



Aggravated Burglary

Current Sentencing Practices



Published by the Sentencing Advisory Council
Melbourne, Victoria, Australia

This paper reflects the law as at 28 February 2011.

© Copyright State of Victoria, Sentencing Advisory Council, June 2011

This publication is protected by the laws of copyright. No part may be reproduced by any process except in accordance with the provisions of the *Copyright Act 1968* (Cth).

ISBN 978-1-921100-70-3 (Print)
978-1-921100-71-0 (Online)

Authorised by the Sentencing Advisory Council,
Level 4, 436 Lonsdale Street, Melbourne VIC 3000

Printed by BigPrint, 50 Lonsdale Street, Melbourne

Publications of the Sentencing Advisory Council follow the Melbourne University Law Review Association Inc *Australian Guide to Legal Citation* (3rd ed., 2010).

Printed on recycled paper
ISO 14001 environmental management system in place

Contents

Contributors v

Abbreviations vii

Glossary viii

Executive summary ix

Chapter 1

Background 1

- Current sentencing practices 1
- Collection of data from sentencing remarks 4
- Aggravated burglary 5
- Jurisdictional limit 7

Chapter 2

Current sentencing practices 9

- Number of people sentenced 9
- Sentence type and length for charges 10
- Sentence type and length for cases 11
- Appeals against higher courts cases 17

Chapter 3

Sentencing factors 19

- Statutory aggravating factors 19
- Factors related to the offence circumstances 20
- Factors relating to the victim 20
- Factors relating to the offender 22

Chapter 4

Types of aggravated burglary 27

- A typology 27
- Confrontational aggravated burglary 30
- Intimate relationship aggravated burglary 33
- Aggravated burglary relating to an offence of robbery or theft 36
- Aggravated burglary relating to a sexual offence 40

Chapter 5

Imprisonment 45

- Charges 45
- Cases 52
- Total effective imprisonment length 52
- Immediate custodial sentences versus other sentences: statistically significant factors 57

Chapter 6

Wholly suspended sentences and community-based orders 65

- Wholly suspended sentences 65
- Community-based orders 72

Appendix 1: Tables of sentencing factors 81

- Factors relating to the offence 81
- Factors relating to the victim 82
- Factors relating to the offender 83

Appendix 2: Data tables 85

- Tables for aggravated burglary type 85
- Tables for aggravated burglary charge and case sentence 91

References 99

- Legislation 99
- Cases 99
- Bibliography 100

Contributors

Authors Felicity Stewart and Geoff Fisher

Sentencing Advisory Council

Chair Arie Freiberg

Deputy-Chair Thérèse McCarthy

Council Members Carmel Arthur
David Grace QC
Hugh de Kretser
Ken Lay
Jenny Morgan
Barbara Rozenes
Gavin Silbert SC
Lisa Ward
David Ware

Chief Executive Officer Stephen Farrow

Abbreviations

| | |
|------------|--|
| ADU | Adjourned undertaking |
| CBO | Community-based order |
| CI | Confidence interval |
| FIN | Fine |
| ICO | Intensive correction order |
| IMP | Imprisonment |
| IVO | Intervention order |
| OTH | Other sentence |
| PSS | Partially suspended sentence of imprisonment |
| TES | Total effective sentence |
| VIS | Victim Impact Statement |
| WSS | Wholly suspended sentence |
| YJC | Youth justice centre order |

Glossary

| | |
|-------------------------------------|--|
| Analysis of variance | A statistical technique that measures the strength of a relationship between a metric dependent variable and a categorical independent variable. |
| Bivariate correlation | A statistical technique that measures the strength of a relationship between two metric or binary variables. |
| Case | A collection of one or more proven charges against a person sentenced at the one hearing. |
| Charge | A single proven count of an offence. |
| Co-sentenced offence | An offence sentenced in the same hearing as the offence of interest. |
| Immediate custodial sentence | A sentencing category that includes sentences that require an offender to immediately serve time in a custodial facility. In this report, 'immediate custodial sentence' includes sentences of imprisonment, partially suspended sentences and youth justice centre orders. |
| Imprisonment | In this report, 'imprisonment' refers only to a sentence of imprisonment that is served immediately and is not partially suspended, as distinct from a sentence of imprisonment that is wholly suspended or that is served by way of intensive correction in the community or by home detention. |
| Logistic regression | A statistical technique that measures the independent influence of multiple independent variables on a binary dependent variable. |
| Statistical significance | The likelihood that a statistical relationship between two variables has not occurred by chance. |
| Total effective sentence | A sentence attached to a case. |

Executive summary

The offence of burglary involves entering a premises as a trespasser with the intention to steal anything in the premises or to commit an offence involving assault or property damage. The offence has a maximum penalty of 10 years' imprisonment. To be guilty of the offence, it is sufficient to enter the premises with the relevant intention. The offence is committed even if, once inside the premises, the person does not actually carry out the additional intended offence involving theft, assault or property damage.

Aggravated burglary occurs if, at the time of the burglary, the offender either carried a weapon or knew that a person was in the premises (or was reckless as to the presence of a person in the premises). The aggravated form of the offence has a much higher maximum penalty of 25 years – the second highest level of maximum penalty available in Victoria after life imprisonment.

Both burglary and aggravated burglary are preparatory offences, because they involve an act (entering property) with the intention to commit a further offence. If, once the person has entered the premises, he or she actually commits the intended offence involving theft, assault or property damage, he or she would be charged and sentenced separately for both the offence of burglary and that further offence.

Although aggravated burglary is a preparatory offence, in terms of the maximum penalty, it is ranked among the most serious offences in Victoria. Yet procedurally aggravated burglary is ranked with much less serious offences, as it is triable summarily in the Magistrates' Court. Approximately 40% of aggravated burglary cases are sentenced in that court. The longest term of imprisonment that can be imposed by that court for any single charge is two years' imprisonment.

When sentencing a person for an offence, one of the factors that Victorian courts are required to consider is current sentencing practices for that offence. This is particularly difficult to do for aggravated burglary. The preparatory nature of the offence is one reason for this, because the gravity of a particular aggravated burglary will be affected by the nature of the offence that the person entering the premises intended to commit once inside. For example, did they break into the premises intending to steal cash while being aware that someone may have been asleep upstairs? Or did they break in knowing that a woman was alone at home and intending to rape her?

The prevalence of aggravated burglary, combined with the unusually wide range of sentences imposed and the difficulty of identifying current sentencing practices for it, prompted the Sentencing Advisory Council to undertake a detailed study of sentencing practices for this offence. The study relies on details set out in written remarks made by judges when delivering their sentences. Because such comments are only available in the higher courts, this study does not include sentences imposed in the Magistrates' Court other than the broad statistical sentencing patterns. The study is also limited to the variables that could be extracted consistently and reliably from the sentencing remarks.

The study examines sentences imposed in 2008–09. The sentences imposed for these charges ranged from adjourned undertakings and fines to imprisonment for seven years. An immediate custodial sentence was the most frequently imposed sentence (55.2%). The median imprisonment term was two years. A wholly suspended sentence was the second most common sentence type (28.2% of charges) and the median term was two years.

Common features of aggravated burglaries sentenced in the higher courts were as follows:

- The offender was usually a person already known to the victim (71.8% of charges) rather than a stranger.
- The offence almost always occurred in residential premises (90.4%).
- The offender almost always committed at least one other offence (96.6%) – frequently this was an offence of causing injury or criminal damage.
- More than half of the offences involved at least one co-offender (59.0%).
- The offender was usually armed with a weapon (61.8%).

Despite these common features, there were many important differences and patterns of sentencing. The Council analysed the differences by separating the cases into six distinct categories, five of which had sufficient numbers to analyse.

Confrontational aggravated burglaries were by far the most common category, accounting for over half of the cases. They include cases such as 'drug run-throughs' (where there is a pre-existing dispute arising from illegal drug dealing and the offender breaks into premises to confront the other party and to take or damage property) and vigilante actions (for example, where the offender seeks to punish the victim because of a belief that the victim has done something wrong).

Confrontational aggravated burglaries tended to be less likely to result in an immediate custodial sentence than other categories of aggravated burglary. Taking other factors into account, the Council found this difference to be statistically significant, suggesting that there is something intrinsic to this type of aggravated burglary that influences sentencing outcomes. One possibility is that there may often be a degree of provocation involved in this type of offence, which may have the effect of reducing the likelihood of imprisonment.

Wholly suspended sentences were substantially more common for these aggravated burglaries than all other aggravated burglary categories (38.2% versus 19.7%). This is most likely explained by the relatively low proportion of confrontational aggravated burglary offenders with prior imprisonment or prior offences or who were on an existing order at the time of the offence.

Intimate relationship aggravated burglaries were the second most common category, accounting for approximately one in six cases. They cover aggravated burglaries that were committed against the offender's former partner or that were otherwise related to an intimate relationship (for example, if the victim was the new partner of the offender's ex-partner).

The Council did not find a statistically significant difference between sentencing for intimate relationship aggravated burglaries and all other categories of aggravated burglary in the likelihood of an immediate custodial sentence. In addition, the Council found no significant difference in the average length of imprisonment terms imposed between intimate relationship aggravated burglaries and all other categories of aggravated burglary.

Aggravated burglaries relating to robbery offences accounted for approximately one in 10 cases. In contrast to the other categories, these cases frequently involved offenders who were strangers to the victim. The overwhelming majority of these offenders had prior convictions (85.7%), and half had previously been imprisoned. A relatively high proportion of these offenders had personal issues, with 85.7% identified as having substance abuse issues and 85.7% having suffered non-sexual abuse or neglect as a child.

Offences in this category had a significantly higher likelihood of receiving an immediate custodial sentence than all other categories of aggravated burglary (95.2% compared with 53.5%). When imprisonment was imposed, the average term was significantly longer than sentences for all other types of aggravated burglary (36.6 months versus 26.3 months).

Aggravated burglaries relating to sexual offences accounted for 5% of aggravated burglaries. They involved cases in which the offender broke into premises intending to commit a sexual offence, or in which the offender committed a sexual offence once inside the premises.

Sentencing of aggravated burglaries in this category was quite divergent. Some sentences were at the top end of the range of seriousness for this offence. The longest sentence in this study was for an offence in this category and, compared with other categories of aggravated burglary, a higher proportion of aggravated burglaries relating to sexual offences resulted in a term of imprisonment of three years or more.

Four of the nine charges for aggravated burglary relating to sexual offences, however, received sentences other than imprisonment, including two wholly suspended sentences, one residential treatment order and one community-based order (the conviction for this last case was quashed on appeal).

The report also includes a statistical study measuring the effects of various characteristics on whether the offender received an immediate custodial sentence. Of the 21 factors examined, six had a statistically significant effect. In order of descending strength:

- There was the presence of a co-sentenced offence of causing serious injury.
- The offender was serving an existing order (such as a suspended sentence, parole or an intervention order) at the time of the offence.
- The offender had served a previous term of imprisonment.
- The aggravated burglary was something other than a confrontational aggravated burglary.
- The offender was aged 25 years or over.
- The offender had a history of substance abuse.

Co-offending relating to robbery was also found to be a statistically significant factor.

Approximately two in five aggravated burglary charges sentenced in the higher courts resulted in a sentence other than an immediate custodial sentence. Most commonly this was a wholly suspended sentence (30.3% of offenders), with a smaller proportion community-based orders (7.9%).

In comparison with offenders who received sentences of imprisonment, these offenders were generally younger, less likely to have prior offending, less likely to have personal background issues, in particular relating to substance abuse, and less likely to have worn a disguise. The offence was more likely to be a confrontational aggravated burglary and more likely to be committed with co-offenders. The offence was less likely to be robbery related and more likely to occur in a private dwelling. The offence was also more likely to be sentenced in the same case as causing injury offences and criminal damage offences but less likely to be sentenced with causing serious injury offences, armed robbery offences and theft offences. The victims were less likely to have submitted a Victim Impact Statement.

The findings in this report suggest that aggravated burglary is a complex offence comprised of a number of subcategories of offending. The report found that the combination of the gravity of other offences in aggravated burglary cases (including the trauma suffered by the victim), the offender's criminal history and age and the motivation for committing the offence is critical to understanding the diversity of sentences imposed in aggravated burglary cases.

Chapter 1

Background

Current sentencing practices

Section 108C(1)(b) of the *Sentencing Act 1991* (Vic) states that one of the Sentencing Advisory Council's statutory functions is to 'provide statistical information on sentencing, including information on current sentencing practices, to members of the judiciary and other interested persons'.

The Council discharges this function in a number of ways, including producing a series of Sentencing Snapshots, each of which presents the range of sentences imposed for a particular offence. The Snapshots use data collected in the higher courts sentencing database, managed by the Courts Statistical Services Unit. This database contains data from conviction returns on all cases sentenced in the Supreme and County courts. Relevant information includes the offence type, the sentence type and amount for each charge and the sentence type and amount for each case. The database also includes the age and gender of the offender.

As of June 2011 the Council has published 114 Snapshots, which have been used by the courts generally to assist them in the task of determining current sentencing practices and by the Court of Appeal in particular as one element of the process of determining whether a sentence is manifestly severe or inadequate.¹

While the Snapshots remain an important source of basic information about sentencing patterns and trends, this report is the first of a series that will provide a much more detailed and comprehensive analysis of sentencing for a number of the most serious offences that come before the courts. These reports will provide a clear picture of the types of cases being sentenced at each point in the sentencing range, the breadth of factors relating to the offence, victim and offender across the range of cases and differences in circumstances between cases sentenced at the highest and lowest ends of the range of sentences imposed.

¹ See, for example, *White v The Queen* [2010] VSCA 261 (4 October 2010) [22]; *Director of Public Prosecutions v Moses* [2009] VSCA 274 (27 November 2009) [24]; *R v Thanh Phong Tran* [2009] VSCA 252 (12 October 2009) [46].

In providing this picture, this series of reports will overcome a limitation of the Snapshots that has been emphasised by the Court of Appeal:

Tables or graphs showing average or mean sentences across the full spectrum from the statutory maximum to nothing, while important, will also be of limited use because they cannot of themselves identify the appropriate range for an offence of the particular gravity of that for which the particular offender is to be punished. Indeed, their limitations are conveyed by the description given to them by the Sentencing Advisory Council of Victoria as 'snapshots'. The tables, therefore, have a part to play; but they must be used with their limitations in mind.²

Thus although the overall statistics define the range of current sentencing practices for an offence, they may not be sufficiently specific to inform sentencing in a particular case containing that offence. It is important to understand current sentencing practices for cases with similar characteristics to the one being sentenced beyond the offence type and to understand the characteristics of cases attracting similar sentences to each other.

An additional benefit of these reports is that, in contrast to the Snapshots, the reports are not limited to presenting the sentencing outcomes for people sentenced for the principal proven offence of a particular offence type. The principal proven offence is the offence that attracted the most serious sentence according to the sentencing hierarchy. Unlike the Snapshots, these reports will include people sentenced for a particular offence who received a more serious sentence for another offence sentenced at the same time.

The Council has been able to overcome the limitations of the Snapshots by developing a new source of data based on coding the sentencing remarks made by judges when imposing sentences in the Supreme and County Courts. The Snapshots are based on much more limited data administratively collected by the courts.

These richer data and this analysis will be of particular value because the Victorian Court of Appeal has indicated that it would be assisted by better information provided by legal practitioners about the current sentencing practices that are relevant to the circumstances of a particular case.

In sentencing an offender, a court must have regard to many sentencing factors including 'current sentencing practices'.³ Upon a request from the sentencing court, prosecutors have a duty to provide submissions to the court as to the appropriate sentencing range,⁴ and defence counsel must be prepared to address the court as to the sentencing disposition that is sought.

Commencing in September 2010, the Director of Public Prosecutions launched a series of challenges to 'current sentencing practices' for a number of offences including aggravated burglary.⁵ The Director lodged these challenges in the wake of criticism by the Court of Appeal of the 'gap' between maximum penalties and current sentencing practices for certain offences.⁶ The Court of Appeal had indicated that, as a matter of procedural fairness, challenges to current sentencing practices must be made at first instance, rather than on appeal.⁷

2 *Hasan v The Queen* [2010] VSCA 352 (17 December 2010) [45]–[46].

3 *Sentencing Act 1991* (Vic) s 5(2)(b).

4 *R v MacNeil-Brown; R v Piggott* (2008) 20 VR 677.

5 Director of Public Prosecutions, 'Director of Public Prosecutions Calls for Increased Sentences' (Media Release, 31 August 2010).

6 *Director of Public Prosecutions v El Hajje* [2009] VSCA 160 (26 June 2009) [33]. See also *Saltalamacchia v The Queen* [2010] VSCA 83 (15 April 2010); *Van Hung Le v The Queen* [2010] VSCA 199 (20 July 2010). The Court of Appeal has expressed similar views in relation to other offences including the offences of intentionally causing serious injury (*Kane v The Queen* [2010] VSCA 213 (23 August 2010)); recklessly causing serious injury (*Winch v The Queen* [2010] VSCA 141 (17 June 2010)); rape (*Leeder v The Queen* [2010] VSCA 98 (23 April 2010)); *Hasan v The Queen* [2010] VSCA 352 (17 December 2010)); sexual penetration of a child under 10 (now 12) (*Director of Public Prosecutions v CPD* (2009) 22 VR 533); persistent sexual abuse of a child (*Director of Public Prosecutions v DDJ* (2009) 22 VR 444); and the offence of cultivating a commercial quantity of cannabis (*Nguyen v The Queen* [2010] VSCA 127 (13 April 2010)).

7 *Leeder v The Queen* [2010] VSCA 98 (23 April 2010) [37].

This report describes current sentencing practices in relation to the offence of aggravated burglary. The offence of burglary involves entering a premises as a trespasser with the intention to steal anything in the premises or to commit an offence involving assault or property damage. It has a maximum penalty of 10 years' imprisonment. To be guilty of the offence it is sufficient to enter the premises with the relevant intention. The offence is committed even if, once inside the premises, the person does not actually carry out the additional intended offence involving theft, assault or property damage.

If, once he or she has entered the premises, the offender actually does commit the intended offence involving theft, assault or property damage, he or she would be charged and sentenced separately for that further offence. In this sense, burglary is a preparatory offence, because it involves an act (entering property) with the intention to commit a further offence. The nature and gravity of the offence therefore depend to a large degree on the further offence that the person intended to commit once inside the premises.

Aggravated burglary occurs if, at the time of the burglary, the offender either carried a weapon or knew that a person was in the premises (or was reckless as to the presence of a person in the premises). The aggravated form of the offence has a much higher maximum penalty of 25 years' imprisonment.

The Council selected aggravated burglary as the first offence in this series of reports because aggravated burglary is one of the most prevalent offences in the higher courts, with one of the broadest sentencing ranges and one of the largest disparities between the median sentence and the maximum penalty for the offence:

- **Prevalence:** In the 12-month period from July 2008 to June 2009, there were 210 charges of aggravated burglary sentenced in the higher courts. In terms of charges sentenced, aggravated burglary was the eleventh most prevalent offence sentenced out of over 300 different offences sentenced in that period.
- **Range:** Over the period 2005–06 to 2009–10, sentences for charges of aggravated burglary ranged from a six-month adjourned undertaking without conviction to a 12-year imprisonment term. The longest imprisonment term for a case that included at least one aggravated burglary charge was 24 years with a 17-year non-parole period.⁸
- **Disparity:** Over the same five-year period, the median term of imprisonment for charges of aggravated burglary was two years and the median term for cases with at least one charge of aggravated burglary was three years and four months. With an available maximum penalty of 25 years' imprisonment, the median represents 8.0% of the maximum and the median total effective sentence represents 13.3%.

The limitations of broad sentencing statistics in identifying the current sentencing practices that are relevant in a particular case are particularly significant for an offence with a sentencing range as broad as that for aggravated burglary. The breadth of the sentencing range and the gap between the maximum penalty and the median sentence raise questions about sentencing for the offence, including:

1. Is there anything about the structure of the offence itself that explains the breadth of the sentencing range?
2. Are there distinct 'types' of aggravated burglary within the broader offence?
3. What sentencing factors arise in relation to the offence?
4. Which factors are statistically significant in predicting whether imprisonment is imposed in a case?
5. Is there any difference in the types of cases sentenced at different points in the sentencing range?

⁸ This case, sentenced in January 2007 in the Supreme Court, included seven counts of rape.

Collection of data from sentencing remarks

The Council has supplemented the basic sentencing data it receives from the Courts Statistical Services Unit by reading and analysing higher courts sentencing remarks in order to collect information on sentencing factors relating to the offence, the victim and the offender. These factors form the factual basis of sentencing, which, if challenged, must be proven by the responsible party (the Crown has the onus of proving matters adverse to the accused beyond reasonable doubt; conversely, if the judge proposes to take into account a matter favourable to the accused, it is sufficient if it is proved on the balance of probabilities).⁹

For the offence of aggravated burglary, data were collected for cases sentenced in the higher courts over a 12-month period from July 2008 to June 2009. Sentencing remarks were available for 178 of the 190 aggravated burglary cases.¹⁰

Limitations of sentencing remarks

In Victoria, there are a large number of sometimes overlapping factors relating to the offence, the victim and the offender that a sentencing judge must take into account in sentencing an offender.¹¹ Although ideally all of these factors would be measurable, this report was limited to those factors that were reliably and consistently included in sentencing remarks.¹² The purpose of sentencing remarks is to communicate to the offender, the victim and the community the sentence handed down and the reasons for that sentence, not to provide a database for researchers.

The remarks are produced in a narrative form and differ depending on the judge's view of how best to communicate his or her reasons. Reasons will differ between judges and between cases. One judge might describe an offender's childhood as traumatic and severely disrupted; another judge might emphasise that the offender was placed in care at an early age and did not form lasting bonds. This presents difficulties in coding for statistical purposes.

Data were generally not collected for factors that were very rarely referred to (for example, post-offence conduct) or when mentioned were too problematic to classify meaningfully. Factors in these categories included prospects of rehabilitation, the role of the offender in joint crime, the degree of provocation, post-offence conduct, the degree of remorse, whether the offender had made restitution to the victim and the time of day at which the offence was committed.

Another difficulty in using sentencing remarks is that, while a positive reference to a factor reliably indicated that the factor was present in a case, the absence of any reference to a factor could mean that it was not present or that it was present but was not referred to.

9 *R v Olbrich* (1999) 199 CLR 270, 280–281.

10 One aggravated burglary was counted for each case in order to ensure information about the case, such as age of offender, was not double counted. Multiple aggravated burglary charges within a case were rare. Of the 178 aggravated burglary cases for which sentencing remarks were available, only nine had multiple aggravated burglary charges.

11 These factors are set out in general terms in section 5(2) of the *Sentencing Act 1991* (Vic) and have been further developed by case law.

