

FINAL RESOURCE ASSESSMENT: BLADED ARTICLES AND OFFENSIVE WEAPONS OFFENCES

1 INTRODUCTION

1.1 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.¹

2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 Bladed article and offensive weapon offences are high volume and it is therefore important that sentencers have clear, comprehensive and up to date sentencing guidelines.

2.2 The existing guideline produced by the Sentencing Guidelines Council (SGC) relates to possession of a bladed article or offensive weapon, and applies to adult offenders sentenced in magistrates' courts. There is currently no guidance for adult offenders sentenced in the Crown Court, or for youth offenders.

2.3 Since the original guideline was produced a number of new offences have been introduced, many of which are subject to mandatory minimum sentences. In addition, recent legislation created a minimum custodial sentence, of 6 months' imprisonment, for those convicted of a second or subsequent offence of possession of a bladed article or offensive weapon. The new guidelines reflect this legislation, and will provide sentencers across the Crown Court, magistrates' court and youth court with guidance for all of the offences within one self-contained document. The Council has developed two new guidelines: one for possession of a bladed article/ offensive weapon, and one for threatening with a bladed article/ offensive weapon.

2.4 The Council's aim in developing these guidelines has been to ensure that the sentences are proportionate to the offence committed and in relation to other offences, and additionally to promote a consistent approach to sentencing.

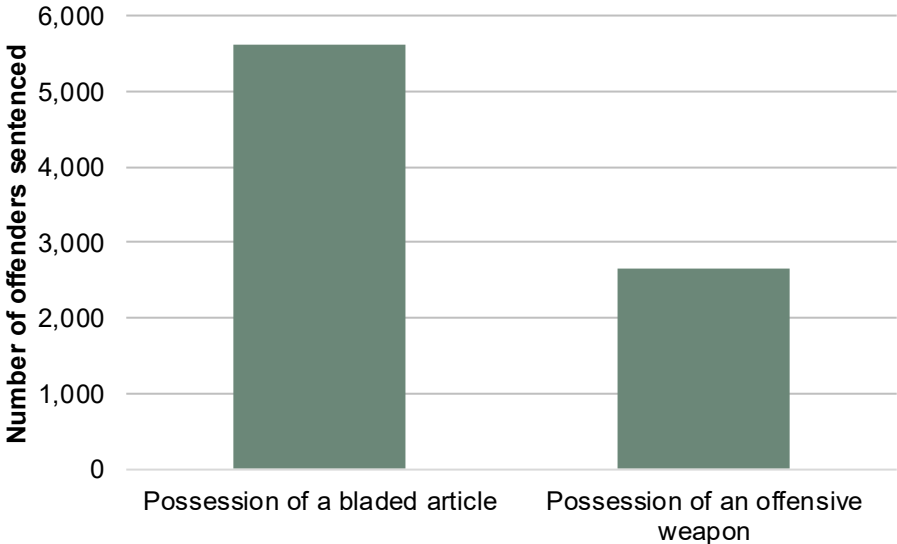
3 SENTENCING FOR BLADED ARTICLE AND OFFENSIVE WEAPON OFFENCES

3.1 Detailed sentencing statistics for bladed article and offensive weapon offences have been published on the Sentencing Council website at the following link: <https://www.sentencingcouncil.org.uk/publications/?type=publications&s&cat=statistical-bulletin>. This section presents simple statistics to give an indication of the volume of these offences and the types of sentences received by offenders.

¹ Coroners and Justice Act 2009 section 127

3.2 Bladed article and offensive weapon offences are high volume; in 2016 around 8,700 adult offenders were sentenced for these offences.^{2,3} The majority of offences (8,300) related to possession of a bladed article or offensive weapon,⁴ and the remainder related to threatening with a bladed article or offensive weapon.⁵ Offences involving a bladed article are more common than those involving an offensive weapon (see Figures 1 and 2).⁶

Figure 1: Number of adult offenders sentenced for possession offences, by type of offence, 2016



² Source: Court Proceedings Database (CPD), Ministry of Justice. For details of data collection and methodology please see: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2016>. The figures shown 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.

