

Have the England and Wales Guidelines Influenced Sentence Severity? New Evidence Using a Scale of Sentence Severity and Time-Series Analyses

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Background: In recent decades England and Wales seems to have experienced a substantial increase in sentence severity. However, the range of different disposals available to courts complicates attempts to quantify the exact change. Recently it has been suggested that the new guidelines introduced by the Sentencing Council might be behind this increase in severity. Yet, besides the assessments undertaken by the Council, the empirical literature on this topic is scarce and based on inadequate ‘before-after’ comparisons. Here we design a new scale of sentence severity to integrate all disposal types available to sentencers, and present time-series analyses to explore the causal effect that seven important offence-specific guidelines have had on sentence severity.

Methods: A scale of sentence severity is estimated using questionnaires, a sample of 21 magistrates and Thurstone’s method. A ranking of disposal types is taken from the sentencing ladder to create a matrix reflecting the relative severity of eleven sentences. For those pairs of sentences where there might be an overlap in severity Magistrates were asked to assess how often lower-ranked disposal types can have a more severe effect than the disposal type ranking above it. The different combinations explored are depicted in Table 1, where each cell reflects the probability that the sentence identified on top of the column will be more severe than the sentence to the left of the row. Using this matrix of severity and Thurstone model (Case V) the severity scores of eleven sentences are estimated. Severity scores for custodial sentences beyond three months in custody are extrapolated assuming a linear function and the severity scores obtained for one, two and three months in custody. This gives us a scale of severity that covers the whole range of sentences available to judges in the England and Wales Crown Court (Table 2).

The quarterly sentencing statistics from the Ministry of Justice are used to plot the change in severity for the main offence groups covered by guidelines. Different ARIMA models for each of the guidelines studied are selected based on AIC comparisons. To assess whether the guidelines had a statistically significant effect on severity forecast regions are estimated using 80% and 95% confidence intervals for the two years following the introduction of new guidelines.

Results: We can quantify an overall 8% increase in sentence severity since 1999, and a 39% increase for the subgroup of ‘indictable only’ offences (Figure 1). Two of the seven guidelines studied (assault and theft) have had a significant increase in sentence severity; the changes detected in the other five guidelines are not significant (Figure 2).

The robustness of our scale of severity is confirmed using split-half analyses assessing the sampling error associated with our small sample of magistrates, and by further sensitivity analyses modifying the parametric assumptions made in the Thurstone model.

Conclusion: For the most part, these findings indicate that the sentencing guidelines are not responsible for the observed increase in sentence severity, which seems to respond to an upward trend that preceded the introduction of the guidelines. Given the magnitude of the increase in sentence severity detected for ‘indictable only’ offences, future sentencing research should prioritise the exploration of any other causes that might be behind this phenomenon.

The scale of severity presented here could also be used as a tool in other areas of sentencing research such as the detection of discriminatory practices or other unwarranted disparities, the measurement of proportionality and deterrence, or the exploration of changes in public opinion on punitiveness.

	absolute discharge	conditional discharge	fine	community order	1-month custody 6-month suspension	1-month custody 12-month suspension	6-month custody 6-month suspension	12-month custody 24-month suspension	1-month immediate custody	2-month immediate custody	3-month immediate custody
absolute discharge	0.5	1	1	1	1	1	1	1	1	1	1
conditional discharge	0	0.5	0.69	1	1	1	1	1	1	1	1
fine	0	0.31	0.5	0.77	1	1	1	1	1	1	1
community order	0	0	0.23	0.5	0.39	1	1	1	1	1	1
1-month custody 6-month suspension	0	0	0	0.61	0.5	1	1	1	1	1	1
1-month custody 12-month suspension	0	0	0	0	0	0.5	0.74	1	1	1	1
6-month custody 6-month suspension	0	0	0	0	0	0.26	0.5	1	1	1	1
12-month custody 24-month suspension	0	0	0	0	0	0	0.5	0.41	0.51	0.61	1
1-month immediate custody	0	0	0	0	0	0	0.59	0.5	1	1	1
2-month immediate custody	0	0	0	0	0	0	0.48	0	0.5	1	1
3-month immediate custody	0	0	0	0	0	0	0.38	0	0	0.5	1

