

## Consultation Stage Resource Assessment

### Motoring 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.<sup>1</sup>

#### Rationale and objectives for new guideline

In May 2008, the Sentencing Guidelines Council (SGC) published the Magistrates' Court Sentencing Guidelines (MCSG), covering most of the offences regularly going before magistrates' courts. This included the offence of dangerous driving under section 2 of the Road Traffic Act 1988. The MCSG only apply to sentences passed at magistrates' courts, and so there are no existing guidelines for this offence for use in the Crown Court. The Council is now consulting on a new sentencing guideline for this offence, for use in all courts.

In August 2008, the SGC's Causing death by driving guideline came into force. This included guidelines for the offences of causing death by dangerous driving, causing death by careless or inconsiderate driving, causing death by careless driving when under the influence of drink or drugs, and causing death by driving whilst unlicensed, disqualified or uninsured. Then, in April 2015, the statutory maximum sentence for causing death by driving whilst disqualified increased from 2 years to 10 years' custody. In addition, under the Police, Crime, Sentencing and Courts (PCSC) Act 2022, the statutory maximum sentence for the offences causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs has been increased from 14 years' custody to life imprisonment. As a result, the Sentencing Council has produced revised guidelines for all of these offences where a death has been caused.

No guidelines currently exist for the offences of causing serious injury by dangerous driving, causing serious injury by driving whilst disqualified, or causing injury by wanton or furious driving. In addition, there are no guidelines for the offences of driving or attempting to drive with a specified drug above the specified limit, and being in charge of a motor vehicle with a specified drug above the specified limit, although the Council has produced general guidance for these offences. The Council

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<sup>1</sup> Coroners and Justice Act 2009 section 127: [www.legislation.gov.uk/ukpga/2009/25/section/127](http://www.legislation.gov.uk/ukpga/2009/25/section/127)

is consulting on new sentencing guidelines for all of these offences, for use in all courts in England and Wales.

Furthermore, a new offence of causing serious injury by careless or inconsiderate driving, which has a statutory maximum sentence of 2 years' custody, has been created under the PCSC Act 2022. The Council has therefore produced a new guideline for this offence.

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.

## Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline 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 death by dangerous driving, Road Traffic Act 1988 (section 1);
- Causing death by careless or inconsiderate driving, Road Traffic Act 1988 (section 2B);
- Causing death by careless driving when under the influence of drink or drugs, Road Traffic Act 1988 (section 3A);
- Causing death by driving whilst unlicensed or uninsured, Road Traffic Act 1988 (section 3ZB);
- Causing death by driving whilst disqualified, Road Traffic Act 1988 (section 3ZC);
- Causing serious injury by dangerous driving, Road Traffic Act 1988 (section 1A);
- Causing serious injury by driving whilst disqualified, Road Traffic Act 1988 (section 3ZD);
- Dangerous driving, Road Traffic Act 1988 (section 2);
- Causing injury by wanton or furious driving, Offences against the Person Act 1861 (section 35);
- Driving or attempting to drive with a specified drug above the specified limit, Road Traffic Act 1988 (section 5A); and
- Being in charge of a motor vehicle with a specified drug above the specified limit, Road Traffic Act 1988 (section 5A).

Although the Council has also produced a new guideline for the offence of causing serious injury by careless or inconsiderate driving, no sentencing data are currently

available for this offence as it was only created as part of the PCSC Act 2022. It has therefore not been included within this resource assessment.<sup>2</sup>

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, especially where no guideline currently exists, and where there has been an increase to the statutory maximum sentence, 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 new guideline may impact sentences. Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks for offenders sentenced for motoring offences, as well as sentencing data from the Court Proceedings Database.<sup>3,4</sup> 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.

During the consultation stage, we intend to conduct research with sentencers, to explore whether the draft guidelines will work as anticipated. This research should also provide some further understanding of the potential impact of the guidelines on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the draft guideline 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>.