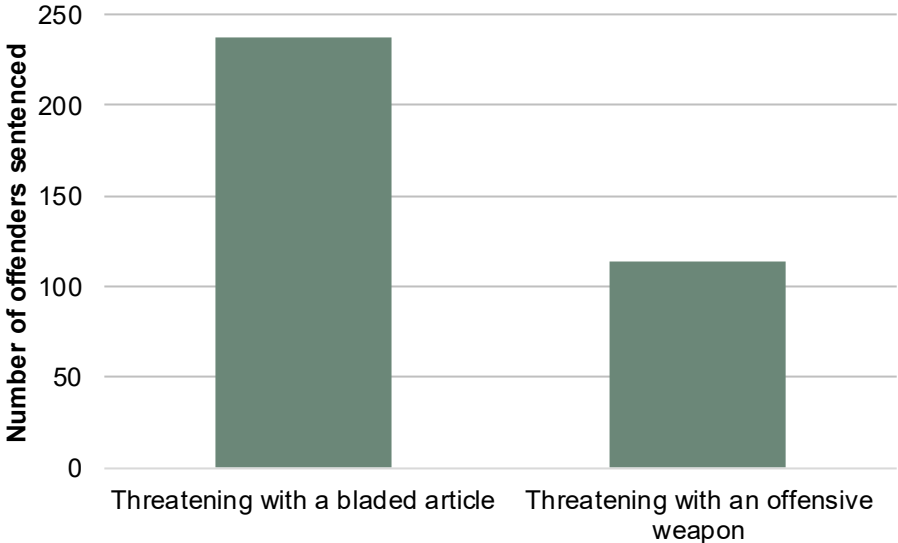
³ The Ministry of Justice publishes Official Statistics on these offences in the 'Knife Possession Sentencing Quarterly' publication, available here: <https://www.gov.uk/government/collections/knife-possession-sentencing-quarterly>. This data is sourced from the Police National Computer and includes cautions and convictions for all knife and offensive weapon offences (i.e. not just those which are the principal offence), along with estimated sentence outcomes. However, the CPD has been used for this resource assessment as it details final sentence outcomes recorded.

⁴ This includes possession of a bladed article, possession of an offensive weapon, and unauthorised possession in prison of a knife or offensive weapon.

⁵ Offences which relate to threatening with a bladed article or offensive weapon were introduced in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which came into force on 1 April 2013.

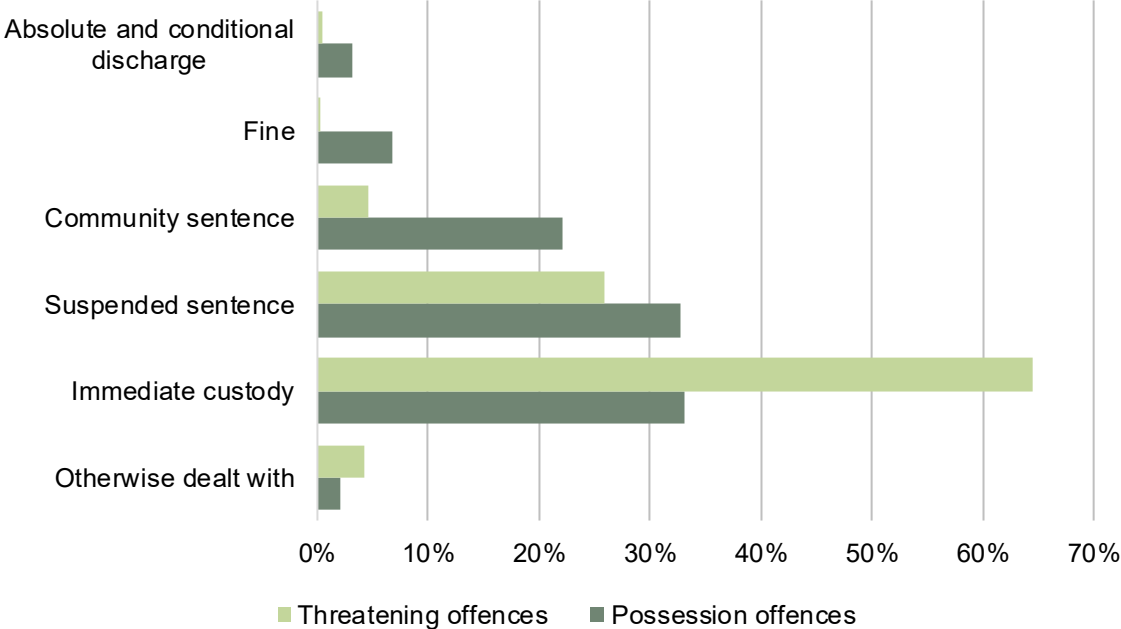
⁶ Figure 1 excludes around 50 offenders sentenced for unauthorised possession in prison of a knife or offensive weapon, as it is not possible within the data to distinguish bladed articles from offensive weapons.

