

## FINAL RESOURCE ASSESSMENT: FAILING TO SURRENDER TO BAIL

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

### 2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 Guidelines are not currently available for all types of breach, and there is variation in the format of the guidelines which do exist and their scope, with some guidance available to magistrates' courts in the form of Magistrates' Courts Sentencing Guidelines but not in the Crown Court. A survey of 216 magistrates and district judges was conducted in November 2014, to gather information on sentencing breaches and the usefulness of current breach guidelines.<sup>2</sup> Respondents indicated that they would like a comprehensive summary of all breach order sentence guidelines, presented in a consistent format and clearly identifiable as a breach guideline.

2.2 The Council decided that breach guidelines should be issued as a single definitive guideline to consolidate and improve guidance and ensure a more consistent approach to sentencing breaches of orders. The Council decided to include the highest volume offences and those where it was thought consistency of approach to sentencing could be achieved through a guideline. The format of the breach guidelines brings them into line with the rest of the Sentencing Council guidelines where possible, using the stepped approach to sentencing and assessing harm and culpability, and any factors increasing seriousness.

### 3 SCOPE

3.1 This resource assessment covers the offence of failing to surrender to bail.

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

<sup>2</sup> The sample was self-selected, and relatively small, meaning that we cannot generalise from these findings to the general population of magistrates and district judges. The findings do, however, give us an indication of how an engaged and interested group use the current guidance and their needs and preferences with reference to future guidelines.

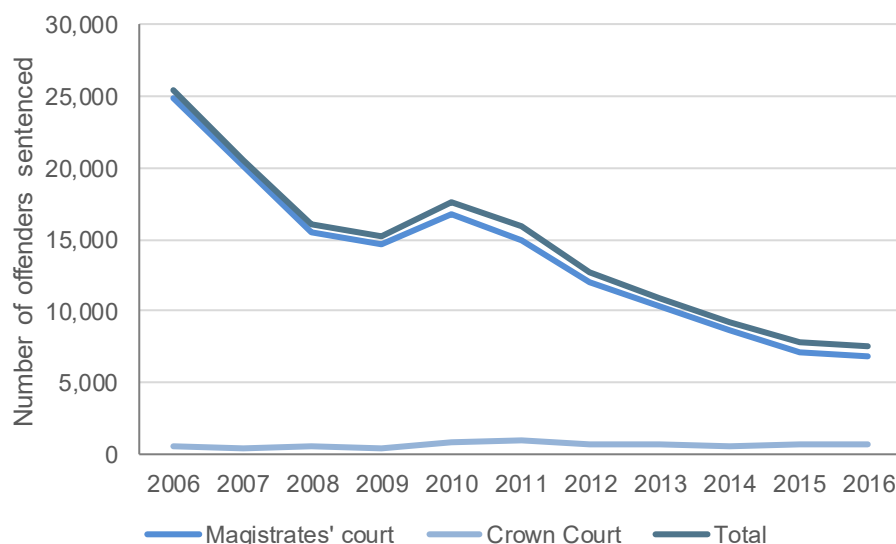
3.2 The maximum sentence for this offence in a magistrates' court is 3 months' imprisonment. In the Crown Court the maximum sentence is 12 months' custody.

3.3 Other breach offences, for which the Council has produced new guidelines, are covered under three further separate resource assessments.

#### 4 CURRENT SENTENCING PRACTICE

4.1 Between 2006 and 2009, the number of adult offenders sentenced for failing to surrender to bail decreased, from 25,400 in 2006 to 15,200 in 2009. The number increased to 17,600 in 2010, and then decreased to 7,600 in 2016.<sup>3</sup> Figure 1 shows the number of adult offenders sentenced for failing to surrender to bail. In 2016 the majority (90 per cent) of these breaches of bail were sentenced in magistrates' courts.

