

Title: Offences against the person IA No: LAWCOM0052 Lead department or agency: Law Commission Other departments or agencies: Ministry of Justice	Impact Assessment (IA)		
	Date: 19/05/2016		
	Stage: Development/Options		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Simon Tabbush Tel No: 020 3334 3840			

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
£103.67 m	£m	£m	Yes/No In/Out/zero net cost

What is the problem under consideration? Why is government intervention necessary?
 Most of the law concerning offences of violence is set out in the Offences Against the Person Act 1861. The problems with the 1861 Act are that it is hard to understand, over-complicated and widely regarded as obsolete. The law also operates in an inefficient manner and contributes to congestion within the court system. Many low-level injury cases are tried in the Crown Court but receive a sentence of 6 months or less. These cases should have been dealt with in the significantly less expensive magistrates' court. The problems can only be solved by legislation, as they arise from the statutory definitions of the offences in that Act.

What are the policy objectives and the intended effects?
 To redraft the law on offences against the person in a form which would:
 (a) modernise and simplify the language by which the offences are defined;
 (b) create a structured hierarchy of offences; and
 (c) ensure that offences against the person are tried in a court of a level appropriate to the gravity of the offence, in accordance with the principles of Sir Brian Leveson's *Review of Efficiency in Criminal Proceedings*.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Option 0: Do nothing
 Option 1: Enact new statute governing offences against the person, including a summary-only offence of aggravated assault with a maximum sentence of 12 months;
 Option 2: Enact new statute governing offences against the person, including a summary-only offence of aggravated assault with a maximum sentence of 6 months.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes/No	< 20 Yes/No	Small Yes/No	Medium Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded:	
				Non-traded:	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Enact new statute governing offences against the person, including a summary-only offence of aggravated assault with a maximum sentence of 12 months

Price Base Year 2014/15	PV Base Year 2014/15	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 66.57	High: 140.89	Best Estimate: 103.67

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	negligible	1.68	13.91
High	negligible	7.23	60.09
Best Estimate	negligible	4.45	37.05

Description and scale of key monetised costs by 'main affected groups'

Transitional cost: Training on practical consequences and familiarisation costs are expected to be negligible (Judicial College, the police and lawyers); Initial spike in appeals (HM Courts and Tribunal Service-HMCTS). On-going costs: Increase in prosecutions from new offences are expected to be negligible (Crown Prosecution Service- CPS); Increased prison sentences from s 20 cases (National Offender Management Service – NOMS) and for assaulting a police constable.

Other key non-monetised costs by 'main affected groups'

None identified

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	15.23	126.66
High	0	18.61	154.80
Best Estimate	0	16.92	140.72

Description and scale of key monetised benefits by 'main affected groups'

Transitional benefits: None identified
On-going benefits: Between 5,400 and 6,600 prosecutions for assault occasioning actual bodily harm would be tried in the magistrates' court instead of the Crown Court as at present, saving court, prosecution and legal aid costs; reduced maximum prison sentences

Other key non-monetised benefits by 'main affected groups'

The law would be comprehensible and give defendants a clear idea of what they are accused of and the maximum penalty they face; Improved victim confidence in criminal justice system

Key assumptions/sensitivities/risks

The figures depend on an assumption that prosecutors can foresee the likely sentence if a case results in a conviction.

Discount rate (%)

3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	IN/OUT/Zero net cost

Summary: Analysis & Evidence

Policy Option 2

Description: Enact new statute governing offences against the person, including a summary-only offence of aggravated assault with a maximum sentence of 6 months

Price Base Year 2014/15	PV Base Year 2014/15	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 13.87	High: 63.62	Best Estimate: 38.74

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	negligible	1.09	9.04
High	negligible	5.48	45.58
Best Estimate	negligible	3.28	27.31

Description and scale of key monetised costs by 'main affected groups'

As option 1 but without the increased maximum custodial sentence for assault of a constable.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	7.15	59.45
High	0	8.74	72.66
Best Estimate	0	7.94	66.05

Description and scale of key monetised benefits by 'main affected groups'

Between 2,500 and 3,100 prosecutions for assault occasioning actual bodily harm would be tried in the magistrates' court instead of the Crown Court as at present, saving court, prosecution and legal aid costs

Other key non-monetised benefits by 'main affected groups'

The law would be comprehensible and give defendants a clear idea of what they are accused of and the maximum penalty they face.

Key assumptions/sensitivities/risks (%)	Discount rate	3.5
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The figures depend on an assumption that prosecutors can foresee the likely sentence if a case results in a conviction.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	IN/OUT/Zero net cost

Evidence Base

Introduction

Background

The offences against the person law reform project concerns the modernisation and restatement of the main offences of violence. These are:

- (a) the offences contained in the Offences Against the Person Act 1861 (“the 1861 Act”),
- (b) assault and battery, which are common law offences, and
- (c) assault on a constable, which is an offence under the Police Act 1996.

The purpose of the project is to replace all these offences with a single modern and easily understandable statutory code.

Proposals for reform of the law of offences against the person have been in existence since the 1970s, when the Criminal Law Reform Committee produced recommendations in the form of a working paper in 1976 and a report in 1980. A draft Code was produced in 1985 in the form of a report to the Law Commission by a group of distinguished academics; we then published a draft criminal code in 1989, a CP on offences against the person in 1992 and a report in 1993, each containing a draft Bill. In 1998 the Home Office published a consultation paper and draft Bill, based on our previous work.

The Ministry of Justice requested the Law Commission to carry out a scoping study as part of the Eleventh Programme of Law Reform. In November 2014 we published a Scoping Consultation Paper considering the possibilities of reform based on the 1998 draft Bill. Our final report is based on the results of that consultation.

The present law

Most of the law concerning offences of violence is set out in the 1861 Act. These offences fall within the following broad categories:

- Injury offences:
 - Section 18 (wounding or causing grievous bodily harm with intent);
 - Section 20 (maliciously wounding or inflicting grievous bodily harm, popularly “GBH”); and
 - Section 47 (assault occasioning actual bodily harm, popularly “ABH”);
- Particular assault offences;
- Other offences in the 1861 Act concerned with poisons, explosives and railways, soliciting murder, threats to kill and many less used offences, e.g. attempting to choke;
- Outside the 1861 Act there are the offences of assault and battery (common law) and assaulting a police constable (Police Act 1996, s 89).

For more details, see Table 1 below, on page 8.

1. *The s 47 offence* (“ABH”) is triable both in the Crown Court and by magistrates, and has a maximum sentence of 5 years (in the Crown Court) or 6 months (in a magistrates’ court).

The 6 month limit applies whether the sentence is immediate or suspended. Accordingly, a magistrates’ court in sentencing for this offence has the following options:

- absolute or conditional discharge;
- a community order;
- a fine;
- a suspended sentence of up to 6 months; or
- immediate custody for up to 6 months.

For the same offence, the Crown Court can pass any of the above sentences; it can also pass:

- a suspended sentence of anything from 6 months and 1 day to 2 years (the maximum for a suspended sentence); or
- a sentence of immediate custody for anything from 6 months and 1 day to 5 years.

There is a practice, approved in a CPS charging standard, of charging common assault (that is, assault or battery) if the injuries are low level and a sentence of 6 months or less, whether immediate or suspended, is expected. This ensures that these cases stay in the magistrates' court, because the defendant cannot elect trial by jury or be sent by the magistrates to the Crown Court for trial for this offence. The magistrates' sentencing options are then precisely as described above: a discharge or non-custodial sentence, or a sentence of imprisonment of up to 6 months, immediate or suspended.

2. *Assault and battery* are common law offences, not defined in any statute (though the Criminal Justice Act 1988, s 39 provides for their mode of trial and punishment). They are triable only in a magistrates' court and have a maximum sentence of 6 months. Confusingly, the word "assault" (or "common assault") is sometimes used as an umbrella term for both of these offences.
3. There is also an offence under the Police Act 1996, s 89 of *assaulting a police constable in the execution of his duty*. This has the same maximum sentence as common assault – 6 months – and there is no need for the defendant to know or suspect that the person assaulted is a police constable.

Problems under consideration

The 1861 Act is in very old-fashioned language and hard to understand. Particular problems are as follows:

Unclear grading of offences

1. The grading of the offences is not clear and is not always reflected in sentencing powers; for example:
 - the offence under section 20 ("GBH") is meant to be more serious than that under section 47 ("ABH"), but both have the same maximum sentence, 5 years.

Unnecessary offences

2. There are too many narrowly specialised offences, involving factual scenarios described in great detail; some of these are of rare occurrence and almost all are covered by more general offences in any case. Examples are:
 - attempting to choke with intent to commit an offence;
 - assaulting magistrates preserving wrecks;
 - failing to feed servants and apprentices.

Complexity

3. The same section often describes many alternative ways of committing an offence, and it is not clear whether these are meant to be one offence or several; for example:
 - there are four ways of committing an offence under section 18 (wounding or grievous bodily harm with intent), involving ten possible factual permutations;
 - there could be anything up to 50 possible ways of committing the explosives offence under section 29.

Unclear and arbitrary mental elements

4. In many offences there is no clear statement of what state of mind the defendant must have had, and there is often no obvious relation between the required state of mind and the factual requirements of the offence; for example:

- the offence under section 20 requires grievous bodily harm or a wound to occur, but the defendant need not intend or foresee either of these results (it is sufficient to intend or foresee the risk of some physical or psychiatric harm). Furthermore, this position is not clear from the wording of the statute and only emerged from a series of decided cases;
- the offence under section 47 requires physical harm to occur, but the defendant need not intend or foresee any harm at all.

Out-dated – in need of modernisation

5. There are references to concepts that no longer exist, such as “felony” and “penal servitude”, and some of the sections do not even state the penalty for the offence.

Cases tried at inappropriate level

6. Another concern is the treatment of low-level injury cases. At present there is a gap in seriousness between the existing offences of common assault and ABH, as many cases involving low-level injuries do not fit conveniently into either offence:
 - If charged as ABH, they may be heard either in a magistrates’ court or in the Crown Court: if heard in the Crown Court they may receive a sentence of up to 5 years. In practice, however, **34.5% of all sentences passed by the Crown Court for this offence are for 6 months or less.**¹ We believe that the Crown Court should not be dealing with cases of this kind.
 - If charged as common assault, these cases remain in the magistrates’ court and the maximum sentence is 6 months. Victims will rightly feel aggrieved that their injuries are not reflected in the charge.