Figure 2: Number of adult offenders sentenced for threatening offences, by type of offence, 2016



3.3 Figure 3 shows the disposal types used for these offences, and Figure 4 shows average custodial sentence lengths over time. The majority of offenders sentenced in 2016 for threatening offences received an immediate custodial sentence (64 per cent). For possession offences,⁷ around one third each received immediate custody or a suspended sentence order, and 22 per cent received a community sentence.

Figure 3: Sentence outcomes received by adult offenders sentenced for bladed article and offensive weapon offences, 2016⁸

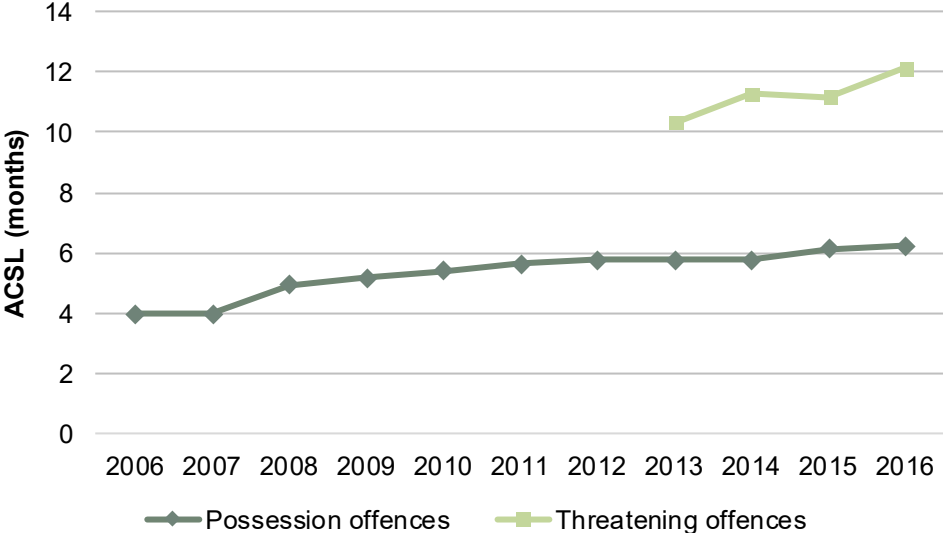


⁷ 'Possession offences' here include possession of a bladed article, possession of an offensive weapon, and unauthorised possession in prison of a knife or offensive weapon.

⁸ The category 'Otherwise dealt with' includes a number of orders, for example hospital orders, confiscation orders and compensation orders.

3.4 The average custodial sentence length for threatening offences was just over one year in 2016. Over the last decade, the average custodial sentence length for possession offences⁹ has increased, from 4.0 months in 2006 to 6.2 months in 2016.