**Figure 1: Number of adult offenders sentenced for failing to surrender to bail, 2006-2016**



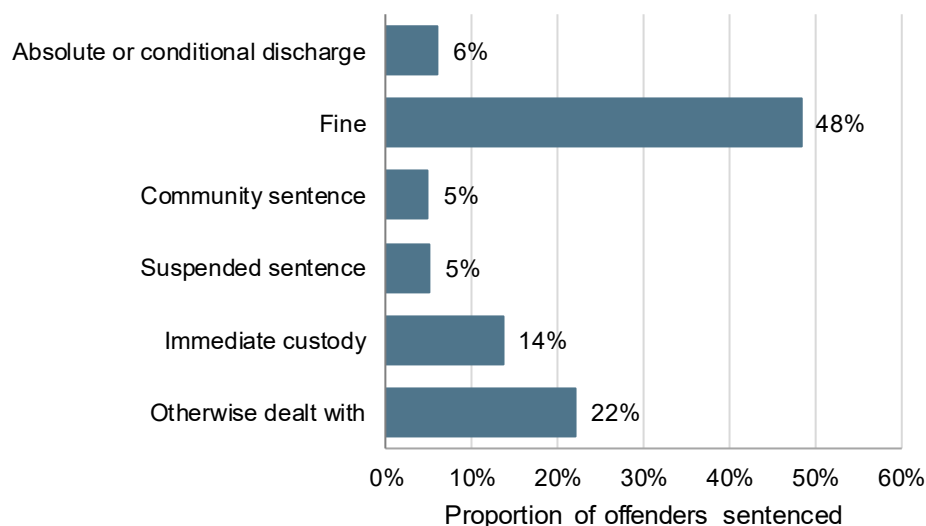
**Source: Ministry of Justice CPD**

4.2 Fines have remained the most frequently used sentence outcome over the last decade. Figure 2 shows the proportion of offenders sentenced for failing to

<sup>3</sup> Source: Ministry of Justice Court Proceedings Database (CPD). For details of data collection and methodology please see: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2017>  
The figures given 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.

surrender to bail by sentence outcome. In 2016, almost half of offenders (48 per cent) received a fine, with 14 per cent sentenced to immediate custody.

**Figure 2: Proportion of adult offenders sentenced for failing to surrender to bail, by sentence outcome, 2016<sup>4</sup>**



**Source: Ministry of Justice CPD**

4.3 Figure 3 shows the distribution of custodial sentence lengths in 2015<sup>5</sup>, for those who received an immediate custodial sentence (approximately 1,000 offenders). Offenders who plead guilty are eligible for a reduction in their sentence. In general, the earlier an offender enters their plea in the court proceedings, the larger the reduction in sentence. In order to compare current sentence lengths with those in the new guideline, it is necessary to look at sentence lengths before any reduction for a guilty plea.

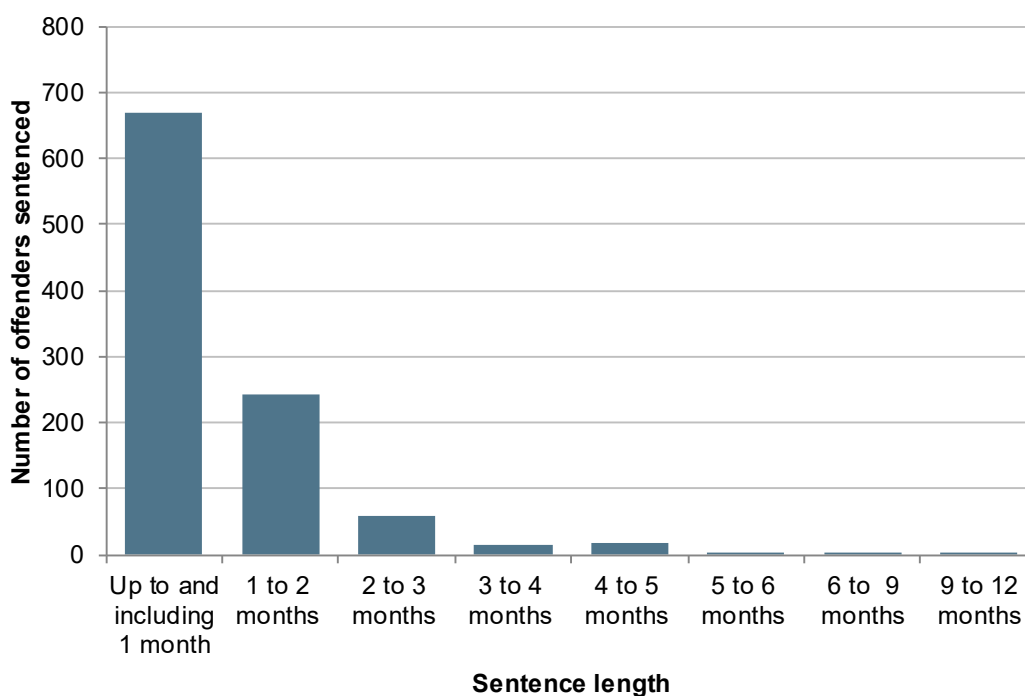
4.4 Figure 3 shows that 670 offenders (66 per cent) received a sentence of up to and including one month, 970 offenders (95 per cent) received a sentence of up to and including three months and 99 per cent received a sentence of up to and including six months, before any reductions for a guilty plea. The average custodial sentence<sup>6</sup> length was around one month (prior to any guilty plea reduction).

<sup>4</sup> The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; compensation; and other miscellaneous disposals.

