

Final resource assessment

Strangulation and suffocation offences

Introduction

This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services ([s127 Coroners and Justice Act 2009](#)).

Scope

The guideline applies only to adults. This assessment therefore only considers the resource impact of the 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:

- strangulation
- suffocation
- racially or religiously aggravated strangulation or suffocation

The Council has produced 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 strangulation and suffocation offences and racially or religiously aggravated strangulation and suffocation offences have been combined owing to the low volume of offenders sentenced for the aggravated offence to date.

Rationale and objectives for new guideline

No current guideline exists for these offences, which came into force on 7 June 2022. The Council has produced a new sentencing guideline 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, 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 to the end of 2023.

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 strangulation and suffocation offences, 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, qualitative research was conducted with a group of sentencers, to explore if the draft guideline worked as anticipated. This research also provided some further understanding of the likely impact of the guideline on sentencing practice, and the subsequent effect on the prison population.

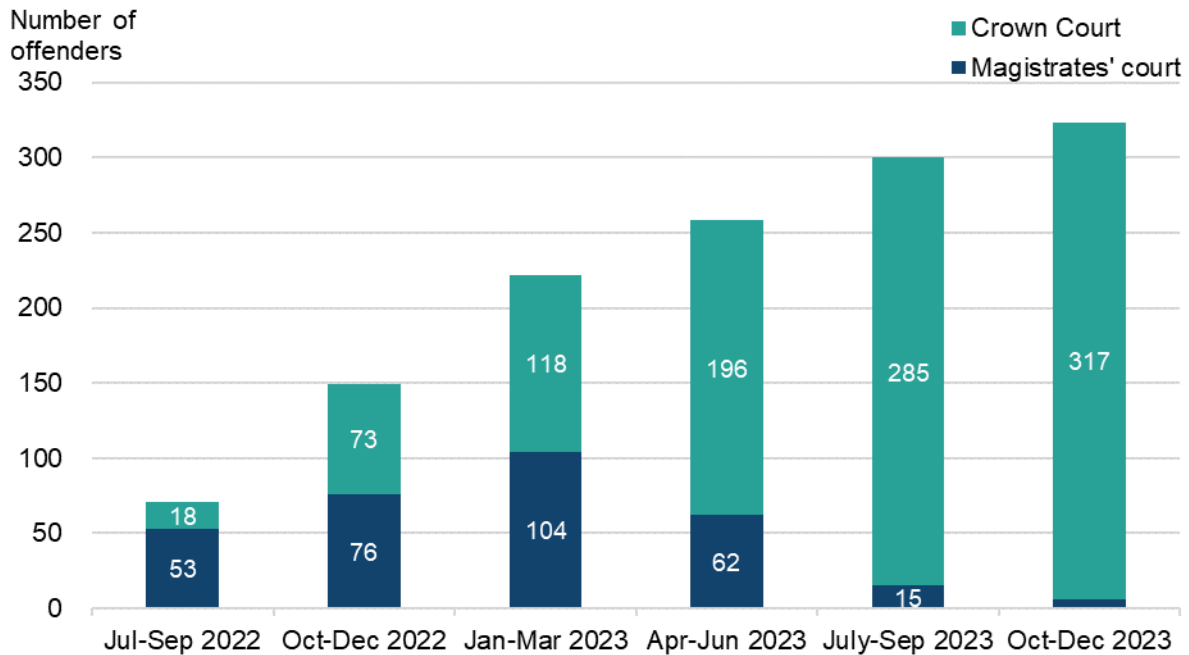
Detailed sentencing statistics for the offences covered by this guideline have been published on the [Sentencing Council: Statistical bulletins webpage](#).

Strangulation/Suffocation/Racially or religiously aggravated strangulation and suffocation

In 2023 (the first full calendar year of data since these offences were in force), around 1,100 adult offenders were sentenced. Strangulation and suffocation offences are triable either way and in 2023, most offenders (83 per cent) of offenders were sentenced at the Crown Court.

Since the introduction of these offences in June 2022, the number of offenders sentenced has increased each quarter, up to around 320 in October to December 2023. Alongside this, the proportion of offenders sentenced in the Crown Court has increased quarter on quarter, to 98 per cent in October to December 2023.

