

Sentence Consistency in England and Wales: Evidence from the Crown Court Sentencing Survey

Jose Pina-Sánchez & Robin Linacre

Why consistency?

Consistency in sentencing is a primary purpose of the Sentencing Council in producing sentencing guidelines:

We consider the extent to which it is possible to measure sentencing consistency from data on real sentencing decisions.

But first we need to think mean by consistency in sentencing.

What do we mean by consistency of sentencing?

There's no standard definition.

Intuitively, consistency in sentencing is when like cases are treated alike.

For quantitative study, we need to be more precise.

In some ways, it's easier to explain what we mean by consistency by identifying possible sources of inconsistency...

Sources of inconsistency

- **Inter-judge disparities** (differences between how different judges sentence similar cases)
- **Intra-judge disparities** (differences between how the same judge treats similar cases)
- **Variation in sentence length due to factors that should be irrelevant** (e.g. discrimination)
- **Disproportionality**

Measurement of consistency

These definitions help us think about how to measure consistency.

A variety of methodologies have been attempted. What they all have in common is that they study the variability of sentences after attempting holding some aspects of the case constant. So they're asking whether like cases are treated alike.

Examples:

- Small scale research with judges e.g simulated sentencing scenarios
- Comparison of courts (with limited controls)
- Regression analysis – e.g. analysis of residuals

Problems...

Measuring the variability in sentences amongst 'alike' cases is often flawed because they are not truly 'alike'.

Unexplained variability in sentencing could be:

- Genuine inconsistency
- Due to unobserved facts of the case

Sentencing decisions are extremely nuanced so we can never hope for perfect data on all relevant legal factors and their 'magnitude'.

As a result, techniques that seek to 'hold facts constant' and consider remaining variability do not provide a good measure of inconsistency

What if it's not possible to study 'alike' cases?

We begin by accepting that, due to lack of data, it will never be possible to hold all the factors of a case constant in anything other than simulation studies.

As a result, it will not be possible to measure the absolute level of consistency.

Is there another way forward?

Multilevel modelling: We think this technique provides a good way forward. It sidesteps the problem. We no longer attempt to separate out variability in sentencing that is due to legitimate legal factors from variability arising from inconsistency.

Multi level modelling

Holding all factors constant is impossible, so let's change the question

For the factors that we do have data on, are they treated consistently across courts?

Should be more robust in the presence of omitted variables: So long as the omitted variables exert similar biases across courts, then they don't invalidate results

Answers a slightly different question: "Can we find evidence of inconsistent sentencing" rather than "what is the level of consistency".

Random slopes

Each legal factor included in the model will have a 'slope'. This is just the coefficient estimate, similar to in a standard regression model.

However, multilevel modelling gives the model the flexibility to allow these slopes to vary across courts.

So, for example, the aggravating factors of 'vulnerable victim' may have a different effect on sentence in different courts. If this is the case, then vulnerable victim would be said to have a 'random slope' term.

This is a testable hypothesis in a multi level model.

If we test the legal factors in the model and find evidence for random slope terms, then we take this to be evidence of possible inconsistencies across courts.

Implementation

Data from the Crown Court sentencing survey.

As a result had access to offence type, aggravating and mitigating factors of cases, recent relevant previous convictions, timing of guilty plea.

Concentrated on assault offences, because they had the highest number of custodial sentences at the Crown Court.

Conducted parallel analysis of burglary and robbery

Implementation

Modelled log sentence length, of sentences >30 days, which is consistent with Anderson and Spohn (2011).

Discarded low volume offence types, and common assault (which is summary only), leaving us with ABH, GBH and GBH with intent.

Multilevel modelling requires the estimation of large numbers of parameters so not all aggravating and mitigating factors can be included.

Model:

$$Y_{ij} = \alpha + (B_j + v_{jl})X_{ij} + \varepsilon_{ij} + \mu_l$$

Results (assaults):

Variables	Regression coefficient	Standard error
Fixed effects		
Intercept	5.356	.056
Previous conviction	.429	.060
(Previous convictions) ²	-.114	.015
First opportunity	-.094	.017
Remorse	-.119	.016
Carer	-.125	.037
Gang	.014	.021
Vulnerable	.139	.028
Public worker	-.078	.036
Sustained	.201	.020
Drugs	.053	.016
GBH	.467	.017
GBH with intent	1.619	.021
Random effects		
Intercept	.005	.002
Vulnerable	.015	.008
Sustained	.007	.004
Level 1 residuals	.293	.006

Results (continued)

Two of nine legal factors found to have statistically significant random slopes terms. These are “sustained” and “vulnerable”.

The base case of an assault of *ABH* committed against a *vulnerable* victim is 8.6 months, but may vary by ± 1.3 months.

A similar base case of an offence of *ABH* where the attack has been perpetrated in a *sustained* manner is 8.1 months and it can vary by ± 1.7 months.

Results - robbery and burglary

We conducted similar analysis on robbery and burglary to see whether our findings were generalisable to more offences. These are probably the only two other offence types with biggest enough samples sizes (with one year of data)

Findings similar:

For burglary, one of nine random slopes was found to be significant - this was membership of group or gang

For robbery, two of nine random slopes were found to be significant. These were membership of group or gang, and where the robbery was committed against a vulnerable victim.

Questions?