12 Factors for which data were collected are defined in Appendix I.

For example, if sentencing remarks referred to the fact that an offender had been physically abused as a child, this means that this was an accepted factor in the case. If the sentencing remarks did not refer to this factor, it could mean that:

- the offender was not abused as a child; or
- he or she was abused but had not disclosed this to the court in the plea hearing; or
- it was disclosed in the plea hearing but the judge did not remark upon it.

Where a decision was made to collect data on a particular factor, the factor for that case was coded as 'not stated' if the factor was not mentioned in remarks.¹³ However, for most factors, this report focuses on the presence of factors in sentencing remarks, rather than their absence. It is therefore likely that counts of the presence of factors in this report, to varying degrees, are under-representations of the actual presence of the factors.

Aggravated burglary

The offence

The offence of aggravated burglary covers a wide range of behaviours and motivations. For the offence to be established, the prosecution must prove beyond reasonable doubt that the accused person:

1. Intentionally entered into premises as a trespasser.
2. Entered with the intention to:
 - a. commit an offence (punishable with imprisonment for a term of five years or more) involving an *assault* (including a *sexual assault*) against a person in the premises or part of the premises; or
 - b. *steal* anything in the premises or part in question; or
 - c. commit an offence (punishable with imprisonment for a term of five years or more) involving any *damage* to the premises or to property in the premises or part of the premises.
3. At the time of entering the premises with the particular intent:
 - a. the accused had with him or her any firearm or imitation firearm, or offensive weapon or any explosive or imitation explosive; or
 - b. a person was present in the premises and the accused:
 - knew that a person was present; or
 - was reckless as to whether or not a person was then present.¹⁴

The offence encompasses a broad range of intentions, behaviour and circumstances of aggravation. It can cover conduct ranging from a person reaching into an open warehouse to steal a packet of cigarettes despite seeing some employees at the far end of the premises or entering an abandoned building to spray graffiti while in possession of a pocket knife, to an armed intruder breaking into a woman's house intending to sexually assault her at gunpoint.

¹³ For example, a case in which no reference was made to whether or not the offender had previously been imprisoned was treated as 'not stated' whereas the judge saying 'you have never been sentenced to a period of imprisonment' was coded as 'no'.

¹⁴ *Crimes Act 1958* (Vic) s 77. The scope of the offence of aggravated burglary was broadened in 1997, to include conduct that had previously been incorporated in the less serious offence of burglary. Burglaries committed in circumstances in which the offender knew or was *reckless* as to whether a person was present were reclassified as aggravated burglaries (previously the offence had been limited to offences in which the offender entered with a weapon).

The offence is committed by the act of *entering the premises*. Subsequent offending, such as stealing or damaging property or assaulting a person within the premises, is required by law to be charged separately.¹⁵ For this reason, the offence of aggravated burglary will almost always be accompanied by other offences. This report shows that at least one additional offence was sentenced with the aggravated burglary charge in 96.6% of cases examined.¹⁶ In this regard, the offence is 'preparatory' in nature, in that the offender enters the premises with the intention of committing further offences once entry has been gained.

Maximum penalty

The current maximum penalty for aggravated burglary is Level 2 imprisonment (25 years). The maximum penalty for this offence was increased from Level 3 imprisonment (15 years' imprisonment) by parliament in 1997, at the same time the offence was broadened to encompass burglaries in which a person was present and the offender was reckless about the person's presence.¹⁷

One purpose of a maximum penalty is to reflect the view of parliament as to the relative seriousness of the offence, compared with other offences. At the time that the maximum penalty was increased to its current level, the then Attorney-General said:

The prevalence of burglary and home-invasion-style offences has caused great disquiet in the community. These crimes undermine the sense of security that people feel in their homes and workplaces. The government wishes to send a message to offenders that these crimes will not be tolerated ... Aggravated burglary will carry a new maximum term of 25 years imprisonment. The higher penalty recognises that burglary offences are particularly heinous where the safety and liberty of individuals is threatened.¹⁸

The inherent seriousness of this offence was discussed in *R v Hayes*,¹⁹ in which the New South Wales Court of Criminal Appeal commented that the invasion of people's home and theft of their property is regarded as 'a social evil from which the community looks for protection to the law enforcement agencies and the criminal courts'.²⁰ Similarly, in *R v Mai*,²¹ Charles JA agreed with the sentencing judge's comment that:

the community is entitled to expect that judges of this court will deal harshly with those who ... invade other citizens' homes. It is a fundamental right of living in a civilised society that people should be and feel safe and secure in their own home. The invasion of a victim's home by masked, armed burglars is a gross violation of that fundamental right.²²

In a series of recent decisions, President Maxwell of the Court of Appeal has highlighted the 25-year maximum penalty and expressed concern that the current sentencing practices appear not to reflect the very high maximum penalty set by parliament.

In *Director of Public Prosecutions v El Hajje*,²³ involving a theft-related aggravated burglary by a drug addict, the offender received a three-year wholly suspended sentence. The Director of Public Prosecutions

¹⁵ *Walsh v Tattersall* (1996) 188 CLR 77.

¹⁶ Only six cases involved one proven charge of aggravated burglary and no other offences. In some of these cases, there were allegations of further offending against the offender once in the premises but the offender was ultimately sentenced for only the aggravated burglary charge (for example, because the offender was found not guilty of the other charges).

¹⁷ See page 5.

¹⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 24 April 1997, 873 (Jan Wade, Attorney-General).

¹⁹ *R v Hayes* (1984) 11 A Crim R 187.

²⁰ *Ibid* 190.

²¹ *R v Mai* [2000] VSCA 184 (19 September 2000).

²² *Ibid* [16].

²³ *Director of Public Prosecutions v El Hajje* [2009] VSCA 160 (26 June 2009).

appealed on the ground that the sentence was manifestly inadequate. The Court of Appeal examined 20 recent examples of aggravated burglary and concluded that, judged by current sentencing practices, the sentence was manifestly inadequate. Maxwell P questioned the adequacy of those sentencing practices in light of the maximum penalty; however, as the Director of Public Prosecutions had not challenged the adequacy of those current sentencing practices, the court did not express a concluded view on the issue.

Maxwell P reiterated concern about this issue in *Saltalamacchia v The Queen*²⁴ and again in *Van Hung Le v The Queen*,²⁵ where he referred to 'Parliament's clear instruction to the courts in 1997 to sentence for this offence within parameters marked out by an increased maximum of 25 years'.²⁶ He observed that:

without the constraint of current sentencing practice, a recidivist like this might well have expected a sentence for aggravated burglary a good deal higher than five years. As things stand, there is a perfectly explicable differential between the sentence imposed on this offender and what appears to be the general run of sentences for this kind of offending. As I have said, that ground of differentiation is the need for very powerful specific deterrence of this offender and strong protection of the community against the risk which he poses.²⁷

Maxwell P has described this issue as being 'a matter of the first importance to the administration of criminal justice in this State'.²⁸ This report seeks to provide a detailed analysis of current sentencing practices for aggravated burglary; however, it does not seek to assess the adequacy or otherwise of those practices in relation to the maximum penalty.

The Council is currently undertaking a review of maximum penalties for a large number of offences (which will include aggravated burglary) in a proposed Crimes Bill. The Attorney-General has also asked the Council to advise him on a baseline sentencing scheme that will also apply to a range of offences including aggravated burglary. In both of those reviews, the Council will be directly addressing the issue of the relationship between sentencing practices and the maximum penalty for aggravated burglary.

Jurisdictional limit

Aggravated burglary is an indictable offence, which means that it may be heard in the higher courts; however, it can also be tried summarily (in the Magistrates' Court) if:

- the offence involves an intent to steal property the amount or value of which does not in the judgment of the court exceed \$100,000;
- the magistrate considers the charge appropriate to be dealt with summarily; and
- the defendant consents.

The seriousness of the particular aggravated burglary is the key factor that will determine whether the court views it appropriate for the matter to be heard in the Magistrates' Court.

If the charge is sentenced in the Magistrates' Court, the longest term of imprisonment that may be imposed is two years. If the case involves multiple charges, the longest total effective sentence that may be imposed is five years.

²⁴ *Saltalamacchia v The Queen* [2010] VSCA 83 (15 April 2010) [26].

²⁵ *Van Hung Le v The Queen* [2010] VSCA 199 (20 July 2010).

²⁶ *Ibid* [37].

²⁷ *Ibid* [42].

²⁸ *Director of Public Prosecutions v El Hajje* [2009] VSCA 160 (26 June 2009) [33].

Chapter 2

Current sentencing practices

Number of people sentenced

Higher courts

A total of 321 *cases* or *people* were sentenced for at least one charge of aggravated burglary in Victorian adult courts in 2008–09.

The majority of these people (190 representing 59.2%) were sentenced in the higher courts. The 190 aggravated burglary cases contained 210 charges of the offence, averaging 1.1 charges of aggravated burglary per case.

Magistrates' Court

The 131 aggravated burglary cases sentenced in the Magistrates' Court contained a total of 195 charges, averaging 1.5 aggravated burglary charges per case.

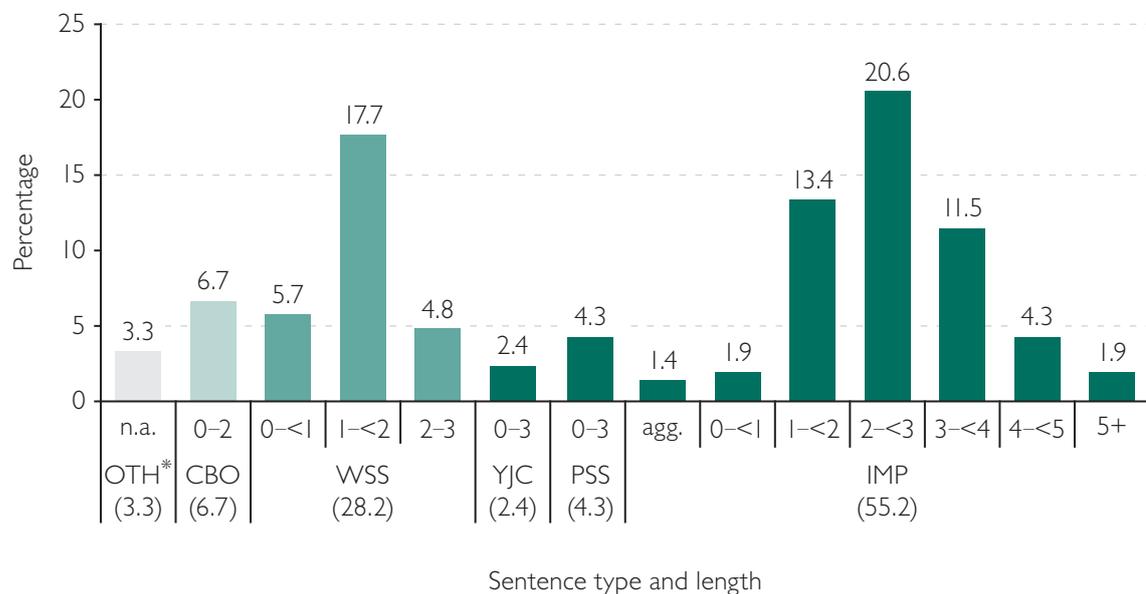
Sentence type and length for charges

Higher courts: sentence for aggravated burglary charges

For the 210 charges of aggravated burglary sentenced in 2008–09 in the higher courts, imprisonment was the most frequently imposed sentence (55.2%). The median imprisonment term was two years, while terms ranged from nine months to seven years. A wholly suspended sentence was the second most common sentence type (28.2% of charges) and the median term was two years.

Imprisonment terms of two to under three years were imposed on 20.6% of all charges and wholly suspended sentences of one to under two years were imposed on 17.7% of charges (Figure 1).

Figure 1: Percentage of charges of aggravated burglary by sentence type and length, higher courts, 2008–09



*OTH (Other) includes residential treatment order; intensive correction order; non-custodial supervision order; fine and adjourned undertaking.

Magistrates' Court: sentence for aggravated burglary charges

In the Magistrates' Court, 90% of imprisonment sentences imposed on charges of aggravated burglary were aggregate terms of imprisonment. Aggregate imprisonment terms take into account multiple charges in a case. Therefore, any charge-based analysis of imprisonment terms needs to exclude aggregate sentences of imprisonment. Given the high percentage of aggregate imprisonment terms for this offence in the Magistrates' Court, no analysis of imprisonment terms at the charge level for Magistrates' Court sentences was conducted.

Sentence type and length for cases

An element of aggravated burglary is that the offender entered the premises intending to commit another offence once inside. If he or she does commit that further offence, it must be charged separately.

If the offender is found guilty of both a charge of aggravated burglary and a further offence, the court must impose a separate sentence for each charge, unless it is possible and appropriate to impose an aggregate sentence.²⁹ This makes it important to examine aggravated burglary offences in the context of the whole case, as looking only at the sentence received for the act of entering the premises does not provide the full sentencing picture.

When a court imposes separate sentences for each charge, it must make orders for cumulation or concurrency to reach a total effective sentence for the case as a whole.

Co-sentenced offences

There were some key differences in both the number of charges and types of offences sentenced in aggravated burglary cases in the Magistrates' Court and higher courts. Tables 1 and 2 show the 15 offences that were most frequently sentenced alongside aggravated burglary in the higher courts and Magistrates' Court respectively. The tables also show the number and percentage of cases as well as the total number of charges of the offence and the average number of charges per case.

Table 1: Number and percentage of aggravated burglary cases sentenced in the higher courts by type of co-sentenced offence (top 15), 2008–09

| Offence | Number of cases | Percentage of cases | Number of charges | Average number of charges per case |
|--------------------------------------|-----------------|---------------------|-------------------|------------------------------------|
| Aggravated burglary | 190 | 100.0 | 210 | 1.1 |
| Criminal damage | 65 | 34.2 | 84 | 1.3 |
| Causing injury intentionally | 57 | 30.0 | 67 | 1.2 |
| Theft | 35 | 18.4 | 123 | 3.5 |
| Common law assault (common law) | 32 | 16.8 | 45 | 1.4 |
| Causing injury recklessly | 26 | 13.7 | 33 | 1.3 |
| Causing serious injury intentionally | 24 | 12.6 | 25 | 1.0 |
| Make threat to kill | 22 | 11.6 | 35 | 1.6 |
| Armed robbery | 18 | 9.5 | 26 | 1.4 |
| Causing serious injury recklessly | 12 | 6.3 | 13 | 1.1 |
| Burglary | 11 | 5.8 | 66 | 6.0 |
| Possess a drug of dependence | 8 | 4.2 | 10 | 1.3 |
| Robbery | 7 | 3.7 | 7 | 1.0 |
| False imprisonment (common law) | 7 | 3.7 | 11 | 1.6 |
| Unlawful assault | 6 | 3.2 | 11 | 1.8 |
| Attempted burglary | 6 | 3.2 | 11 | 1.8 |
| Rape | 5 | 2.6 | 7 | 1.4 |
| Total cases | 190 | 100.0 | 915 | 4.8 |

²⁹ There were three charges in the higher courts that received an aggregate imprisonment term and 91 in the Magistrates' Court.

Table 2: Number and percentage of aggravated burglary cases sentenced in the Magistrates' Court by type of co-sentenced offence (top 15), 2008–09

| Offence | Number of cases | Percentage of cases | Number of charges | Average number of charges per case |
|---|-----------------|---------------------|-------------------|------------------------------------|
| Aggravated burglary | 131 | 100.0 | 195 | 1.5 |
| Theft | 117 | 89.3 | 513 | 4.4 |
| Burglary | 56 | 42.7 | 184 | 3.3 |
| Fail to answer bail | 41 | 31.3 | 78 | 1.9 |
| Possess drug of dependence | 30 | 22.9 | 46 | 1.5 |
| Deal with property suspected of being proceeds of crime | 29 | 22.1 | 59 | 2.0 |
| Criminal damage | 25 | 19.1 | 33 | 1.3 |
| Handle stolen goods | 22 | 16.8 | 32 | 1.5 |
| Unlawful assault | 21 | 16.0 | 27 | 1.3 |
| Go equipped to steal | 20 | 15.3 | 28 | 1.4 |
| Obtain property by deception | 17 | 13.0 | 81 | 4.8 |
| Possess controlled weapon | 17 | 13.0 | 21 | 1.2 |
| Resist police | 13 | 9.9 | 20 | 1.5 |
| Intentionally/recklessly cause injury | 12 | 9.2 | 18 | 1.5 |
| Drive whilst disqualified | 11 | 8.4 | 29 | 2.6 |
| Use a drug of dependence | 10 | 7.6 | 13 | 1.3 |
| Total cases | 131 | 100.0 | 1,693 | 12.9 |

Aggravated burglary cases in the Magistrates' Court were likely to contain a higher number of charges of any offence, with an average of 12.9 charges. This was over two and a half times the average number of charges in the higher courts (4.8).

In the higher courts, it was rare for an aggravated burglary case to contain more than one aggravated burglary charge. Only 4.7% of cases contained multiple charges of aggravated burglary. This percentage was substantially lower than in the Magistrates' Court, where 21.5% of aggravated burglary cases contained more than one aggravated burglary charge.

In terms of the types of co-sentenced offences, theft, burglary, criminal damage and causing injury offences were among the 15 most common offences sentenced alongside aggravated burglary at both court levels. However, the relative frequency of these co-sentenced offences was substantially higher in the Magistrates' Courts. For example, 89.3% of Magistrates' Court cases included a theft, whereas only 18.4% did in the higher courts.

Co-sentenced offences in the higher courts tended to be more serious. Recklessly causing serious injury (12.6% versus 0.0%), make threat to kill (11.6% versus 4.6%), armed robbery (9.5% versus 0.0%), intentionally causing serious injury (6.3% versus 0.0%) and false imprisonment (3.7% versus 0.0%) were substantially more frequent in the higher courts than in the Magistrates' Court. Many of these more serious offences, such as armed robbery, cannot be tried summarily in the Magistrates' Court.

Offences that appear among the most common co-sentenced offences in the Magistrates' Court exclusively included fail to answer bail, deal with property suspected of being proceeds of crime, going equipped to steal, resist police and drive while disqualified.

Figure 2: Percentage of aggravated burglary offenders by selected co-sentenced offence category

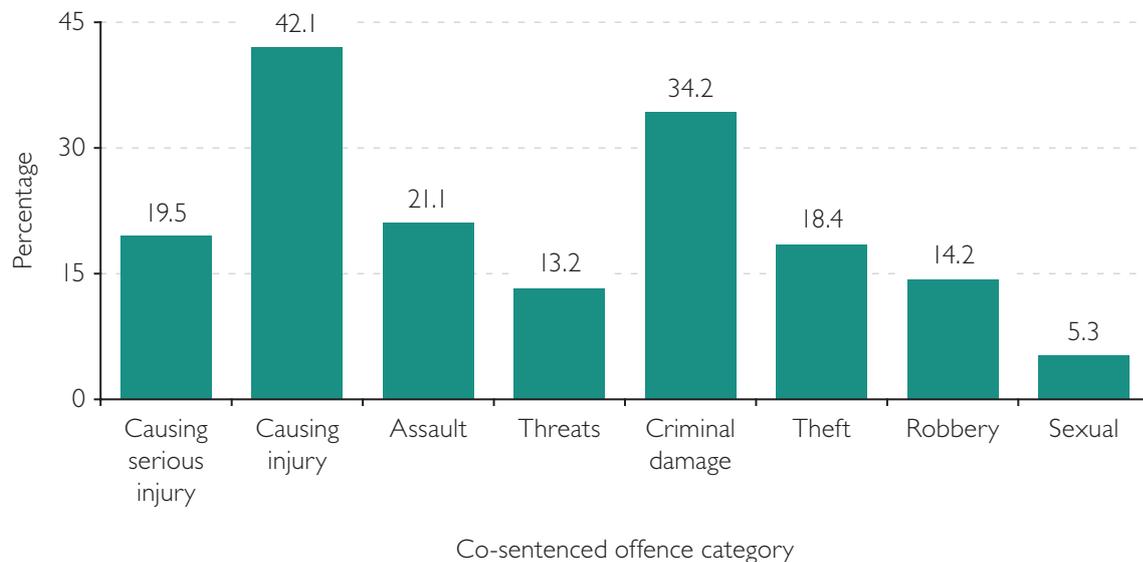


Figure 2 enables offences that were sentenced alongside aggravated burglary in the higher courts to be examined more easily by presenting them in broader offence categories. For example, the offences of causing serious injury and causing injury include both intentional and reckless forms of these offences, while the robbery category includes both armed robbery and robbery. Once the two forms of causing injury offence were combined, this category became the most common offence category, comprising co-sentenced offences in 42.1% of cases, followed by criminal damage (34.2%). Causing serious injury offences were sentenced in 19.5% of cases, while sexual offences were sentenced in 5.3% of aggravated burglary cases and robbery in 14.2% of aggravated burglary cases.

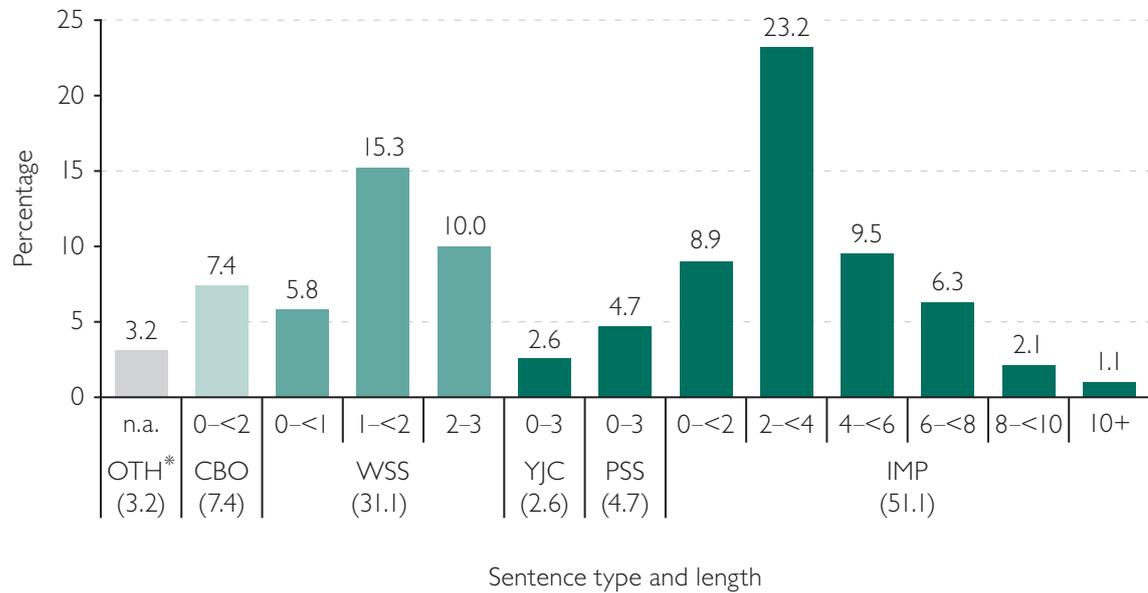
Total effective sentence for aggravated burglary cases: higher courts

For the 190 aggravated burglary cases sentenced in 2008–09, the relative frequency of sentence types at the case level was similar to that at the charge level. At the case level, imprisonment comprised just over half of sentences (51.1%) and wholly suspended sentences comprised nearly one-third (31.1%).

