

Consultation stage resource assessment

Non-fatal strangulation and suffocation

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](#)).

Scope

The guideline applies only to adults. This assessment therefore only considers the resource impact of the draft guideline on prison and probation resources. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences:

- non-fatal strangulation
- non-fatal suffocation
- racially or religiously aggravated non-fatal strangulation or non-fatal suffocation

The Council is consulting on a new sentencing guideline for these offences, for use in all courts in England and Wales.

The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. For more details see the 'Further information' section at the end of this document. Statistics for non-fatal strangulation and suffocation and racially or religiously aggravated non-fatal strangulation and suffocation have been combined owing to the low volume of offenders sentenced for the aggravated offence to date.

Rationale and objectives for new guideline

There are currently no guidelines for these offences, which came into force on 7 June 2022. The Council is consulting on new sentencing guidelines for these offences, for use in all courts in England and Wales.

The development of a guideline for these offences is in accordance with the Council's aim to develop guidelines where they are absent, to improve consistency in sentencing and provide guidance for sentencers.

While these offences are very new, it has been important to develop a guideline to ensure consistency of sentencing as charging volumes have been steadily increasing and sentencing volumes have also increased in every quarter.

Current sentencing practice

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

The evidence base has been limited by the recency of this offence. Nevertheless, sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks, both before and after a Court of Appeal judgment (*R v Cook* [2023] EWCA Crim 452) confirmed the approach to be taken to sentencing non-fatal strangulation, references to case law, relevant news articles and sentencing data from the Ministry of Justice (MoJ) Court Proceedings Database. For more information on this data source please see the 'Further information' section at the end of this document.

During the consultation stage, some small-scale research will be conducted with a group of sentencers, to explore if the draft guideline works as anticipated. This research should also provide some further understanding of the likely impact of the guideline on sentencing practice, and the subsequent effect on the prison population.

Detailed sentencing statistics for the offences covered by the draft guideline have been published on the [Sentencing Council: Statistical bulletins webpage](#).

Non-fatal strangulation/Non-fatal suffocation/Racially or religiously aggravated non-fatal strangulation and suffocation

In the first 12 months that these offences were in force (July 2022 to June 2023 inclusive), around 700 adult offenders were sentenced. Non-fatal strangulation and suffocation are triable either way and, across these 12 months, 58 per cent of offenders were sentenced at the Crown Court.

The vast majority of offenders are sentenced to custody, either immediate or suspended. Between April and June 2023, the most recent quarter of data available, slightly over half of offenders sentenced received an immediate custodial sentence (55 per cent) and around a third received a suspended sentence order (32 per cent). A further 10 per cent received a community order and 2 per cent had their sentence recorded as either 'other' or unknown (see the 'Further information' section for more details).

For those sentenced to immediate custody, the average (mean) custodial sentence length (ACSL) has been increasing steadily in each quarter since the offence came into force. In July-September 2022 the ACSL was around 12 months but by April-June 2023 this increased to around 19 months. It is likely that this increase is related

to the decision of the Court of Appeal in R v Cook handed down in early April 2023. The statutory maximum sentence for this offence is 5 years' custody.

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 estimate of the impact of the new guideline is 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. Furthermore, as the offences of non-fatal strangulation and suffocation are relatively new, there is limited evidence to draw from. 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 guidelines.

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

In developing sentence levels for this guideline, existing guidance and data on current sentence levels have been considered. While there are 12 months of available data on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the draft guidelines, especially given the recent change in sentencing practice which is likely to be a result of the Court of Appeal judgment in R v Cook. 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 guideline may have on prison and probation resources. To support the development of the guidelines and mitigate the risk of the guideline having an unintended impact, research will be undertaken with sentencers during the consultation period, which will provide more information on which to base the final resource assessment accompanying the definitive guideline.

Resource impacts

This section should be read in conjunction with the draft guideline available on the [Sentencing Council consultation webpage](#).

Summary

Overall, the non-fatal strangulation and suffocation guideline provides for the most serious offences – those involving high culpability and high harm factors – to be sentenced more severely, to ensure relativity and proportionality with other assault offence sentences. This is anticipated to increase custodial sentence lengths in some cases, which may result in a total requirement of around 40 additional prison places.

Non-fatal strangulation and suffocation

There is currently no guideline for non-fatal strangulation and suffocation offences, although in April 2023, the Court of Appeal judgment in R v Cook stated that a starting point of 18 months' custody would be appropriate for offences involving particular features.

The draft guideline consists of three levels of culpability and two levels of harm. The sentencing ranges have been set with a view to ensure that the serious nature of this offending is captured but that outcomes are still proportionate to sentences for offences of related seriousness, for example other assault offences. The sentencing table in the draft guideline ranges from a high level community order at the bottom of the range for category C2, up to 4 years 6 months' custody at the top of the range for category A1, against a statutory maximum sentence of 5 years' custody.

All of the starting points in the guideline are custodial so it could be expected that any offenders who might currently receive a non-custodial sentence would instead receive a custodial sentence under the draft guideline. This affects a relatively small proportion of offenders (around 30 offenders in April to June 2023). A high level community order is available at the very bottom of the range of C2 for any cases where this is considered by the sentencer to be the most appropriate sentencing outcome.

Analysis of a sample of Crown Court judges' sentencing remarks from after the Court of Appeal judgment in April 2023 was undertaken to understand the possible effects of the guideline on sentencing practice. Non-fatal strangulation and suffocation are triable either way, although over the period that the sample of transcripts covers, over three quarters of offenders were sentenced at the Crown Court. This means the transcript sample reflected a range of sentencing outcomes but is not necessarily representative of all cases and all offending.

Based on an analysis of 41 transcripts of sentencing remarks from offenders sentenced in May and June 2023, it is estimated that the draft guideline is likely to result in a slight increase in sentence lengths overall. Within the transcript sample, the mean average sentence length for immediate custodial outcomes increased by 1 month, from an average of 18 months' to 19 months' custody, across all cases. The cases driving the biggest increases all fell into culpability A under the draft guideline, with increases of between 4 and 9 months' custody in these cases. As a result, it is

estimated that the draft guideline may lead to a requirement for around 40 additional prison places per year.

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 guideline 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 guideline has the intended effect and inviting views on the guideline. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

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

If sentencers do not interpret the guideline 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. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of Crown Court sentencing remarks for non-fatal strangulation and suffocation cases after the decision of the Court of Appeal in *R v Cook* have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers carried out during the consultation period should also enable issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

Consultees can also feed back their views of the likely effect of the guideline, and whether this differs from the effects set out in this consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

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 (ACSLs) 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.

The result category 'Other/unknown' includes cases where the outcome categorised in the CPD was 'Otherwise dealt with', which covers multiple miscellaneous disposals, and those cases where the disposal was not known.

It is possible that the figures presented may include the courts' recovery from the impact of the coronavirus (COVID-19) pandemic, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Methodology

Where a resource impact has been calculated, volumes of sentences have been adjusted in line with estimated 2023 volumes, using known volumes from April to June 2023. It has been assumed that those serving a determinate custodial sentence of less than seven years would be released half-way through their sentence.

The estimated resource impacts provided are based on the assumption that offenders who were previously given a suspended sentence order would continue to be given one under the draft guideline, provided the sentence length was within the range for suspension (between 14 days and 2 years).

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, due to rounding. Prison impact estimates have been rounded to the nearest 10 prison places.