Figure 4: Average (mean) custodial sentence length (ACSL) for adult offenders sentenced to immediate custody for bladed article and offensive weapon offences, 2006-2016^{10,11}



3.5 Around a third of offenders sentenced for possession offences and nearly two thirds of offenders sentenced for threatening offences receive an immediate custodial sentence. As a consequence, any changes in sentencing practice have the potential to have a noticeable impact on requirements for prison places.

4 KEY ASSUMPTIONS

4.1 To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline, and draws upon analytical and research work undertaken during guideline development.

4.2 Some assumptions must also be made, in part because it is not possible precisely to foresee how sentencers’ behaviour may be affected across the full range of sentencing scenarios. Historical data on changes in sentencing practice can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. Therefore any estimates of the impact of the new guideline are subject to a large degree of uncertainty.

4.3 The resource impact of the new guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of the new guideline. Any future

⁹ The offence of unauthorised possession in prison of a bladed article or offensive weapon is excluded from these figures and from Figure 4. As this offence only came into force in 2015, and as the ACSL is higher than for the other possession offences (8.1 months in 2016), including this offence may have made the trend for possession offences less meaningful.

¹⁰ Excludes life and indeterminate sentences.

¹¹ The offences of threatening with a bladed article or with an offensive weapon were only introduced in December 2012 and therefore data only exists from 2013 onwards.

changes in sentencing practice which are unrelated to the publication of the new guideline are not included in the estimates.

5 RESOURCE IMPACTS

Bladed articles and offensive weapons - possession

5.1 The existing SGC guideline for possession of a bladed article or offensive weapon contains three categories of offence seriousness, based on harm and culpability. The new guideline has two levels of harm and four levels of culpability.

5.2 Existing guidance states that sentencers should be considering a starting point of at least 12 weeks' custody for those offences involving a bladed article where a first time offender has pleaded not guilty.¹² There is evidence, however, that current sentencing practice does not fully reflect the existing guidance. For example, a high proportion (32 per cent) of offenders sentenced for possession of a bladed article in 2016 received a non-custodial sentence.¹³ This is a decrease from 38 per cent in 2015, and from 69 per cent in 2006. Therefore, over time, sentencing practice has become more in-line with current guidance.

5.3 Under the new guideline, any offences involving possession of a bladed article will fall within high culpability (category A). At the lower level of harm (category A2), this will attract a minimum starting point of six months' custody, with a sentence range from three to twelve months' custody. As a high proportion of offenders currently receive a non-custodial sentence, it is anticipated that under the new guideline, more offenders convicted for possession of a bladed article will receive a custodial sentence, compared to current sentencing practice. This will have an impact on prison and probation resources.

5.4 An estimate of the potential uplift in custodial sentences which may occur can be calculated by assuming that all offenders who currently receive a non-custodial sentence¹⁴ for possession of a bladed article will now receive a short custodial sentence.

5.5 Currently, for possession of a bladed article, just under half of custodial sentences of two years or less are suspended (48 per cent in 2016), so it could be assumed that the additional custodial sentences anticipated under the new guideline would be suspended at the same rate. However, it could be that a larger proportion would be suspended under the new guideline, as those previously receiving a non-custodial sentence could be assumed to be at the less serious end of the scale, and therefore more likely to be suspended.

5.6 Using 2016 CPD data as a guide, and assuming that custodial sentences are suspended at the same rate as in 2016, then this would result in the need for around 80 additional prison places per year,¹⁵ at a net cost of around £2.5 million.¹⁶ This breaks down as a cost of around £1.9 million in prison costs, and £620,000 in probation costs (comprised of a saving from fewer community orders, and a cost due to more suspended sentence

¹² https://www.sentencingcouncil.org.uk/wp-content/uploads/MCSG-Sentencing_for_possession_of_a_weapon_-_knife_crime.pdf

¹³ This includes discharges, fines, community sentences, and offences otherwise dealt with.

¹⁴ This is the number of offenders who received a discharge, fine or community sentence in 2016.