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<sup>2</sup> The Impact Assessment published by the Ministry of Justice alongside the PCSC Bill can be found here: [driving offences Impact Assessment \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/614447/driving-offences-impact-assessment.pdf)

<sup>3</sup> The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this 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. The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate, immediate custodial sentences, after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here: [http://www.sentencingcouncil.org.uk/publications/?s=&cat=statistical-bulletin](https://www.sentencingcouncil.org.uk/publications/?s=&cat=statistical-bulletin).

<sup>4</sup> Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. 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.

### **Causing death by dangerous driving**

In 2020, around 150 offenders were sentenced for causing death by dangerous driving and all of these were sentenced at the Crown Court. The majority of offenders (93 per cent) were sentenced to immediate custody, a further 6 per cent were given a suspended sentence order, and 1 per cent were given a community order.

For those receiving immediate custody in 2020, the average (mean) custodial sentence length (ACSL) was 4 years 7 months, whilst the statutory maximum sentence for causing death by dangerous driving was still 14 years' custody.<sup>5</sup>

### **Causing death by careless or inconsiderate driving**

In 2020, around 120 offenders were sentenced for causing death by careless or inconsiderate driving. Most offenders were either given a suspended sentence order (39 per cent) or sentenced to immediate custody (31 per cent). A further 25 per cent received a community order, 4 per cent received a fine and 1 per cent were recorded as 'otherwise dealt with'.<sup>6</sup>

The statutory maximum sentence for causing death by careless or inconsiderate driving is 5 years' custody and in 2020 the ACSL for this offence was 1 year.

### **Causing death by careless driving when under the influence of drink or drugs**

In 2020, around 20 offenders were sentenced for causing death by careless driving when under the influence of drink or drugs. The majority of offenders (89 per cent) were sentenced to immediate custody, and a further 11 per cent were given a suspended sentence order.

In 2020, the ACSL for this offence was 4 years 6 months, when the statutory maximum sentence was still 14 years' custody.<sup>5</sup>

### **Causing death by driving whilst unlicensed or uninsured**

Causing death by driving whilst unlicensed or uninsured is an extremely low volume offence. In 2020, fewer than five offenders were sentenced for this offence, and all offenders sentenced were given a suspended sentence order.

The statutory maximum sentence for causing death by driving whilst unlicensed or uninsured is 2 years' custody and over the period 2016-2020 the ACSL for this offence was 11 months.<sup>7</sup>

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<sup>5</sup> The statutory maximum sentence for this offence increased from 14 years' custody to life imprisonment under the PCSC Act 2022. The latest full year of data available for analysis at the time of publication was from 2020, before this increase in statutory maximum sentence, so there are no cases exceeding 14 years' custody included in these figures.

<sup>6</sup> The category '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.

<sup>7</sup> The ACSL is provided for the period 2016-2020, rather than for a single year, due to the small number of offenders sentenced to immediate custody for this offence each year.

### **Causing death by driving whilst disqualified**

Causing death by driving whilst disqualified is also an extremely low volume offence, with a statutory maximum sentence of 10 years' custody. Since 2015,<sup>8</sup> fewer than five offenders have been sentenced for this offence, and all offenders were sentenced to immediate custody.<sup>9</sup>

### **Causing serious injury by dangerous driving**

In 2020, around 300 offenders were sentenced for causing serious injury by dangerous driving. Just over two thirds of offenders (67 per cent) were sentenced to immediate custody, and a further 26 per cent were given a suspended sentence order. Five per cent received a fine, 1 per cent received a community order and 1 per cent were recorded as 'otherwise dealt with'.<sup>6</sup>

The statutory maximum sentence for causing serious injury by dangerous driving is 5 years' custody and in 2020 the ACSL for this offence was 2 years 2 months.

### **Causing serious injury by driving whilst disqualified**

Causing serious injury by driving whilst disqualified is a very low volume offence, with fewer than ten offenders sentenced in 2020. The majority of offenders (86 per cent) were sentenced to immediate custody, and 14 per cent received a fine (this equates to one offender).