Table 1: Matrix of Pair Comparisons for Each of the Sentence Outcomes Considered

Sentence Outcome	Severity Score
Absolute discharge	0
Conditional discharge	0.97
Fine	1.33
Community order	2.13
1-month custody 6-months suspended	2.34
1-month custody 12-months suspended	3.66
6-months custody 6-months suspended	3.78
12-months custody 24-months suspended	5.74
1-month custody	5.05
2-months custody	5.75
3-months custody	6.45
12-months custody	13.45
5-years custody	47.05
20-years custody	173.05

Table 2: Scale of Severity

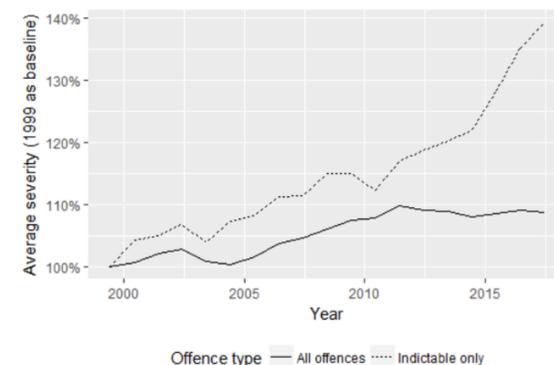


Figure 1: Change in Severity for ‘Indictable Only’ and ‘All Offences’

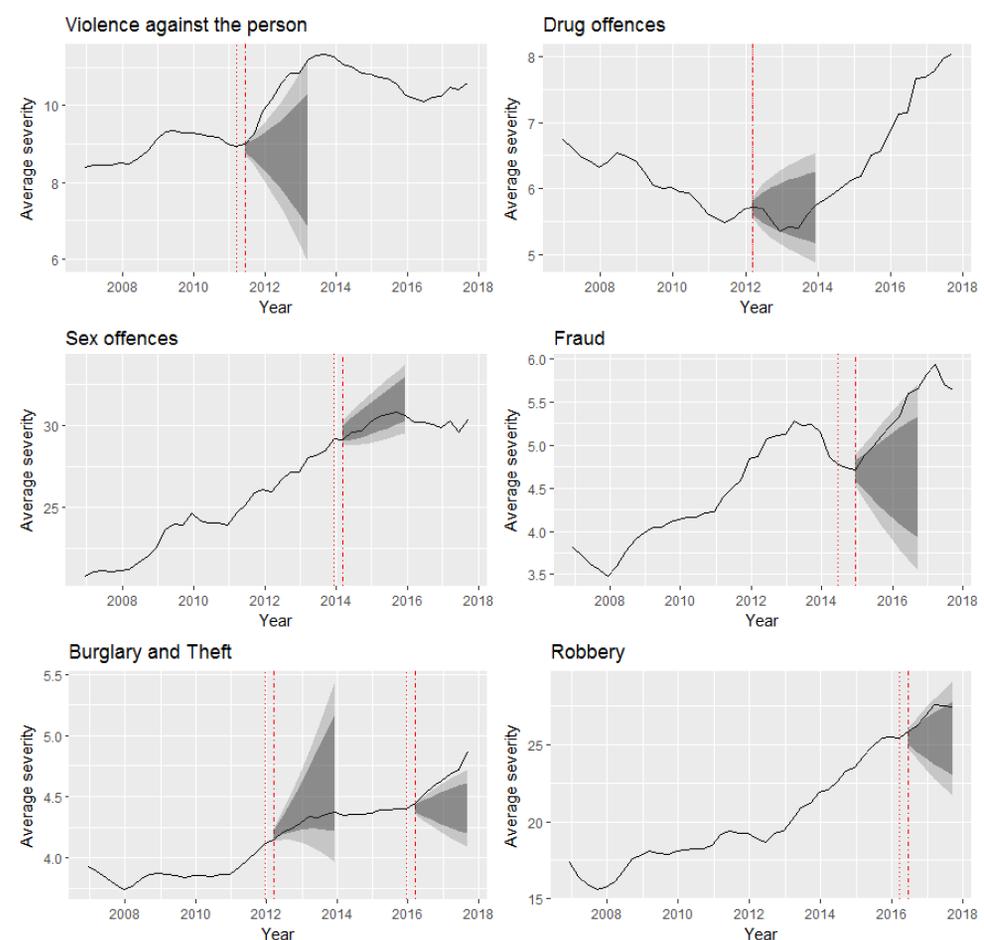


Figure 2: Time-Series with Forecast Regions Following the Introduction of Guidelines