As Figure 3 shows, 23.2% of all aggravated burglary cases received a total effective imprisonment term of two to under four years, while wholly suspended sentences of one to under two years were imposed on 15.3% of offenders.

The overall total effective sentence for aggravated burglary cases tended to be substantially greater than the sentence imposed for the individual aggravated burglary charges. The median total effective imprisonment term was three years and three months (compared with two years for charges) and the longest term was 17 years (compared with seven years).

Figure 3: Percentage of aggravated burglary cases by total effective sentence type and total effective sentence length, higher courts, 2008–09

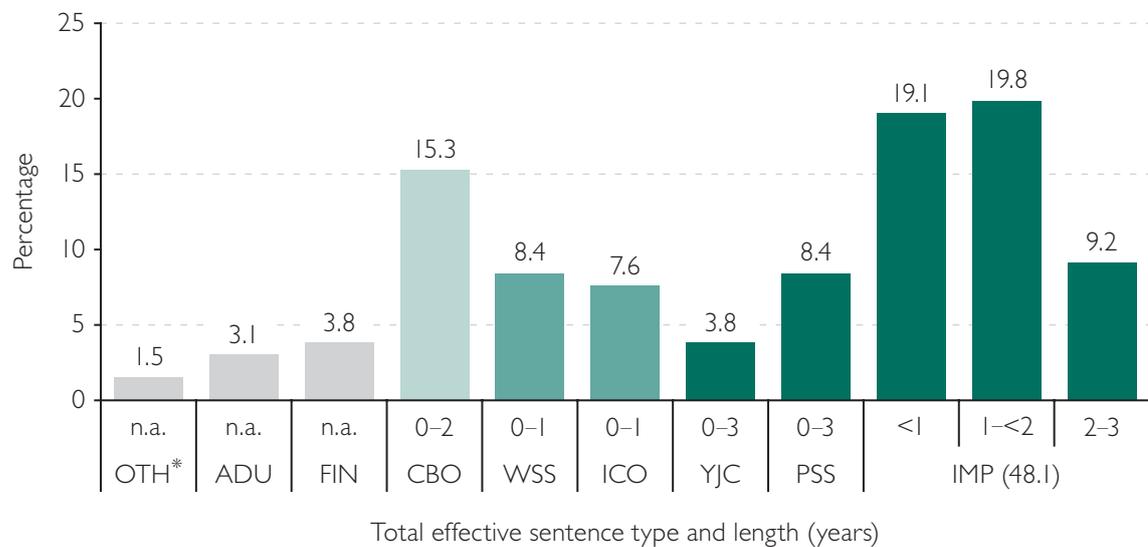


*OTH (Other) includes residential treatment order; intensive correction order; non-custodial supervision order; fine and adjourned undertaking.

Total effective sentence for aggravated burglary cases: Magistrates' Court

The range of total effective sentences imposed on aggravated burglary cases in the Magistrates' Court is shown in Figure 4.

Figure 4: Percentage of aggravated burglary cases sentenced by total effective sentence type and total effective sentence length, Magistrates' Court 2008–09



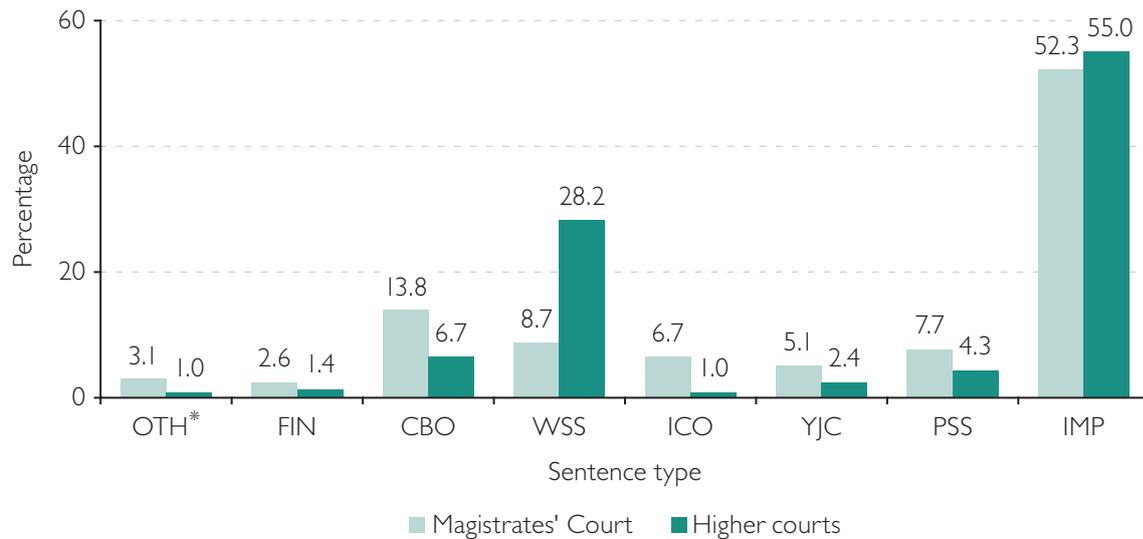
*OTH (Other) includes combined custody and treatment order and drug treatment order.

Higher courts and Magistrates' Court compared

Given the jurisdictional limit in the Magistrates' Court, one would expect more severe sentences to be imposed in the higher courts than in the Magistrates' Court.

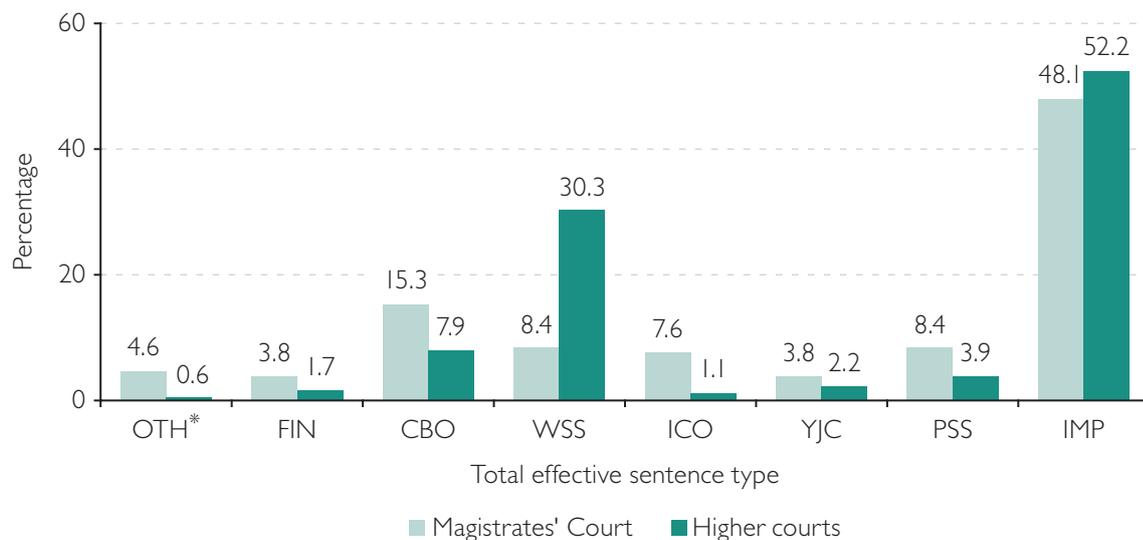
The distributions of sentence types imposed on aggravated burglary charges and cases for higher courts and the Magistrates' Court are presented in Figures 5 and 6.

Figure 5: Percentage of aggravated burglary *charges* by sentence type and court level, 2008–09



*OTH (Other) for higher courts data includes residential treatment order, non-custodial supervision order, fine and adjourned undertaking and for Magistrates' Court data includes combined custody and treatment order and drug treatment order.

Figure 6: Percentage of aggravated burglary *cases* by total effective sentence type and court level, 2008–09



*OTH (Other) for higher courts data includes residential treatment order, non-custodial supervision order, fine and adjourned undertaking and for Magistrates' Court data includes combined custody and treatment order and drug treatment order.

Contrary to expectation, the frequency with which the most severe sentence type, imprisonment, was used was similar at both court levels. In the higher courts, 55.0% of charges and 52.2% of cases received imprisonment compared with 52.3% of charges and 48.1% of cases in the Magistrates' Court.

The use of all other sentence types, however, differed markedly. Wholly suspended sentences were far more prevalent in the higher courts (28.2% of charges) than in the Magistrates' Court (8.7%) but community-based orders, partially suspended sentences, youth justice centre orders and fines were all more frequent in the Magistrates' Court.

While there was very little difference between the two court levels in the use of imprisonment, there was a substantial difference in the length of imprisonment imposed. As Figure 7 shows, nearly two-thirds (64.6%) of total effective imprisonment terms in the higher courts were three years or more, compared with less than one in 20 (3.2%) in the Magistrates' Court (all of these cases received three years exactly). The median length of total effective imprisonment sentence for aggravated burglary cases was three years and three months in the higher courts, over three times higher than in the Magistrates' Court (one year). Overall, more severe sentences were imposed in the higher courts, reflecting the more serious nature of offending heard in these courts.

Figure 7: Percentage of aggravated burglary offenders by total effective imprisonment term and court level



Appeals against higher courts cases

A sentence imposed on a person may be appealed by that person or by the Crown.³⁰ A person sentenced may also appeal against his or her conviction. All appeals made in relation to people sentenced in the higher courts are determined by the Court of Appeal.

As of January 2011, appeals were successful in 11 of the 190 aggravated burglary cases that had originally been sentenced between July 2008 and June 2009. In one of these cases, the defendant's conviction, which had resulted in a community-based order, was quashed. This means that, if appeals are taken into account, the total number of offenders was 189 and the total number of charges was 209.

In seven cases, the defendant successfully appealed against his or her sentence. Each of these cases involved sentences of imprisonment. The original total effective terms ranged from three to eight years. The eight-year total effective term was reduced to seven years and six months, and the three-year term was reduced to a partially suspended sentence of three years with a suspended period of two years. For all but one of these cases, the sentence attached to the aggravated burglary charge did not change. The only aggravated burglary sentence that changed was a three-year term, which was reduced to two years and eight months.

The Crown successfully appealed against sentence in three cases. One case originally received a total effective imprisonment term of six years, which increased to nine years. In that case, the imprisonment sentence attached to the aggravated burglary charge increased from three years to four years and six months. Another case originally received a total effective imprisonment term of five years. This increased to seven years. The imprisonment term of one year on the aggravated burglary charge increased to one year and six months. The wholly suspended sentence of three years attached to one case was increased to four years' imprisonment.

Once the original sentencing data were amended to incorporate the results of all successful appeals, there was very little change in sentencing patterns. No change was found for the longest total effective imprisonment term (17 years) or the longest imprisonment term attached to a charge (seven years). The median total effective imprisonment term increased marginally from three years and three months to three years, three months and 15 days. The median imprisonment term attached to a charge remained two years.

³⁰ Appeals data were collected by the Sentencing Advisory Council from transcripts of sentencing remarks of criminal appeals on the Australasian Legal Information Institute's website <www.austlii.gov.au>.

Chapter 3

Sentencing factors

This chapter, as well as all subsequent chapters, examines data on factors referred to in sentencing remarks of aggravated burglary cases sentenced in the higher courts in 2008–09. Definitions of factors and categories within each factor for which data were collected are presented in Appendix 1. Detailed data tables are provided in Appendix 2. The number of cases examined was 178 out of a total of 190 (sentencing remarks were unavailable for 12 cases).

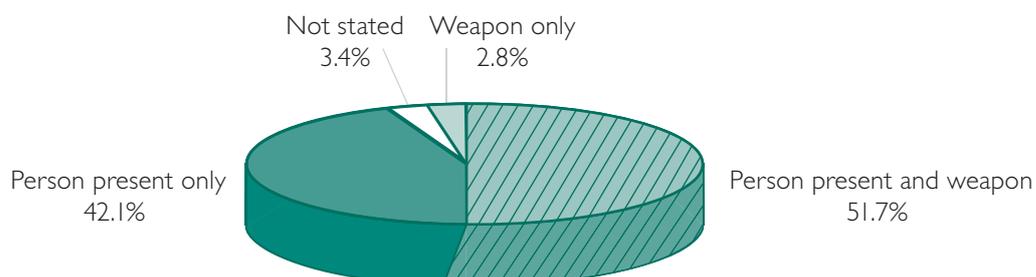
Statutory aggravating factors

There are two statutory aggravating factors for the offence of aggravated burglary, which can be present concurrently or individually:

1. The offender knows of or is reckless to a person's presence in the premises.
2. The offender possesses a weapon at the time of entering the premises.³¹

As Figure 8 shows, of the 178 aggravated burglary charges, the vast majority of aggravated burglary charges (93.8%) were aggravated wholly or partly by the offender's knowledge of or recklessness to the presence of a person in the premises. In 51.7% of charges, the offence was also aggravated because the offender possessed a weapon. In only five charges (2.8%), the sole aggravating factor was that the offender entered the premises in possession of a weapon.

Figure 8: Percentage of aggravated burglary charges by aggravating factor, higher courts



³¹ See pp. 5–6.

Factors related to the offence circumstances

Weapon use, type and method

Once inside the premises, many offenders used a weapon that they had either brought with them or obtained while in the premises. Well over half of offenders employed a weapon at some stage (61.8%). A weapon was used by the offender to threaten victims in 19.7% of all cases and to physically attack the victim in 41.0% of all cases. The most common type of weapon was a bat, bar or club (27.0% of all cases), while particularly serious weapons such as knives (11.8%) and firearms (6.2%) were used in a minority of offences.

Type of premises

The vast majority (90.4%) of aggravated burglaries occurred in a residential premises. Very few commercial premises were the subject of an aggravated burglary (retail and recreational premises together made up 5.1% of cases).

Co-offenders and disguise

It was common for the offender to carry out the aggravated burglary in company but extremely uncommon for a disguise to be worn. Co-offenders were present in 59.0% of aggravated burglaries, while the offender wore a disguise in 6.2% of aggravated burglaries.

Factors relating to the victim

Five factors relevant to victims were examined: the number of victims, the age of the victims, the gender of the victims, whether a Victim Impact Statement was submitted by the victim and referred to by the judge and the victim's relationship to the offender.

Number, age and gender of victims

Exactly half of aggravated burglaries had one victim, while 46.0% had multiple victims (in 4.0% of aggravated burglaries the number of victims was not stated in sentencing remarks). To be counted as a victim in this analysis, the person had to be present in the burgled premises.

Of the 178 aggravated burglaries, 36 involved a child victim (20.2%) and in two of these the child was the sole victim. An elderly adult was a victim in seven cases (3.9%) and in two of these the elderly adult was the sole victim.

A female was a victim in 78 aggravated burglaries (42.7%), 23 of which involved no other victims (12.9% of all cases). A male was a victim in 129 aggravated burglaries (72.5%), 65 of which involved no other victims (36.5% of all cases).

Victim Impact Statement

A Victim Impact Statement was submitted by the victim and referred to by the sentencing judge in exactly half of the aggravated burglary cases.

Case study 1: In the words of the victim (extract from Victim Impact Statement)

I'm angry that three months after the incident I'm still terrified to be alone at home. I go to my parents' home instead to sleep while my partner is on night shift ... I'm not sleeping, I fall asleep and awake in a cold sweat or dream about the incident. It's a constant struggle to tell myself that I am safe now. The overwhelming emotion is that I no longer feel safe, every sound in the house wakes me up. It's an old house so there are many sounds. I wake up alert and terrified. I sleep with my mobile phone under the pillow. I am prepared. My home no longer feels like home. I can't relax, I don't feel safe. We've changed bedrooms. I can't bear to sleep in the room where I spent so much time being tied up. My heart beats so fast not knowing what would happen next. We now sleep in the lounge room. It's better but only just. We're now thinking seriously of moving house. The feelings of constantly being agitated and scared are said to pass but at the moment I feel like I'm on the same page.

Victim Impact Statements provide a vehicle for providing information to the sentencing judge about the longer term consequences of the offence as well as the immediate harm, such as any physical injury.

Case study 2: In the words of the sentencing judge

Tendered in evidence are a considerable number of Victim Impact Statements from your victims. These speak of the ongoing psychological trauma that each of these victims has suffered as a consequence of your offending, in particular feeling 'always on edge', having become obsessive about checking that the doors to their homes are locked, feeling insecure about going out of their homes, but also, whilst remaining within their homes, not being able to mow the lawn without ensuring that another person is present, not being able to go to sleep without a light left on at night, feeling tearful and frightened and vulnerable and, in one case, even having to move to another home in order to feel safe. Your offending continued over a six year period and you targeted primarily old and vulnerable people. Your conduct strikes at the very heart of every citizen's entitlement to feel secure in his own home. The Victim Impact Statements tendered in evidence reveal an unhappy emotional legacy of your disgraceful behaviour, which showed a complete disregard for the privacy and sense of security and wellbeing of each of your victims.

Relationship of offender to victim

Nearly three-quarters (70.0%) of aggravated burglary offenders knew their victim, while the majority (83.3%) of those who knew their victim were an acquaintance of the victim but not a family member. The victim and offender were ex-partners or partners in 10.1% of charges. All 17 of these offences took place in a private dwelling.

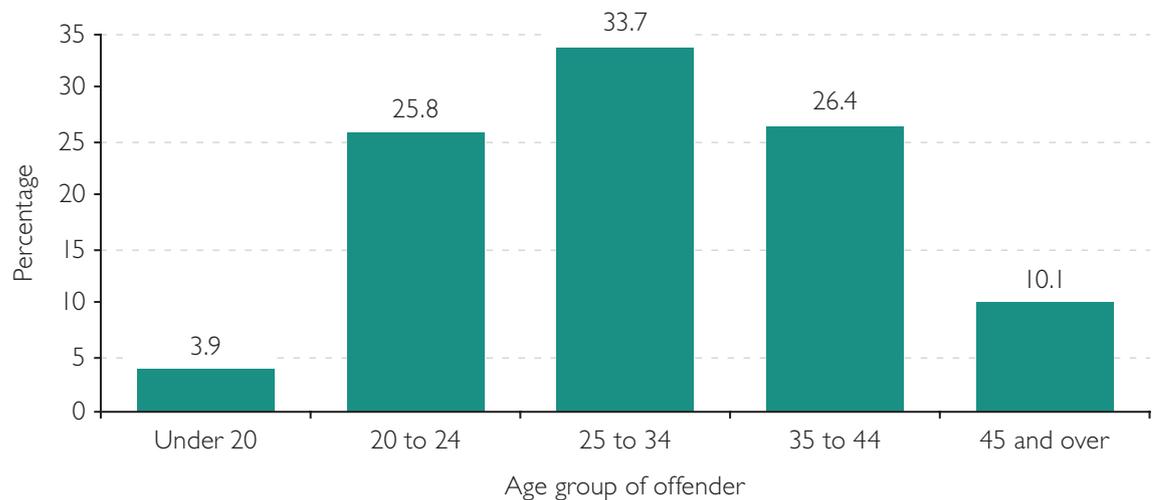
Factors relating to the offender

This section presents the factors relating to the circumstances of the offender including the age of the offender at the time of sentence, the gender of the offender, personal background issues, prior offending, the type of prior offending, whether the offender had previously been sentenced to imprisonment, the plea that was entered and whether assistance was provided to police.

Age and gender

The mean age at sentence for aggravated burglary offenders was 31 years, while ages ranged from 18 to 63 years. As Figure 9 shows, over one-quarter (29.7%) of offenders were aged under 25 years, while one in 10 (10.1%) were aged 45 years and over. The vast majority (95.5%) of offenders were male (there were 170 men and eight women).

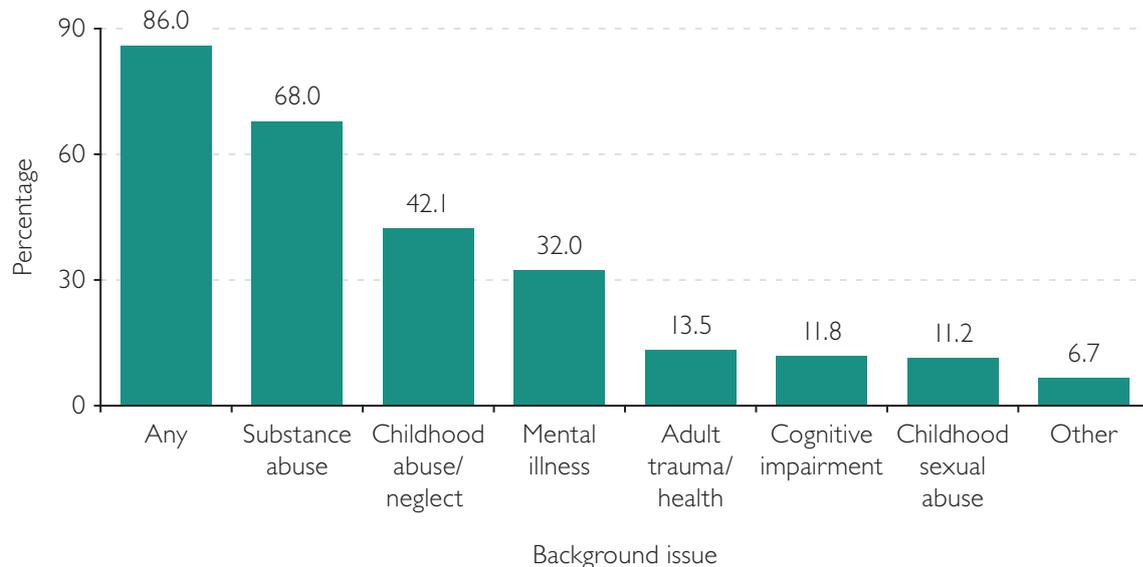
Figure 9: Percentage of offenders by age group of offender, higher courts, 2008–09



Substance abuse, mental illness, childhood abuse and other significant factors

The sentencing judge referred to background factors, such as substance abuse, mental illness and childhood abuse, relating to the offender in a high proportion of the aggravated burglary cases. As Figure 10 shows, at least one such factor was referred to in relation to nearly nine out of 10 aggravated burglary offenders (86.0%). The most common was substance abuse (68.0%) followed by non-sexual abuse, neglect or severe disruption as a child (42.1%) and mental illness (32.0%). Adult trauma or significant health issues were mentioned in 13.5% of cases. The judge referred to the offender having suffered childhood sexual abuse in 11.2% of cases. In relation to 43.3% of offenders, there was a reference to at least one childhood background issue (sexual abuse or non-sexual abuse, neglect or severe disruption). Reference was made to the offender having either a cognitive impairment or mental illness or both in 40.5% of cases.