The statutory maximum sentence for causing serious injury by driving whilst disqualified is 4 years' custody and over the period 2016-2020 the ACSL for this offence was 21 months.<sup>7</sup>

### **Dangerous driving**

In 2020, around 3,300 offenders were sentenced for dangerous driving, and the majority (83 per cent) were sentenced in the Crown Court. In 2020 most offenders were either sentenced to immediate custody (49 per cent) or were given a suspended sentence order (32 per cent). A further 15 per cent received a community order, 3 per cent received a fine, 1 per cent were recorded as 'otherwise dealt with', and less than 1 per cent received a discharge.<sup>6,10</sup>

The statutory maximum sentence for dangerous driving is 2 years' custody and in 2020, the ACSL for this offence was 10 months.

### **Causing injury by wanton or furious driving**

Causing injury by wanton or furious driving is a low volume offence, with around 10 offenders sentenced in 2020. Just over half of offenders sentenced in 2020 (55 per cent) were given a suspended sentence, a further 36 per cent were sentenced to

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<sup>8</sup> Prior to 13 April 2015, the offence of causing death by driving whilst disqualified was combined with the offence of causing death by driving whilst unlicensed or uninsured.

<sup>9</sup> An average custodial sentence length (ACSL) has not been calculated for this offence due to the very low number of offenders sentenced.

<sup>10</sup> Percentages may not appear to sum to 100 per cent due to rounding.

immediate custody, and 9 per cent received a community order (this equates to one offender).

The statutory maximum sentence for this offence is 2 years' custody and over the period 2016-2020 the ACSL was 1 year.<sup>7</sup>

### **Driving or attempting to drive with a specified drug above the specified limit**

Driving or attempting to drive with a specified drug above the specified limit is the highest volume offence covered by the new guideline, with around 13,300 offenders sentenced in 2020. The majority of offenders sentenced in 2020 (86 per cent) received a fine. A further 9 per cent received a community order, 2 per cent received a suspended sentence, 1 per cent were sentenced to immediate custody, 1 per cent received a discharge, and 1 per cent were recorded as 'otherwise dealt with'.<sup>6</sup>

The statutory maximum sentence for this offence is an unlimited fine and/or 6 months' custody and in 2020, the ACSL for this offence was 2 months.

### **Being in charge of a motor vehicle with a specified drug above the specified limit**

In 2020, around 270 offenders were sentenced for being in charge with a specified drug above the specified limit, and the majority of offenders (91 per cent) received a fine. A further 7 per cent received a community order, 1 per cent received a discharge, 1 per cent were sentenced to immediate custody, and less than 1 per cent were recorded as 'otherwise dealt with'.<sup>6,10</sup>

The statutory maximum sentence for this offence is a level 4 fine and/or 3 months' custody and over the period 2016-2020 the ACSL for this offence was 3 weeks.<sup>7</sup>

## **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 guideline 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 new guideline 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, and those which have only recently been created, there are limited data available. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guideline, and an assessment of the effects of changes to the wording of the guideline where a previous guideline existed.

The resource impact of the draft 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 draft guidelines are therefore not included in the estimates.

In developing sentence levels for the new 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, for sections 1 and 3A of the Road Traffic Act 1988. Existing guidance and case studies, as well as transcripts of judges' sentencing remarks have also been reviewed.

While data exists 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 and harm proposed in the draft guidelines using relevant transcripts. As a consequence, it is difficult to ascertain how sentence levels may change under the draft guideline.

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the new guidelines, and to mitigate the risk of the changes having an unintended impact, research will be undertaken with sentencers during the consultation period, utilising different scenarios. Along with consultation responses, this should hopefully provide more information on which to base the final resource assessment accompanying the definitive guidelines.

## Resource impacts

This section should be read in conjunction with the draft guideline available at: <http://www.sentencingcouncil.org.uk/consultations/>.

### Overall impacts

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

Overall, the guideline is anticipated to increase sentences for several offences, where sentence levels have been driven either by the changes to legislation introduced under the PCSC Act 2022, for sections 1 and 3A of the Road Traffic Act 1988, or by the knock-on effect this has had on other related motoring offences. It is estimated that the draft guidelines, in reflecting the increase in statutory maximum penalties, may result in a requirement for up to around 260 additional prison places for causing death by dangerous driving, around 20 additional prison places for causing death by careless driving when under the influence of drink or drugs, and around 80 additional prison places for causing serious injury by dangerous driving.