¹⁵ The number of prison places required has been rounded to the nearest 10 prison places.

¹⁶ Costs quoted in £millions are rounded to the nearest £100,000. Other costs are rounded to the nearest £10,000.

orders and more offenders requiring post-sentence supervision when released from custody).

5.7 However, as sentences over the last decade have gradually become more severe for possession of a bladed article, with substantial increases in both the custody rate and the ACSL, it could be expected that sentencing severity would continue to rise in absence of the guideline, and so any increase observed following the introduction of the guideline may be largely due to a long-term increase and not solely due to the guideline itself. It is therefore likely that the costs directly related to the guideline will be lower than estimated.

5.8 The new guideline also reflects recent legislation which states that offenders convicted of a second or subsequent offence of possession of a bladed article or offensive weapon should receive a minimum custodial sentence of 6 months' imprisonment. As a result, there may be an increase in the number of offenders receiving custodial sentences for a second or subsequent offence. However, this impact would be as a result of the legislation, and not due to the sentencing guideline.

Bladed articles and offensive weapons - threats

5.9 The new guideline for threatening offences is based on two levels of culpability and two levels of harm. Under the new guideline, threatening offences attract a starting point of custody, with an offence range of six months' custody up to three years. Current sentencing practice shows that in 2016, around 20 offenders received either a conditional discharge, a fine or a community sentence for these offences.

5.10 While there is currently no specific guideline for these offences, there is a statutory minimum sentence for threatening offences of six months' custody. The new guideline therefore reflects the legislation, and as a result any increase in the number of offenders receiving custodial sentences is the impact of the legislation and not the sentencing guideline. It is therefore not anticipated that the guideline will have any impact on prison and probation resources for these offences.

6 RISKS

6.1 Two main risks have been identified:

Risk 1: The Council's assessment of current sentencing practice is inaccurate.

6.2 An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

6.3 This risk has been mitigated by information that has been gathered by the Council as part of the guideline development and consultation phase, including:

- Feedback from the Council's research pool of magistrates and district judges, asking for comments on the current guideline and suggestions for what the Sentencing Council may want to take into consideration for the new guideline. In total 91 magistrates and district judges provided feedback;

- Content analysis of 110 transcripts of Crown Court sentencing remarks for the offences of: possession of a bladed article or offensive weapon, and threatening with a bladed article or offensive weapon;
- A telephone survey with 52 magistrates and 8 district judges, which explored sentencing behaviours and attitudes. In this exercise scenarios were used to test how the guideline would be used in practice.

6.4 However, there were limitations on the number of factual scenarios that could be explored, so the risk cannot be fully eliminated.

6.5 The risk has also been mitigated by the collection and analysis of sentencing information from courts. By comparing sentence outcomes to those that may result from the new guideline, it has been possible to detect problematic areas of the draft guideline and amend them for the definitive version.

Risk 2: Sentencers do not interpret the new guideline as intended.

6.6 This could cause a change in the average severity of sentencing, with associated resource effects (including the potential for anticipated changes to some categories of the guideline to affect other categories where no change was intended).

6.7 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing.

6.8 Following the release of guidelines, explanatory material is provided to read alongside the guidelines. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines on sentencing practice. Additionally, the Sentencing Council recently launched a data collection exercise in a sample of magistrates' courts across England and Wales, running from the beginning of November 2017 to the end of March 2018. As part of this exercise, sentencers are being asked to give details of the sentencing factors they have taken into account and the final sentence they have imposed each time they sentence an adult for possession of a bladed article or offensive weapon. This will tell us what sentencing practice at magistrates' courts looks like for this offence before the guideline comes into effect. A similar exercise is planned for 2019/20, to collect data once the guideline is in place. This will help the Council to monitor the impact of the guideline, compare sentencing practice before and after the guideline, and to ensure any divergence from its aims is identified and rectified. In due course, an evaluation of the impact of the guideline will be conducted and published, incorporating the data collected.