<sup>5</sup> This has been estimated based on the stage at which offenders entered a plea and the reduction given, as found in the Crown Court Sentencing Survey (CCSS) 2014. These estimates are provided for calendar year 2015, which reflects recent sentencing practice where the CCSS reductions are still considered to be robust.

<sup>6</sup> The average custodial sentence length is the average (mean) length of determinate custodial sentences.

**Figure 3: Number of adult offenders sentenced to immediate custody for failing to surrender to bail, by estimated sentence length, before any reductions for a guilty plea, 2015<sup>7</sup>**



Source: Ministry of Justice CPD data adjusted with the Crown Court Sentencing Survey 2014

## 5 KEY ASSUMPTIONS

5.1 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. However, 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 large degree of uncertainty.

5.2 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. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the new

<sup>7</sup> Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'up to and including 1 month' includes sentence lengths less than or equal to one month, and '1 to 2 months' includes sentence lengths over 1 month, and up to and including 2 months.

guideline, and an assessment of the effects of changes to the structure and wording of the guideline.

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

5.4 In developing sentence levels for the different breach guidelines existing guidance and data on current sentence levels has been considered. A very small sample of sentences was reviewed, but these were in relation to transcripts of Crown Court proceedings when a failing to surrender to bail offence was sentenced with other offences. Transcripts of cases are not available for magistrates' court proceedings, so a review of sentences and factors which may influence the sentence was not possible.

5.5 During the consultation process views were sought regarding the potential impact of the draft guideline. Findings from consultation stage research were also considered in the development of the final guideline, to mitigate the risk of the guideline having an unintended impact.

5.6 While data exists on the number of breaches and the sentences imposed, it is difficult to establish how current breach cases would be categorised across the levels of culpability and harm in the new guideline, due to a lack of data available regarding the seriousness of current cases. As a consequence, it has not been possible to ascertain how sentence levels may change under the new guideline.

5.7 It therefore remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources.

## **6 RESOURCE IMPACTS**

This section should be read in conjunction with the definitive guideline available at:

<http://www.sentencingcouncil.org.uk/publications/?cat=definitive-guideline&s&topic>.

6.1 The existing Sentencing Guidelines Council's guideline for failing to surrender to bail contains three categories reflecting the 'nature of failure and harm'. These categories are based on the culpability of the offender, with the harm caused taken into account when determining where the case falls in the sentence range. The new guideline adopts the Sentencing Council's standard approach. It is based on three levels of harm and three levels of culpability.

6.2 The statutory maximum sentence for failing to surrender to bail is 12 months in the Crown Court and 3 months in the magistrates' court. The new guideline aims to capture serious cases of failing to surrender to bail for a Crown Court trial or sentence hearing in harm category 1, which reflects the higher statutory maximum for this offence in the Crown Court. Harm category 2 applies to serious cases of failing to surrender to bail in magistrates' courts. Harm category 3 applies to all other cases (cases of lesser seriousness in both courts).

6.3 The starting point for the highest level of seriousness is 14 days in the existing guideline. In the new guideline, the starting point for the highest level of culpability and the highest level of harm is six weeks' custody. However, the way in which the definitive guideline assesses seriousness is different to the existing guideline. In the existing guideline, the highest level of seriousness involves deliberate failure to attend causing delay and/or interference with the administration of justice, whereas in the definitive guideline the highest level of seriousness involves a deliberate attempt to evade or delay justice, where failure to attend a Crown Court hearing results in substantial delay and/or interference with the administration of justice. A small number of transcripts of sentencing remarks from the Crown Court were analysed and suggest that the starting point has been set in line with current sentencing practice, therefore it is not anticipated to have an impact on prison or probation resources.

6.4 The existing guideline states that where a custodial sentence is imposed for the original offence and a custodial sentence is also deemed appropriate for the failing to surrender offence, a court should normally impose a consecutive sentence, however a concurrent sentence will be appropriate where otherwise the overall sentence would be disproportionate to the combined seriousness of the offences. The new guideline also states that where the substantive offence attracts a custodial sentence, a consecutive sentence should normally be imposed for the failure to surrender offence. At step five the totality principle is then considered, where a consideration is made of whether the total sentence is just and proportionate to the overall offending behaviour. The new wording and format of the guideline regarding consecutive sentences is considered to be in line with the existing guideline, and therefore is not anticipated to have an impact on prison or probation resources.

## **7 RISKS**

7.1 Two main risks have been identified:

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

7.2 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.

7.3 This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase.

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

7.4 If sentencers do not interpret the guideline as intended, 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).

7.5 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. Views gathered as part of the consultation and consultation stage research are also considered when developing the definitive guideline.

7.6 Following the release of the guidelines, explanatory material will be provided to read alongside the guideline; consultees can also feedback their views of the likely effect of the guideline, 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 to ensure any divergence from its aims is identified as quickly as possible.