Assaults causing low-level injuries fall within the definition of the offence under section 47, but are often charged as common assault in order to avoid Crown Court trial, in accordance with the CPS charging standard. Despite this charging standard, many cases are still charged under section 47, even though (as we have seen) a sentence of 6 months or less may result. The charging decision in such cases may have been made for either of two reasons:

- the prosecutor may have over-estimated the likely sentence, for example by being unaware of the defendant’s intention to plead guilty or other mitigating factors;
- the prosecutor, while realising that the likely sentence was 6 months or less, may have felt that a charge under section 47 was appropriate for reasons of labelling, for example if the victim felt particularly strongly that the charge should reflect the fact of injury.

A related question is why, when defendants are charged under section 47, so many cases are sent to the Crown Court although the magistrates’ court has power to try these cases. In accordance with the principles of Sir Brian Leveson’s *Review of Efficiency in Criminal Proceedings*, the Sentencing Council has published a new allocation guideline,² which will come into force on 1 March 2016, designed to encourage the retention of jurisdiction by magistrates in more “either way” cases and to combat a perceived culture of “if in doubt, send it up”.³

In 2003, Parliament decided to raise the limits of magistrates’ sentencing powers from 6 months to 12 months, though this has not yet been brought into force. **73.5% of all sentences now passed by the Crown Court for ABH are for 12 months or less,**⁴ and would therefore be within the magistrates’ new powers if they came into force.

Policy objectives

To redraft the law on offences against the person in a form which would:

- modernise and simplify the language by which the offences are defined;

¹ Calculated from Sentencing Council’s Crown Court Sentencing Survey for England and Wales for 2014, see pp 17 and 33 below.

² Published 10 December 2015, available at http://www.sentencingcouncil.org.uk/wp-content/uploads/Allocation_Guideline_2015.pdf (last visited 18 February 2016)

³ See the keynote address by Lord Justice Treacy at the Criminal Law Review Conference on 3 December 2015: <https://www.judiciary.gov.uk/wp-content/uploads/2015/12/speech-lj-treacy-ct-clr.pdf> (last visited 18 February 2016).

⁴ Calculated from Sentencing Council’s Crown Court Sentencing Survey for England and Wales for 2014, see p 17 below.

- create a structured hierarchy of offences; and
- ensure that offences against the person are tried in a court of a level appropriate to the gravity of the offence, in accordance with the principles of Sir Brian Leveson’s *Review of Efficiency in Criminal Proceedings*.

Rationale for intervention

The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).

In the case of offences against the person current arrangements mean that the law is not readily understandable except by specialists. Further, the gap in seriousness between the offences of common assault and assault occasioning actual bodily harm leads to some cases being wrongly labelled and others incurring unnecessary costs by being tried in a court of too high a level.

Statutory intervention is required because it is the only way to make the necessary changes to the definitions of the offences under consideration. This would allow for a logically satisfactory solution to the problems and uncertainties with the current offences and ensure that cases are tried in a court of the appropriate level.

Option Description

The following options have been considered:

Option 0: Do nothing;

Option 1: Enact new statute governing offences against the person, including a summary-only offence of aggravated assault with a maximum sentence of 12 months;

Option 2: Enact new statute governing offences against the person, including a summary-only offence of aggravated assault with a maximum sentence of 6 months.

Option 0: do nothing

If this option is adopted the problems in the present law will continue. The law will remain hard to understand, and the practical effect of the law will remain different from the apparent meaning of the 1861 Act. The Crown Court will continue to try numerous cases of ABH which would merit a sentence of 6 months or less if convicted.

Option 1: Enact new statute governing offences against the person, including a summary-only offence of aggravated assault with a maximum sentence of 12 months

This option consists of enacting the Home Office’s 1998 draft Bill in place of the existing 1861 Act, with some variations. The maximum sentence for both aggravated assault and assaulting a constable would be 12 months

Outline of the reforms

The proposed changes are set out in brief in the following table. In this table “D” means the person said to have committed an offence and “V” means the person said to have been harmed. Section numbers refer to the Offences Against the Person Act 1861 unless otherwise stated. The maximum sentence for each offence is stated in brackets at the end of the entry.

Table 1: Offences Against the Person Act 1861, current offence vs replaced offence

Current offence	Replaced by
S 18: Wounding or causing grievous bodily harm, with intent to do grievous bodily harm (life)	Intentionally causing serious injury (life)
S 20: Malicious wounding or causing grievous bodily harm (GBH): D must intend or foresee a risk of some harm, not necessarily grievous (5 years)	Recklessly causing serious injury: D must foresee a risk of <i>serious</i> injury (7 years)
S 47: Assault occasioning actual bodily harm (ABH): D need not intend or foresee any harm at all (5 years)	1. Intentionally or recklessly causing injury, not necessarily by assault: D must foresee a risk of some injury (5 years) 2. Aggravated assault, meaning assault causing injury: no need to foresee risk of injury (12 months)
Assault and battery, sometimes collectively called "common assault" (common law offences, 6 months)	1. Physical assault (6 months) 2. Threatened assault (6 months)
Police Act 1996, s 89: Assaulting police; D need not know or suspect that V is a police officer (6 months)	Assaulting police: D must know or be reckless about whether V is a police officer (12 months)
S 36: Assaulting clergy (2 years); s 37: assaulting magistrate preserving wrecks (7 years)	Abolished
S 18: Grievous bodily harm with intent to resist arrest (life)	Causing serious injury with intent to resist arrest (sentence not decided, but should be more than 7 years and less than life)
S 38: assault with intent to resist arrest (2 years)	Assault with intent to resist arrest (2 years)
Various offences of causing injury or danger by means of poisons (ss 22, 23 and 24) or explosives (ss 28, 29, 30 and 64) or on railways (ss 32, 33 and 34)	Replaced by fewer and simpler offences of causing danger by these means (causing actual injury is covered by the main injury offences)
S 4: Soliciting murder (life)	Encouraging murder (life)
S 16: Threats to kill (10 years)	Threats to kill, cause serious injury or rape (10 years)
S 21: Attempting to choke (life); s 17: preventing escape from a shipwreck (life); s 26: failing to feed servants and apprentices (5 years)	Abolished
S 27: Exposing children to danger (5 years); s 31: setting man-traps (5 years); s 35: causing harm by furious driving (2 years)	Left in 1861 Act

A more detailed table is attached both to the summary and to the full scoping report, and is available on our website.

Our recommendations cover three broad categories:

1. Changes to the injury offences;
2. Changes to the assault offences; and
3. Changes to other offences.

1. Changes to the injury offences

The injury offences: introduction

The most important offences recommended by us are about causing injury. This can mean injury of any kind (including disease), caused by any means. In general, when an offence in the draft Bill consists of causing “serious injury” or “injury”, D must also intend or foresee serious injury or injury, as the case may be. This is significantly different from the present law, where there is often a mismatch between what must happen and what must be intended or foreseen by D.

The new offence of “aggravated assault” is intended to bridge the gap in seriousness between the existing offences of common assault and ABH. The new offence is designed to cover low level injury cases in a way that reflects and acknowledges the fact that an injury has been caused. At the same time, these cases will remain in the magistrates’ court and the sentence is limited to 12 months. This ensures that cases are tried in a court of the appropriate level and avoids unnecessarily incurring the expensive and time-consuming procedures of the Crown Court.

i. Section 18

The present offence under section 18 of the 1861 Act consists of wounding or causing grievous bodily harm, either with intent to do grievous bodily harm or with intent to resist or prevent the apprehension or detention of any person. It is triable only in the Crown Court, except in the case of minors, who are tried in the youth court. The maximum sentence is imprisonment for life.

Our recommendation is to replace this offence with:

- one offence of intentionally causing serious injury; and
- one offence of causing serious injury with intent to resist, prevent or terminate the lawful arrest or detention of himself or another.

The maximum sentence for the first offence will be life, as for the existing offence. We recommend fixing a figure for the second offence, of more than 7 years but less than life. Possible levels are 10 years and 14 years.

These offences differ from the existing offence in one respect: they do not include a wounding that does not amount to serious injury. This however simply reflects existing practice: the CPS charging standard recommends that any wounding not amounting to grievous bodily harm should be charged under section 47, even though a charge under section 18 or 20 is theoretically available. These changes will therefore have no financial impact.

ii. Section 20

Our recommendation is to replace the section 20 offence with an offence of “recklessly causing serious injury” (clause 2 of the draft Bill), which would have a maximum sentence of 7 years.

This differs from the existing offence by not automatically including wounding: a wound can be tried using this offence only if it amounts to a serious injury. In this respect it reflects present practice (as described above under section 18), in which a wound that does not amount to a serious injury is generally charged under section 47 (assault occasioning actual bodily harm).

It also differs from the existing offence by requiring that the defendant foresaw the risk of *serious* injury: in the present offence it is sufficient if the defendant intended or foresaw the risk of some harm. However, the cases excluded from the offence for this reason will instead be charged with the new offence of “intentionally or recklessly causing serious injury”, which has a maximum sentence of 5 years. This means that no case will have a lower maximum sentence than at present.

The additional prison costs caused by the seven year maximum sentence are analysed in the Costs and Benefits Analysis, below. The exclusion of wounding and the requirement of foresight of serious injury should not have any financial impact.

Transmission of disease

At present a person who recklessly transmits an infection (in particular HIV or an STI) to another can be charged and convicted for the offence under section 20, maliciously inflicting grievous bodily harm. Our proposals largely preserve the existing law, though there is some pressure for these cases to be decriminalised.

We are proposing that the offence under clause 2 (recklessly causing serious injury) should only apply if the defendant foresaw *serious* injury. At present, cases in which the defendant foresaw some physical injury (for example as a result of vigorous sex) but did not foresee transmitting a disease theoretically fall within the offence under section 20. Under our proposals these cases will no longer fall within the offence under clause 2, though they could fall within that under clause 3. However, no case has so far been prosecuted on such facts and the impact of this change may be regarded as involving too small a number of cases to be significant.

Hate crimes

There are racially and religiously aggravated forms of the offences under sections 20 and 47 and of common assault. We recommend updating all these to reflect the changes to the underlying offences.

The maximum sentence for racially or religiously aggravated “reckless serious injury” should be increased to 10 years (as the basic offence will have a maximum of 7). This could theoretically involve additional prison costs. However, since the number of defendants convicted of the aggravated section 20 offence in the Crown Court averages approximately 15 per year over the last few years (see Table 5 below), this increase may be regarded as affecting too small a number of cases to be significant.

iii. Section 47:

Our recommendation is to replace the section 47 offence with two new offences:

- one offence of intentionally or recklessly causing injury (“the injury offence”), triable in either the Crown Court or a magistrates’ court and punishable with up to 5 years (in the Crown Court) or 6 months (in a magistrates’ court); and
- one offence of “aggravated assault”, meaning any assault or battery which in fact causes injury (whether or not this was intended or foreseen), triable only in the magistrates’ court and punishable with up to 12 months.