For the offences of causing death by careless or inconsiderate driving and dangerous driving, it is anticipated that the draft guidelines may result in an impact on prison and probation resources, although it is not possible to quantify any impact at this stage.

For the other offences covered by the draft guidelines, it is difficult to estimate the impact of the guidelines, either due to low volumes or due to a lack of data available

on how current cases would be categorised under the new guideline. However, it is anticipated that for these offences the draft guidelines will improve consistency of sentencing for these offences, but not lead to any notable changes in sentencing severity.

### **Causing death by dangerous driving/ Causing death by careless driving when under the influence of drink or drugs**

The current SGC guideline for causing death by dangerous driving contains three levels of seriousness reflecting the 'nature of [the] offence'. The proposed guideline has three levels of culpability and one level of harm, as all cases of causing death by dangerous driving will inevitably be of the utmost seriousness.

The SGC guideline for causing death by careless driving when under the influence of drink or drugs contains nine offence categories, based on three levels describing the nature of the offence, and three categories describing factors relevant to the presence of alcohol or drugs. The proposed guideline follows a similar format, with three levels of culpability and three categories containing factors in relation to the presence of alcohol or drugs.

Under the PCSC Act 2022, the statutory maximum sentence for these offences has increased from 14 years' custody to life imprisonment. The sentence levels in the draft guidelines have therefore been increased, in both high and medium culpability, in order to reflect the new statutory maximum sentences set by Parliament, and ensure sentencing levels in these guidelines are proportionate to other offences.

Analysis of a sample of Crown Court judges' sentencing remarks<sup>11</sup> has been undertaken to understand the possible effects of the guidelines on sentencing practice. Both of these offences are 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.

For causing death by dangerous driving, the analysis indicated there may be a shift in how offenders are categorised under the new guideline, from level 3 seriousness in the existing guideline (which has a starting point of 3 years' custody) to medium culpability in the new guideline (which has a starting point of 6 years' custody), and from level 2 seriousness (starting point of 5 years' custody) to high culpability (starting point of 12 years' custody). This is most likely due to the fact that four factors currently within level 3 seriousness have moved into medium culpability in the draft guideline, and similarly one factor has moved from level 2 seriousness to high culpability.

The analysis also indicated that the draft guidelines for both offences are likely to result in an uplift in sentences, due to an increase in sentence lengths for these offences. For causing death by dangerous driving, the analysis found that the average final custodial sentence increased on average by 1 year 11 months under

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<sup>11</sup> Twenty-five transcripts of Crown Court sentencing remarks from 2019 and 2020 were analysed (15 for causing death by dangerous driving and 10 for causing death by careless driving when under the influence of drink or drugs), to assess the impact these guidelines may have on prison and probation services.



the guideline (from 5 years 4 months to 7 years 2 months).<sup>12</sup> It is estimated therefore that the draft guideline may result in a requirement for up to around 260 additional prison places per year.<sup>13,14</sup> For causing death by careless driving when under the influence of drink or drugs, the analysis found that the average custodial sentence length increased by 1 year 1 month (from 4 years 4 months to 5 years 5 months),<sup>12</sup> and it is estimated that the guideline may result in a requirement for up to around 20 additional prison places per year.<sup>13,14</sup> These increases in sentence levels are driven by the recent legislative changes, which have been reflected in the guidelines.

### **Causing death by careless or inconsiderate driving**

The existing SGC guideline for causing death by careless or inconsiderate driving contains three categories of seriousness reflecting the 'nature of activity'. The new draft guideline contains three levels of culpability and one level of harm.

Starting points and sentence ranges in the draft guideline have been increased slightly, in order to remain in step with the increased sentence levels in the guidelines for causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs.

