformation rule only makes changes to a subset of sentences. Many sentences are left unchanged by the rule.

This uncertainty is dealt with by estimating a range of possible outcomes, rather than just producing a point estimate. A range of outcomes – a lower bound and higher bound - can be generated by running the model twice using different assumptions about sentencers' behaviour each time.

There are other sources of uncertainty which have not been modelled, and could serve to increase the range of outcomes further. For instance, any future changes in criminality and the number and type of offenders coming before the courts would affect the resource impact of the new guideline, but has not been modelled.

#### Example of a 'transformation rule'

This section presents an example of how actual sentences from 2009 were used to produce 'hypothetical sentences' using a transformation rule. Specifically, it looks at how this worked for cases of GBH (s.18) for the 'high' bound of the range of estimates. This process had to be repeated with a different rule for each type of assault (GBH s.20, ABH, common assault etc.) covered under the guideline. It also had to be repeated for the 'low' bound of the range of the estimates.

The lowest category under the current guideline (category 4) applies to cases of GBH with intent of similar severity as the lowest category under the new guideline (category 3). The transformation rule therefore aims to 'map' any 2009 sentences falling into the current category 4 onto category 3 in the new guideline.

The current category 4 has a category range of 3 to 5 years, with a starting point of 4 years' custody. The new category 3 category range is the same: 3 to 5 years custody, with a starting point of 4 years' custody. (For now, the overlap in categories under the current guideline will be ignored. This will be dealt with later.)

In this case, we would expect the new guideline to have little or no effect on sentencing practice. A suitable transformation rule may be something like:

**Rule 1:** Take all actual sentences from 2009 that fall into category 4 of the current guideline. To create the sentences that hypothetically would have occurred under the new guideline, make no change to these sentences.

Similar transformations need to be made for 2009 sentences falling into categories 3, 2 and 1 of the current guideline. The severity of offences falling into the current category 3 (4 to 6 years) corresponds roughly to offences falling towards the lower part of category 2 of the new guideline (5 to 6.5 years).

A suitable transformation rule here may be<sup>5</sup>:

**Rule 2:** Take sentences passed in 2009 that fell into category 3 of the new guideline and apply the following formula:  
Hypothetical sentence = (Actual sentence – 4 years) \* (3/5) + 5 years

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<sup>5</sup> An adjustment had to be made for the fact that there is a gap in the current sentencing guidelines between 6 and 7 years custody (i.e. sentences falling into this gap do not obviously correspond to a category). It was assumed that sentences of 6 years to 6.5 years fall into category 3 of the current guidelines and sentences of 6.5 to 7 years fall into category 2.

It was considered that the severity of offences falling into the current category 2 guideline range of 7 to 10 years corresponds roughly to offences that will fall into the upper part of the proposed new category 2 (6.5 to 10 years).

A suitable transformation rule here may be:

**Rule 3:** Take sentences passed in 2009 that fell into category 3 of the current guideline and apply the following formula:

$$\text{Hypothetical sentence} = (\text{Actual sentence} - 6.5 \text{ years}) * (5/7) + 6.5 \text{ years}$$

Finally, it is thought that sentences of 10 years and above which fall into the current category 1 range of 10 to 16 years will be unchanged from current sentencing practice.

**Rule 4:** Make no change

These four rules can be combined into an overall transformation rule that looks at every sentence passed in 2009, and converts it into a new 'hypothetical sentence'. There are two additional complications. First, in situations where category ranges in the current guideline overlapped, it is assumed that a quarter of sentences falling into the overlap were of the lower category, and three-quarters of the sentences were of the higher category. This assumption has been made because the 'actual' 2009 sentences that we have data for are those given after guilty plea reductions have been applied. This means it is more likely these sentences were originally in the higher category. Second, sentences falling above the overall guideline range were assumed to fall into category 1, and sentences falling below the overall guideline range were assumed to fall into category 4.