The injury offence differs from the existing offence under section 47 by requiring intention or foresight of injury; it also differs by not requiring the injury to be caused by assault. For this reason, it could include the transmission of a disease not amounting to serious injury. Cases in which the risk of infecting another was a reasonable one to take, for example going out in public with a common cold, would still be excluded.

Our proposals are designed to address those cases where a sentence of 12 months or less is expected but the prosecutor at present decides to bring charges under s 47 for labelling reasons. In these cases the prosecutor will charge the new offence of aggravated assault. This will satisfy the need for the correct label but keep the case in the magistrates’ court.

The sentencing powers for aggravated assault would be an exception to the general rule that magistrates can only pass a sentence of up to 6 months for a single offence. Section 154 of the Criminal Justice Act 2003 increases the general sentencing powers of magistrates to 12 months per offence, but has not yet been brought into force. We are proposing that this particular offence should have a 12 month maximum even in advance of section 154 being commenced. There is no certainty as to whether this particular recommendation will be accepted; for example, it may be thought anomalous that, on the same facts, the magistrates can impose a sentence of 12 months for aggravated assault but only 6 months for the more serious offence of intentionally or recklessly causing injury. That is why we also give projections for Option 2: that is, the same reforms as Option 1 but assuming a 6 month instead of a 12 month maximum sentence for the new offence. In this impact assessment we assume, throughout, that section 154 has not been commenced before our present recommendations are implemented. If section 154 is commenced first, a large part of both the costs and the savings analysed below will already have occurred, and will no longer be consequences of our recommendations.

The CPS charging standard would need to be revised to recommend that low-level injury offences should be charged as aggravated assault, rather than common assault as at present; it would also define a low level injury as one where the expected sentence is 12 months or less (as opposed to 6 months as at present). The injury offence would then be charged only when a sentence of more than 12 months is expected and Crown Court trial is desired. (In some cases, magistrates may choose to accept jurisdiction even if the expected sentence is higher than this, as they can commit the case to the Crown Court for sentence after determining the defendant’s guilt.)

In practice, therefore, the aggravated assault offence will be used in three categories of case:

- low-level injury cases which at present are charged as common assault because of the charging standard;
- low-level injury cases which are at present charged under section 47, where sentences of 12 months or less are expected;
- injury cases, whatever the level of injury or the likely sentence, where the prosecution expects difficulty in proving that D intended or foresaw any risk of injury.

The second and third categories include both cases at present tried in the Crown Court and cases at present tried in the magistrates' court. As concerns cases at present tried in the magistrates' court, our proposals should have little if any financial impact, as the cost of prosecuting a case under the new offence is likely to be the same as for a prosecution for common assault or low level ABH. There will be some saving in ABH cases because the magistrates will not need to spend time deciding on the mode of trial, but as explained in the Cost and Benefit Analysis, below, this will be on a small scale and we cannot estimate accurate figures. Our proposals should not have any financial impact in cases where the prosecutor now brings charges under s 47 because he or she has over-estimated the likely sentence. In cases where the prosecutor expects a sentence of over 12 months, he or she will decide to charge the full injury offence, under clause 3 of the draft Bill, unless there are likely to be problems in proving that the defendant intended or was reckless about injury. The cost of trying the case is likely to be the same as in section 47 cases at present.

2. Changes to assault offences

i. There are currently offences of assault and battery, triable only in the magistrates' court and with a maximum sentence of 6 months. These are common law offences, rather than offences under the 1861 Act.

Our recommendation is to restate these offences in statute under the names of "threatened assault" and "physical assault", without changing the definitions or the sentencing powers. This change should have no financial impact.

ii. There is also an offence of assaulting a constable in the execution of his duty, under the Police Act 1996. This too is triable only in the magistrates' court and has a maximum sentence of 6 months. There is no requirement that the defendant knew or suspected that the victim was a police officer; but in some cases where the defendant did not know this, he or she will be able to rely on self-defence.

Our recommendation is to change this so that the defendant must either know that the victim was a police officer or be reckless as to whether the victim was or was not. We also recommend increasing the maximum sentence to 12 months.

The first change should have little or no financial impact, as a defendant who does not know that the victim is a police officer will in any case be able to be charged with assault.

The second change may lead to some increase in prison costs. We analyse this in the Cost and Benefit Analysis, below.

iii. There are offences of racially or religiously aggravated assault and assault while resisting arrest. Our reforms involve redefining these to refer to the new assault offences, but there should be no financial impact.

iv. We are proposing to abolish the offences of assaulting a clergyman and assaulting a magistrate in his duty preserving a wreck. As these offences are very seldom charged there should be little or no financial impact.

3. Changes to other offences

i. Poisoning offences

Our recommendation is to replace the three current poisoning offences with a single offence of administering a substance capable of causing injury, carrying a maximum of 5 years.

In cases where actual injury is caused, this offence can be charged together with one of the offences under clauses 1, 2 and 3, all of which involve intentionally or recklessly causing an injury. Taking the offence under clause 3 as the most likely to be charged, this yields a theoretical maximum sentence of 10 years (5 under clause 3 plus 5 under the new poisoning offence), though it is not approved practice to

impose consecutive sentences for two or more offences constituted by the same incident.⁵ Ten years is also the current maximum sentence for the section 23 offence though, as shown in Scale and Scope below, sentences for this offence rarely exceed 5 years, whether or not actual harm was caused.

In cases currently charged under section 22, it will also be possible to charge:

- one of the injury offences, or attempt to commit an injury offence; and
- attempt to commit the intended offence (usually murder, rape or robbery).

This yields a potential life sentence, as at present. Where sexual interference (rape or otherwise) is intended, it is also possible to charge the offence under section 61 of the Sexual Offences Act 2003, administering a substance with intent to commit a sexual offence, for which the maximum sentence is 10 years.

ii. Explosives

Our recommendation is to replace the four existing explosives offences with two offences of using dangerous or explosive substances intending to cause injury or being reckless as to whether injury is caused, one carrying life (where the injury foreseen is serious) and the other carrying 14 years (where it is not).

All three offences now carrying life sentences involve injuries that must be classified as serious. They will therefore fall within one or other of the proposed offences, depending on whether D intended or foresaw that the injury would be serious.

The offence carrying 2 years (making or possessing explosives intending to commit an offence) is abolished without replacement in our Bill. However the same behaviour is covered by offences under the Explosive Substances Act 1883. We foresee no financial impact as a result.

iii. Railways

As with poisoning, our recommendation is to replace the three railway offences with one offence with a maximum sentence of 5 years.

iv. Threats to kill

In the 1861 Act, there is an offence of threatening to kill. We are proposing to extend this to threats to cause serious injury and threats to rape. At present these cases constitute assault; they may also be covered by affray, malicious communications, harassment or public order offences, or be addressed by criminal behaviour orders or similar procedures.

v. Attempting to choke

The offence under section 21, of attempting to choke with intent to commit an offence, currently carries a life sentence. We have analysed the sentencing appeals available in online case report resources and, to judge from this sample, in practice the intended offence is almost always either robbery or rape.

Our recommendation is to abolish this offence without replacement.

The position for this offence is similar to that for cases now falling within the offence under section 22 (administering stupefying substances with intent to commit an offence). That is, in cases currently falling within the choking offence, it will be possible to charge an actual or attempted injury offence together with attempt to commit robbery or rape, yielding a potential life sentence. In cases where sexual interference (rape or otherwise) is intended it will also be possible to charge the offence under Sexual Offences Act 2003, s 62, of committing an offence with intent to commit a sexual offence, with a maximum sentence of 10 years. We therefore believe that the abolition of the choking offence will have no financial impact, by way of sentencing or otherwise.

vi. Other offences

Our recommendation is to abolish the offences of preventing escape from shipwrecks and failing to feed servants and apprentices. Prosecutions for these offences are very rare indeed, and this recommendation should therefore have no significant financial impact.

⁵ Sentencing Council's *Offences Taken into Consideration and Totality Definitive Guideline*, p 7; *Ralphs* [2009] EWCA Crim 2555.

We recommend retaining the offences of exposing children to danger, setting man-traps and causing harm by furious driving. These will stay within the 1861 Act and not be restated in a new statute.

Option 2: Enact new statute governing offences against the person, including a summary-only offence of aggravated assault with a maximum sentence of 6 months

This option consists of enacting the Home Office’s 1998 draft Bill in place of the existing 1861 Act, with some variations.

These reforms are identical to option 1 except that the maximum sentence for aggravated assault and assaulting a constable would be 6 months instead of 12. Within this option, we therefore only assess the impact of the reforms concerning aggravated assault and assaulting a constable.

Scale and scope

Most of the law concerning offences of violence is set out in the 1861 Act. The three best known offences are those under section 18 (wounding or causing grievous bodily harm with intent); section 20 (maliciously wounding or inflicting grievous bodily harm, popularly “GBH”); and section 47 (assault occasioning actual bodily harm, popularly “ABH”). There are also offences concerned with poisons, explosives and railways, soliciting murder, threats to kill and many less used offences. Outside the 1861 Act there are the offences of assault and battery (common law) and assaulting a police constable (Police Act 1996, s 89).

This section provides the statistical headlines of these offences in relation to:

- Prosecutions
- Convictions
- Sentences and acquittals

1. Injury offences

i. Section 18 – Wounding or causing grievous bodily harm with intent

The present offence under section 18 of the 1861 Act consists of wounding or causing grievous bodily harm, either with intent to do grievous bodily harm or with intent to resist or prevent the apprehension or detention of any person. It is triable only in the Crown Court, except in the case of minors, who are tried in the youth court. The maximum sentence is imprisonment for life. The numbers of prosecutions under section 18 for the five year period, 2010-2014 is indicated in Table 2 below.

Table 2: Convictions and acquittals for the s 18 offence, Crown Court, 2010-2014⁶

	2010	2011	2012	2013	2014	Average
Crown Court, convictions	1,683	1,736	1,637	1,431	1,421	1582
Crown Court, acquittals	1,297	1,164	1,114	902	972	1090

Source: Crown Court data tool at <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>, Ministry of Justice

⁶ Only figures for adults are given. They include only cases in which the section 18 offence was the main offence charged. The figures do not distinguish between GBH and wounding, or between intent to do GBH and intent to resist arrest. Convictions do not distinguish between guilty pleas and convictions following trial. Acquittals include discontinued prosecutions and any other cases that do not result in a conviction.