Figure 1: Number of adult offences sentenced for strangulation and suffocation offences, by court type, July to September 2022 to October to December 2023



Nearly all offenders are sentenced to custody, either immediate or suspended. Between October and December 2023, the most recent quarter of data available, around two thirds of offenders sentenced received an immediate custodial sentence (68 per cent) and just under a third received a suspended sentence order (30 per cent). The remaining 1 per cent received a community order.

Since the strangulation and suffocation offences came into force, the proportion of offenders sentenced who received an immediate custodial sentence has generally increased each quarter.

For those sentenced to immediate custody, the average (mean) custodial sentence length (ACSL) increased each quarter in 2022 and the beginning of 2023. In the last three quarters, the mean ACSL has remained fairly stable and in October to December 2023 was around 20 months.

Since the offences came into force, almost all offenders received a sentence of less than 2 and a half years (91 per cent in October to December 2023). However, since April 2023, there has been a shift to a higher proportion of offenders receiving a sentence of over 12 months than when the offence was first introduced. It is likely that this increase is related to the judgment *R v Cook* handed down in early April 2023, which established sentencing principles for these offences until such time a guideline was available. The judgment stated that a starting point of 18 months' custody would usually be appropriate. 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 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 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 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 18 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 guideline, especially given changes in sentencing practice which is likely to be a result of *R v Cook*. As a consequence, it is difficult to ascertain how sentence levels may change under the 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 was undertaken with sentencers during the consultation period, utilising different scenarios to understand the interpretation of the guideline. Along with consultation responses, this provided 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 guideline available on the [Sentencing Council website](#).

Summary

Overall, the strangulation and suffocation guideline provides for the most serious offences – those involving high culpability and high harm factors – to be sentenced appropriately, to ensure relativity and proportionality with other assault offence sentences with the same statutory maximum sentence. This is anticipated to increase custodial sentence lengths in some cases, which may result in a total requirement of around 80 additional prison places.

Strangulation and suffocation offences

There was previously no guideline for 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 usually be appropriate.

The 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, particularly other assault offences. The sentencing table in the 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 (immediate or suspended) under the guideline. This affects a relatively small proportion of offenders (7 per cent of offenders received an absolute or conditional discharge, a fine or a community order in 2023, equating to 81 offenders). A high level community order is available at the 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. Strangulation and suffocation are triable either way offences, although over the period that the sample of transcripts covers, over three quarters of offenders were sentenced at the Crown Court. In the most recent quarter of data available (October to December 2023), nearly all offenders (98 per cent) were sentenced at the Crown Court, so this means the transcript sample reflected a range of sentencing outcomes and is now more representative of current cases and sentencing practice post *R v Cook*.

Based on an analysis of 41 transcripts of sentencing remarks from offenders sentenced in May and June 2023, it is estimated that the 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 3 months, from an average of 19 months' to 22 months' custody, across all cases. The analysis

suggested that the increase in sentence lengths may be attributed to the seriousness assessment in the new guideline resulting in fewer cases falling into lowest category of seriousness (5 per cent of cases fell into culpability C under the new guideline) and more cases falling into the higher culpability categories due to the definitions of the most serious culpability (95 per cent of cases fell into either culpability category A or B under the new guideline).

To calculate the expected resource impact, volumes of sentences have been adjusted in line with 2023 volumes. It should be noted that the number of offenders sentenced for strangulation and suffocation offences has increased quarter on quarter between the introduction of this offence and December 2023, with an increasing proportion sentenced to immediate custody. As this is a new offence, it is difficult to ascertain whether current trends will continue. Therefore, if the volume of offenders sentenced to immediate custody for this offence were to change, this could also affect the estimated impact on prison resources.

As a result of the culpability categorisation within the guideline and the increasing volume of offenders sentenced to immediate custody for strangulation and suffocation offences, it is estimated that the guideline may lead to a requirement for around 80 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 has been mitigated by information that was gathered by the Council as part of the guideline development and consultation phase. This included providing case scenarios as part of the consultation exercise which were intended to test whether the guideline had the intended effect and inviting views on the guideline. However, there were limitations on the number of factual scenarios which could be explored, so the risk could not 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 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 have been developed with current sentencing practice in mind. Research with sentencers carried out during the

consultation period also enabled issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

Consultees were also able to feed back their views of the likely effect of the guideline, and whether this differed 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, 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 2023 volumes. 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 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.