Combining these assumptions with rules 1 to 4 above, we get the following overall transformation rule:

### Higher bound estimate

Under the higher bound estimate, 95% of sentencers change their sentencing behaviour in the way intended by the guideline. 5% of sentencers do not alter their sentencing behaviour as a result of the new guideline.

Of the 95% who do change their sentencing behaviour, the following transformation rules apply:

Range to which rule applies	Transformation rule ( $x = \text{'actual' 2009 sentence}$ )
0-4 years	No change
4-5 years	One quarter: Do nothing Three quarters: $(x - 4) \frac{3}{5} + 5$
5-6.5 years	$(x - 4) \frac{3}{5} + 5$
6.5 to 10 years	$(x - 6.5) \frac{5}{7} + 6.5$
Over 10 years	No change

## **Estimation of the resource impact on the probation service – changes since the consultation stage resource assessment**

Feedback received during the consultation period suggested that improvements could be made to the estimation of the resource impact of the new guideline on the probation service.

In the consultation stage resource assessment, there was no explicit modelling of the variation in cost of different community orders. A single ‘average cost’ figure was used. However, this may not be appropriate. In particular, the cost of community orders may differ depending on how the proposed new guideline has affected the sentence awarded.

Where an offender who previously would have got a short term custodial sentence would get a community order, they would be likely to get a community order of above average intensity, and therefore above average cost. Where an offender who previously would have got a community order would get a fine, that community order would have been likely to be one of below average intensity and cost.

This means that the cost savings to the probation service may be over-estimated if an average cost figure is used for all community orders. This effect will be referred to as ‘Effect 1’ below.

It is possible that there may be a countervailing effect. It could be that changes in sentencing practice that result from the proposed new guideline could also affect the general severity of community orders, and that those offenders whose disposal type does not change may get slightly less onerous community orders. That is, as some offenders receive community orders rather than custody, changes to sentences may cascade downwards on the sentences for offenders whose disposal type does not change. There could therefore be small general movement towards less resource intensive community orders. This effect will be referred to as ‘Effect 2’ below.

These two possible effects were not accounted for in the consultation stage resource assessment. There is therefore probably greater uncertainty surrounding the resource effect of the new guideline on the probation service than was previously estimated.

### Changes to the model

For the figures in the final resource assessment, the analytical approach was updated to account for the effects described above. The updated model allows variation in the cost of community orders. This adds an additional source of uncertainty into the estimates. In one scenario, which reflects the least costly outcome for the probation service, the Effect 1 and Effect 2 are assumed to cancel out. In another scenario, at the opposite end of the uncertainty band, Effect 1 has a significant impact whilst Effect 2 is assumed to have a negligible impact.

Specifically, the assumptions used to model Effect 1 in this latter scenario are as follows:

Sentence under current guideline	Sentenced under proposed	Cost of community order for sentence under	Cost of community order for the sentence under
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	<b>guideline</b>	<b>current guideline</b>	<b>the new guideline</b>
Custody	Community order	N/A	£3,800
Community order	Community order	£2,800	£2,800
Community order	Fine	£1,800	N/A

For example:

- If the model estimates that a particular sentence will change from a short custodial sentence to a community order, it is assumed that costs to the probation service will rise by £3,800.
- If the model estimates that a particular sentence will change from a community order to a fine, it is assumed that costs to the probation service will fall by £1,800.

### **Evaluation of methodology**

The methodology has been constructed to generate the best possible estimates of the impact of the new sentencing guideline given available evidence and data. However, strong assumptions have had to be made which are discussed in more detail below.

#### Assumptions about behavioural change (the 'transformation rules')

The source of greatest uncertainty in the analytical model's estimates stems from the lack of an evidence base to help make assumptions about how sentencers' behaviour will change in response to the new guideline.

The difficulty is that when sentencing guidelines were released by the Sentencing Guidelines Council, they were not usually released with the intention of bringing about any overall changes in the disposal types used by sentencers or average sentence lengths. Their aim was typically to present guideline sentencing ranges that reflected current sentencing practice, with the aim of increasing consistency of sentencing. This means that historical data on how sentencing practice changed following the release of past guidelines is not very useful in trying to estimate the effects of the new guidelines.