The Sentencing Council, in their report “Assessing the impact and implementation of the Sentencing Council’s Assault Definitive Guideline”,⁷ report that, while there was an overall decrease in sentencing severity for crimes of violence since the guideline was introduced, sentences for the section 18 offence have increased, despite the estimate that the guideline would result in less severe sentences.⁸ The reason for this appears to be that the guideline divides the range for each offence into categories denoting greater and lesser harm and higher and lower culpability; but the definition of the s 18 offence, and the practice of not charging that offence for non-serious wounds, virtually ensure that all cases will involve both greater harm and higher culpability.

ii. Section 20 – Maliciously wounding or inflicting grievous bodily harm, popularly “GBH”

The present offence under section 20 of the 1861 Act consists of malicious wounding or causing grievous bodily harm having intended or foreseen a risk of some harm – not necessarily grievous. It is triable in both the Crown Court and magistrates’ courts, except in the case of minors, who are tried in the youth court. The maximum sentence is 5 years imprisonment. The numbers of prosecutions under section 20 for the five year period 2010-2014 is indicated in Table 3 below.

Table 3: Convictions and acquittals for the s 20 offence in the Crown Court and the magistrates’ court, 2010-2014⁹

	2010	2011	2012	2013	2014	Average
Crown Court, convictions	4,087	3,741	3,361	3,092	3,198	3,496
Crown Court, immediate custodial sentences	2,387	2,353	2,117	1,859	1,832	2,110
Crown Court, acquittals	835	720	708	538	570	674
Magistrates’ courts, convictions	860	725	651	533	540	662
Magistrates’ courts, other disposals	490	439	288	152	97	293

Source: Crown Court data tool and magistrates’ courts data tool at <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>, and further breakdown supplied by Ministry of Justice (reference 412-15). The figures for other disposals in the magistrates’ courts were calculated by the Law Commission by adding together the figures in the data tool for proceedings discontinued, discharge, charge withdrawn and charge dismissed. They exclude cases committed to the Crown Court.

The sentencing pattern for 2014 is set out in Table 4 below. The right hand column shows the total number of sentences in each band. In the middle column (serious harm intended or foreseen) we have attempted to separate out those cases in which serious harm was intended or foreseen. For this purpose, we have assumed that serious harm was intended or foreseen if any of three markers are present in the underlying statistical record:

- threatened or actual use of a weapon or equivalent;
- intention to cause more serious harm; or
- deliberately causing more harm than necessary.

⁷ Published 22 October 2015, available at <https://www.sentencingcouncil.org.uk/wp-content/uploads/Assault-assessment-synthesis-report.pdf> (last visited 18 February 2016), pp 1 and 5 to 7.

⁸ The report is discussed in the keynote address by Lord Justice Treacy at the Criminal Law Review Conference on 3 December 2015: <https://www.judiciary.gov.uk/wp-content/uploads/2015/12/speech-lj-treacy-ct-clr.pdf> (last visited 18 February 2016).

⁹ The figures include only cases in which the section 20 offence was the main offence charged, and they exclude the racially and religiously aggravated forms of the offence, which are set out separately in Table 5 below. Convictions do not distinguish between guilty pleas and convictions following trial. Acquittals include discontinued prosecutions and any other cases that do not result in a conviction.

Table 4: Sentences passed for the s 20 offence in the Crown Court in 2014¹⁰

	Serious harm intended or foreseen	Total
Total sentences passed	1,182	2,495
Non-custodial, including suspended sentences	403	1,155
Up to 3 months	5	9
Over 3 months and up to 6 months	3	17
Over 6 months and less than 12 months	36	82
12 months	71	162
Over 12 months and up to 18 months	179	339
Over 18 months and up to 3 years	427	657
Over 3 years and up to 4 years	45	58
4 years	9	11
Over 4 years and up to 5 years	0	1
Over 5 years	4	4

Source: Sentencing Council Crown Court Sentencing Survey and further breakdown supplied by Sentencing Council on 11 September 2015

From these figures we calculate that serious injury was intended or foreseen in just over 47% of all cases sentenced and in about 58% of all cases resulting in immediate custody.

As explained, the offence under section 20 in principle includes the reckless transmission of a disease. There are very few cases of this: some 21 convictions (including guilty pleas) and 5 acquittals in the whole period from 2004 to 2014. (Figures supplied by the National AIDS Trust.)

The numbers of prosecutions for the racially or religiously aggravated form of the section 20 offence are given in the following table.

Table 5: Convictions and acquittals for the racially or religiously aggravated form of the s 20 offence¹¹

	2010	2011	2012	2013	2014	Average
Crown Court, convictions	30	16	15	8	10	16
Crown Court, acquittals	17	14	2	5	6	9
Magistrates' courts, convictions	25	4	3	2	2	7
Magistrates' courts, other disposals	28	3	1	2	0	7

Source: Crown Court data tool and magistrates' courts data tool at <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>, Ministry of Justice. The figures for other disposals in the magistrates' courts were calculated by the Law Commission by adding together the figures in the data tool for proceedings discontinued, discharge, charge withdrawn and charge dismissed. They exclude committals to the Crown Court.

iii. Section 47 - assault occasioning actual bodily harm, popularly "ABH"

The numbers of prosecutions under section 47 for the last few years are given in the following table. They include only cases in which the section 47 offence was the main offence charged, and they exclude the racially and religiously aggravated forms of the offence (the numbers of these are very small

¹⁰ These figures are independent of those in Table 3, as they represent sentences passed in 2014 rather than cases heard in that year. They also only represent cases in which the judge reported the sentence.

¹¹ The data held centrally by the Ministry of Justice for court proceedings do not specifically identify whether the conviction was on grounds of racial or religious hatred under this particular legislation.

compared with those for the basic offence). Acquittals include discontinued prosecutions and any other cases that do not result in a conviction.

Table 6: Convictions and acquittals for the s 47 offence in the Crown Court and the magistrates' court, 2010-2014

	2010	2011	2012	2013	2014	Average
Crown Court, convictions, consisting of:	7,877	7,050	5,434	4,650	4,981	5,998
Guilty pleas	7,010	6,220	4,724	4,064	4,438	5,291
Convictions on trial	867	830	710	586	543	707
Crown Court, acquittals	3,051	2,690	1,882	1,475	1,541	2,128
Magistrates' courts, convictions	8,791	6,866	4,068	3,111	3,136	5,194
Magistrates' courts, other disposals	4,776	3,677	2,317	1,470	1,421	2,732

Source: Further breakdown of criminal justice statistics, as supplied to Law Commission by Ministry of Justice (reference 412-15). The figures for other disposals in the magistrates' courts were calculated by the Law Commission by adding together the figures in the data tool for proceedings discontinued, discharge, charge withdrawn and charge dismissed. They exclude committals to the Crown Court.

Since the issue of the CPS charging standard, recommending that common assault should be charged in low-level injury cases, prosecutions for the offence under section 47 have shown a steady decline in numbers but an increase in average sentence. The Sentencing Council, in their report "Assessing the impact and implementation of the Sentencing Council's Assault Definitive Guideline",¹² report that, while there was an overall decrease in sentencing severity for crimes of violence since the guideline was introduced, sentences for ABH increased, despite the estimate that the guideline would result in less severe sentences. The reason for this increase is presumably that, since most low-level cases are now charged as common assault, the cases still charged using the section 47 offence are likely to be those at the top end of the range.

Despite the practice of charging common assault in low-level injury cases, and the increase in average sentences, there are still many cases under section 47, even in the Crown Court, which result in sentences of 6 months or less. The reason why these cases were charged under section 47 instead of as common assault could be either that the prosecutor over-estimated the likely sentence or that it was felt that, whatever the likely sentence, charging common assault would not do justice to the facts in labelling terms. Similar reasons may influence the decision of magistrates to send a section 47 case to the Crown Court, even though they have the power to try it themselves. Furthermore, even if the magistrates decide to retain jurisdiction in these cases, the defendant has the right to elect Crown Court trial.

In what follows, we are concerned to establish what proportion of sentences passed by the Crown Court for this offence would have been within the power of a magistrates' court.

The Crown Court sentencing pattern for the section 47 offence is set out in the table below: the underlying figures were supplied by the Ministry of Justice. In this table the sentences passed are divided into three groups:

- sentences certainly within the power of a magistrates' court: absolute or conditional discharge, community order, fine, immediate custody for not more than 6 months;
- sentences certainly beyond the power of a magistrates' court: immediate custody for more than 6 months;
- suspended sentences and others where it is unknown whether they would have been within the power of a magistrates' court.

¹² Published 22 October 2015, available at <https://www.sentencingcouncil.org.uk/wp-content/uploads/Assault-assessment-synthesis-report.pdf> (last visited 19 February 2016), pp 1, 8 and 9.

The reason that suspended sentences are treated in this way is that a magistrates' court has power to impose a suspended sentence of up to 6 months, but the publicly available statistics do not distinguish the different lengths of suspended sentence.

For comparison, the table also shows the proportion of sentences of immediate imprisonment for more than 6 but not more than 12 months. These are of course a subset of those "not within powers of magistrates' courts".

Table 7: Proportion of s 47 sentences within and beyond the powers of magistrates' courts, 2010-2014

	2010	2011	2012	2013	2014	Average
Within powers of magistrates' court	33%	33%	28%	24%	22%	28%
Not within powers of magistrates' court	32%	33%	37%	38%	38%	36%
Not known	35%	34%	35%	38%	40%	36%
6-12 months custody	17%	18%	20%	19%	18%	18%

Source: Calculated by Law Commission from figures in Table 6

Figures from the Sentencing Council's Crown Court Sentencing Survey for England and Wales for 2014 show the following pattern for sentences passed by the Crown Court for the section 47 offence, as set out in paragraphs (a) to (e) below (excluding sub-paragraphs). The Sentencing Council have also supplied us with figures showing the breakdown of suspended sentences by length, which are set out in sub-paragraphs (i) to (iii) of paragraph (c) below. In 2014:

- (a) 14% of cases resulted in a discharge or a non-custodial sentence;
- (b) 7% of cases resulted in a sentence of immediate custody for 6 months or less;
- (c) 40% of cases resulted in a suspended sentence, among which:
 - (i) 33.75% of suspended sentences (13.5% of all sentences) were for up to or including 6 months;
 - (ii) 52.5% of suspended sentences (21% of all sentences) were for more than 6 months but not more than 12 months;
 - (iii) 13.75% of suspended sentences (5.5% of all sentences) were for more than 12 months;
- (d) 18% of cases resulted in a sentence of immediate custody of more than 6 months but not more than 12 months; and
- (e) 21% of cases resulted in a sentence of immediate custody of more than 12 months.

The figures above show that 14 (discharge or non-custodial) + 7 (immediate custody 6 months or less) + 18 (immediate custody 6-12 months) + 13.5 (suspended sentence 6 months or less) + 21 (suspended sentence 6-12 months) = **73.5%** of all sentences passed by the Crown Court for the section 47 offence in 2014 were for 12 months or less. Under our proposals, it is hoped that most of these cases will be charged as aggravated assault and therefore tried in the magistrates' court.

