

Final Resource Assessment

Child Cruelty Offences

Introduction

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 ([s127 Coroners and Justice Act 2009](#)).

Rationale and objectives for new guideline

In February 2008, the Sentencing Guidelines Council (SGC) published 'Overarching Principles: Assaults on children and cruelty to a child', covering the offence of cruelty to a child (section 1 of the Children and Young Persons Act 1933). This guideline did not cover the offence of causing or allowing a child to die (section 5 of the Domestic Violence and Crime Act 2004).

In July 2012, the offence of causing or allowing a child to die was expanded to include causing or allowing a child to suffer serious physical harm as part of the Domestic Violence, Crime and Victims (Amendment) Act 2012. The Council subsequently produced guidelines to cover this wider offence, along with revisions to the previous SGC guideline for cruelty to a child. These were published in September 2018, to come into effect in courts in England and Wales from 1 January 2019.

Under the Police, Crime, Sentencing and Courts (PCSC) Act 2022, for offences committed on or after 28 June 2022, the statutory maxima have increased from 10 years' custody to 14 years' custody for both cruelty to a child and causing or allowing a child or vulnerable adult to suffer serious physical harm, and from 14 years' custody to life imprisonment for causing or allowing a child or vulnerable adult to die. The Council has now created revised sentencing guidelines for these offences to reflect these increases in the statutory maximum sentences: a Cruelty to a child guideline for sentencing child cruelty offences contrary to section 1(1) of the Children and Young Persons Act 1933, for use in all courts, and another guideline covering both causing or allowing a child to die and causing or allowing a child to suffer serious physical harm, contrary to section 5 of the Domestic Violence, Crime and Victims Act 2004, for use in the Crown Court.

Users should note that the increase in statutory maximum sentence covers offenders sentenced for causing or allowing a child **or vulnerable adult** to die or suffer serious physical harm, while the guideline is only applicable for offenders sentenced for causing or allowing a **child** to die or suffer serious physical harm. Analysis of Crown

Court judges' sentencing remarks suggests the majority of cases involve child victims, rather than vulnerable adults.

The Council's aim in developing these guidelines is to provide sentencers with a clear approach to sentencing these offences which will ensure that sentences are proportionate to the offence committed and in relation to other offences. They should also promote a consistent approach to sentencing in relation to the increases in statutory maximum sentence (whilst also considering the impact laid out in the [Ministry of Justice impact assessment](#), drafted in conjunction with the Home Office, for the increase in statutory maximum sentence for these child cruelty offences).

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences:

- Causing or allowing a child to die or suffer serious physical harm, Domestic Violence, Crime and Victims Act 2004 (section 5)
- Cruelty to a child, Children and Young Persons Act 1933 (section 1(1))

These guidelines apply to sentencing adults only; they will not directly apply to the sentencing of children and young people.

Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of them.

The intention is that the guidelines will encourage consistency of sentencing, in relation to the increase in statutory maximum sentences, and also to ensure that, for all offences, sentences are proportionate to the severity of the offence committed and in relation to other offences, whilst incorporating the changes in legislation.

Knowledge of recent sentencing was required to understand how the guidelines may impact sentences. Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks for offenders sentenced for child cruelty offences, as well as sentencing data from the Court Proceedings Database. For more information on this data source please see the Further information section at the end of this document. Knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guidelines.

Detailed sentencing statistics for the offences covered by the revised guidelines have been published on the [Sentencing Council: Statistical bulletins webpage](#). The underlying data may contain volumes for offenders sentenced for this offence where the victim was a vulnerable adult, for which the guideline does not apply, as it is not

possible from the source data to separate out figures for offences where the victim was a child from those where the victim was a vulnerable adult. However, analysis of Crown Court judges' sentencing remarks suggests the majority of cases involve child victims, rather than vulnerable adults.

Causing or allowing a child to die or suffer serious physical harm (section 5)

This is a low volume offence. In the years since the existing guideline has been in force (2019 to 2021), around 60 offenders were sentenced for this offence, of which 15 were sentenced for causing or allowing a child to die. This offence is indictable only, and so all offenders are sentenced at the Crown Court.

For causing or allowing a child to die, over the whole time that the existing guideline has been in force, all offenders have received immediate custody. In 2021, for causing or allowing a child to suffer serious physical harm, 56 per cent of offenders received immediate custody and 44 per cent received a suspended sentence order.

The statutory maximum sentence for these offences increased under the PCSC Act 2022, in relation to offences committed on or after 28 June 2022, from 14 years' custody to life imprisonment for causing or allowing a child to die and from 10 years' custody to 14 years' custody for causing or allowing a child to suffer serious physical harm. The latest full year of data available for analysis at the time of publication was from 2021, before the increases in statutory maximum sentence.

For those receiving immediate custody from 2019 to 2021 inclusive, the average (mean) custodial sentence length (ACSL) after any reductions for a guilty plea was 6 years 4 months for causing or allowing a child to die. For causing or allowing a child to suffer serious physical harm, the ACSL over the same period was 3 years 9 months.