The transformation rules used in the model therefore had to be based on careful comparison of starting points and ranges in the current and proposed guideline. However, given the difficulty in predicting likely behavioural change, they are considerable differences in the rules used in the 'high' and 'low' scenarios, leading to the large range of estimates presented in this resource assessment.

#### The counterfactual

This resource assessment attempts to estimate the costs and benefits of the new sentencing guideline for assault, relative to the 'counterfactual' - a scenario in which a new guideline is not released.

To conduct this exercise, it is necessary to define the counterfactual. The assumption made in the modelling methodology is that future sentence practice in the absence of changes to sentencing guidelines would be similar to actual sentencing practice in 2009.

This counterfactual does not take into account the impact of possible future policies such as those described in the recent Ministry of Justice Green Paper. There is also no attempt to forecast changes in criminality, the number of offenders coming before the courts, or changes in CPS charging standards.

### Sentencing Data

Sentencing data is sourced from the Ministry of Justice Court Proceedings Database for 2009.

The analytic model works by considering 'actual' sentences from 2009, and applying transformation rules which depend on which sentencing guideline 'category' the sentence fell into. For instance, if a sentence of 3.5 years was observed in 2009, it would be assumed that this fell into category 4 of the current assaults guideline, which has a category range of 3 to 5 years.

However, this type of assumption will not always be correct because of reductions in sentences for guilty pleas. Data does not exist about the scale of guilty plea reductions for individual sentences, so it is difficult to correct for them. In addition, in some exceptional cases in which it is in the interests of justice to do so, sentencers may sentence outside the category ranges.

This means that the transformations applied to some sentences may not be appropriate. This will introduce a bias into the model, which results in the model having a slight tendency to overstate the true resource impact.

### Data on time spent in custody

Good data exists on the sentence lengths awarded to those convicted of assault. To calculate the cost of these sentences, the sentence must be deconstructed into its constituent parts, which can include elements of custody, home detention curfew (HDC) and licence.

Data is available on the time that offenders spend in custody as a percentage of their total sentence length. However, it was felt that this data would not give an accurate picture of *changes* in time spent in prison when sentence length changes. This is because the data includes time spent on remand as part of time served, which it has been assumed would not be affected by changes in sentencing practice. It was considered that it would be most appropriate to assume that when sentence length changes, half of the change is spent in custody (with a small downward adjustment for the use of HDC).

Finally, no modelling work has been done to consider breaches or licence recalls and their resource implications.

### Cost data

Cost data has been provided by the Analytical Services Directorate at the Ministry of Justice. It has been assumed the average cost of a year in prison is around £30,000 and the average cost of a community order is assumed to be around £2,800. All costs are expressed in 2010/11 prices

Data on the cost of a prison place has been linearly interpolated to calculate the cost of shorter and longer sentences. For instance, it is assumed that four months in custody costs £10,000.

Suspended sentences are assumed to cost the same amount as community orders.

Home detention curfew cost data is taken from a report by the National Audit Office entitled "The Electronic Monitoring of Adult Offenders<sup>6</sup>". A 90 day period spent on home detention curfew is thus assumed to cost £1,500.

Data on the cost of the part of a custodial sentence which is spent on licence are taken from the NOMS Specification, Benchmarking and Cost programme specification documents for delivering a supervision requirement. It is recognised that a supervision requirement is not the same thing as time spent on licence; this data was used in the absence of a better alternative. On this basis, a year on licence is assumed to cost £720.

### Applicability of Guidelines

The proposed guideline will apply to all sentencing decisions regardless of the date that the offence was committed. This resource assessment therefore works on the assumption that Sentencing Council guidelines will apply to all adult cases of assault dealt with by the courts.

### **Full list of transformation rules**

In the rules outlined below, the variable 'x' is the length of the 'actual' sentence from 2009. For instance  $(x - 4)(3/5) + 5$  means that the 'actual' sentence has four years deducted from it, the result is multiplied by three-fifths, and finally five years are added to this result.