The figures above include only cases which resulted in a sentence and in which the judge complied with his or her obligation to report the sentence handed down. That said, there was about 60% compliance in 2014, and the report accompanying the survey stated that, comparing sentences with those in MoJ/HMCTS records, it seems that the percentages shown by the survey are representative.

There is neither the capacity nor the need to provide corresponding figures for injury cases charged as common assault, because:

- the statistics do not distinguish common assault cases in which some injury was caused from cases in which it was not (or even assault from battery); and
- according to our analysis, our proposed reforms have no financial impact on injury cases currently charged as common assault.

2. Assault offences

As we expect no financial impact as a result of our recommended changes to assault and battery, we give no figures for the number of prosecutions for these offences. We give the figures for assault on a constable in the execution of his duty in Table 8 below. The total of prosecutions means the number of defendants who were charged with this offence and reached a first hearing in a magistrates' court.

Table 8: Custodial sentences for assault on a constable, 2010-2014

	2010	2011	2012	2013	2014	Average
Custodial sentences, 3 months or less	986	977	781	770	776	858
Custodial sentences, over 3 and up to 6 months	381	343	302	233	230	298
Total custodial sentences	1,367	1,320	1,083	1,033	1,006	1,156

Source: Further breakdown of criminal justice statistics, as supplied to Law Commission by Ministry of Justice (reference 594-15)

From a weighted average of these figures, assuming an average sentence of 1½ months for the band up to 3 months and an average sentence of 4½ months for the band from 3 to 6 months, it appears that the average custodial sentence for this offence varies between 2 and 2.5 months.

3. Other offences

i. Poisoning offences

Over the period from 2004 to 2014 inclusive, a total of 7 sentences were passed by the Crown Court for the offence under s 22 (administering stupefying substances in order to commit an offence); of these, 2 were in the range from 5 to 10 years, and 1 was over 10 years.

In the same period, 33 sentences were passed for the offence under s 23 (administering poison so as to endanger life or cause grievous bodily harm); of these, none were in the range from 5 to 10 years, and 3 were over 10 years (as the maximum sentence for the offence is 10 years, this must mean that other offences were also charged or that a sentence of imprisonment for public protection was passed).

Sentences under s 24 (administering poison to injure or annoy) never exceeded 2 years.

All these figures, and those for the remaining offences listed, were supplied to us by the Ministry of Justice.

ii. Offences involving explosives

Prosecutions for these offences are uncommon. In the period from 2004 to 2014, there were a total of 45 prosecutions for all four offences taken together, the majority of them under section 29. Out of all these, only one resulted in a sentence of more than 10 years (the statistics do not state whether this was for more than 14 years).

iii. Offences involving railways

(a) Over the period from 2004 to 2014 inclusive, 3 sentences were passed for the offence under s 32, of putting things on railways to endanger passengers. Of these, 2 were in the 1-2 year bracket and 1 was in the 2-5 year bracket. None was more than 5 years.

(b) In the same period, there was only one sentence passed for the offence under s 33 (throwing things at trains to endanger passengers), and that was for 12 months or less.

(c) There were 56 sentences passed for the offence under section 34: 26 for 6 months or less; 18 for more than 6 months but not more than 12 months; 12 for more than 12 months but not more than 2 years (the limit for the offence).

iv Threats to kill

We are proposing to extend the offence of threatening to kill to include threats to cause serious injury and threats to rape. As threats to cause serious injury or rape are not at present a distinct offence (though they will sometimes fall within common assault or malicious communications, harassment or public order offences), there are no verifiable statistics showing in how many more cases the offence would be charged.

The numbers of prosecutions under section 16 for the last few years are given in the following table. They include only cases in which the section 16 offence was the main offence charged. Convictions do not distinguish between guilty pleas and convictions following trial. Acquittals include discontinued prosecutions and any other cases that do not result in a conviction.

Table 9: Convictions and acquittals for the s 16 offence in the Crown Court and the magistrates' court, 2010-2014

	2010	2011	2012	2013	2014	Average
Crown Court, convictions	210	235	214	209	276	229
Crown Court, acquittals	213	171	129	156	158	165
Magistrates' courts, convictions	243	235	222	226	235	232
Magistrates' courts, other disposals	959	766	580	321	1,181	761

Source: Crown Court data tool and magistrates' courts data tool at <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>, Ministry of Justice. The figures for other disposals in the magistrates' courts were calculated by the Law Commission by adding together the figures in the data tool for proceedings discontinued, discharge, charge withdrawn and charge dismissed. They exclude committals to the Crown Court.

v. Attempting to choke

This offence is still occasionally used. The scoping consultation paper¹³ shows that, in the period from 2003 to 2013, there were anything up to 28 prosecutions per year for this offence. We do not have sentencing data.

vi. Other offences

There are a number of obscure offences, such as impeding rescue from wrecks and failing to feed servants and apprentices, which we are proposing to abolish. Prosecutions for these are very rare indeed: in the entire period from 2004 to 2014 there was one prosecution for failing to feed servants and apprentices and none at all for impeding rescue from wrecks.

Notes

i. The figures given in Tables 2, 3, 5, 6, 8 and 9 on convictions and acquittals for different offences 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.

ii. Every effort has been 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.

Source: Court Proceedings Database, Ministry of Justice

¹³ Reform of Offences against the Person, A Scoping Consultation Paper: Law Commission Consultation Paper No 217, para 2.236(1).

Costs and benefits analysis

This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, the impact of some changes is likely to be very small or non-existent, and we have indicated those instances where we think this is the case in earlier discussion in the option descriptions or the scale and scope section.¹⁴ There are also important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

When calculating the net present value (“NPV”) for the impact assessment we have used a time frame of ten years, with the present being year 0. We have assumed that the transitional costs and benefits occur in years 0, 1 and 2, and ongoing costs and benefits accrue in year 1 to 10. We have used a discount rate of 3.5%, in accordance with HM Treasury guidance. Unless stated all figures are in 2014/15 prices, and have been updated using the GDP deflator.

In the case of monetised impacts we provide high, low and best estimates: the best estimates are half way between the high and the low estimates. There is no intrinsic correlation between costs and benefits: in fact the possible variations in the costs are independent of the possible variations in the benefits and it is possible for higher costs to coexist with lower benefits or vice versa. Also, the difference between the “high” and “low” estimates for costs is considerably greater than in the case of benefits. Accordingly, the estimated high NPV value is based on the low cost estimate and high estimate of benefit and the estimated low NPV value is based on the high cost estimate and the low estimate of benefits. This means that the range between low and high values is the greatest possible allowed by the figures.

Option 0: Do nothing [base case]

Because the “do-nothing” option is compared against itself its costs and benefits are necessarily zero, as is its NPV.¹⁵

However the problems identified above in the present law of offences against the person will continue.

¹⁴ For example see discussion on recommendation to changes to injury offences under section 18, section 20 and transmission of disease on page 9

¹⁵ The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

Option 1: Enact new statute governing offences against the person, including a summary only offence of aggravated assault with a maximum sentence of 12 months

Costs

Transitional Costs

1. Training

There will be minimal, if any, additional costs as a result of judicial training. Both initial and ongoing judicial training in this area would not be unduly onerous and could, therefore, be incorporated within existing programmes.

We are informed that, while there would be a need for considerable training and re-training of relevant police officers, this would be absorbed in the existing annual programmes and would not involve a net increase in the training budget or the time spent.¹⁶

With regard to training legal professionals, we anticipate minimal additional cost, as training on reforms to offences against the person would form part of their continuing professional development.

2. Spike in appeals

As with most reforms which aim to simplify the law, our recommendations will lead to both short term costs and long term savings:

(a) there will be some more appeals while the new definitions bed in, and fewer thereafter because the new definitions are clearer than the old; it is impossible to set a time limit on this, as significant appeals on points of law often occur at intervals of several years;

(b) the same point could be made about legal costs: in preparing for cases, in the short term (say 3 years) lawyers will take more time because they are not used to the new definitions, and in the long term they will take less time because they have a simpler statute to interpret.

Given the unpredictable nature of points of law that may arise in the future, it is not possible to put figures on either the costs or the savings.

On-going Costs

3. Increased numbers of prosecutions

(a) Transmission of disease

The new offence under clause 3, of intentionally or recklessly causing injury, may include some cases of comparatively minor infection; at present only infections amounting to "grievous bodily harm" are covered by any offence (except in the unlikely event that a non-serious infection was transmitted in the course of an assault). However, this will not apply when the risk of passing on the infection was a reasonable one to take: for example travelling on the underground while infected with a common cold. The number of cases affected should therefore be very small.

On the other side of the account, under our reforms the offence under clause 2 (recklessly causing injury) will no longer include cases where the defendant did not foresee transmission of disease but did foresee a non-serious injury. These cases will be very rare indeed: none of the convictions so far recorded appears to depend on this particular oddity in the law. Even if such cases occur there will be no certainty of any saving, as they will instead fall under the clause 3 offence, of intentionally or recklessly causing injury.

¹⁶ Request to College of Policing, reference IR173837.

Overall, the impact of our proposals on transmission of disease may be regarded as insignificant.

(b) New offence of threatening to kill, cause serious injury or rape

The offence of threatening to kill is replaced by an offence of threatening to kill, cause serious injury or rape. Cases of threats to cause serious injury or rape will often at present be covered by affray, assault or offences relating to harassment or public order or malicious communications, or be dealt with through criminal behaviour orders or similar procedures. However, there is no way of determining how many of the cases dealt with through these offences or procedures represent such threats.

Given the number of cases prosecuted for the existing offence, we do not expect the number of cases under the expanded offence to be large. The cost of prosecuting such cases may be higher than that of using the existing offences and procedures, as the new offence is a serious one and will often be tried in the Crown Court; however, the new offence would be a more powerful tool to deal with this kind of behaviour.

(c) Explosives offences

One change is that it will become an offence recklessly to use explosives in such a way as to cause a risk of injury which is not serious; at present this is only an offence if injury is intended. Theoretically this could open the door to more prosecutions, for example for the irresponsible use of fireworks. However, given the insignificant number of existing prosecutions, the impact of these additional prosecutions if any should be very small compared with that of the other changes considered in this assessment.

4. Increased demand/number of prison places

(a) S 20 Offence of recklessly causing serious injury

Cases where it is possible to prove that D foresaw a risk of serious injury will be charged under clause 2 (recklessly causing serious injury), and receive a sentence of up to 7 years, instead of up to 5 years as at present.

There will be additional prison costs, in that some defendants will be sentenced to more than 5 years. It is also possible that the increased maximum will lead to a general scaling up of sentences, including those lower down in the range. Below we calculate the likely additional prison costs, both on the assumption that only the most serious cases will result in increased sentences and on the assumption that sentences are uniformly scaled up. The two sets of figures are given as framing possibilities rather than as realistic estimates, as the actual effects of the revised maximum sentence will necessarily depend, at least in part, on the terms of any revised sentencing guideline that may be issued following the introduction of the new offences.