Analysis of a sample of Crown Court judges' sentencing remarks<sup>15</sup> has been undertaken to understand the possible effects of the guideline on sentencing practice. The analysis suggested that under the new guideline, some offenders currently receiving a community order may receive a short custodial sentence instead. This is due to the fact that the starting point for the lesser culpability category in the draft guideline is 26 weeks' custody (compared to a medium level community order in the existing guideline) and, in addition, the sentence range for the medium culpability category is now solely custodial (compared to a range of high level community order – 2 years' custody for the medium category in the existing guideline). However, given that a substantial proportion of these custodial sentences are likely to be eligible for suspension, for the purposes of this analysis we have not assumed this will have a resource impact in terms of prison places.<sup>16</sup>

The analysis also indicated that there may be a slight uplift in sentences for those sentenced to immediate custody, however, given the limited evidence available, along with the fact that only around a third of offenders are sentenced to immediate custody, any resource impact is anticipated to be minimal. Further research will, however, be conducted with sentencers during the consultation stage to estimate the

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<sup>12</sup> These ACSL calculations have been based on the transcript analysis undertaken. The ACSL calculated using the transcripts differs from the ACSLs presented in the 'Current sentencing practice' section, as these were calculated using CPD data.

<sup>13</sup> To calculate the expected resource impact, volumes of sentences have been adjusted in line with 2019 volumes. It has also been assumed that those serving a determinate sentence of less than seven years would be released half-way through their sentence and those serving a determinate sentence of seven years or more would be released after serving two thirds of their sentence. This two-thirds release point will take effect for these offences under the PCSC Act 2022.

<sup>14</sup> Prison impact estimates have been rounded to the nearest 10 prison places.

<sup>15</sup> A total of 10 transcripts of Crown Court sentencing remarks for causing death by careless or inconsiderate driving from 2019 were analysed to assess the impact this guideline may have on prison and probation services. This included offenders sentenced to community orders, suspended sentence orders and immediate custody.

<sup>16</sup> Sentencers are able to suspend sentences of between 14 days and two years.

potential resource impact of the guideline and to understand how the guideline will be applied in practice.

### **Causing death by driving whilst unlicensed or uninsured/ Causing death by driving whilst disqualified**

The existing SGC guideline for causing death by driving whilst unlicensed, disqualified or uninsured contains three categories of seriousness reflecting the 'nature of activity', and has an offence range of a community order to 2 years' custody (the statutory maximum sentence for causing death by driving whilst unlicensed or uninsured). As the statutory maximum sentence for causing death by driving whilst disqualified is now 10 years' custody, a separate draft guideline has been produced for this offence, in addition to a draft guideline covering the unlicensed/ uninsured offences.

The new draft guidelines for these offences contain three levels of culpability and one level of harm. The sentence table in the draft guideline for causing death by driving whilst unlicensed or uninsured is the same as that in the existing guideline. As the sentence starting points and ranges have not changed, along with the fact that these offences are very low volume, it is anticipated that any impact of the draft guideline will be negligible.

In the draft guideline for causing death by driving whilst disqualified, the sentence table ranges from a high level community order to 7 years' custody. The increased starting points and ranges in this guideline reflect the higher statutory maximum for this offence. However, given the extremely low number of offenders sentenced for this offence each year, it is expected that any impact of the draft guideline on prison and probation resources will be negligible.

### **Causing serious injury by dangerous driving**

There is no current guideline for causing serious injury by dangerous driving. The proposed guideline has two levels of harm and three levels of culpability. The sentencing ranges have been set with a view to increasing current sentence levels slightly, to reflect the increased sentence levels for causing death by dangerous driving. The sentencing table in the draft guideline ranges from 26 weeks to 5 years' custody, the statutory maximum for this offence.