It is assumed that in the 'high' case, 95% of sentencers change their sentencing behaviour in accordance with the rules below, with the remaining 5% making no change to their sentencing behaviour.

In the 'low' scenario, 70% apply the relevant rules outlined below, with the remaining 30% making no change to their sentencing behaviour.

### GBH with intent

Range to which rule applies	Transformation rules	
	Low	High
0-4 years	No change	No change
4-5 years	One quarter: Do nothing Three quarters: $(x - 4)\frac{4}{5} + 4.5$	One quarter: Do nothing Three quarters: $(x - 4)\frac{3}{5} + 5$
5-6.5 years	$(x - 4)\frac{4}{5} + 4.5$	$(x - 4)\frac{3}{5} + 5$

<sup>6</sup> [http://www.nao.org.uk/publications/0506/the\\_electronic\\_monitoring\\_of\\_a.aspx](http://www.nao.org.uk/publications/0506/the_electronic_monitoring_of_a.aspx)

6.5 to 10 years	$(x - 6.5)\frac{6}{7} + 6.5$	$(x - 6.5)\frac{5}{7} + 6.5$
Over 10 years	No change	No change

GBH/Racially or religiously aggravated GBH

Range to which rule applies	Transformation rules	
	Low	High
0-24 weeks' custody	Half: Do Nothing Half: Community order	Community order
24-36 weeks' custody	Half: $\left(x - \left(\frac{24}{52}\right)\right)(1.5833) + 0.23$ One Eighth: Community order Three Eights: Do nothing	Quarter: Community order Quarter: Do nothing Half: $\left(x - \left(\frac{24}{52}\right)\right)(2.166)$
36 weeks to 2 year's custody	Do nothing	Do nothing
2 year to 3 years' custody	$(x - 2)\left(\frac{3}{4}\right) + 2.25$	$(x - 2)\left(\frac{1}{2}\right) + 2.5$
Over 3 years' custody	Do nothing	Do nothing

ABH/Racially or religiously aggravated ABH

Range to which rule applies	Transformation rules	
	Low	High
Community order	One eighth: Fine Seven eights: Do nothing	One quarters: Fine Three quarters: Do nothing
0-6 months' custody	Half: Community order Half: No change	Community order
6 months to 36 weeks' custody	$\left(x - \frac{1}{2}\right)1.657 + \frac{3}{8}$	$\left(x - \frac{1}{2}\right)(2.32) + \frac{1}{4}$
Over 36 weeks' custody	No change	No change

Assault with intent to resist arrest

Range to which rule applies	Transformation rules	
	Low	High
Community order	Seven eights: Do nothing One eighth: Fine	Three quarters: Do nothing One quarter: Fine
0 to 26 weeks' custody	Half: community order Half: do nothing	Community order



0.5 – 1.5 years' custody	$(x - 0.5)\frac{7}{8} + \frac{3}{8}$	$(x - 0.5)\frac{3}{4} + \frac{1}{4}$
1.5 years' custody or more	Reduce by 12.5%	Reduce by 25%

Assault on a constable

Range to which rule applies	Transformation rules	
	Low	High
Community order	Five sixths: Do nothing One sixth: Fine	Two thirds: Do nothing One third: Fine
0 to 18 weeks' custody	One quarter: Community order Three quarters: No change	Half: Community order Half: No change
Over 18 weeks' custody	No change	No change

Common assault/Racially or religiously aggravated common assault

Range to which rule applies	Transformation rules	
	Low	High
Fine	Nine tenths: Do nothing One tenth: Conditional discharge	Four fifths: Do nothing One fifth: Conditional discharge
Community order	Nine tenths: Do nothing One tenth: Fine	Four fifths: Do nothing One fifth: Fine
0-13 weeks' custody	Half: Community order Half: Do nothing	Community order
13-26 weeks' custody	$\left(x - \frac{1}{4}\right)\frac{5}{4} + \frac{3}{16}$	$\left(x - \frac{1}{4}\right)\frac{3}{2} + \frac{1}{8}$