Table 10: Section 20 offence: increased prison costs

Per year	Low estimate (increase only in most serious cases)	High estimate (uniform scaling up)
A. Crown court convictions	3,496	3,496
B. Immediate custody	2,110	2,110
C. Percentage of custody cases affected	4.3% [serious injury foreseen, and sentenced to 3 years or more]	58% [serious injury foreseen, and sentenced to immediate custody]
D. Number of custody cases affected [B x C]	91	1223
E. Additional length of sentence [years]	1	0.75
F. Additional time in prison per case (=0.5 x E)	0.5	0.375
G. Annual cost per prisoner	£23,900	£23,900
H. Annual cost [D x F x G]	£1,087,450	£10,961,138

I. Adjustment factor ¹⁷	1	0.5
J. Adjusted annual cost [H x I]	£1,087,450	£5,480,569

In the result, we estimate the additional prison costs incurred as follows:

- low estimate: £1.09 m per year
- best estimate: £3.28 m per year
- high estimate: £5.48 m per year.

Assumptions:

Common to both estimates

- The average number of Crown Court convictions was 3,496, of which 2,100 resulted in immediate custody: see Table 3.
- The cost of keeping a person in prison for 1 year is £23,900.
- Most prisoners are eligible for release on licence half way through their sentence: we therefore assume that the average time spent in prison is 50% of the sentence imposed.

Low estimate based on scaling up only the most serious cases

- The most serious cases involving foresight of serious injury now attract a custodial sentence of three years or more.
- Cases where serious injury was foreseen and which now receive sentences in the range of 3 to 5 years will receive sentences in the range from 3 to 7 years. For simplicity, we assume that the average sentence in each range is at the mid-point of that range, so the change is from an average of 4 years to an average of 5 years, i.e. an additional year.¹⁸

Based on the most recent available data (2014) on Crown Court convictions, in Table 4, out of a total of 2,495 sentences, 1,340 were for immediate custody. Out of these there were 58 (2.3% of total sentences; 4.3% of sentences for immediate custody) where serious injury was foreseen *and* a custodial sentence of 3 years or more was passed.

- In 4.3% of the 2,100 custody cases the average sentence will rise from 4 years (the mid-point of the 3 to 5 year range) to 5 years (the mid-point of the 3 to 7 year range).

High estimate based on a scaling up all custody cases by a factor of 1.4

From Table 4, above, out of 2495 cases (in 2014), 1182 have markers showing intention or foresight of serious harm. Of that number, 779 received sentences of immediate custody, the average length being 23 months.

- The sentence for all cases which now receive a sentence of immediate custody, and in which intention or recklessness as to serious harm is proved, would be scaled up by a factor of 1.4 to reflect the new maximum sentence of 7 years.
- After scaling-up, the average sentence would rise from 23 months to just over 32 months.
- There is intent or recklessness as to serious harm in 58% of the 2,110 cases resulting in immediate custodial sentences. The scaling up will apply to these cases.

The choice between the estimates

We are unaware of any systematic research on the effect of increased sentences by way of scaling up: whether judges go on giving the sentences they feel appropriate, but limited at the top end, or whether they tend to distribute cases in order of seriousness evenly along the range of sentences available.

¹⁷ The reason for this adjustment factor is explained under the heading “The choice between the estimates”, below.

¹⁸ The sentencing guideline for assault-related offences states that the normal sentencing range for the section 20 offence, even in cases of high harm and high culpability, only goes up to 3 years. The assumption here is that the sentencing guideline remains in force, and that judges will continue to pass much the same sentences as at present except in cases outside the normal range, which have something exceptional about them.

Based on consultation responses and after talking to legal practitioners our instinct is that it is nearer the first than the second. This is supported by the fact that only 3% of all sentences now passed by the Crown Court for this offence (including non-custodial sentences) are for more than 3 years (see Table 4 above), meaning that very few sentences approach the statutory maximum. By way of comparison, we have studied the sentencing statistics¹⁹ for the offence of causing death by dangerous driving (section 1 of the Road Traffic Act 1988), where the maximum sentence was increased in 2004 from 10 years to 14 years. The year before the Act was passed in 2002 the average custodial sentence length [ACSL] was 39.2 months and in the years after it ranged from 43 to 44.8 months, which is roughly a 15 percent increase in the ACSL. This suggests that a 40 per cent increase in the ACSL might be too high. We have therefore reduced this top-end estimate by 50 per cent (that is, to show an average increase of ACSL of 20 per cent rather than 40 per cent) to ensure that it is more in line with the limited evidence we have.

Probation costs

The increase in prison sentences for cases of reckless causing of serious injury could also entail an increase in probation costs, though the new offence will not include any cases not covered by the existing offence under section 20. In most cases where a person is sentenced to a term of imprisonment of over 12 months, he or she may be released on licence for up to half of that term, and is subject to supervision by a probation officer for the licence period. (For sentences under 24 months, there is a period of licence and “post sentence supervision” of a minimum of 12 months.) If the average period of imprisonment is increased, there will be a corresponding increase in the average period for which a person is on licence, and therefore in the costs of supervision. For higher risk cases, which are most likely to be affected by increased sentences, probation services are managed by the National Probation Service (NPS). In these cases there will be an increased direct cost to government. The modelled cost per year on caseload for pre and post release supervision of offenders managed by NPS on 12 + months custodial sentences is estimated at £4,400²⁰. On the basis of the ACSL indicated above an average increase of 20 per cent is about 9 months and the estimated cost increase is £3,300. Applying this unit cost to an increase in the licence period is likely to over-estimate the maximum increase in cost because work is weighted toward activity near the beginning and end of the licence period. There is an additional cost consideration to take into account, namely that extending the sentence length increases the period during which the offender could breach their licence, potentially resulting in additional costs for prosecuting the breach and for delivering any resulting penalties.

(b) Increase in sentencing power for aggravated assault

The maximum sentence for aggravated assault is 12 months, and this will apply to some cases which are at present tried by the magistrates’ court either as ABH or as common assault, and have a maximum sentence of six months. However, this should not have any impact on prison costs, for the following reasons.

i. Cases now tried as ABH in the magistrates’ court

These cases are tried in the magistrates’ court because the court estimated the likely sentence as six months or less; had the case deserved a higher sentence it would have been sent to the Crown Court for trial, or at least committed to the Crown Court for sentence. Therefore, even given a sentencing limit of 12 months, these cases would be unlikely to receive a sentence of over six months.

ii. Cases now charged as common assault

The same reasoning applies here. In accordance with the CPS charging standard, cases in which injury is caused are only charged as common assault if the prosecution estimates the likely sentence as six months or less; that is to say, if the prosecutor believes that, even if the case were charged under section 47 and tried by the Crown Court, the sentence would be in that range despite the theoretical availability of a sentence up to 5 years. It follows that, even given a sentencing limit of 12 months, these cases would be likely to receive a sentence of 6 months or less.

Aggravated assault will also be charged in some cases which currently go to the Crown Court; but as this has the effect of reducing the maximum sentence rather than increasing it we consider this under

¹⁹ Supplied by the Ministry of Justice to the Law Commission on 9 February 2016.

²⁰ Caveats: Costs reflect delivery of the sentence to high risk offenders by NPS; Costs are indicative and reflect modelling of delivery by NPS; Custodial sentences include pre-release work; Corporate service costs [e.g. HR, Finance] are not apportioned within unit costs; Intervention purchase costs are apportioned in proportion to direct spend by sentence type. Source: Ministry of Justice, National Offenders Management Service Planning and Analysis Group.

Benefits, below.

(c) Assault on a constable

The figures in Table 8 show an annual average of 1,156 custodial sentences passed for this offence each year, with an average sentence of approximately 2.25 months. This refers to the nominal sentence passed: under section 33(1)(a) of the Criminal Justice 1991, a prisoner is released unconditionally half-way through the sentence if that sentence was for under 12 months.

The effect of our recommendations will be twofold.

- A reduction in the number of prosecutions because of the necessity to prove that the defendant knew or suspected that the victim was a police officer. Since in most cases police officers confronting a suspect are in uniform, and in the remaining cases the defendant will often be able to claim self-defence, we do not think that this reduction will amount to more than 10%, or 100 custodial sentences per year. However, these cases will instead be prosecuted as common assault.
- An increase in sentences in individual cases, as the maximum sentence will be 12 months instead of six.

We do not expect the first change to lead to a significant change in sentencing. The maximum sentence for assault on a constable is 6 months, the same as for common assault. The average sentence for assault on a constable is probably greater than that for common assault, for example a higher proportion of these cases may result in prison sentences. However, the cases affected, being cases where the defendant did not know that the victim was a police officer, would be at the bottom end of the sentencing range for that offence and would not be sentenced significantly differently from common assault.

The impact of the second change is indicated in Table 11 below. In the low estimate, we assume that sentencing for this offence will increase by 25%. In the high estimate, we assume that sentences will increase by 75%. In the best estimate, we assume a mid-point between the low and high estimates, i.e. an average increase of 50%.

Table 11: Assault on a constable: annual increased prison cost

	Low estimate	Best estimate	High estimate
A. Total number of custodial sentences	1,156	1,156	1,156
B. Less 10% prosecuted as common assault	116	116	116
C. Adjusted number of custodial sentences	1,040	1,040	1,040
D. Average sentence length [as passed, in months]	2.25	2.25	2.25
E. Percentage increase in sentence length	25%	50%	75%
F. Annual additional prison years served: (C x E x D)/24 ²¹	24.5	50	75
G. Annual cost per prisoner	£23,900	£23,900	£23,900
H. Total cost: F x G	£0.59 m	£1.17 m	£1.74 m

(d) Railway offences

The offence under section 34, which carries a maximum sentence of 2 years, is replaced by a general offence of causing danger on railways, with a maximum of 5 years. This however is to reflect the fact that the new offence also covers cases within the more serious offences under sections 32 and 33. We

²¹ The denominator of 24 (for converting months imposed to years served) reflects the assumption that only half the sentence imposed is actually served.

do not intend or expect a general scaling up of sentences in cases now falling within section 34 in proportion to the new maximum: if necessary this could be spelled out in a new sentencing guideline.

(e) New offence of threatening to kill, cause serious injury or rape

As explained in paragraph 3(b) above, the offence of threatening to kill is replaced by an offence of threatening to kill, cause serious injury or rape: as at present, the maximum sentence would be 10 years, though we would expect sentences for threats to injure or rape to be shorter than those for threats to kill. Cases of threats to cause serious injury or rape will often at present be covered by affray (maximum sentence 3 years), assault (6 months) or by offences relating to harassment or public order (usually 6 months) or malicious communications (2 years), or be dealt with through criminal behaviour orders or similar procedures. However, there is no way of determining how many of the cases dealt with through these offences or procedures represent such threats.