Given that the sentence range for this offence is solely custodial, it is expected that any offenders currently receiving a fine or community order would receive a custodial sentence under the draft guideline; however this only affects a small proportion of offenders (6 per cent). In addition, three of the six categories in the sentencing table for this offence have a starting point which is eligible for suspension.<sup>16</sup>

Analysis of a sample of Crown Court judges' sentencing remarks<sup>17</sup> has been undertaken to understand the possible effects of the guideline on sentencing practice. The analysis indicated that overall, the draft guideline is likely to result in an uplift in sentences for this offence, with an increase in the average final custodial

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<sup>17</sup> A total of 10 transcripts of Crown Court sentencing remarks for causing serious injury by dangerous driving from 2019 were analysed to assess the impact this guideline may have on prison and probation services. This included offenders sentenced to community orders, suspended sentence orders and immediate custody.

sentence of 7 months (from 2 years 3 months to 2 years 11 months).<sup>18</sup> It is therefore estimated that the draft guideline may result in a requirement for up to around 80 additional prison places.<sup>19,20,21</sup>

### **Causing serious injury by driving whilst disqualified**

There is no current guideline for causing serious injury by driving whilst disqualified. The draft guideline for this offence contains three levels of culpability and two levels of harm, with a sentencing table ranging from a community order to 4 years' custody (the statutory maximum for this offence). The intention of this draft guideline is to promote consistency in sentencing for this offence, where there is no guidance currently. Transcript analysis was undertaken of the small number of Crown Court judges' sentencing remarks available for this offence<sup>22</sup> which, although limited by sample size, did not offer any indication that the guideline would result in an increase to sentence levels. Given that this offence is mostly sentenced at the Crown Court, it is likely that the transcripts analysed are fairly representative of this type of offending. In addition, this offence is very low volume, therefore it is anticipated that any resource impact of the guideline is likely to be negligible.

### **Dangerous driving**

The existing MCSG guideline for dangerous driving contains three categories of seriousness reflecting the 'nature of activity'. The new draft guideline adopts the Sentencing Council's standard stepped approach and applies to all courts. It is based on two levels of harm and three levels of culpability, with a sentencing table ranging from a low level community order to two years' custody, the statutory maximum for this offence. The sentencing ranges have been increased to some extent, to reflect the increased sentence levels for causing death by dangerous driving and causing serious injury by dangerous driving.

Most offenders sentenced for dangerous driving are sentenced at the Crown Court (83 per cent in 2020) and analysis of a sample of Crown Court judges' sentencing remarks<sup>23</sup> has been undertaken to understand the possible effects of the guideline on sentencing practice. However, given that the number of transcripts analysed

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<sup>18</sup> These ACSL calculations have been based on the transcript analysis undertaken. The ACSL calculated using the transcripts differs from the ACSLs presented in the 'Current sentencing practice' section, as these were calculated using CPD data.

<sup>19</sup> To calculate the expected resource impact, volumes of sentences have been adjusted in line with 2019 volumes for offenders sentenced to immediate custody. It has also been assumed that offenders would be released half-way through their sentence.

<sup>20</sup> Data are not available to estimate how many suspended sentence orders would continue to be suspended under the draft guideline, however, the estimated resource impact provided here is based on the assumption that offenders who were previously given a suspended sentence order would continue to be given one under the draft guideline. In addition, it has been assumed that although offenders currently receiving a non-custodial sentence under the existing guideline will receive a custodial sentence under the draft guideline, these sentences would likely be eligible for suspension and so it has been assumed that these cases will not result in a prison impact.

<sup>21</sup> Prison impact estimates have been rounded to the nearest 10 prison places.

<sup>22</sup> A total of 6 transcripts of Crown Court sentencing remarks for causing serious injury by driving whilst disqualified from the period 2017-2021 were analysed to assess the impact this guideline may have on prison and probation services.

<sup>23</sup> A total of 10 transcripts of Crown Court sentencing remarks for dangerous driving from 2019 were analysed to assess the impact this guideline may have on prison and probation services.

represents a very small proportion (less than 1 per cent) of the total number of offenders sentenced, these findings should be viewed as indicative only.

The analysis suggested that sentences using the draft guideline are broadly in line with the outcomes given by sentencers prior to the guideline. It suggested that sentence types would remain similar under the new guideline; for example, offenders currently receiving a suspended sentence order would continue to do so, as would offenders who are currently receiving a sentence of immediate custody.