Cruelty to a child (section 1)

This is a higher volume offence. In 2021, around 380 offenders were sentenced for cruelty to a child, of which the majority (70 per cent) were sentenced in the Crown Court. The most common outcome was a suspended sentence order (39 per cent), followed by a community order (30 per cent) and then one fifth (21 per cent) were sentenced to immediate custody. A further 3 per cent received a discharge and 1 per cent received a fine. The remaining 6 per cent of offenders were recorded as 'Otherwise dealt with', although please see the Further information section at the end of this document for more information about a known data issue with this outcome.

The statutory maximum sentence for this offence increased from 10 years' custody to 14 years' custody under the PCSC Act 2022, in relation to offences committed on or after 28 June 2022. The latest full year of data available for analysis at the time of publication was from 2021, before this increase in statutory maximum sentence, during which, the ACSL for those offenders sentenced to immediate custody was 2 years 3 months for this offence, after any reduction for a guilty plea.

Key assumptions

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 guidelines and draws upon analytical and research work undertaken during guideline development. However, some assumptions must 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. Any estimates of the impact of the revised guidelines are therefore subject to a substantial degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines 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. In addition, for low volume offences such as child cruelty, there are limited data available. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to anticipated sentencing practice under the revised guideline.

The resource impact of the revised guidelines is measured in terms of the changes in sentencing practice that are expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the guidelines are therefore not included in the estimates.

In developing sentence levels for the 'Very high culpability' level of the revised guidelines, data on current sentence levels have been considered, although this covers the period before the increase in statutory maximum sentence under the PCSC Act 2022. Existing guidance and case studies, as well as transcripts of judges' sentencing remarks, have also been reviewed.

While data exist on the number of offenders and the sentences imposed, due to a lack of data available regarding the seriousness of current cases, assumptions have been made about how current cases would be categorised across the levels of culpability in the guidelines using relevant transcripts. As a consequence, it is difficult to ascertain how sentence levels may change under the guidelines.

It is, therefore, similarly difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. The consultation gave respondents the opportunity to raise any concerns regarding the impact of the guidelines, which have contributed to this assessment.

Resource impacts

This section should be read in conjunction with the guidelines available at the [Sentencing Council website](#).

Overall impacts

The expected impact of each guideline is provided in detail below.

Overall, the guidelines are intended to reflect the increase in statutory maxima through the addition of a further culpability level, above the existing 'High culpability' level in both guidelines. As such, the impact is intended to be isolated to those offenders already at the highest culpability of offending behaviour. The guidelines remain unchanged from the draft stage which means the impacts set out in this resource assessment are the same as those which were presented at consultation.

Causing or allowing a child to die or suffer serious physical harm (section 5)

The existing section 5 guideline covers both ways of committing this offence and contains three levels of culpability and three levels of harm, leading to a 9-box sentencing table. The highest harm level is reserved for causing or allowing a child to die, with a range of starting points from 2 years' custody for category C1 up to 9 years' custody for the highest category A1. For causing or allowing a child to suffer serious physical harm, the lowest starting point is 9 months' custody for category C3 and the highest is category A2 with a starting point of 7 years' custody.

Under the PCSC Act 2022, the statutory maximum sentence for this offence has increased, from 10 to 14 years' custody for causing or allowing a child to suffer serious physical harm and from 14 years' custody to life imprisonment for causing or allowing a child to die. An additional culpability level ('Very high culpability') has been inserted above the existing 'High culpability' level in the guideline, to reflect the new statutory maximum sentences set by Parliament. The revised guideline therefore has four levels of culpability but maintains three levels of harm, leading to a 12-box sentencing table, with a starting point for A1 of 14 years' custody and a range of 12 to 18 years. The rest of the sentencing table below the new culpability level A remains unchanged from the existing guideline, although the culpability levels have been renamed accordingly.

Analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice. This offence is indictable only and, as such, all offenders are sentenced at the Crown Court. Therefore, we can assume the findings from this analysis are likely to be representative of all offending (but note that the analysis takes into account the original sentence and does not take into account any changes to sentence on appeal).

A total of 22 transcripts of Crown Court sentencing remarks covering 35 offenders sentenced for causing or allowing a child to die or suffer serious physical harm in 2019 and 2020 were initially analysed in order to assess the impact the guideline may have on prison and probation services. These transcripts covered all the offenders sentenced in these years. Of these, eight cases where the offender fell into the highest culpability category were considered in more detail in a resentencing exercise, to understand how the new culpability category might be used (five for causing or allowing a child to die and three for causing or allowing a child to suffer serious physical harm).

This transcript analysis indicated that there is likely to be negligible resource impacts relating to the addition of this new 'Very high culpability' level, as there are very few offenders currently falling into 'High culpability', across all levels of harm, for whom it might be appropriate. This is supported by analysis of the CPD data. From 2019 to 2021, for causing or allowing a child to die, no offenders received an original final

sentence of 9 years or more, which is the starting point for the highest offence category A1 in the existing guideline and remains as such for the comparable B1 offence category of the guideline (the sentence ranges for both are also identical). Furthermore, over the same period for causing or allowing a child to suffer serious physical harm, fewer than five offenders were originally sentenced to an immediate custodial sentence of 7 years or more, (the starting point for the A2 offence category in the existing guideline). Although these are final sentences after any reduction for a guilty plea and do not include any changes on appeal, these are the types of cases for which the new 'Very high culpability' category under the guideline might be appropriate. For this subset of relevant cases, the starting point in the revised guideline would be 5 years higher than in the existing guideline. However, it is anticipated that only a subset of offenders currently assessed as 'High culpability' across all levels of harm would be suitable for the new 'Very high culpability' category, therefore limiting the impact.

Given that almost all offenders already receive immediate custody, the guideline is not anticipated to change the proportion of offenders who receive immediate custodial sentences. It is likely that there may be a very small number of offenders at the highest level of culpability across both offences who will receive longer custodial sentences under the guideline. However, these increases in sentence levels are driven by the recent legislative changes, which have been reflected in the guidelines.

Cruelty to a child (section 1)

The existing guideline for sentencing offences of cruelty to a child contains three levels of culpability and three levels of harm leading to a 9-box sentencing table with a range in starting points from a medium level community order for offence category C3, up to a starting point of 6 years' custody for the highest category A1. The guideline mirrors the approach for causing or allowing a child to die or suffer serious physical harm and inserts a new 'Very high culpability' level above the existing 'High culpability', with a range of starting points from 3 years' custody for the new category A3, up to a starting point of 9 years' custody for the new A1 offence category, thus creating a 12-box sentencing table. As with the Causing or allowing a child to die or suffer serious physical harm guideline, the starting points and ranges in the rest of the sentencing table remain unchanged.

Analysis of a sample of Crown Court judges' sentencing remarks was undertaken to understand the possible effects of the revised guideline on sentencing practice. A total of 21 transcripts of Crown Court sentencing remarks covering 28 offenders sentenced for cruelty to a child were initially analysed. Of these, seven cases from 2019 and 2020, where the offender was in the highest culpability category under the existing guideline, were resentenced to assess the impact the revised guideline may have on prison and probation services.

The analysis suggested that under the revised guideline, there may be a very small impact on prison and probation resources as a subset of those currently categorised within the 'High culpability' level may receive longer sentences under the guideline if sentencers find the new 'Very high culpability' category is more appropriate. This new category has a starting point three years higher for harm levels 1 and 2 and two years higher for harm level 3, reflecting the increase in statutory maximum sentence. However, as there is no indication that the guideline will lead to a change in sentencing outcomes for child cruelty offences; the majority of offenders are

expected to continue receiving a suspended sentence order or a community order, rather than immediate custody, since the guideline remains largely unchanged. This means only a small subset of cases should be impacted by the revised guideline.

These findings are supported by CPD analysis. In 2021, fewer than 1 per cent of offenders received an immediate custodial sentence of 6 years or more, which is the starting point for the highest offence category A1 under the existing guideline. Given that so few offenders are committing offences of cruelty to a child at the highest level of culpability currently, it is anticipated that the impact of this guideline on prison and probation resources is likely to be minimal, although any increases will be driven by the recent legislative changes which are now reflected in the guideline.

Risks

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

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 revised guidelines come into effect.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This included the analysis of 43 transcripts of judges' sentencing remarks, which have provided a more detailed picture of current sentencing practice for these offences. This analysis has formed a large part of the evidence base on which the resource impacts for these guidelines have been estimated.

Risk 2: Sentencers do not interpret the new guidelines as intended

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret them as intended. For these guidelines, the sentencing ranges for the new 'Very high culpability' level have been decided on by considering case studies, sentencing data and Council members' experience of sentencing. Transcripts of sentencing remarks of relevant child cruelty cases have also been studied to gain a greater understanding of current sentencing practice and to understand how the guidelines may be implemented in practice.

Consultees have also had the opportunity to provide their opinion of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. Finally, the Council uses data from the Ministry of Justice to monitor the effects of its guidelines.

Further information

Data sources and quality

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented in this publication 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.

Further details of the processes by which MoJ validate the records in the CPD can be found inside the 'Technical Guide to Criminal Justice Statistics' within the [Criminal Justice System Statistics Quarterly \(CJSQ\) publication](#).

The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When an offender has been found guilty of two or more offences, the principal 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. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. Further information about these sentencing data can be found in the accompanying statistical bulletin and data tables published on the [Sentencing Council: Statistical bulletins webpage](#).

The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea.

'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Figures presented include the time period from March 2020 in which restrictions were initially placed on the criminal justice system due to the coronavirus (COVID-19) pandemic, and the ongoing courts' recovery since. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

General conventions

Actual numbers of sentences have been rounded to the nearest 100, when more than 1,000 offenders were sentenced, and to the nearest 10 when fewer than 1,000 offenders were sentenced.

Proportions of sentencing outcomes have been rounded to the nearest integer. Percentages in this report may not appear to sum to 100 per cent, owing to rounding.