Given the number of cases prosecuted for the existing offence, we do not expect the number of cases under the expanded offence to be large. The available sentences will be higher, resulting in increased prison costs. As explained above, however, we believe that these costs are justified as the new offence would be a more powerful tool to deal with this kind of behaviour.

(f) Other offences

In the section on court costs, above, we explained that there could be a small number of additional prosecutions for the transmission of non-serious diseases and handling explosives so as to risk a non-serious injury. It follows that there could be a corresponding increase in prison costs in connection with these offences. We do not put a figure on this as it will be small compared with the costs and benefits of the major changes.

Table 12: Summary of annual costs in £m

	Low estimate	Best estimate	High estimate
On-going costs			
S 20 Increased custodial sentences	1.09	3.28	5.48
Police constable offences increased custodial sentence	0.59	1.17	1.74
Total	1.68	4.45	£7.23

Benefits

Transitional Benefits

None identified

On-going Benefits

1. Reduced number of Crown Court proceedings by creation of summary-only offence of aggravated assault

Our recommendation here is that many cases which are now charged under section 47 (ABH), and therefore sometimes end up in the Crown Court, should instead be charged under the new summary-only offence of aggravated assault. These are: (i) cases where a sentence of 12 months or less is expected and (ii) cases where intention or recklessness as to injury cannot be proved.

(i) Cases where lower sentence expected

The cases in which the most money will be saved are those which currently go to the Crown Court,

although the resulting (and foreseeable) sentence is 6 months or less. There will be further savings for cases where the likely sentence is more than 6 months but not more than 12 months.

The saving per case will be equal to the difference between the costs of (a) a Crown Court hearing in a low-level section 47 case and (b) a magistrates' court hearing on a charge under section 47 or a high-level common assault case.

As shown in Table 6 above, the Crown Court at present deals with approximately 7,300 to 8,900 prosecutions per year for the section 47 offence. Assuming that the proportions shown by the Crown Court Sentencing Survey for 2014 are representative, 73.5%, or roughly 5,400 to 6,600 cases, would be such as to justify a sentence of not more than 12 months if convicted.

Assuming that the result was foreseeable, these cases would be charged as aggravated assault under our proposals. This percentage ought in theory to be reduced to reflect the cases in which the prosecutor over-estimated the likely sentence, for example by being unaware of the defendant's intention to plead guilty or other mitigating factors, but we have no means of estimating the proportion of cases in which this is likely to be true. We therefore assume that considerations of labelling are the operative factor in the choice of charge in most of these marginal cases. As the other assumptions made in calculating the likely savings (for example, in relation to legal aid costs²²) err on the side of under-estimation, the final figure for total savings may be allowed to stand.

This will lead to Criminal Justice System savings in the following areas:

Courts; Legal aid and Prosecution.

The proposed reforms will only apply to offences committed after the commencement of the legislation, and will therefore not affect cases forming part of the existing backlog in the Crown Court. It may therefore take a few years for the full scale of the annual saving to become evident.

Table 13: Annual CJS savings

	Low estimate	Best estimate	High estimate
A. Number of prosecutions	7314	8126	8939
B. % of ≤ 12 month sentences	73.5	73.5	73.5
C. Number of prosecutions where expected sentence ≤ 12 months if convicted	5,376	5,973	6,570
D. Net difference in court cost: Crown vs magistrates	£325	£325	£325
E. Court cost savings [C x D]	£1,747,132	£1,941,098	£2,135,304
F. Net difference in legal aid fees: Crown vs magistrates if no guilty plea	1402	1402	1402
F. Net difference in legal aid fees: Crown vs magistrates if guilty plea	721	721	721
G. Number of cases with guilty pleas [0.65 x C]	3494	3882	4271
H. Legal aid savings - if guilty plea	£2,519,364	£2,799,064	£3,079,108
I. Legal aid savings - if no guilty plea	£2,637,900	£2,930,760	£3,223,980
J. Total legal aid savings [H + I]	£5,157,264	£5,729,823	£6,303,088
K. Net difference in prosecution cost: Crown vs magistrates - trial	£2,523	£2,523	£2,523

L. Net difference in prosecution cost: Crown vs magistrates - guilty plea	£1,024	£1,024	£1,024
M. Annual savings in prosecution cost: Crown vs magistrates - trial [(0.35 x C) x K]	£4,747,091	£5,274,113	£5,801,784
N. Annual savings in prosecution cost: Crown vs magistrates - guilty plea [(0.65 x C) x L]	£3,578,126	£3,975,369	£4,373,102
O. Total Prosecution savings [H + I]	£8,325,217	£9,249,482	£10,174,886
P. Total CJS Savings [E + J + O]	£15.23 m	£16.92 m	£18.61 m

Number of prosecutions: From Table 6 - Crown Court convictions + acquittals 5 year average (best estimate); +/- 10 percent (high/low estimates)

Court costs

The cost of hearings in the Crown Court is £1500 for a sitting day of 5 hours. In magistrates' courts the cost is £1150 per day. (Figures supplied by the Ministry of Justice.)

We do not have precise figures for the length of time taken by a prosecution for a low-level s 47 offence in the Crown Court, or by a prosecution for the s 47 offence or a high level common assault in a magistrates' court. Based on data from HM Courts and Tribunals Service in 2009, it is estimated that the average length of a prosecution in the Crown Court for all either-way offences is 3 hours, while the average length of a prosecution in a magistrates' court for crimes of violence is 2.5 hours.

Some further saving may result from the fact that, under our proposals, the magistrates will not need to spend time deciding on the mode of trial; however, accurate figures for the time taken by this are not available and the likely saving is too small to justify the research required for detailed quantification.

Based on these figures, the saving per case is $(3 \times £1500)/5 - (2.5 \times £1150)/5 = £325$.

Legal aid costs

According to the Criminal Legal Aid (Remuneration) Regulations 2013, the minimum basic fee for a hearing of less than one day of a s 47 case in the Crown Court and the magistrates' court respectively are as set out below. For this purpose we assume that the case is not complicated, that there is a litigator and an advocate appearing alone in the Crown Court or a litigator alone in the magistrates' court, that there are fewer than 10 witnesses, that there is no documentary evidence and that the case was thought suitable for the Crown Court: different fees apply when the defendant elects trial.

In the Crown Court, the minimum advocate's fee is £898 for a contested trial, or £449 or £581 for a guilty plea or cracked trial, depending on when it cracked. The minimum litigator's fee is £810.51 for a trial, £575.16 for a cracked trial and £485.38 for a guilty plea.

In the magistrates' court the lower fixed fee is £378.46 (designated area) or £306.25 (undesignated area) in the case of a trial, or £272.56 (designated area) or £213.35 (undesignated area) in the case of a guilty plea. (A designated area means London.)

Thus, for a trial the minimum saving is $£898 + £810 - £306 = £1402$, and for a guilty plea or cracked trial it is $£449 + £485 - £213 = £721$, assuming that most cases are tried outside London.

As mentioned, 65% of cases are pleas of guilty (we have no information for cracked trials).

The legal aid estimate above is likely to have under-estimated the potential for savings, because

- in the magistrates' court the means test is harder to satisfy than it is in the Crown Court. In effect this means that fewer defendants are likely to be financially eligible for legal aid;
- as explained, Crown Court legal aid costs have been calculated on the basis of the minimum

advocate's and litigator's fee: in some cases higher fees may be payable.

Prosecution costs

The average costs of prosecutions in the Crown Court and magistrates' courts, as supplied to us by the CPS, are as follows:

Table 14: Average prosecution costs in Crown Court and magistrates' courts

Hearing	CPS Cost	Advocacy Cost	TOTAL
Crown Court – trial ²³	£1,828.00	£1,200.00	£3,028.00
Crown Court – guilty plea ²⁴	£835.00	£312.00	£1,147.00
Magistrates' Court – trial ²⁵	£505.00	nil ²⁶	£505.00
Magistrates' Court – guilty plea ²⁷	£123.00	nil ²⁶	£123.00

Accordingly, the saving in prosecution costs per case resulting from hearing that case in a magistrates' court instead of the Crown Court is £3028 – 505 = £2523 for a trial and £1147 – £123 = £1024 for a guilty plea.

As stated above, 65% of the cases concerned are guilty pleas.

Jury attendance time

When a case is heard in a magistrates' court instead of the Crown Court, this saves jury attendance time for the duration of the case. The cost of a juror's time falls on the employer, where the juror is employed, on the juror, where the juror is self-employed, and on public funds, to the extent of any travelling expenses and attendance allowance. By reducing the demand for juror time, our recommendations allow a productivity gain. Given the variety in jurors' earnings, we have not attempted to calculate a figure.

Waiting time

The HM Courts and Tribunals Service Annual Report for 2014-15 states that the average waiting time from receipt of a case in the Crown Court to the hearing where a plea is taken or a jury is sworn in is 17.6 weeks. As against that, the average time it takes to complete a case in a magistrates' court from first listing is 2.9 weeks. The result of our proposals, in which approximately 6,000 cases per year will be tried in magistrates' courts instead of in the Crown Court, should therefore be a net reduction in waiting times, though waiting times in magistrates' courts may increase to some extent as a result of the additional caseload. The saving in waiting time has the following non-monetised benefits:

- allowing the quicker resolution of a case and shortening the anxiety period for defendants, victims and witnesses;
- fresher memory of witnesses when they give evidence, and less time for witnesses or evidence to go missing;
- reducing bottlenecks in Crown Court caseload.

ii. Cases where intention or recklessness cannot be proved

The new offence of aggravated assault will also be used in cases where injury was caused and it is clear that it is severe enough to justify a sentence of more than 12 months, but because it cannot be

²³ Not guilty and mixed plea costs have been used to generate the Crown Court average cost for a trial.

²⁴ Timeous guilty and late guilty costs have been used to generate the Crown Court average cost for a guilty plea.

²⁵ Summary and either way trial data has been used.

²⁶ No advocacy costs have been included for magistrates' court hearings as most are done by internal advocates.

²⁷ Guilty summary, guilty either way and late guilty costs have been used to generate the average cost for a guilty plea.

proved that D intended or foresaw any injury the aggravated assault offence is the only one available. In current practice, these would all have been charged under section 47 and would mostly be tried in the Crown Court.

Here there will be a saving, as these cases will be tried in the magistrates' court. However it is impossible to quantify the number of cases affected, as at present statistics on the section 47 offence do not distinguish cases in which intention or recklessness was present. We do not think that they will be very numerous, as a case of assault where no risk of injury was foreseen will not often merit a sentence of over 12 months. The Sentencing Council's definitive guideline on assault offences states that, in section 47 cases of greater harm but lower culpability, the starting point is 26 weeks' custody (i.e. 6 months) and the category range is from a low level community order to 51 weeks' custody (just under 12 months).