The analysis also suggested there may be an increase in sentence length for offenders receiving a suspended sentence order and for some offenders sentenced to immediate custody. Although the increases in immediate custodial sentence lengths were small, dangerous driving is a high-volume offence (with around 1,600 offenders sentenced to immediate custody in 2020), so any changes have the potential to result in a large resource impact. It is therefore anticipated that the draft guideline for dangerous driving may result in an impact on prison and probation resources, although it is not possible to quantify any impact at this stage, given the low proportion of transcripts analysed for this offence (less than 1 per cent of offenders sentenced). However, as the statutory maximum sentence for this offence is 2 years' custody, all custodial sentences would be eligible for suspension.<sup>16</sup>

Further research will be conducted during the consultation stage to estimate the potential resource impact of the guideline and to understand how the guideline will be applied in practice.

### **Causing injury by wanton or furious driving**

There is no current guideline for causing injury by wanton or furious driving. The draft guideline for this offence contains three levels of culpability and three levels of harm, with a sentencing table ranging from a fine to 2 years' custody (the statutory maximum for this offence). The transcript analysis undertaken of Crown Court judges' sentencing remarks for this offence<sup>24</sup> did not offer any indication that the guideline would result in an increase to sentence levels. As this offence is indictable only (and consequently can only be sentenced in the Crown Court), it is expected that the transcripts analysed are representative of all offending. Furthermore, as this is a low volume offence, it is anticipated that any resource impact of the guideline is likely to be negligible.

### **Driving or attempting to drive with a specified drug above the specified limit/ Being in charge of a motor vehicle with a specified drug above the specified limit**

The existing MCSG guidance for these offences contains an exhaustive list of factors that increase seriousness. The new draft guidelines adopt the Sentencing Council's standard stepped approach and are based on two levels of harm and two levels of culpability. The sentencing ranges have been set to be in line with current sentencing practice and consistent with other relevant guidelines, with a sentencing table ranging from a fine to the respective statutory maxima for these offences (26 weeks' custody for driving or attempting to drive with a specified drug above the specified

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<sup>24</sup> A total of 9 transcripts of Crown Court sentencing remarks for causing injury by wanton or furious driving from the period 2019-2020 were analysed to assess the impact this guideline may have on prison and probation services.

limit, and 12 weeks' custody for being in charge of a motor vehicle with a specified drug above the specified limit).

As both of these offences are summary only, it has not been possible to undertake an analysis of sentencing remarks for these offences.<sup>25</sup> Given the lack of data available on how current cases would be categorised under the draft guidelines, it is difficult to estimate what the resource impact of the draft guidelines might be.

Driving or attempting to drive with a specified drug above the specified limit is a high-volume offence (with around 13,300 offenders sentenced in 2020), however just 1 per cent of offenders were sentenced to immediate custody in 2020 (around 160 offenders). Being in charge of a motor vehicle with a specified drug above the specified limit is a much lower volume offence, with 270 offenders sentenced in 2020, and of those fewer than five were sentenced to immediate custody.

Given the low proportion of offenders sentenced to immediate custody for these offences, along with their low statutory maximum sentences (which are both within the range of suspension),<sup>16</sup> it is anticipated that any impact of these guidelines on prison and probation resources is likely to be minimal.

## 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 new guidelines comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guidelines have the intended effect and inviting views on the guidelines. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated. Transcripts of judges' sentencing remarks have provided a more detailed picture of current sentencing practice for some of these offences which has formed a large part of the evidence base on which the resource impacts have been estimated, however it should be noted that these are rough estimates which should be interpreted as indicative of the direction and approximate magnitude of any change only.

### **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 the new draft guidelines, sentencing

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<sup>25</sup> Transcripts of sentencing remarks are only available from the Crown Court.

ranges have been decided on by considering sentence ranges in the existing guidelines, in conjunction with sentencing data and Council members' experience of sentencing. Transcripts of sentencing remarks of relevant motoring cases have been studied where possible to gain a greater understanding of current sentencing practice and to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers due to be carried out during the consultation period should also enable issues with implementation to be identified and addressed prior to the publication of the definitive guidelines.

Consultees can also feed back their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines.