

## Consultation Stage 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.<sup>1</sup>

#### 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 suffer serious physical harm came into force as part of the Domestic Violence, Crime and Victims (Amendment) Act 2012. The Council subsequently produced guidelines to cover this offence, along with the offence of causing or allowing a child to die and 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<sup>2</sup> to suffer serious physical harm, and from 14 years' custody to life imprisonment for causing or allowing a child or vulnerable adult<sup>2</sup> to die. The Council is now consulting on 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 offences of 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.

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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)

<sup>2</sup> 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 guidelines are 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.<sup>3</sup>

## 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 suffer serious physical harm, Domestic Violence, Crime and Victims Act 2004 (section 5);
- Causing or allowing a child to die, Domestic Violence, Crime and Victims Act 2004 (section 5); and
- 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 draft 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

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<sup>3</sup> 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 can be found here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1073333/MOJ\\_Criminal\\_Law\\_IA\\_2022\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073333/MOJ_Criminal_Law_IA_2022_Final.pdf)

offences, as well as sentencing data from the Court Proceedings Database.<sup>4,5</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.

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

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

These are both low volume offences. In the years since the existing guideline has been in force (2019 and 2020), around 30 offenders were sentenced for these offences, of which fewer than 10 were sentenced for the offence of causing or allowing a child to die. These offences are both indictable only, and so all offenders are sentenced at the Crown Court.

For causing or allowing a child to die, all offenders were sentenced to immediate custody in 2019 and 2020. In the same years, for the offence of causing or allowing a child to suffer serious physical harm, 50 per cent of offenders received immediate custody, 44 per cent received a suspended sentence order and the remainder were 'Otherwise dealt with'.<sup>6</sup>

For those receiving immediate custody in 2019 and 2020, the average (mean) custodial sentence length (ACSL) was 3 years 9 months for causing or allowing a child to suffer serious physical harm.<sup>7</sup> For causing or allowing a child to die, the ACSL over the same period was 6 years 7 months.<sup>8</sup>

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<sup>4</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 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>.

<sup>5</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.

<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 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 2020, before this increase in statutory maximum sentence, so there are no cases exceeding 10 years' custody included in these figures.

<sup>8</sup> The statutory maximum sentence for this offence increased from 14 years' custody to life imprisonment 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 2020, before this increase in statutory maximum sentence, so there are no cases exceeding 14 years' custody included in these figures.

## Cruelty to a child (section 1)

This is a higher volume offence. In 2020, around 330 offenders were sentenced for cruelty to a child, of which the majority (61 per cent) were sentenced in the Crown Court. Most offenders received a community order (35 per cent), around a third (33 per cent) a suspended sentence order and one fifth (20 per cent) were sentenced to immediate custody. A further 9 per cent were recorded as 'Otherwise dealt with'.<sup>9</sup>

The statutory maximum sentence for cruelty to a child was 10 years' custody for the period covered by these statistics.<sup>10</sup> In 2020, the ACSL for those offenders sentenced to immediate custody was 1 year 11 months for this offence.

## 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, 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 revised guidelines, and an assessment of the effects of revising the guidelines by adding a new culpability level.

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 '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.

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<sup>9</sup> The category 'Otherwise dealt with' covers miscellaneous disposals which, for this offence, includes disposals such as hospital orders and compensation. 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>10</sup> The statutory maximum sentence for this offence increased from 10 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 2020, before this increase in statutory maximum sentence, so there are no cases exceeding 10 years' custody included in these figures.

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

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. Nevertheless, the consultation responses 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 guidelines available at: <http://www.sentencingcouncil.org.uk/consultations/>.

### 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.

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

The current section 5 guideline covers both offences 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 offences of causing or allowing a child to die, with a range of starting points from 2 years' custody for 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 these offences 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 draft guideline, to reflect the new statutory maximum sentences set by Parliament. The revised draft 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 – 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<sup>11</sup> has been undertaken to understand the possible effects of the guideline 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.

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 would be appropriate. This is supported by analysis of the CPD data. In 2019 and 2020, for causing or allowing a child to suffer serious physical harm, only two offenders were sentenced to an immediate custodial sentence of 7 years or more, which is the starting point for the A2 offence category in the existing guideline. These might be the types of cases for which an offender could be placed in the new 'Very high culpability' category under the draft guideline, which has a starting point 5 years higher than 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.

Furthermore, over the same period, for the offence of causing or allowing a child to die, no offenders received a 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 draft guideline (the sentence ranges for both are also identical).

Given that almost all offenders already receive immediate custody, the draft 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 draft 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 draft 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.

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<sup>11</sup> 22 transcripts of Crown Court sentencing remarks covering 35 offenders sentenced for causing or allowing a child to die or suffer serious physical harm were initially analysed in order to assess the impact these guidelines may have on prison and probation services. For the years when the existing guideline was in force, 2019 and 2020, the analysed transcripts covered 100% of offenders sentenced over this period. Of these, 8 cases where the offender fell into the highest culpability category were resentenced, to understand how the new culpability category might be used (5 for causing or allowing a child to die and 3 for causing or allowing a child to suffer serious physical harm).

Analysis of a sample of Crown Court judges' sentencing remarks<sup>12</sup> has been undertaken to understand the possible effects of the draft guideline on sentencing practice. The analysis suggested that under the revised guideline, there may be a very small impact on prison and probation resources as a subset of offenders who would be within the 'High culpability' level currently may receive longer sentences under the draft guideline if the new 'Very high culpability' category is appropriate instead, which 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. There is no indication that the guideline will lead to a change in sentencing outcomes for these offences; the majority of offenders are likely to continue receiving a community order or suspended sentence order since the guideline remains largely unchanged.

These findings are supported by CPD analysis. In 2019 and 2020, fewer than 1 per cent of offenders received an immediate custodial sentence of 6 years or more: 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 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 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 the draft 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.

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<sup>12</sup> A total of 21 transcripts of Crown Court sentencing remarks covering 28 offenders sentenced for cruelty to a child were initially analysed. Of these, 7 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.

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 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.