2. Saving for mode of trial proceedings in magistrates' court cases.

Under our proposals, the new offence of aggravated assault will be charged instead of ABH, not only in the cases discussed above, which are at present heard in the Crown Court, but also in most of the ABH cases now heard in the magistrates' court. Once more, accurate figures are not available and the likely scale of the saving is too small to justify further research in order to quantify it.

3. *Reduced prison costs*

(a) Decrease in maximum sentence for causing serious injury with intent to resist arrest

The decrease in maximum sentence for the arrest branch of the offence could in principle save prison costs. However, as we have no figures for cases of wounding/GBH with intent to resist arrest, as distinct from intent to do GBH, we do not know either how frequent these cases are or whether in practice sentences of more than 10 years, or more than 14 years, are ever passed.

(b) Charging aggravated assault in cases where intention or recklessness cannot be proved

In analysing possible savings in court costs we explained that, in cases where it is impossible to prove that the defendant intended or foresaw any injury, aggravated assault will be charged even when the injury is so serious that, in present law and practice, it would result in a sentence of more than 12 months. It follows that, in these cases, there will also be a saving in prison costs, as the maximum sentence for aggravated assault is 12 months. However, for reasons explained in connection with court costs, we think that these cases will be very few.

(c) Poisoning offences

Only a few of the existing poisoning cases under sections 22 and 23 would have been affected if the maximum sentence had been 5 years. Since those top-end cases were presumably ones in which harm was actually caused, the offences of causing injury (under clauses 1 to 3 of the draft Bill) would be available in addition to the new poisoning offence. The possible range of sentences therefore remains much the same as at present.

Cases now charged under section 24 will be charged under the new offence, but as the maximum sentence remains the same (5 years) the sentencing pattern should be unaffected. In practice, sentences for the new offence will remain at 2 years or less, except for those cases which at present would be charged under one of the more serious offences (section 22 or 23).

(d) Railway offences

The offences under sections 32 and 33, which both have a maximum sentence of life imprisonment, are replaced by a general offence of causing danger on railways, with a maximum of 5 years. This should have little financial impact, as it is rare for any of the existing offences to result in a sentence of more than 2 years. The reason for increasing the maximum to 5 years is largely symbolic, to reflect the fact that the new offence replaces all three existing offences.

We therefore foresee no significant impact on prison costs.

4. Improved clarity/reduced uncertainty

The reforms will contribute to the comprehensibility of the law, as the new statute will be written in modern language, divide the offences in a simple and logical way and give full, accurate and up to date information about the requirements and consequences of each offence.

One effect of this reform is that the new offences are much simpler than the existing offences and will have fewer ingredients that need to be proved.

5. Consistency in law

The law would be consistent and coherent, for example by not referring to obsolete concepts and procedures; all the required information (for example on sentencing) would be contained in one statute. The main offences of causing injury would have a coherent fault requirement, in that the harm required to be intended or foreseen would match the harm required to be done.

6. Improved victim confidence

A further benefit is that cases involving injury which are at present charged as common assault will instead be charged as aggravated assault. This labels the defendant's conduct correctly by showing that injury was caused, and victims will feel that their injuries are acknowledged by the criminal justice system.

Option 2: Enact new statute governing offences against the person, including a summary only offence of aggravated assault with a maximum sentence of 6 months

Costs

Transitional Costs

As for Option 1.

On-going Costs

As for Option 1 – except that there will be no additional custodial sentences for the assault of a constable to take into account.

Table 15: Option 2 Summary of annual costs.

	Low estimate	Best estimate	High estimate
On-going costs			
S 20 Increased custodial sentences	£1,087,450	£3,284,009	£5,480,569
Total	£1.09 m	£3.28 m	£5.48 m

Benefits

Transitional Benefits

None identified

On-going Benefits

As for Option 1, except as follows:

Aggravated assault

The figures set out above in “scale and scope” show that 14 (discharge or non-custodial) + 7 (immediate custody 6 months or less) + 13.5 (suspended sentence 6 months or less) = **34.5%** of ABH sentences passed by the Crown Court in 2014 would have been within the powers of a magistrates’ court.

Cases now charged as common assault

As for Option 1.

Cases now charged under section 47 and tried in magistrates’ court

As for Option 1.

Cases now charged under section 47 and tried in Crown Court

The cases in which the most money will be saved are those which currently go to the Crown Court, although the resulting (and foreseeable) sentence is 6 months or less.

The saving per case will be equal to the difference between the costs of (a) a Crown Court hearing in a low-level section 47 case and (b) a magistrates' court hearing on a charge under section 47 or a high-level common assault case.

As shown above, the Crown Court at present deals with approximately 7,300 to 8,900 prosecutions per year for the section 47 offence. Assuming that the proportions shown by the Crown Court Sentencing Survey for 2014 are representative, 34.5% of these, or roughly 2,500 to 3,100 cases, would be such as to justify a sentence of not more than 6 months if convicted.

Assuming that the result was foreseeable, these cases should have been heard in the magistrates' court, and would be charged as aggravated assault under Option 2. This percentage ought in theory to be reduced to reflect the cases in which the prosecutor over-estimated the likely sentence, for example by being unaware of the defendant's intention to plead guilty or other mitigating factors. However, we have no means of estimating the proportion of cases in which this is likely to be true. As in Option 1, we therefore assume that considerations of labelling are the operative factor in the choice of charge in most of these marginal cases. As the other assumptions made in calculating the likely savings (for example, in relation to legal aid costs²⁸) err on the side of under-estimation, the final figure for total savings may be allowed to stand.

Table 16: CJS Savings

	Low estimate	Best estimate	High estimate
A. No. of prosecutions	7314	8126	8939
B. % of ≤ 6 month sentences	34.5	34.5	34.5
C. Number of prosecutions where expected sentence is ≤ 6 months if convicted	2523	2803	3084
D. Net difference in court cost: Crown vs Magistrates	£325	£325	£325
E. Court cost savings [C x D]	£820,082	£911,128	£1,002,285
F. Net difference in legal aid fees: Crown vs Magistrates if no guilty plea	£1,402	£1,402	£1,402
F. Net difference in legal aid fees: Crown vs Magistrates if guilty plea	£721	£721	£721
G. Number of cases with guilty pleas [0.65 x C]	1640	1822	2005
H. Legal aid savings - if guilty plea	£1,182,559	£1,313,846	£1,445,296
I. Legal aid savings - if no guilty plea	£1,238,198	£1,375,663	£1,513,297
J. Total legal aid savings [H + I]	£2,420,757	£2,689,509	£2,958,592
K. Net difference in prosecution cost: Crown vs magistrates - trial	£2,523	£2,523	£2,523
L. Net difference in prosecution cost: Crown vs magistrates - guilty plea	£1,024	£1,024	£1,024
M. Annual savings in prosecution cost: Crown vs magistrates - trial [(0.35 x C) x K]	£2,228,227	£2,475,604	£2,723,286

N. Annual savings in prosecution cost: Crown vs magistrates - guilty plea [(0.65 x C) x L	£1,679,528	£1,865,990	£2,052,680
O. Total Prosecution savings [H + I]	£3,907,755	£4,341,594	£4,775,967
P. Total CJS Savings [E + J + O]	£7.15 m	£7.94 m	£8.74 m

Court costs

As explained under Option 1, the saving in court costs per case resulting from that case being heard in a magistrates' court instead of the Crown Court is £325. As with Option 1, there will be some further saving by avoiding the need for a mode of trial hearing.

Legal aid costs

As explained under Option 1 the minimum saving in legal aid costs per case resulting from that case being heard in a magistrates' court instead of the Crown Court is £1402 for a trial and £721 for a guilty plea, and 65% of the cases concerned are guilty pleas.

Prosecution costs

As explained under Option 1, the saving in prosecution costs per case resulting from hearing that case in a magistrates' court instead of the Crown Court is £2523 for a trial and £1024 for a guilty plea, and 65% of the cases concerned are guilty pleas.

Other

In addition, as explained under Option 1 there will be savings for jury attendance time and waiting time.

All these savings will of course be far less than under Option 1, because under Option 2 cases where the expected sentence is in the 6-12 month bracket will still be heard in the Crown Court.

Cases where intention or recklessness cannot be proved

Finally, the new offence of aggravated assault will be used in cases where injury was caused and it is clear that it is severe enough to justify a sentence of more than 6 months but, because it cannot be proved that D intended or foresaw any injury, the aggravated assault offence is the only one available. In current practice, these would all have been charged under section 47 and would mostly be tried in the Crown Court.

Here too there will be a saving, as these cases will be tried in the magistrates' court and receive a sentence limited to 6 months. However it is impossible to quantify the number of cases affected, as at present statistics on the section 47 offence do not distinguish cases in which intention or recklessness was present. Unlike in Option 1, the saving may be substantial: a case of assault where no risk of injury was foreseen will not often merit a sentence of over 12 months but may well merit a sentence of over 6 months. The Sentencing Council's definitive guideline on assault offences states that, in section 47 cases of greater harm but lower culpability, the starting point is 26 weeks' custody (i.e. 6 months) and the category range is from a low level community order to 51 weeks' custody (just under 12 months). However, while this may be a saving in financial terms it does mean that several cases will result in an unduly lenient sentence.

Assault on a police constable

In Option 2, the definition of the offence is changed so as to require knowledge or recklessness about whether the victim is a police constable but there is no change in sentencing powers. We estimate, above, that this will lead to a decrease in prosecutions of about 10%. However, as these cases will instead be prosecuted as common assault, and the sentences passed are likely to be comparable, there will be no saving in either court costs or prison costs.

Specific Impact Tests

Statutory equality duty

We expect that overall our reforms will have little impact as concerns equality. Some marginal positive effects are:

- There is an increased maximum sentence for the racially or religiously aggravated form of the offence of recklessly causing serious injury.
- We recommend abolishing the offence of assaulting clergy in performance of their duties.

Competition

We do not expect that our reforms will have any particular effect, whether positive or negative, on competition.

Small Business

We do not expect that our reforms will have any particular effect, whether positive or negative, on small businesses.

Environmental impact and wider environmental issues

We do not expect that our reforms will have any particular effect, whether positive or negative, on environmental impact and wider environmental issues.

Health and well-being

The law of offences against the person is designed, among other things, to protect public safety. The law as recommended does not significantly alter the overall coverage of these offences, though it alters the boundaries between one offence and another. We therefore do not expect any particular effect on health and well-being.

Human rights

By making the law easier to understand our recommendations will promote legal certainty.

Justice system

We have already considered the impact that the proposed reforms could have on the criminal justice system throughout the impact assessment.