Figure 10: Percentage of aggravated burglary offenders by background issue, higher courts, 2008–09



Case study 3: Physical abuse, severe disruption

You had a dysfunctional childhood, with your mother leaving your violent, alcoholic father when you were approximately two years of age. Your father was violent towards you and your brother. It appears that you were raised by your grandparents. Unfortunately, when you were approximately 11 years of age, your grandmother died. It was at this age that you commenced drinking, and eventually commenced smoking cannabis.

Case study 4: Severe disruption

Your early life has been emotionally deprived and no doubt damaging to you. You lost your father in a truck accident at about 18 months. Tragically, your older brother [later] died in the same way. Your mother re-married. At eleven, you were told that your step-father was not your natural father. This had a profound impact indeed. At that time, your relationship with your mother was so badly damaged that you left home and for six to eight months lived, at 11 years, on the streets. Ultimately, you were taken in by the family of a school friend. You went back to school and were further raised by them. After school you worked, but began to use drugs, mainly cannabis and speed.

Case study 5: Physical abuse, severe disruption

Your life so far has been damaged by very considerable personal hardship. Your father was an abusive alcoholic. Both your mother and the children, including you, were victims of his violence. You were the second oldest of four children. In your developing years, particularly I was told between seven and 11 years, your mother tried unsuccessfully several times to leave with the children. Your father always found you. The oldest child, a boy, had run away when he was 11. You also ran away at that age. There was time in an orphanage and on the streets.

Case study 6: Sexual abuse, neglect, severe disruption

You were born to a mother 21 years of age who worked as a prostitute and who had become pregnant with you to one of her clients. She too had grown up in circumstances of considerable disadvantage, as the oldest of 14 children and as a child who had been placed in an orphanage at the age of 13. As an adult she worked as a prostitute and was a heavy user of alcohol and other drugs. You spent your early years alternating between your mother and grandmother. A younger brother, born to your mother, was placed for adoption. A welfare agency provided assistance to your mother and you were placed in different foster care arrangements from time-to-time.

When you were eight years of age, at the request of a client, your mother made you available to him for sexual purposes. Following that, as I understand it, you were made a ward of the State and placed with other wards in foster care with a family until you were 12. You were placed with another foster family from the age of 12 to 14.

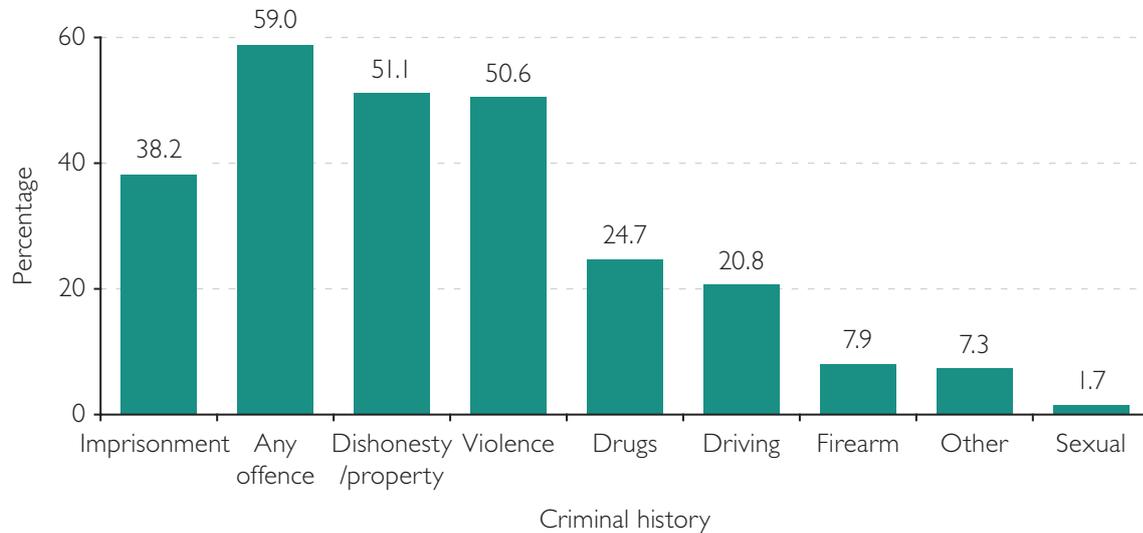
Your father, who knew of your existence and had made some contact with you earlier, made contact with you again when you were 14. He encouraged your use of cannabis and introduced you to the use of amphetamines. With his encouragement you began to use amphetamines intravenously when you were 15. You were out and about, non-compliant with the rules of your foster family and a serious drug user. When you were 16 you began a relationship with [a man who] was eight years older than you. Your first child was born when you were 17. Your partner was a heroin user. You were using amphetamines and violence was a feature of your domestic circumstances. Your second child was born when you were 20. You married [your partner] but your relationship with him came to an end when you became aware that he had a sexual relationship with your mother.

Prior offences and existing orders

Over one in five (21.3%) aggravated burglary offenders were serving an existing order, such as bail, parole or a suspended sentence, at the time of the aggravated burglary.

Figure 11 shows the criminal history of aggravated burglary offenders according to whether they had served a previous term of imprisonment or had committed a previous offence and, if so, the type of previous offence. It was common for aggravated burglary offenders to have committed prior offences. In 59.0% of remarks, the sentencing judge mentioned that the offender had committed at least one prior offence. A smaller percentage (38.2%) had served a previous term of imprisonment. The most common general types of previous offences were dishonesty/property offences (51.1%) and violence (50.6%).

Figure 11: Percentage of aggravated burglary offenders by criminal history of offender, higher courts, 2008–09



Previous research has found a link between childhood abuse and juvenile and adult involvement in crime. A longitudinal study in the United States found that children who were abused or neglected were significantly more likely to be arrested as an adult than children who had not suffered abuse or neglect.³² The study also found that arrest for a violent offence was significantly more likely among adults who suffered neglect as children. In a meta-analysis of a large number of delinquency studies, criminal involvement among juveniles was found to be strongly predicted by neglectful styles of parenting.³³

Those studies focused on the likelihood that neglected children will commit offences as adults. The data examined in this report provided an opportunity to examine the offender's level of criminality, as distinct from the likelihood that the offender will commit offences. The Council did this by examining whether the aggravated burglary offenders were more likely to have committed prior offences if they had been abused as a child than if they had not been abused as a child. For offenders who had suffered abuse or neglect as a child, the aggravated burglary was more likely to be a subsequent offence (78.7%) than for offenders who had not experienced abuse as a child (44.7%).³⁴ These findings suggest that the level of criminality, not simply the likelihood of criminality, is greater among adults who suffer abuse as a child.

Plea entered and assistance to police

The vast majority of offenders pleaded guilty (94.9%). In 5.1% of cases, the judge referred to the fact that the offender had assisted police as an informant.

³² Cathy Widom and Michael Maxfield, *An Update on the 'Cycle of Violence'*, Research in Brief (National Institute of Justice, 2001).

³³ Rolf Loeber and Magda Stouthamer-Loeber 'Family Factors as Correlates and Predictors of Juvenile Conduct Problems and Delinquency' (1986) 7 *Crime and Justice*, 29–149.

³⁴ The association between childhood abuse and prior offences held even when age of the offender was controlled for. A logistic regression using both age of offender and childhood abuse as predictors of prior offending found that childhood abuse significantly increased the chances of prior offending by a factor of 4.6 (odds ratio = 4.608, $p < 0.001$). Age had no significant effect on the likelihood of prior offences (odds ratio = 1.483, $p = 0.265$).

Chapter 4

Types of aggravated burglary

A typology

The offence of aggravated burglary involves a person unlawfully entering premises with one of a range of criminal intentions, from the intention to commit a serious sexual assault on a person in the premises to the intention to damage property or to steal. It is therefore an offence that has a very wide scope in terms of its level of seriousness.

In the abstract, different people conceive of the offence of aggravated burglary in different ways, with different types of behaviour coming to mind. Some will think of the sexual predator who breaks into premises intending to sexually assault a person inside. Others will think of thieves breaking into premises in the night, hoping to steal property without waking the sleeping occupants. Yet others may think of armed offenders, bashing their way into a home to rob the helpless occupants. In practice, the offence is broader yet. It includes an offender who breaks into an empty factory, while carrying an army knife in his or her pocket, in order to 'tag'. Or it includes an unarmed offender who is reckless as to whether there are occupants in a business he or she is trying to steal from. The offence encompasses vigilantes and those who take the law into their own hands, such as a man who thought an acquaintance was in a sexual relationship with his 13 year old daughter and broke into the acquaintance's home to warn him off. It includes violent husbands who try to scare off their ex-wife's new partner in a fit of jealousy or who violently break into their ex-partner's home despite an intervention order.

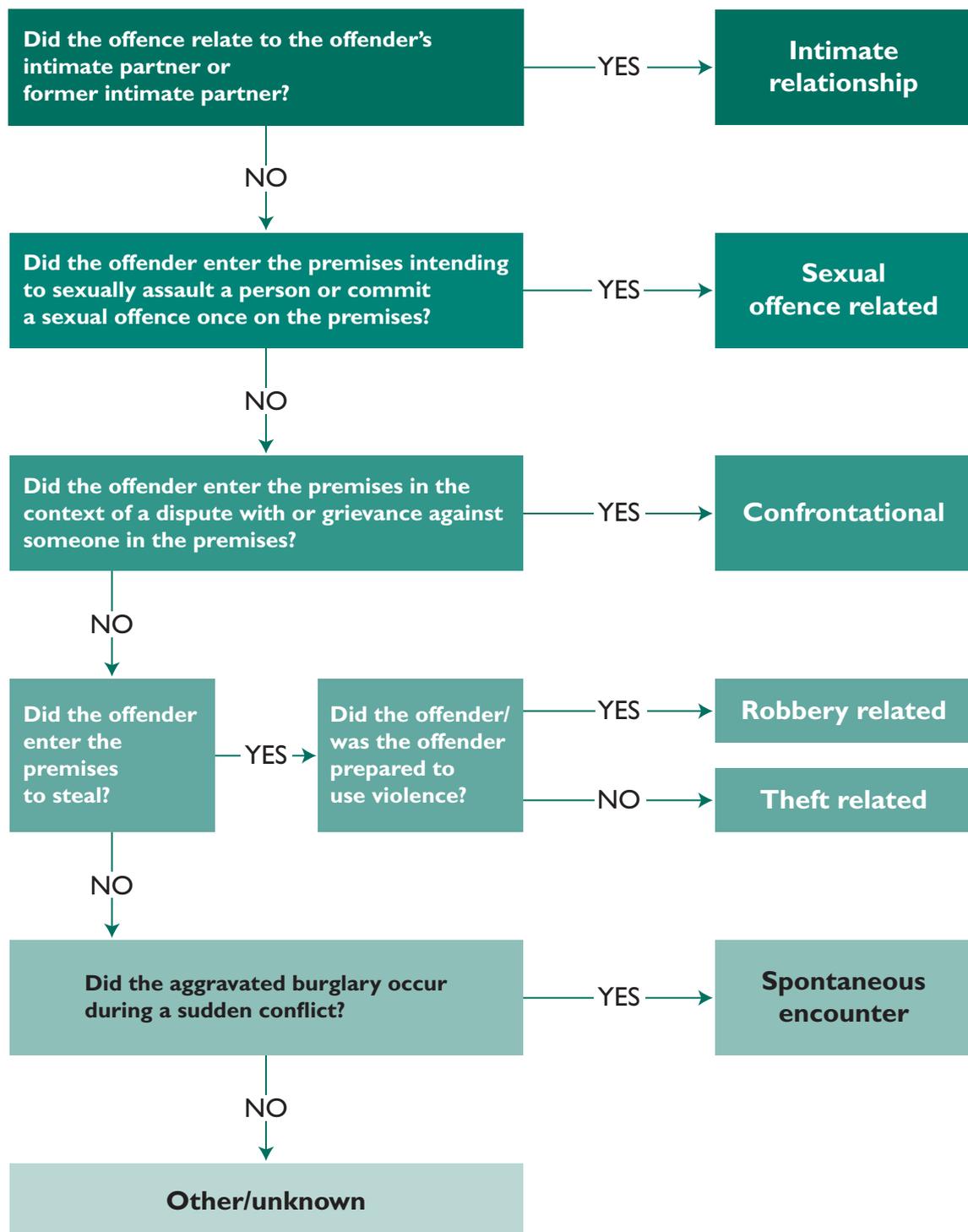
Given the broad scope of this offence, in order to understand sentencing practices for it, the Council considered it important to understand the dynamics and parameters of the offence. The Council therefore analysed the data coded from sentencing remarks. The data enabled the Council to identify a number of typical categories or types of aggravated burglary.³⁵ Almost all of the cases were classifiable into one of these categories. Having classified cases within these categories, the Council then looked at the sentencing factors in cases within each category of aggravated burglary to study whether there were differences in factors relating to the offence, the victims, the offenders and sentencing dispositions. This section examines the similarities and differences between the various types of aggravated burglary according to the typology outlined below.

³⁵ In setting up this typology, the Council was influenced by the work of Kenneth Polk in categorising homicides. See, for example, Kenneth Polk, *When Men Kill: Scenarios of Masculine Violence* (Cambridge University Press, 1994).

Categories of aggravated burglary

The cases were classified into one of six broad categories of aggravated burglary based on the judges' sentencing remarks. Figure 12 illustrates the categorisation process. Cases were coded into one category only, in the following order of priority if more than one category applied (i.e. the first relevant category in this order was the category into which the case was coded). More detailed descriptions of each category are included further in this chapter at the start of each category.

Figure 12: Categorisation of aggravated burglary offences, decision-making process



Spontaneous encounter aggravated burglary was defined to include aggravated burglaries that were an immediate response to a sudden conflict with no previous history between the offender and victim. Cases in which the aggravated burglary was a delayed response to a conflict or a grievance were categorised as confrontational aggravated burglary. Only three cases were classified as spontaneous encounter aggravated burglary; the Council did not analyse this category in this chapter as the number is too small for meaningful analysis.³⁶

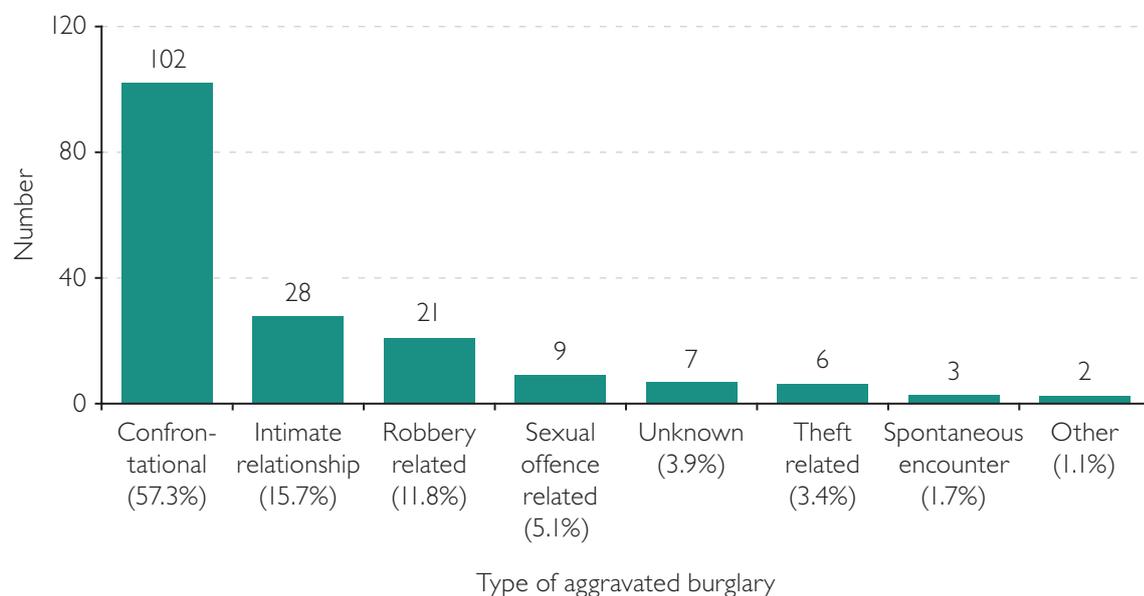
Cases were classified as 'other' aggravated burglary where the case could not be classified into one of the other categories, and cases were classified as 'unknown' where there was insufficient information in the sentencing remarks to classify the case into a category.

Proportion of cases in each category

Figure 13 shows the number and percentage of aggravated burglaries according to each category. Confrontational aggravated burglary was clearly the most common category, accounting for over half of the aggravated burglary cases in the period (57.3%). This was followed by intimate relationship aggravated burglaries (15.7%), aggravated burglaries relating to a robbery offence (11.8%) and those relating to a sexual offence (5.1%).

These categories are discussed in the remainder of this chapter, in order of prevalence. Within all of the categories, the Council looked at the characteristics of the offence, the offender and victims and how the factors present in each aggravated burglary category compared with the offence as a whole.

Figure 13: Number and percentage of principal aggravated burglary charges by type of aggravated burglary, higher courts, 2008–09



³⁶ The three cases related to the same incident in which three offenders were urinating outside a block of flats. One occupant of the flats asked the group to stop urinating. The group then entered this person's flat and seriously assaulted him.

Confrontational aggravated burglary

Definition and proportion

For the purposes of this report, confrontational aggravated burglary is defined as an aggravated burglary in which the offender or co-offender/s entered the premises:

- intending to confront someone or use violence in the context of a dispute with someone in the premises or associated with someone in the premises, for example, a dispute about an unpaid debt or about a perceived wrong;
- to steal or damage property as 'payback' for a debt or other conflict situation;
- as a warning, threatening to use violence or take or damage property as a result of a dispute in the context of a drug trafficking transaction (colloquially known as 'drug run-throughs'); or
- to confront or 'punish' the victim for some wrong that the offender believed the victim had done (i.e. vigilante type cases).

The common feature of all offences in this category is that they occurred in the context of a previous conflict or grievance between the offender and a person in the premises or associated with someone in the premises.

Incidents against the offender's partner or former partner were not included in this category.

Of the 178 cases involving an aggravated burglary charge in the period examined, more than half fell into this category (102 cases or 57.3%).

Key findings

Like all other categories of aggravated burglary, the vast majority of confrontational aggravated burglaries took place in residential premises and were committed by offenders who were male (94.1%), who were aged between 20 and 44 years (88.2%), who pleaded guilty to the offence (95.1%) and who did not wear a disguise during the offence (93.1%).

Distinguishing features of confrontational aggravated burglary were the relatively high percentage of charges that were committed with co-offenders (73.5%) and with a weapon (68.6%), suggesting that offenders seeking to approach or confront someone in the context of a grievance or prior dispute are more likely to take reinforcements and weapons. A relatively high proportion of offenders in this category was also sentenced for offences of causing injury (43.5%), causing serious injury (24.5%) and criminal damage (44.1%).

Compared with other types of aggravated burglary, a relatively low proportion of these offenders had experienced non-sexual abuse or neglect as a child (29.4%), had committed a previous offence (52.0%), had served a previous term of imprisonment (32.4%) or were serving an order at the time of the offence (16.7% versus 27.6% for other types of aggravated burglary). Victims were more likely to be male (86.3%) and an acquaintance who was not a family member of the offender (82.4%), but they were less likely to have submitted a Victim Impact Statement (40.2%).

In terms of sentencing practices, immediate custodial sentences comprised a lower proportion of confrontational aggravated burglaries (48.0%) than all other categories of aggravated burglary (72.4%). When other factors were taken into account, this difference was found to be statistically significant, which means there is something intrinsic to this type of aggravated burglary that influences sentencing outcomes. One possibility is that there is often a degree of provocation involved in this type of offence, which may have the effect of reducing the likelihood of imprisonment.

Wholly suspended sentences were substantially more common for confrontational aggravated burglary than all other aggravated burglary categories (38.2% versus 19.7%). Of the factors found to be statistically significant in the regression analyses in Chapter 5, the relatively low proportion of confrontational aggravated burglary offenders with prior imprisonment or prior offences or who were on an existing order at the time of the offence is most likely to explain the higher level of wholly suspended sentences found for confrontational aggravated burglary offenders.

Some cases in this category arose where an offender believed that he or she was owed money or property by the victim, or the victim had stolen money or property and the offender entered the premises where he or she believed the victim was able to retrieve the money or property in recompense. In some such cases, the offender also damaged the victim's property, stole property in excess of what he or she believed was owed and/or assaulted or threatened the victim. Such cases are sometimes colloquially referred to as an armed 'run-through' (or a 'drug run-through' in cases involving a drug debt or dispute over a drug-related transaction). Such cases often took place in residential premises in circumstances where the offender knew that the victim was present.

Some were cases in which an offender (or commonly a group of offenders) heard an allegation (whether or not supported by facts) against the victim and decided to take matters into his or her own hands. Cases in this category include, for example, an allegation that the victim had child pornography or had sexually assaulted a person. In a number of cases, sentencing judges made it clear that this type of vigilante conduct is serious and that sentences would reflect that, for example:

the action of taking it upon yourselves to exact retribution against a person you decided was a wrongdoer, challenges the fundamentals of the way that society operates. It is the rule of the thug rather than the rule of law. Police are empowered to investigate alleged crimes and courts to punish proven wrongdoers. The sentence imposed must make clear to you and to other persons who might be tempted to act in a similar manner that such behaviour will not be tolerated and will be punished.³⁷

Some cases in this category involved mistaken identity or a previous conflict or grievance against a third person who was not at the premises at the time of the aggravated burglary.

Sentencing range

Charge based

Sentences for confrontational aggravated burglary tended to be skewed towards lower-end sentences compared with all other categories of aggravated burglary (see Figure 14).

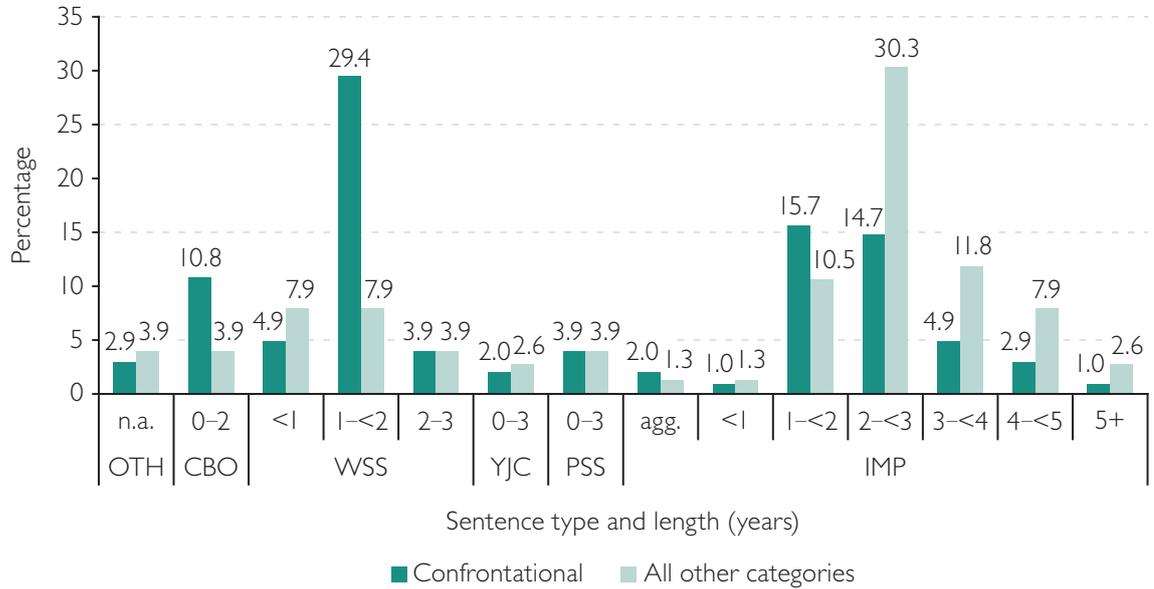
Immediate custodial sentences made up a lower proportion of confrontational aggravated burglaries than all other categories of aggravated burglary (48.0% versus 72.4%). When the effects of other factors were controlled for using a regression model, confrontational aggravated burglary had a significant effect on sentence outcome, decreasing the chances of an immediate custodial sentence (odds ratio = 0.190, $p < 0.01$).

Just under one-quarter of confrontational aggravated burglaries (23.5%) received an imprisonment term of two years or more, compared with over half (52.6%) of all other categories of aggravated burglary.

The median imprisonment term for charges of confrontational aggravated burglary was the same as for all other categories of aggravated burglary (two years). The mean imprisonment term for confrontational aggravated burglaries was shorter than the mean for all other categories (25.3 months versus 31.4 months), the difference being statistically significant ($F = 4.072$, $p < 0.05$).

³⁷ *R v Oliver & Ors* [2009] VCC (17 February 2009) [10].

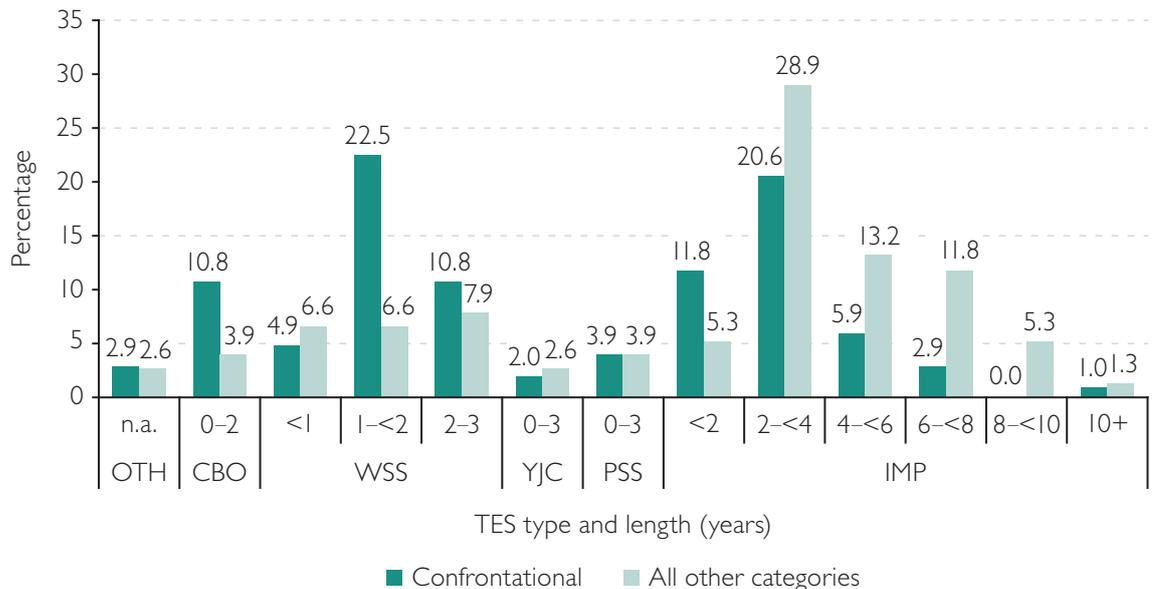
Figure 14: Percentage of aggravated burglary principal charges by type of aggravated burglary and sentence type and sentence length category, higher courts, 2008–09



Total effective sentence

At the total effective sentence level, a similar tendency towards lower-end sentences was evident for confrontational aggravated burglary (see Figure 15). The mean total effective imprisonment term for confrontational aggravated burglaries (40.7 months) was shorter than for other types (53.8 months), a difference that was statistically significant ($F = 4.652, p < 0.05$).

Figure 15: Percentage of aggravated burglary cases by total effective sentence type and length and aggravated burglary category, higher courts, 2008–09



Intimate relationship aggravated burglary

Definition and proportion

For the purposes of this report, intimate relationship aggravated burglary is defined as an aggravated burglary that relates to the dynamics of the offender's relationship with his or her intimate partner or his or her former intimate partner. Cases placed in this category include aggravated burglaries by the partner or former partner of the victim or an associate of the victim in which the offender:

- entered the premises to confront, assault or commit another offence (such as theft or property damage) against his or her partner or former partner or did any of these things once inside the premises; or
- committed the above type of incidents against someone living with his or her partner or former partner (such as a family member, intimate partner, friend or acquaintance), for example, as a means of exercising control or taking revenge or threatening or punishing his or her partner or former partner.

Of the 178 cases involving an aggravated burglary charge in the period examined, 28 cases (15.7%) were committed in the context of an intimate relationship.

Key findings

Like all other categories of aggravated burglary, the vast majority of intimate relationship aggravated burglaries took place in residential premises (96.4%) and were committed by offenders who were male (96.4%), who were aged between 20 and 44 years (82.1%), who pleaded guilty to the offence (96.4%) and who did not wear a disguise during the offence (96.4%).

Distinguishing features of intimate relationship aggravated burglary were the relatively high percentage of offenders aged 45 years and over (17.9%) and victims who were female (67.9%), who were the ex-partner or partner of the offender (64.2%) and who submitted a Victim Impact Statement (57.1%).

Compared with other types of aggravated burglary, relatively high proportions of offenders acted alone (71.3%) and were also sentenced for threat offences (28.6%) and assaults (32.1%). A relatively low proportion of offenders was also sentenced for causing serious injury offences (14.3%).

Relatively low proportions of offenders had served a prior term of imprisonment (40.7%). A lower proportion had the following types of background issues: mental health issues (21.4%), cognitive impairment (7.1%) or significant health or trauma issues as an adult (7.1%).

In terms of sentencing practices, a regression analysis found no statistically significant difference between intimate relationship and non-intimate relationship aggravated burglary in the likelihood of an immediate custodial sentence. There was also no significant difference in the average length of imprisonment terms imposed. These findings suggest that there is nothing intrinsic to intimate relationship aggravated burglaries that caused offenders to receive generically different sentencing outcomes to non-intimate relationship aggravated burglaries.

The main differences in sentencing were that intimate relationship aggravated burglary charges were more likely to receive imprisonment terms of one to under three years (50.0% versus 32.0%) but were less likely to receive imprisonment terms of three years or longer and less likely to receive wholly suspended sentences of one to under two years (10.7% versus 22.0%).

Sentencing range

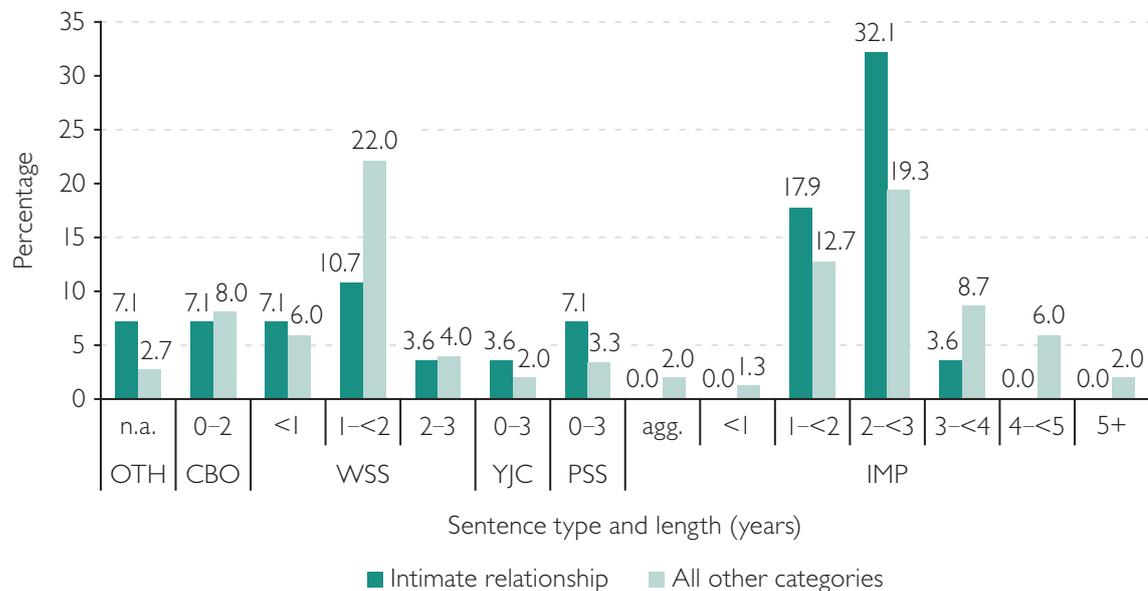
Charge based

There were some clear differences in sentencing practices for charges of intimate relationship aggravated burglary and charges of non-intimate relationship aggravated burglary. Intimate relationship aggravated burglary charges were more likely to receive imprisonment terms of one to under three years (50.0% versus 32.0%) but less likely to receive imprisonment terms of three years or longer and wholly suspended sentences of one to under two years (10.7% versus 22.0%).

A marginally lower proportion of intimate relationship aggravated burglary charges received an immediate custodial sentence: 57.3% compared with 64.3% for other categories of aggravated burglary. Controlling for other factors, the difference was found to be not statistically significant (odds ratio = 3.062, $p = 0.089$).

The median imprisonment term was the same for intimate relationship aggravated burglaries and all other categories (two years). Although the mean imprisonment term was shorter for intimate relationship aggravated burglaries than non-intimate relationship offences (23.5 months versus 29.5 months), this difference was not statistically significant ($F = 2.302$, $p = 0.133$).

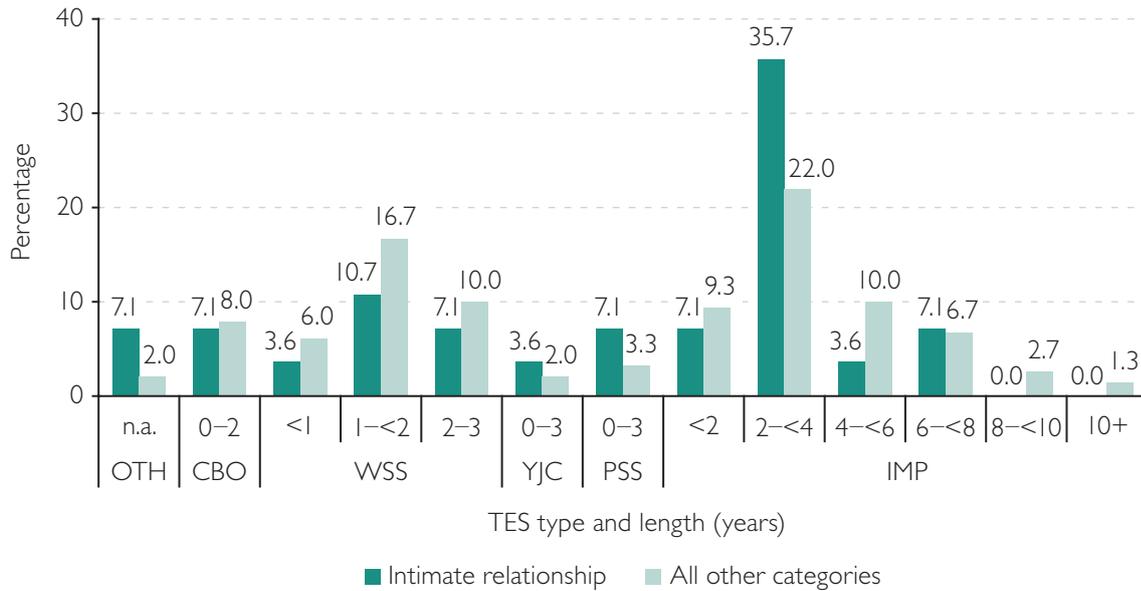
Figure 16: Percentage of aggravated burglary principal charges by type of aggravated burglary and sentence type and sentence length category, higher courts, 2008–09



Total effective sentence

The median total effective imprisonment term was marginally lower for intimate relationship aggravated burglaries than for all other categories (24 months versus 27 months). The difference in the mean total effective imprisonment term for intimate relationship aggravated burglaries and all other categories (40.6 months versus 49.1 months) was not statistically significant ($F = 1.040, p = 0.311$).

Figure 17: Percentage of aggravated burglary cases by total effective sentence type and length and aggravated burglary category, higher courts, 2008–09



Aggravated burglary relating to an offence of robbery or theft

Definition and proportion

For the purposes of this report, the category of aggravated burglary relating to a robbery offence is defined as an aggravated burglary in which the offender or a co-offender:

- entered the premises intending to steal or stole once in the property; and
- used violence, force, threats or restraints in taking the property or demonstrated the willingness to extract property through violence.

The category of aggravated burglary relating to a theft offence is defined as an aggravated burglary in which the offender or a co-offender:

- entered the premises intending to steal or stole once in the property; and
- did not use violence, force or threats or restrain occupants or demonstrate the willingness to extract property through violence.

Aggravated burglaries that were related to an offence of robbery or theft in the context of a previous dispute or grievance were included in the category of confrontational aggravated burglary and therefore were not included in the categories of aggravated burglary relating to a robbery offence or aggravated burglary relating to a theft offence.

Of the 178 cases involving an aggravated burglary charge in the period examined, there were only six relating to a theft offence (3.4% of all aggravated burglaries) and 21 relating to a robbery offence (11.8%), so that in total aggravated burglaries relating to a property offence made up 15.2% of all aggravated burglaries in the period. Under Victorian law, it is possible for less serious instances of aggravated burglary to be heard in the Magistrates' Court. Theft motivated aggravated burglaries are more likely to be permitted to be heard in the Magistrates' Court than those which involve serious assaults or are sexually motivated. Although it is not possible to categorise offences heard in the Magistrates' Court due to the absence of written sentencing remarks in that jurisdiction, the presence of a theft charge in 89.3% of aggravated burglary cases heard in the Magistrates' Court suggests that a substantial number of theft motivated aggravated burglaries are dealt with in that jurisdiction, which explains the small number in this category in the higher courts.

As the proportion of higher courts aggravated burglary offenders who committed these categories of aggravated burglary in the study period was relatively small and the motivation for both categories relates to dishonestly obtaining property, these categories will be analysed jointly under the description of 'aggravated burglary relating to property offences' as well as separately.

The aggravated burglaries relating to robbery offences varied. Some aggravated burglaries were related to the robbery of a person or people unknown to the offender. Other aggravated burglaries were related to the opportunistic robbery of someone known to the offender who was believed to possess valuable property. For example, some cases involved the robbery of a known drug dealer searching for drugs or money (but not in the context of a previous dispute). The courts have made it clear that regardless of the victim's involvement in the drug trade, such robberies are to be treated with equal severity. For example, in sentencing the offender in the case of *R v Gruber*,³⁸ the sentencing judge said:

It was submitted that, at the time of your offending, you regarded the victim as 'fair game' in the drug culture within which you moved. However, you now acknowledge that such an approach is unacceptable and could never be an ameliorating factor. In these circumstances, [the victim] was entitled to the full protection of the

38 *R v Gruber* [2008] VCC (21 November 2008).

law – whether he was engaged in the insidious drug trade or not. There is no victim sub-class upon whom criminals such as you can prey and then expect there might be a lesser sentence for such reason. Every person, however troubled or afflicted, is entitled equally to the enjoyment of the human right to be free of physical violence of any kind.³⁹

The seriousness of all offences of aggravated burglary is well recognised, although, as a general rule, offences relating to property are viewed as less serious than those relating to harm to the person. Even where an aggravated burglary is committed purely for financial gain, the offence has the potential to cause harm beyond the loss of property.

If an offender burgles a premises in which no-one is present, by definition the offender must be armed with a weapon for the burglary to be aggravated. This carries the risk that if the offender is disturbed by a person returning to the premises, serious injury could ensue. If such an aggravated burglary is committed in a residential premises at a time when no-one is present, the subsequent knowledge that an armed person had been inside the victim's home can cause psychological harm. A number of cases have recognised this. In *R v Yates*,⁴⁰ McInerney J stated:

[An aggravated] burglary disturbs the domestic quiet and repose of the victims of the burglary – [it] often leaves a sense of unease, of terror for the future, in the inhabitants of the homes which have been burgled.⁴¹

In *R v Hayes*,⁴² Street CJ further elaborated on the trauma caused:

It is not necessary to discourse at length upon the disruption to peaceable living caused by this current upsurge in burglaries. Householders cannot leave their homes in confidence that the contents will be safe. The trauma of re-entering a home that has been ransacked is in itself no light matter. This can cause a continuing uneasiness and disquiet at the knowledge that an unknown person has invaded the sanctity of the home. Added to this is the emotional distress at the loss of property, including treasured items that frequently have a sentimental value far in excess of their intrinsic worth. Even those who are not immediate victims of burglary nevertheless feel its effect in the escalating premiums charged by the insurance industry for insuring against the risk of its occurrence. The invasion of people's homes and the plundering of their property is a social evil from which the community looks for protection to the law enforcement agencies and the criminal courts.⁴³

Similarly, aggravated burglaries committed in residential premises while people are present (for example, breaking into a house to steal while its inhabitants are sleeping) can cause harm beyond the loss of property such as psychological harm and decreased perceptions of safety. This is so even in cases in which the offender means the victim no harm and does not attempt to injure or threaten the victim. The victim has no means of knowing what the offender's intention is or was during the burglary. This was recognised in one of the theft-related aggravated burglary cases in the study period in which the sentencing judge said:

Your breaking into an occupied home for the purposes of stealing goods to feed your drug habit is an assault on the security and safety of every-day domestic life. For most people, their home is their castle. Your conduct erodes the capacity of an ordinary person to confidently enjoy the privacy of their home free from the fear of unwarranted intrusion.⁴⁴

Where a property motivated aggravated burglary is accompanied by the offender's willingness to act violently to achieve his or her aims (aggravated burglaries relating to a robbery offence), the offence is likely to be viewed as more serious.

39 Ibid [42] citing *Director of Public Prosecutions v Smeaton* [2007] VSCA 256 (15 November 2007) [25] (Maxwell P).

40 *R v Yates* (Unreported, Victorian Court of Criminal Appeal, McInerney, Kaye and Brooking JJ, 12 February 1982).

41 Ibid 5–6.

42 *R v Hayes* (1984) 11 A Crim R 187.

43 Ibid 189–190.

44 *R v Stephenson* [2008] VCC (17 December 2008) [13].

Key findings: aggravated burglary relating to a robbery offence

Like other types of aggravated burglary, aggravated burglaries relating to a robbery offence were characterised by a high proportion of guilty pleas (100.0%), male offenders (100.0%) and locations being residential premises (81.0%).

Aggravated burglaries in this category were distinguished by a relatively high proportion of charges that involved a weapon (76.2%) and were sentenced in the same case as robbery and theft offences (both 52.4%). A relatively high proportion of offenders wore a disguise (33.3%). The offenders had relatively high proportions of prior offences (85.7%) and prior imprisonment (50.0%). The offenders also had relatively high proportions of most types of background issues, including substance abuse (85.7%), non-sexual abuse or neglect as a child (85.7%), mental illness (47.6%), significant health issues or trauma as an adult (23.8%) and childhood sexual abuse (23.8%). A relatively high proportion of offenders was not known to the victim (52.4%).

Aggravated burglary charges that were related to a robbery offence had a significantly higher likelihood of receiving an immediate custodial sentence (95.2% compared with 53.5%). When a sentence of imprisonment was imposed, the average term was significantly longer than the average term for sentences for other types of aggravated burglary (36.6 months versus 26.3 months).

Key findings: aggravated burglary relating to a theft offence

There were only six aggravated burglaries relating to a theft offence. All occurred in a private dwelling and did not involve a weapon. Generally, the only co-sentenced offence was theft, although one involved a criminal damage offence and one involved a robbery offence. All offenders had served a previous term of imprisonment, five had a substance abuse issue and all pleaded guilty to the offence. The offender and victim were unknown to each other in all charges.

Of the six aggravated burglaries relating to a theft offence, four received a sentence of imprisonment. The terms of imprisonment ranged from 15 months to three years for individual charges and the total effective terms of imprisonment ranged from two years and two months to eight years and eight months.

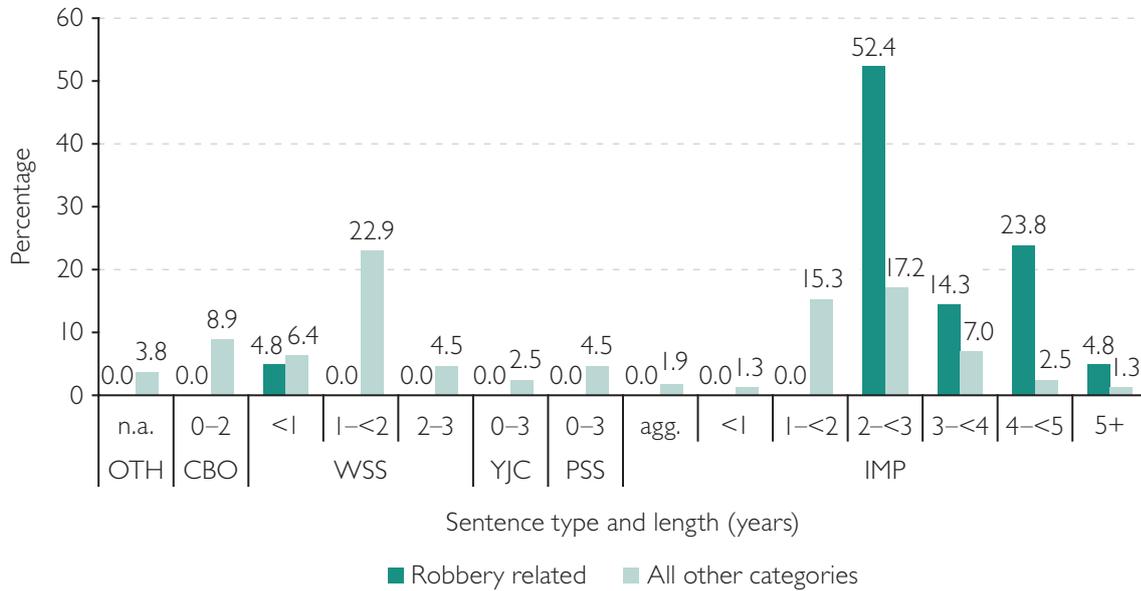
Sentencing range

Charge based

The sentences for aggravated burglaries relating to a robbery offence were markedly skewed towards the higher end of the sentencing range compared with aggravated burglaries in all other categories. All but one aggravated burglary relating to a robbery offence received an immediate custodial sentence (95.2% compared with 53.5%) and, after controlling for other factors in a regression model, aggravated burglaries relating to a robbery offence were significantly more likely to receive a sentence of imprisonment than all other categories of aggravated burglary (odds ratio = 13.735, $p < 0.05$).

The median term of imprisonment was two years and eight months for aggravated burglaries relating to a robbery offence, compared with two years for all other categories, and the mean term for aggravated burglaries relating to a robbery offence (36.6 months) was significantly longer than for all other categories (26.3 months) ($F = 8.70$, $p < 0.01$).

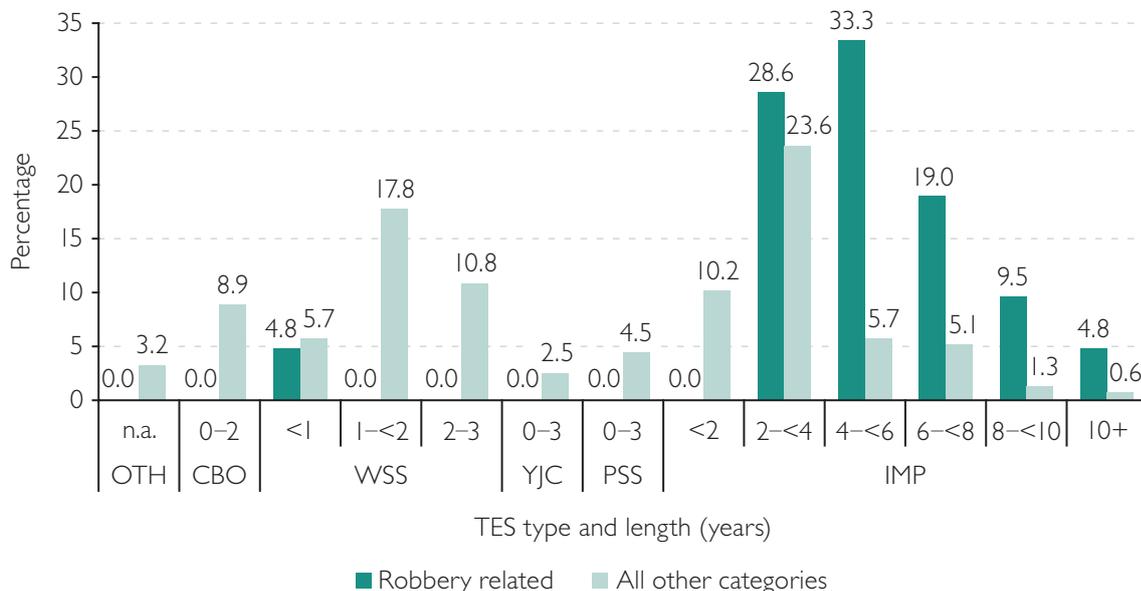
Figure 18: Percentage of aggravated burglary principal charges by type of aggravated burglary and sentence type and sentence length category, higher courts, 2008–09



Total effective sentence

At the case level, total effective imprisonment terms were substantially longer for aggravated burglaries relating to a robbery offence compared with all other categories of aggravated burglary. The median total effective imprisonment sentence was four years and six months, over double the two years for other categories of aggravated burglary, and the mean total effective imprisonment term for aggravated burglaries relating to a robbery offence was significantly longer than the mean for all other categories of aggravated burglary (61.6 months versus 43.9 months) ($F = 5.847, p < 0.05$).

Figure 19: Percentage of aggravated burglary cases by total effective sentence type and length and aggravated burglary category, higher courts, 2008–09



Aggravated burglary relating to a sexual offence

Definition and proportion

In this report, aggravated burglary relating to a sexual offence is defined as an aggravated burglary in which the offender:

- entered the premises intending to sexually assault a person in the premises (regardless of whether or not a sexual assault occurred); or
- committed a sexual offence against someone within the premises, regardless of the offender's original intention at the time of entering the premises; for example, the definition would include a case in which an offender entered the premises intending to steal but once inside the premises committed a sexual assault on a person within the premises.

Any aggravated burglary that fell into one of these categories was included in this category, unless it involved an intimate partner or former intimate partner of the offender, in which case it was categorised as intimate relationship aggravated burglary.

Therefore, even if an aggravated burglary involved a previous conflict or grievance against the victim or the victim's associates, it was categorised as aggravated burglary relating to a sexual offence rather than confrontational if it fell into one of these categories. For example, in one case the offender broke into the premises and sexually assaulted a person against whom he had a grievance. This was classified as aggravated burglary relating to a sexual offence rather than confrontational aggravated burglary.

Of the 178 cases involving an aggravated burglary charge in the period examined, nine cases (5.1%) were aggravated burglaries relating to a sexual offence.

Key findings

Aggravated burglaries relating to a sexual offence were distinguished from other categories of aggravated burglary in a number of ways. A higher proportion of these aggravated burglaries was sentenced with a sexual offence (eight cases), involved female victims (eight) and involved a plea of not guilty by the offender (three). One offender was deemed to have a sexual disorder requiring treatment.

A higher proportion of aggravated burglaries relating to a sexual offence resulted in a term of imprisonment of three years or more and a total effective imprisonment term of five years or more than for other aggravated burglary categories. Five of the nine aggravated burglary charges relating to a sexual offence received imprisonment, one received a residential treatment order, two received a wholly suspended sentence and one received a community-based order.

The longest term of imprisonment imposed for a charge in this category was seven years, and the remaining four charges received a three-year imprisonment term. The longest total effective imprisonment term was nine years' imprisonment.

Aggravated burglaries that involve the intention to commit or the commission of a sexual offence are at the top end of the range of seriousness for this offence. This was recognised in *Director of Public Prosecutions v Brown*,⁴⁵ in which Vincent JA said:

This Court has on a number of occasions stated that the premeditated nocturnal invasion with criminal intent of a person's home will always be regarded as extremely serious. Where, as here, that invasion

45 *Director of Public Prosecutions v Brown* (2004) 10 VR 328.

has been effected for the achieved purpose of raping the occupant, it is, in my mind, unthinkable that the imposition of condign punishment would not follow.⁴⁶

The relevance of the burglar's intention or purpose in entering the premises to the relative seriousness of an offence of aggravated burglary was also explored in *Director of Public Prosecutions v Howe*,⁴⁷ in which Justice Crockett commented:

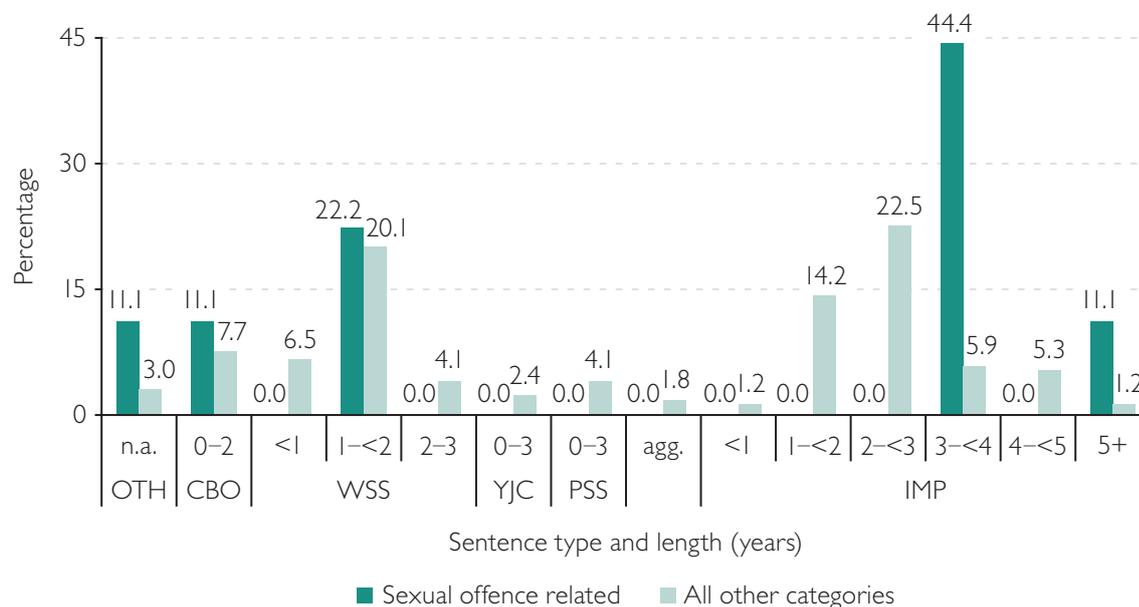
The offences themselves, involving as they did wanton and deliberate attacks upon innocent citizens, above all the invasion of the privacy of the home of two women, and assaulting and terrorizing those women within what ought to have been the sanctuary of their own homes, was extremely disgraceful and unforgivable conduct ... In my view, the offences, the circumstances in which they were committed and the background of the repeated contempt for the law which had been displayed by the respondent called for condign punishment.⁴⁸

While arguably representing the most serious category of aggravated burglary, this category is far less common than others.

Sentencing range

Charge based

Figure 20: Percentage of aggravated burglary principal charges by type of aggravated burglary and sentence type and sentence length category, higher courts, 2008–09



46 Ibid 336 (footnotes omitted).

47 *Director of Public Prosecutions v Howe* (Unreported, Victorian Court of Criminal Appeal, Crockett, ACJ, Murphy and Gray JJ, 6 September 1988).

48 Ibid 6. See also Judicial College of Victoria, *Sentencing Manual* (2005–) <www.judicialcollege.vic.edu.au> at 28.6.3.1: 'Burglaries in which the purpose is an assault (especially a sexual assault) are generally regarded as more serious than burglaries in which the trespass is for the purposes of theft-type or criminal damage'.

A similar proportion of aggravated burglary charges relating to a sexual offence received an immediate custodial sentence (55.1%) compared with charges for all other categories of aggravated burglary (58.6%). However, the median imprisonment term for charges in this category was substantially longer (three years versus two years). The mean imprisonment term for aggravated burglary relating to a sexual offence (45.6 months) was nearly double the mean term for other categories (27.6 months) and this difference achieved statistical significance ($F = 8.064, p < 0.01$).

As the finding that four out of the nine aggravated burglary charges relating to a sexual offence received a sentence other than imprisonment was unexpected, the Council examined the details of these four cases.

One offender received a wholly suspended sentence of 12 months. He had entered the home of a young woman known to him while he was intoxicated, had undressed and walked into her bedroom while she was asleep. The offender fled without committing a further offence.

Another offender received a wholly suspended sentence of 18 months. He was a 21 year old male who started behaving oddly after taking drugs at a party. He stripped naked, made some strange comments to his brother and wandered out the house. He walked into his neighbour's house and got into a bath with a naked boy and grabbed his penis. The boy's mother restrained the offender who made sexual comments to her before the police arrived.

In another case, the offender received a 12 month community-based order. The offender was at a party. He entered the bedroom of a woman while she was sleeping and had sexual intercourse with her. He was acquitted of a rape charge but found guilty of aggravated burglary. On appeal, this offender was acquitted of the aggravated burglary charge.⁴⁹

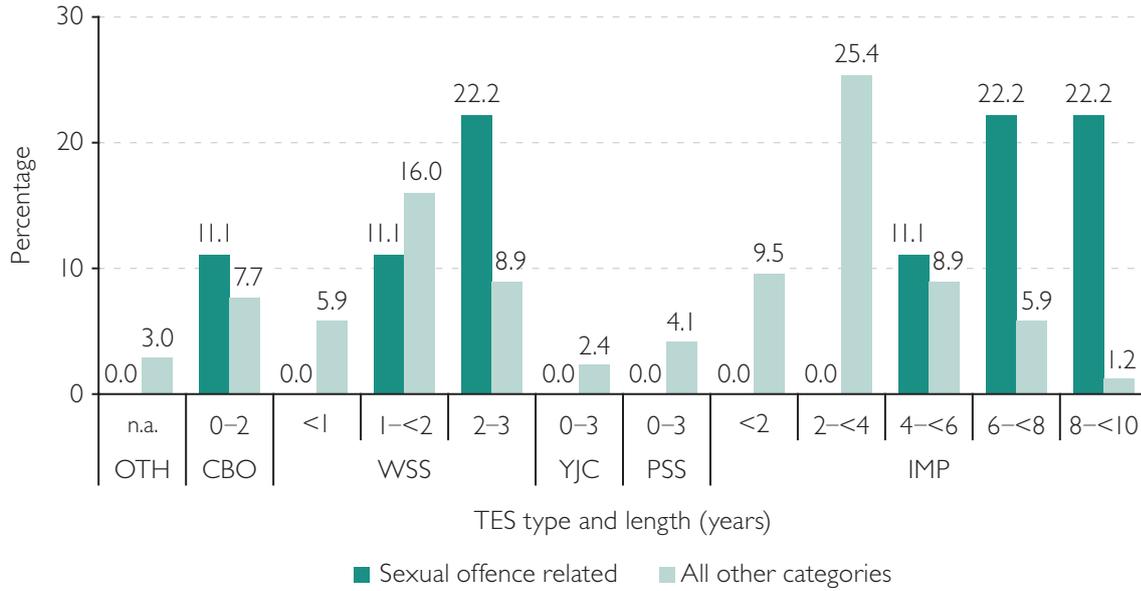
In the fourth case, the intellectually disabled offender received an 18 month residential treatment order (this is an order providing for detention of intellectually disabled offenders in a residential treatment facility). He had broken into a house that he thought contained a woman from whom he had been stealing underwear. She no longer lived there. Two children were in the house and the offender ordered them to take off their clothes. He ran off when he realised one child was making a phone call.

49 *R v Benis* [2010] VSCA 62 (25 March 2010).

Total effective sentence

The median total effective imprisonment term for aggravated burglaries relating to a sexual offence was over double the median for all other categories (84 months versus 37 months). The mean total effective imprisonment term for aggravated burglaries relating to a sexual offence (82.5 months) was significantly longer than the mean for all other categories (42.7 months) ($F = 7.958, p < 0.01$).

Figure 21: Percentage of aggravated burglary cases by total effective sentence type and length and aggravated burglary category, higher courts, 2008–09



Chapter 5

Imprisonment

This chapter explores how imprisonment sentences vary according to factors presented in Chapter 3 of this report. It examines imprisonment sentences at two levels, charges and cases, and examines the extent to which factors influence an outcome of imprisonment.

Charges

This section explores the profile of aggravated burglary charges that received an imprisonment sentence.

Overview

Of the 178 offenders sentenced for aggravated burglary in the review period, 93 (52.2%) received an immediate custodial sentence for the aggravated burglary charge (or, in the small number of cases with more than one aggravated burglary charge, for the aggravated burglary charge that received the most severe sentence).

Figure 22 shows the distribution of imprisonment lengths for charges of aggravated burglary. The most frequently imposed term was two years, while imprisonment lengths ranged from nine months to seven years. The median imprisonment term was two years.

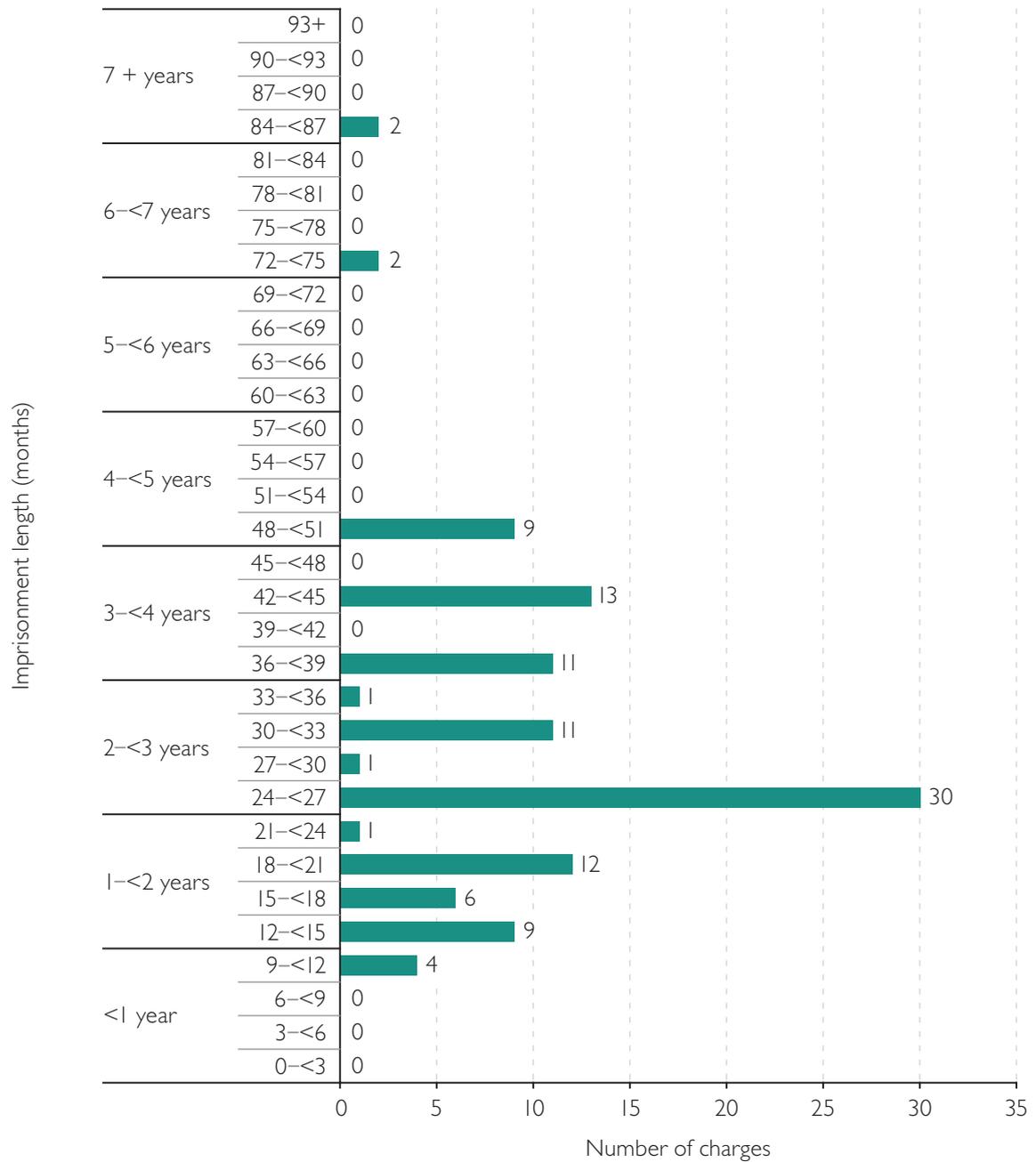
The median term was chosen to separate two groups of charges for analysis – charges that received a term of under two years (the 'shorter imprisonment' group) and charges that received a term of two years or more (the 'longer imprisonment' group). The shorter imprisonment group comprised 26 charges/people (14.6% of all principal charges/people), while the longer imprisonment group comprised 64 charges/people (36.0%).

In this section, the Council analyses factors relating to the offence, the offender and the victim that may have influenced the decision to impose this sentencing order.

Aggravated burglary

The main factors in which clear differences were evident between charges in each of the two groups were prior offending, weapon use, childhood abuse or neglect and the co-sentenced offence category of robbery. The presence of each of these factors was substantially more common among charges in the longer imprisonment group.

Figure 22: Number of aggravated burglary charges by length of imprisonment sentence, higher courts, 2008–09



The offence

Type of aggravated burglary

Figure 23 shows the percentage of charges according to the type of aggravated burglary. Those in the longer imprisonment group were substantially more likely to be related to a robbery offence or a sexual offence. Intimate relationship charges were equally likely to be in either group. Confrontational aggravated burglary charges were more likely to be in the shorter imprisonment group.

Figure 23: Percentage of aggravated burglary offenders by type of aggravated burglary and imprisonment length, higher courts, 2008–09



Aggravating factor

Figures 24 and 25 show the percentage of aggravated burglaries according to the type of aggravating factor for each group.

The two figures show that the sole aggravating factor of a person being present was much more common in the shorter imprisonment group than the longer imprisonment group (57.7% of charges compared with 32.8% of charges).

Conversely, the combination of aggravating factors (a person being present and the offender possessing a weapon) was much more common in the longer imprisonment group than the shorter imprisonment group (59.4% of charges compared with 38.5%).

Charges that were aggravated solely by the possession of a weapon were rare, accounting for none in the shorter imprisonment group and only 3.1% of the longer imprisonment group.

Figure 24: Percentage of aggravated burglary charges that received an imprisonment term of under two years by aggravating factor, higher courts, 2008–09

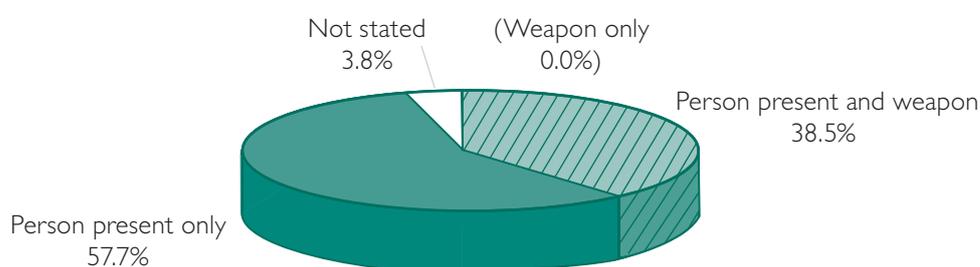
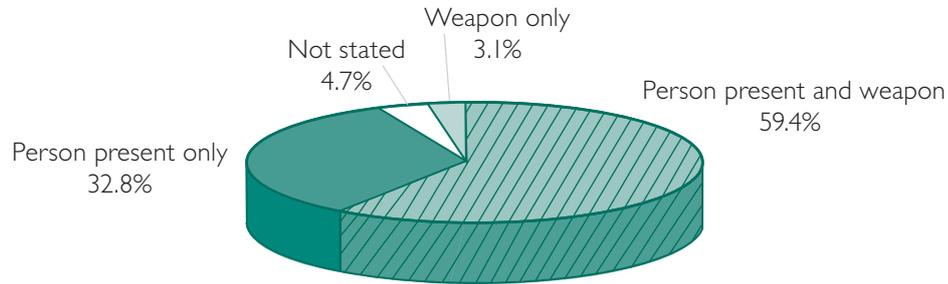


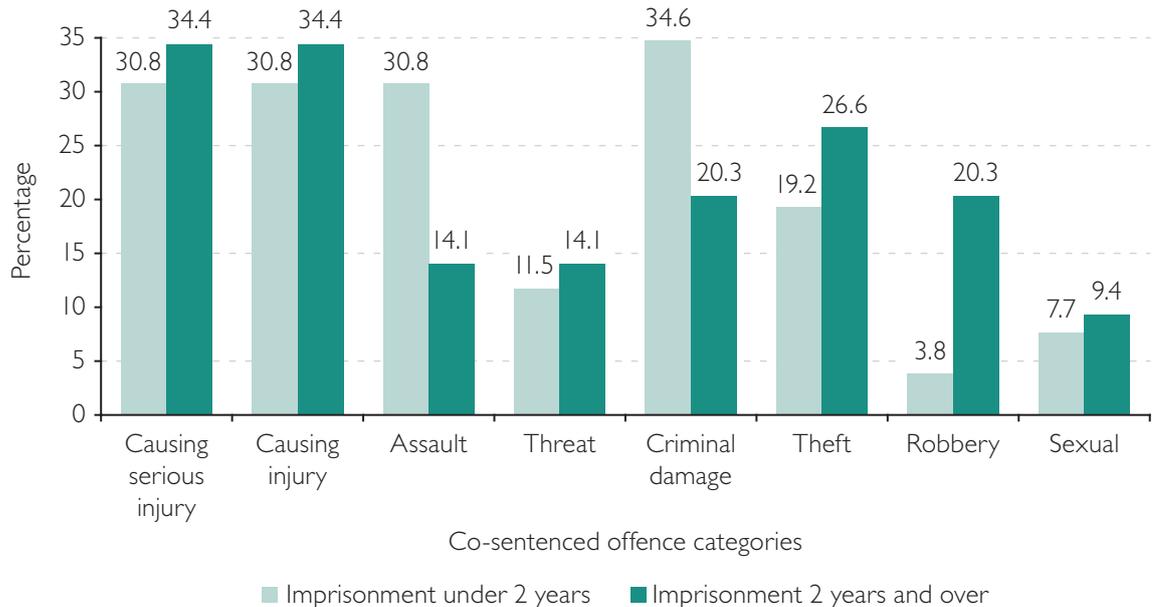
Figure 25: Percentage of aggravated burglary charges that received an imprisonment term of two years or more by aggravating factor, higher courts, 2008–09



Co-sentenced offences

Figure 26 shows that aggravated burglary charges in the longer imprisonment group were substantially more likely to be sentenced alongside charges of robbery and theft and less likely to be sentenced alongside assault and criminal damage.

Figure 26: Percentage of offenders by type of co-sentenced offence and imprisonment term, higher courts, 2008–09



Type of premises and disguise

Of the 26 people who were in the shorter imprisonment group, 24 (92.3%) committed the aggravated burglary in a dwelling (23 in a private dwelling and one in a non-private dwelling). This compares with 89.1% of charges in the longer imprisonment group.

In 25 of 26 cases in the shorter imprisonment group, the offender was not wearing a disguise, and in the other case there was no mention of whether or not the offender was disguised. Just over one in 10 offenders in the longer imprisonment group were wearing a disguise at the time of the offence (12.5%).

Alcohol or drugs

The percentage of charges in which the judge referred to the offender being under the influence of alcohol or drugs at the time of the offence was similar for both groups of charges: 50.0% in the shorter imprisonment group and 54.7% in the longer imprisonment group.

The victim

Number, age and gender of victims

Charges in the shorter imprisonment group had a higher proportion of offences with multiple victims: 46.2% compared with 37.5% for the longer imprisonment group.

Children were more common as victims in the shorter imprisonment group than the longer imprisonment group (26.9% compared with 12.5%), although the only charge resulting in imprisonment in which a child was the sole victim was in the longer imprisonment group.

Elderly victims were uncommon in both groups (two in the shorter imprisonment group and one in the longer imprisonment group).

There were similar proportions of female and male victims in each group, although a female was the sole victim in a higher proportion of charges in the longer imprisonment group.

Relationship of offender to victim

There were 26 cases in which the offender received an imprisonment term of under two years for the offence of aggravated burglary:

- In 14 charges (53.8%) the victim was a friend or acquaintance or otherwise known to the offender (but not a family member). This was slightly lower than the proportion of overall aggravated burglaries committed against an acquaintance (59.6%).
- In four charges (15.3%) the victim was the offender's former partner (higher than the 9.0% of aggravated burglaries overall that were directed at a partner or former partner) and in one case the offender's current partner (this was the only aggravated burglary committed against a current partner in the review period).
- In six charges (23.1%) the victim was a stranger, roughly the same as the proportion for the offence overall.

Victims in the 64 principal aggravated burglary charges that received an imprisonment term of two or more years were known to the offender in 62.5% of charges. Just over half (51.6%) were a friend or acquaintance of the offender but not a family member. These percentages were comparable with victims of charges that received imprisonment lengths of under two years.

Victim Impact Statement

Victim Impact Statements were submitted in relation to similar proportions of charges in both groups: 57.7% of charges in the shorter imprisonment group and 56.3% of charges in the longer imprisonment group.

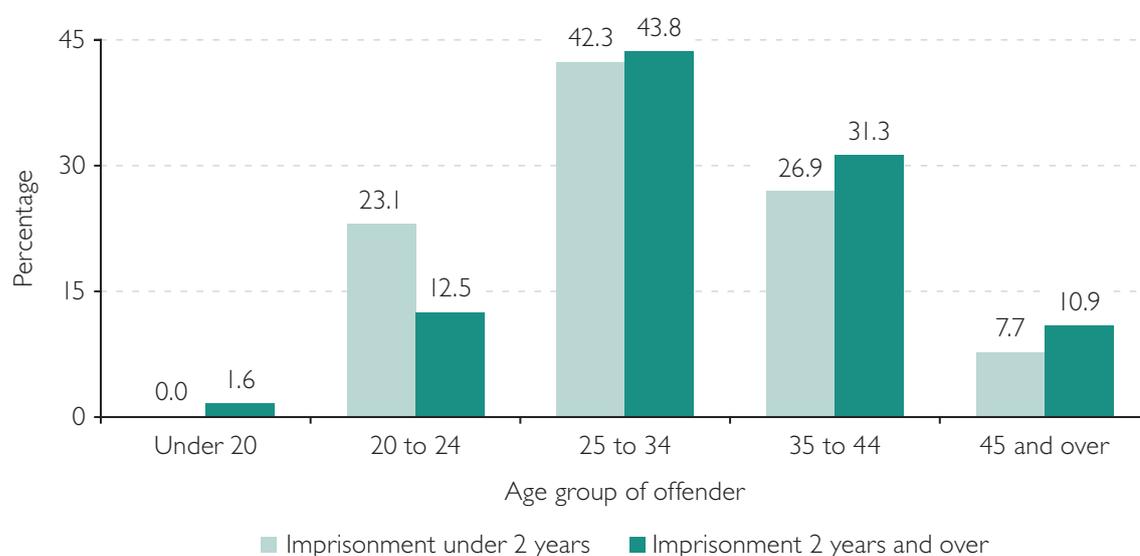
The offender

Age and gender

As Figure 27 shows, a greater proportion of offenders in the shorter imprisonment group was aged between 20 and 24 years. The average age of offenders in the longer imprisonment group was 34 years, marginally older than the 32 years for offenders in the shorter imprisonment group.

The only females to receive a sentence of imprisonment were in the longer imprisonment group.

Figure 27: Percentage of offenders by age group and imprisonment sentence length group, higher courts, 2008–09



Substance abuse, mental illness, childhood abuse and other significant issues

As Figure 28 shows, in a substantially lower proportion of cases in the shorter imprisonment group, the sentencing judge referred to the offender having suffered childhood abuse or neglect (23.1% versus 60.9%) and mental illness (30.8% versus 40.6%), but a higher proportion experienced trauma or significant health issues as an adult. Similar proportions were mentioned as having experienced substance abuse, cognitive impairment and childhood sexual abuse.

Previous criminal history

A relatively high proportion of offenders in the longer imprisonment group had at least one prior offence (81.3% versus 65.4% in the shorter imprisonment group) and a higher proportion had served a previous term of imprisonment (60.9% versus 50.0% in the shorter imprisonment group).

As Figure 29 shows, offenders in the longer imprisonment group were more likely to have at least one previous violent offence (68.8% versus 57.7%) and dishonesty or property offence (71.9% versus 57.7%).

Cooperation and plea

The overwhelming majority of offenders in each group pleaded guilty (92.3% in the shorter imprisonment group and 95.3% in the longer imprisonment group).

In two cases in the shorter imprisonment group, the sentencing judge mentioned that the offender had assisted the police as an informant. The proportion of offenders who assisted police as informants was twice as high in the longer imprisonment group (14.1% or nine offenders).

Figure 28: Percentage of aggravated burglary offenders by type of background issue and sentence – imprisonment less than two years and imprisonment of two years or more, higher courts, 2008–09

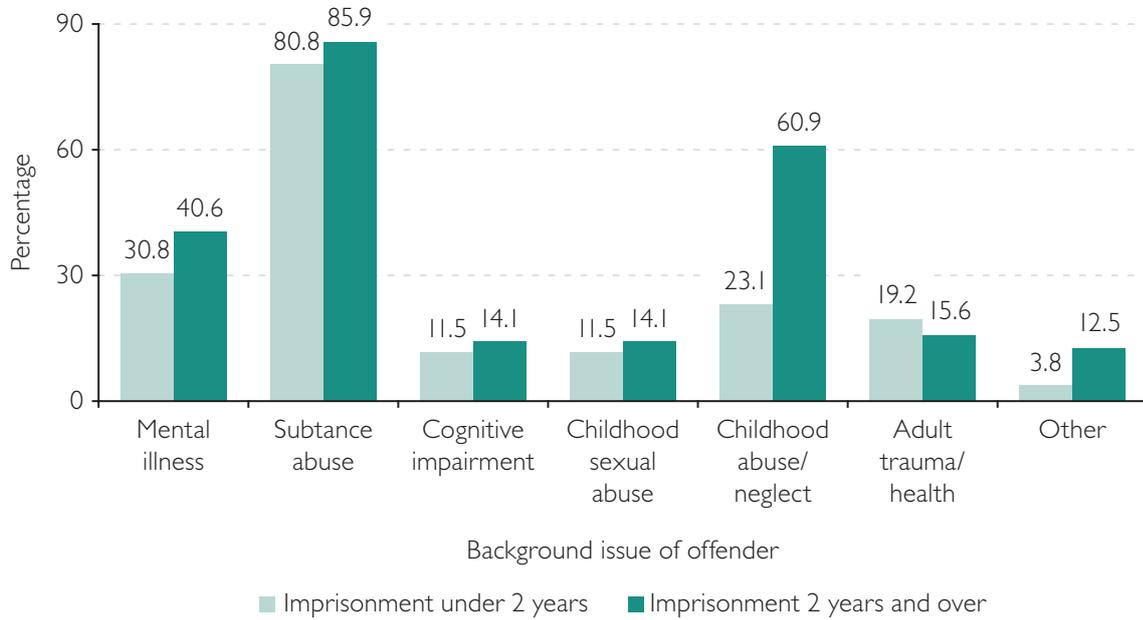
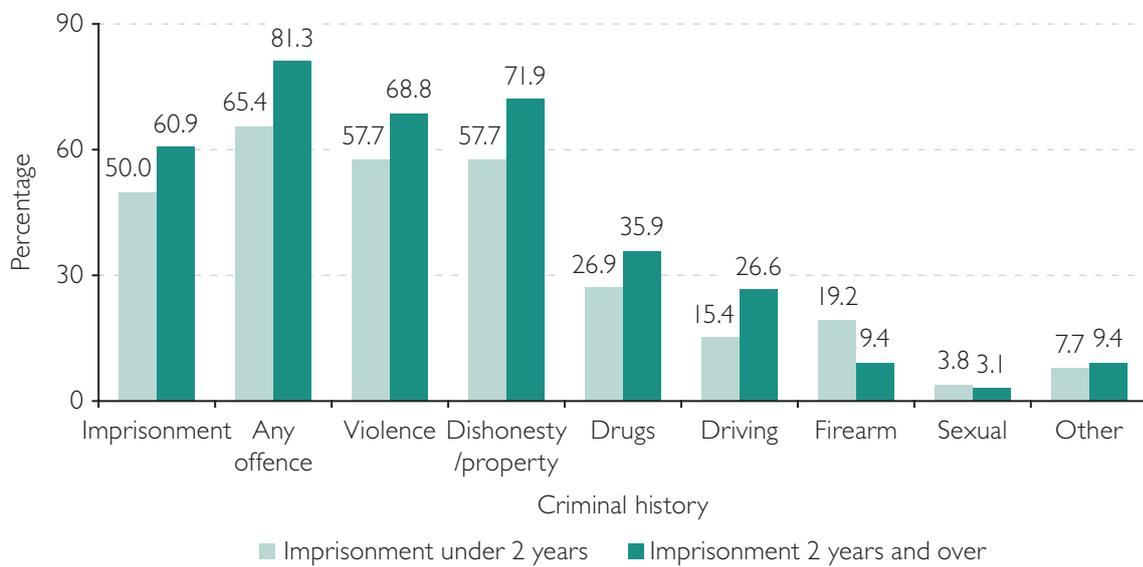


Figure 29: Percentage of principal aggravated burglary charges by criminal history of offender and imprisonment term, higher courts, 2008–09



Cases

The offence of aggravated burglary is committed by the act of unlawfully entering premises. Subsequent offending, such as stealing or damaging property or assaulting a person within the premises, is required by law to be charged and sentenced separately, and for this reason almost all aggravated burglary offences are sentenced alongside other charges. Looking only at the sentence received for the act of entering the premises does not provide the full sentencing picture in cases in which the offender has committed further offences once inside. Therefore, in addition to examining sentences for aggravated burglary charges, the Council looked at total effective sentences of imprisonment for aggravated burglary cases.

Total effective imprisonment length

Of the 178 people sentenced for aggravated burglary in the review period, 93 received a sentence of imprisonment for aggravated burglary. All of these offenders were sentenced for other offences alongside the aggravated burglary and received a total effective sentence of imprisonment (TES) for the case. The distribution of lengths of the total effective sentences is presented in Figure 30.

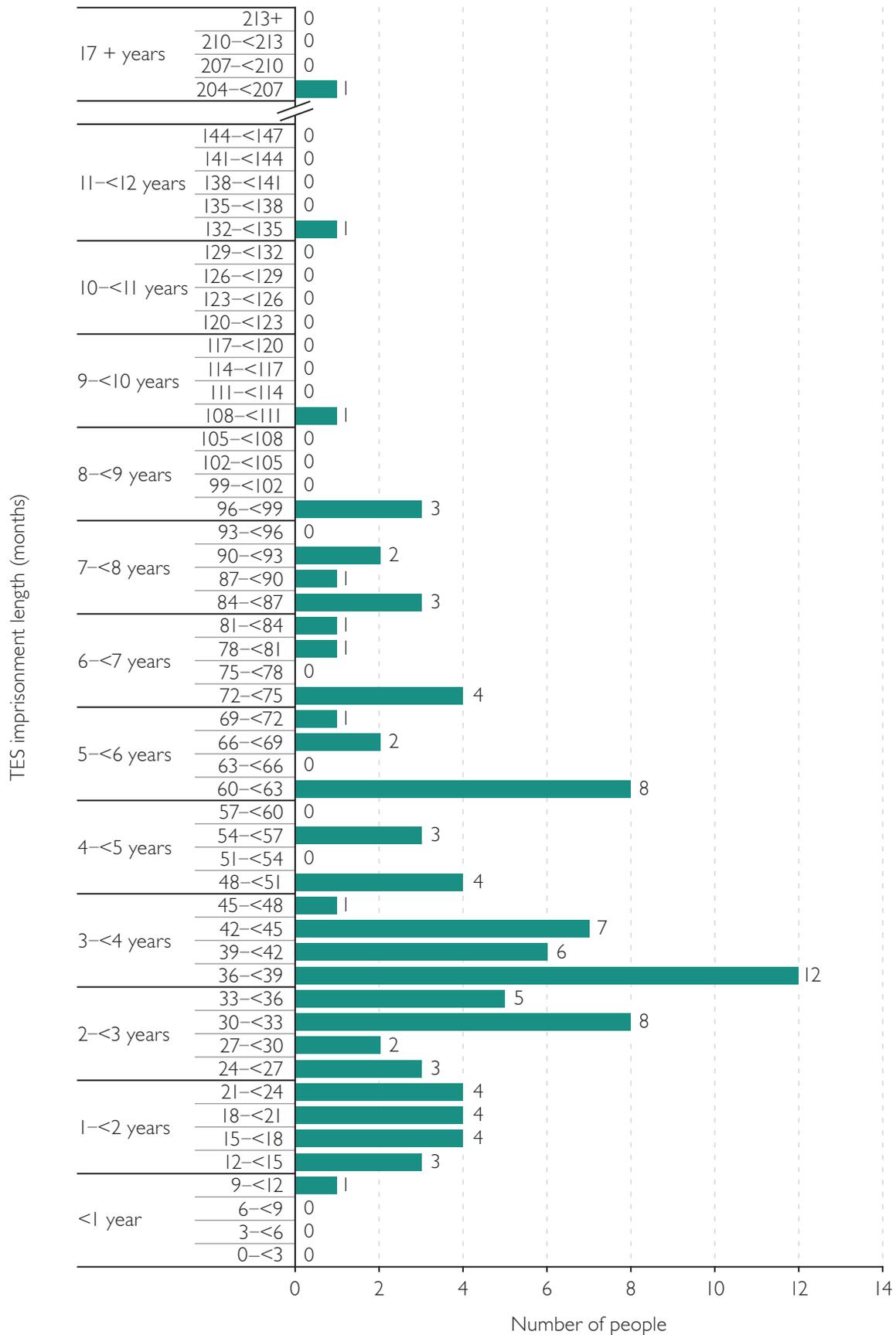
The median total effective sentence for aggravated burglary cases was three years and three months, substantially higher than the median total effective sentence for principal aggravated burglary charges (two years). The highest total effective sentence for an aggravated burglary case in the review period was 17 years.

The median non-parole period was one year and nine months and the longest non-parole period was 14 years.

In order to examine sentencing factors for total effective sentence terms, people were divided into groups based on the length of their total effective sentence and its relationship with the median term of imprisonment (three years and three months) and the 75th percentile (five years):

- The *low TES group* includes all offenders with a total effective sentence under the median. This group comprises 46 offenders.
- The *middle TES group* includes all offenders who received a total effective sentence above the median but below the 75th percentile. This group comprises 20 offenders.
- The *high TES group* includes those offenders who received a total effective sentence above the 75th percentile (27 offenders).

Figure 30: Number of people sentenced for aggravated burglary by total effective imprisonment term, higher courts, 2008–09

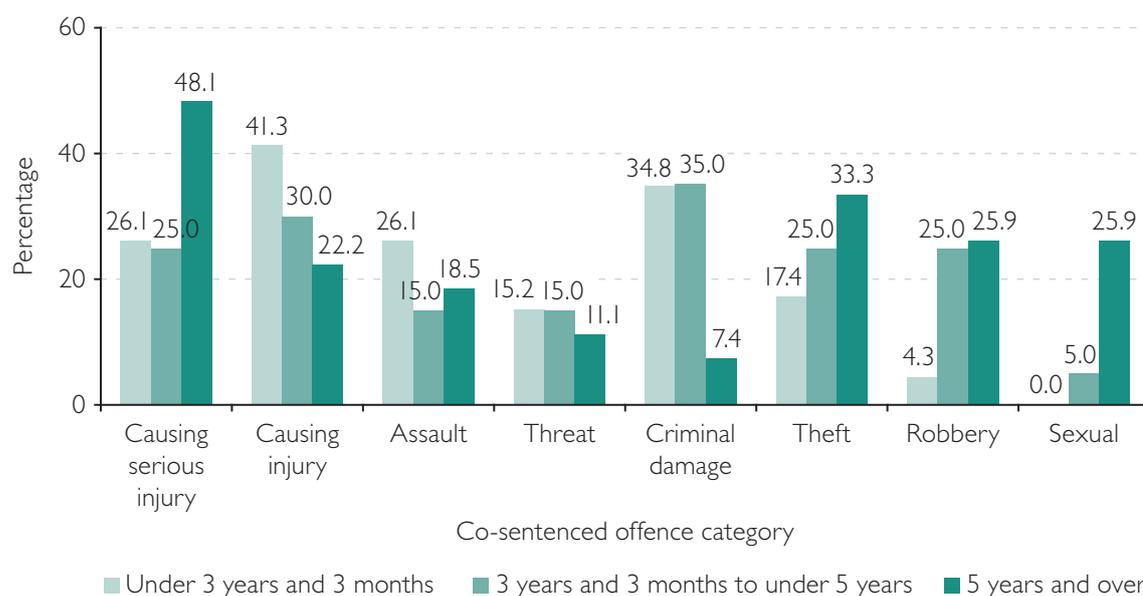


Key findings

Many of the patterns that were apparent in the charge-based analysis were repeated in the TES-based analysis:

- There appeared to be a direct relationship between the proportion of aggravated burglaries of a particular type and the length of the total effective sentence. The percentage of intimate relationship or confrontational aggravated burglaries decreased across the TES groups, whereas the proportion that was related to a robbery offence or sexual offence increased.
- The proportion of cases that included a serious injury offence, theft, robbery and sexual offence tended to increase as the total effective imprisonment term increased (see Figure 31). In contrast, the proportion that included a causing injury offence, threat, criminal damage and assault tended to decrease as the length of total effective imprisonment increased. Thus, in general, the longer imprisonment terms tended to involve more highly serious offences (serious injury, sexual offences and robbery) and fewer less serious offences (causing injury, criminal damage and threats).
- The presence of a weapon tended to increase along with the length of total effective imprisonment term. The proportion of offenders in the low TES group who possessed a weapon was 56.5% compared with 65.0% of offenders in the middle TES group and 74.1% in the high TES group. The type of weapon also differed, with firearms and knives being more likely for offenders who received longer total effective imprisonment terms. A total of 22.2% of offenders in the high TES group possessed a firearm and 22.2% possessed a knife, compared with 5.0% and 10.0%, respectively, for those in the middle TES group. None of the offenders in the low TES group possessed a firearm and 13.0% possessed a knife.
- The offender's age tended to increase along with the length of total effective imprisonment term. The mean age for offenders was 31 in the low TES group, 34 in the middle TES group and 36 in the high TES group.
- The percentage of offenders aged under 25 decreased across the total effective imprisonment term groups, with 23.9% in the low group, 15.0% in the middle group and 3.0% in the high group.

Figure 31: Percentage of aggravated burglary cases by selected co-sentenced offence category and TES group, higher courts, 2008–09



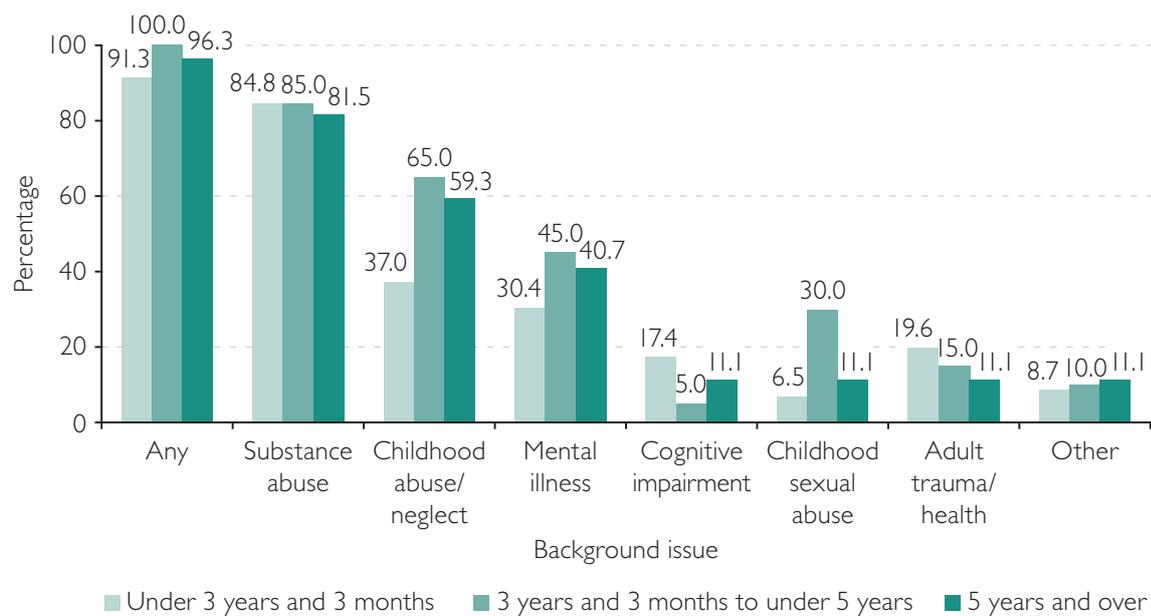
Over nine out of 10 offenders in each total effective imprisonment length group had at least one background issue referred to in sentencing remarks (see Figure 32). The most common background issue reported in sentencing remarks was substance abuse, which varied little across the three groups (from 81.5% to 85.0%).

There were substantial differences in the proportion of offenders who experienced childhood physical abuse or neglect. Larger proportions occurred among offenders in the middle TES group (65.0%) and high TES group (59.3%) than for offenders in the low TES group (37.0%).

There were also differences in the proportion of offenders who had suffered sexual abuse as a child. Thirty percent of offenders in the middle TES group had experienced childhood sexual abuse, a substantially higher proportion than the 6.5% of offenders in the low TES group.

The proportion of offenders who had experienced significant health issues or trauma as an adult declined as the length of total effective imprisonment term increased: 19.6% for those in the low TES group, 15.0% for those in the middle TES group and 11.1% for those in the high TES group.

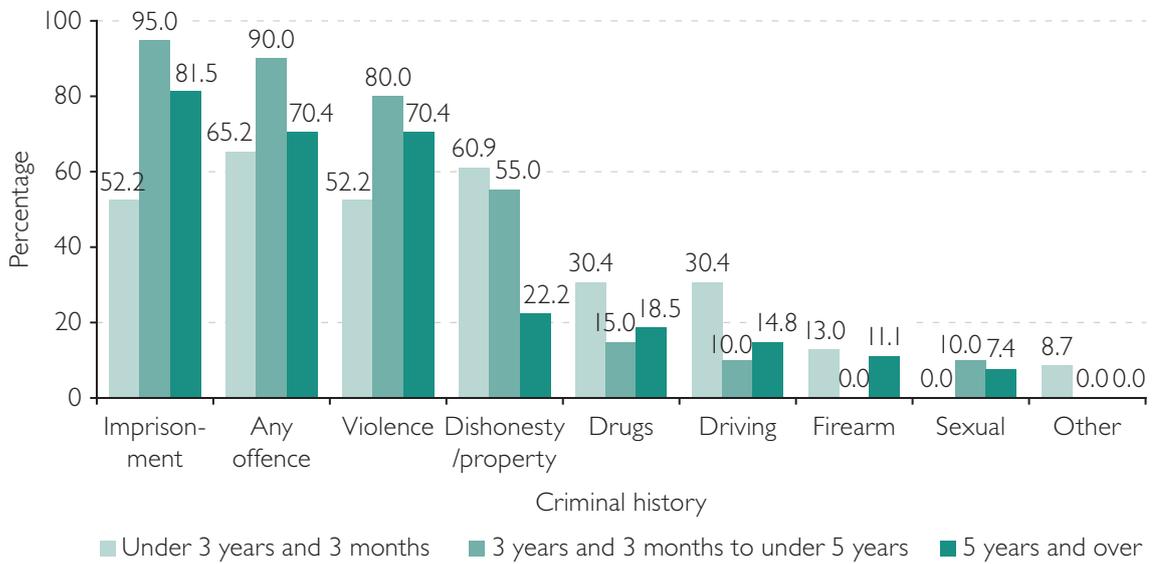
Figure 32: Percentage of people by type of background issue and TES group, higher courts, 2008–09



As Figure 33 shows, the proportion of offenders who had served a previous term of imprisonment was highest for the middle TES group: 95.0% compared with 81.5% for the high TES group and 52.2% for the low TES group. A similar pattern was evident in the percentage of offenders with prior offences in general and for violent offences specifically.

In terms of plea entered, although across all three groups the vast majority of offenders pleaded guilty, there was a decline in the percentage as the total effective imprisonment term increased. All offenders in the low TES group pleaded guilty, compared with 95.5% of those in the middle TES group and 85.2% of those in the high TES group. This suggests that the longer the imprisonment term a person faced, the less willing they were to plead guilty.

Figure 33: Percentage of offenders by criminal history of offender and TES group, higher courts, 2008–09



Immediate custodial sentences versus other sentences: statistically significant factors

Aim

This section assesses whether factors have an independent and statistically significant effect on whether or not a charge received a sentence of immediate imprisonment. Approximately half of the charges received this sentence.

When interpreting the results of this study, it is important to bear in mind what is and what is not being assessed. This study is limited to assessing the influence of factors on an immediate custodial sentence. The ability of factors to influence the length of the term of imprisonment is not being assessed. Thus, simply because a factor has a significant effect on whether a court imposes an immediate custodial sentence does not mean that factor will affect the length of imprisonment term. Conversely, a factor that has no effect on an immediate custodial sentence may in fact have an effect on the term of imprisonment.

Testing the statistical significance of factors

Statistical significance is a threshold used in scientific research that means a relationship between variables is unlikely to have occurred by chance. It therefore allows the researcher to infer that a relationship found in a sample can be extended to a population with a certain degree of probability. The standard threshold of certainty is 0.05, which means that one can be 95% confident that a relationship actually exists between the variables.

Bivariate correlation and analysis of variance techniques assess the relationship between one independent variable and a dependent variable. They provide a general indication of which variables may be related to a dependent variable, when the effects of other variables are not controlled for.

In logistic regression, the effects of other independent variables can be controlled for and measured if they are included in the regression model. Regression thus allows the independent relationship between each independent variable and the dependent variable to be measured. The Council used a logistic regression technique to statistically assess the impact of factors on sentence outcome. Logistic regression allows assessment of the degree to which multiple factors independently influence a binary outcome and the influence of multiple factors to be tested for statistical significance.⁵⁰ The binary outcome or dependent variable in this study is sentence outcome, specifically whether or not an immediate custodial sentence was imposed on the charge of aggravated burglary.⁵¹

Bivariate correlation and logistic regression techniques are used in this chapter. Earlier in the report, comparison of mean imprisonment terms for various factors use the analysis of variance technique.

50 Barbara Tabachnick and Linda Fidell, *Using Multivariate Statistics* (Pearson Education Inc., 5th ed., 2007) pp. 437–440.

51 The Council considered whether the influence of factors on imprisonment length could also be assessed through regression techniques. However, due to the relatively small sample of charges that received imprisonment (approximately 90), the number of factors included in a regression model was severely limited, which risked misleading results. Therefore, the Council did not perform a regression on imprisonment term. Instead, the Council separately assessed differences in the mean imprisonment term and total effective imprisonment term for particular factors.

Factors assessed

In order to test different sentencing factors, the Council assessed the extent to which factors were intercorrelated (multicollinearity). Where moderate-to-strong correlations existed among factors, a single factor was chosen for inclusion in subsequent regression analysis. Sets of factors that were intercorrelated were:

- prior offences and previous imprisonment; and
- intimate relationship aggravated burglary, confrontational aggravated burglary and robbery-related aggravated burglary.

Table 3: Number and percentage of, and correlation with immediate custodial sentences for, aggravated burglary sentencing factors, higher courts, 2008–09

| Variable | Number | Percentage of charges (n = 178) | Correlation with immediate imprisonment |
|--|--------|---------------------------------|---|
| Intimate relationship aggravated burglary | 28 | 15.7 | 0.051 |
| Confrontational aggravated burglary | 102 | 57.3 | -0.244** |
| Sexual offence related aggravated burglary | 9 | 5.1 | -0.013 |
| Robbery-related aggravated burglary | 21 | 11.8 | 0.273** |
| Aggravating factor: weapon | 97 | 56.4 | 0.086 |
| Co-offenders | 105 | 60.0 | -0.099 |
| Assisted police as informant | 26 | 14.6 | -0.006 |
| Plea (not guilty) | 9 | 5.1 | -0.013 |
| Drugs/alcohol influence | 91 | 51.1 | 0.065 |
| Offender aged 25 and over | 125 | 70.2 | 0.273** |
| Offender gender (male) | 170 | 95.5 | 0.092 |
| Previously imprisoned | 68 | 38.2 | 0.405** |
| Existing order | 38 | 21.3 | 0.273** |
| Mental illness | 57 | 32.0 | 0.09 |
| Cognitive impairment | 21 | 11.8 | 0.096 |
| Substance abuse | 121 | 68.0 | 0.398** |
| Childhood abuse/neglect | 75 | 42.1 | 0.166* |
| Adult trauma/significant health | 24 | 13.5 | 0.033 |
| Victim Impact Statement | 89 | 50.0 | 0.114 |
| Cause serious injury co-offence | 36 | 20.2 | 0.311** |
| Children present | 36 | 20.2 | -0.058 |
| Multiple victims | 82 | 46.1 | 0.002 |
| Female victim | 76 | 42.7 | 0.152* |

* p < 0.05

**p < 0.01

For each of these sets, only one factor at a time could be considered in a regression model. Therefore, to determine the effect of intercorrelated factors, separate regression models were created with each including a different intercorrelated factor.

The final list of factors to be assessed, along with the frequency of each factor and its correlation with immediate custodial sentence is shown in Table 3.

The basic correlation analysis of sentencing factors with an immediate custodial sentence in Table 3 showed some factors were related to immediate custodial sentences at a statistically significant level. The factor with the strongest correlation with immediate custodial sentences was previous imprisonment ($r = 0.405$, $p < 0.01$), suggesting that offenders were more likely to receive an immediate custodial sentence if they had previously served a term of imprisonment. This factor was followed by substance abuse ($r = 0.398$, $p < 0.01$), serious injury co-sentenced offence ($r = 0.311$, $p < 0.01$), existing order ($r = 0.273$, $p < 0.01$), offender aged 25 years and over at sentence ($r = 0.273$, $p < 0.01$), childhood abuse or neglect ($r = 0.166$, $p < 0.05$) and female victim ($r = 0.152$, $p < 0.05$). The strongest negative correlation was between confrontational aggravated burglary and immediate custodial sentences ($r = -0.244$, $p < 0.01$), suggesting that confrontational aggravated burglaries were less likely to receive immediate custodial sentences than other types of aggravated burglaries.

No statistically significant relationship was found between the imposition of an immediate custodial sentence and other sentencing factors including plea type, presence of a female victim, presence of a child victim or submission of a Victim Impact Statement. It is important to note that, while these factors had no statistically significant correlation with immediate custodial sentences, this does not necessarily mean that they were not considered important in the sentencing process.

Results and discussion

All 21 sentencing factors were entered into a regression model predicting the outcome of an immediate custodial sentence. This model predicted imprisonment significantly better than no model at all (Chi square = 96.2, $df = 21$, $p < 0.01$) and the model explained 57.9% of the variance in sentence outcome (Nagelkerke R square = 0.579). Odds ratio coefficients, their confidence intervals and significance values found for each factor are shown in Table 4.

Six factors in this model influenced whether an immediate custodial sentence was imposed on a charge of aggravated burglary at a statistically significant level ($p < 0.05$). The strongest factor was a co-sentenced offence of causing serious injury. Cases that included at least one charge of these offences were 12.8 times more likely to receive an immediate custodial sentence (odds ratio = 12.793, $p < 0.001$).

The second strongest factor was existing order: offenders who were serving an existing order at the time of the aggravated burglary offence were 10.2 times more likely to receive an immediate custodial sentence (odds ratio = 10.187, $p < 0.01$).

The other significant factors, in order of descending strength, were:

- previous imprisonment – offenders who had served a previous term were 8.9 times more likely to receive an immediate custodial sentence (odds ratio = 8.891, $p < 0.001$);
- confrontational aggravated burglary – this decreased the chances of an immediate custodial sentence by 81.0% (odds ratio = 0.190, $p < 0.01$);
- age of offender – offenders aged 25 or older were 3.8 times more likely to receive an immediate custodial sentence (odds ratio = 3.837, $p < 0.05$); and
- substance abuse – offenders with a history of drug abuse were 3.6 times more likely to receive an immediate custodial sentence (odds ratio = 3.586, $p < 0.05$).

Table 4: Odds ratio values, confidence intervals and significance values for each variable in predicting immediate imprisonment sentence, higher courts, 2008–09

| Variable | Odds ratio | 95.0% confidence interval for odds ratio | | Significance value |
|--|------------|--|--------|--------------------|
| | | Lower | Upper | |
| Cause serious injury co-offence | 12.793 | 3.231 | 50.663 | 0.000 |
| Existing order | 10.187 | 2.343 | 44.299 | 0.002 |
| Previously imprisoned | 8.891 | 2.97 | 26.618 | 0.000 |
| Confrontational aggravated burglary | 0.190 | 0.057 | 0.638 | 0.007 |
| Offender aged 25 and over | 3.837 | 1.380 | 10.672 | 0.010 |
| Substance abuse | 3.586 | 1.282 | 10.032 | 0.015 |
| Adult trauma/significant health | 0.286 | 0.070 | 1.171 | 0.082 |
| Plea (not guilty) | 0.319 | 0.015 | 6.840 | 0.465 |
| Cognitive impairment | 2.473 | 0.599 | 10.219 | 0.211 |
| Aggravating factor: weapon | 2.066 | 0.791 | 5.398 | 0.138 |
| Victim Impact Statement | 1.424 | 0.560 | 3.622 | 0.458 |
| Co-offenders | 1.140 | 0.350 | 3.718 | 0.828 |
| Drug/alcohol influence | 1.118 | 0.444 | 2.820 | 0.812 |
| Sexual offence related aggravated burglary | 1.024 | 0.064 | 16.274 | 0.986 |
| Female victims | 0.952 | 0.269 | 3.370 | 0.939 |
| Multiple victims | 0.769 | 0.238 | 2.489 | 0.662 |
| Children present | 0.739 | 0.207 | 2.644 | 0.642 |
| Offender gender (male) | 0.732 | 0.101 | 5.307 | 0.758 |
| Childhood abuse/neglect | 0.656 | 0.239 | 1.797 | 0.412 |
| Mental illness | 0.620 | 0.231 | 1.665 | 0.343 |
| Assisted police as informant | 0.373 | 0.096 | 1.445 | 0.154 |

A factor that had a near significant effect was adult significant health or trauma. Offenders with significant health or trauma issues as an adult were less likely to receive an immediate custodial sentence (71.4%) (odds ratio = 0.286, $p = 0.08$).

Three additional regression models were created, each with one out of 21 factors substituted by a related factor. In the first model, confrontational aggravated burglary was replaced by robbery-related aggravated burglary. In this model, robbery-related aggravated burglary had a significant effect, increasing the likelihood of an immediate custodial sentence by a factor of 13.7 (odds ratio = 13.735, $p < 0.05$, lower CI = 1.111, upper CI = 169.829). In the second model, confrontational aggravated burglary was replaced by intimate relationship aggravated burglary, which had no significant effect on the chances of an immediate custodial sentence (odds ratio = 3.062, $p = 0.089$, lower CI = 0.843, upper CI = 11.12). The third model involved prior offences instead of prior imprisonment. Prior offences increased the likelihood of an immediate custodial sentence by a factor of five (odds ratio = 4.672, $p < 0.01$, lower CI = 1.754, upper CI = 12.441).

There may be a number of explanations for the lack of significant effect found for some factors. One explanation is that some factors measured were not precise enough for an effect on sentence to show up. The submission of a Victim Impact Statement was used in this study as a possible indicator of harm done to the victim; if a victim was sufficiently motivated to submit a statement, he or she must be particularly affected. However, the decision of a victim to submit a Victim Impact Statement may be more complex than simply an indicator of the harm done. Some victims may simply not want to lodge a formal statement about the harm done, even if the harm is particularly serious. Perhaps a more appropriate measure of the impact on victims may be the level of injury suffered. Indeed, the regression model found that where a victim suffered 'serious' injury, an immediate custodial sentence was significantly more likely to be imposed on the charge.

The presence of co-offenders may also not necessarily be indicative of offence seriousness. Although this may be an aggravating factor, the *role* played by the offender is perhaps more important in determining culpability and influencing sentencing outcomes. The role played by co-offenders was unable to be quantified using available information.

Another possible explanation is that some factors may not be sufficiently important to affect the large distinction between immediate custodial sentences and other types of sentences. This is perhaps the case with assistance to police as an informant, mental illness and childhood abuse or neglect, none of which reduced the likelihood of imprisonment. All of these factors were taken into account by the sentencing judge, as indicated in sentencing remarks, but the decision to imprison was not significantly affected.

The lack of significant effect of guilty pleas was particularly surprising. Overall, four of the nine charges for which a plea of not guilty was entered received a sentence other than imprisonment. The Council investigated the facts of these four cases.

Two of the charges with a not guilty plea received a community-based order. One of these charges comprised an offender entering the bedroom of a woman at a party and having sexual intercourse with her. The offender was charged with rape and aggravated burglary (for entering the bedroom) and pleaded not guilty to both charges. He was acquitted of the rape charge but found guilty of the aggravated burglary charge (the aggravated burglary charge was subsequently quashed on appeal).

For the other charge that received a community-based order, the offender was a refugee from the Congo who lived in a boarding house. After being racially abused and taunted by his fellow resident for a period of time, he broke into the fellow resident's room and attacked him. As a result, the offender was also charged with causing injury recklessly.

One wholly suspended sentence was imposed on a charge with a not guilty plea. The offender was one of five co-offenders who entered the premises of someone they believed stole marijuana plants. They did no damage to the property and no-one was injured. The offender was aged 21 at the time of the offence.

One charge received a residential treatment order. In that case an intellectually disabled offender broke into a house that he thought contained a woman he had been stealing underwear from; she no longer lived there. The case included a number of burglaries and thefts (of underwear from clotheslines) as well as two counts of assault with intent to rape. For the case as a whole, the offender received a five-year residential treatment order for sexual offending issues as well as a wholly suspended sentence of two years and two months.

The highly unusual nature of some of these cases and the strong mitigating circumstances in others help to explain the finding that plea had no significant effect on the sentence imposed. If these mitigating circumstances could have been controlled for in a statistical analysis, it may be that a significant effect on sentencing would have been found for plea type.

Stated reduction due to guilty plea

In 94.9% of the cases in the review period, the defendant pleaded guilty. Although guilty pleas did not have a statistically significant effect on whether an immediate custodial sentence was imposed, judges are required to state the sentence they would have imposed had the offender pleaded not guilty.⁵² Therefore, an investigation was conducted into the level of 'hypothetical' discount offenders received for a guilty plea.

Data on sentence discounts are collected by the Courts Statistical Services Unit, Department of Justice. Of the 190 aggravated burglary cases sentenced in the higher courts between July 2008 and June 2009, 147 had information recorded about the hypothetical sentence. As these are incomplete data, they should serve only as a guide to discounting practices.

Table 5 shows the number and percentage of aggravated burglary cases according to the indicated and imposed total effective sentence type. The percentages represent distributions of indicated sentence types for each imposed sentence type. For example, of the 80 offenders who received imprisonment, 100.0% also received an indicated sentence type of imprisonment. This is to be expected as there is no sentence type in Victoria that is more severe than imprisonment. The vast majority (92.0%) of the 50 offenders on whom a wholly suspended sentence was imposed had an indicated sentence type that required some form of immediate imprisonment: imprisonment (76.0%), partially suspended sentence (14.0%) or youth justice centre order (2.0%).

Table 5: Number and percentage of aggravated burglary cases by sentence type imposed and sentence type indicated, higher courts, 2008–09

| TES type indicated | TES type imposed | | | | | | Total |
|------------------------------|-------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| | IMP | PSS | YJC | ICO | WSS | CBO | |
| | Number | | | | | | |
| Imprisonment | 80 | 6 | 0 | 1 | 38 | 1 | 126 |
| Partially suspended sentence | 0 | 2 | 0 | 1 | 7 | 0 | 10 |
| Youth justice centre | 0 | 0 | 4 | 0 | 1 | 0 | 5 |
| Intensive correction order | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wholly suspended sentence | 0 | 0 | 0 | 0 | 4 | 2 | 6 |
| Community-based order | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 80 | 8 | 4 | 2 | 50 | 3 | 147 |
| | Percentage | | | | | | |
| Imprisonment | 100.0 | 75.0 | 0.0 | 50.0 | 76.0 | 33.3 | 85.7 |
| Partially suspended sentence | 0.0 | 25.0 | 0.0 | 50.0 | 14.0 | 0.0 | 6.8 |
| Youth justice centre | 0.0 | 0.0 | 100.0 | 0.0 | 2.0 | 0.0 | 3.4 |
| Intensive correction order | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Wholly suspended sentence | 0.0 | 0.0 | 0.0 | 0.0 | 8.0 | 66.7 | 4.1 |
| Community-based order | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

⁵² *Sentencing Act 1991* (Vic) s 6AAA.

Figure 34 shows the distribution of cases according to the actual imprisonment term imposed and the numeric reduction based on plea. Reductions ranged from three months to five years and the average numeric reduction was one year and five months. Larger numeric reductions tended to occur for longer sentences.

Figure 34: Number of cases by imprisonment term imposed and numeric reduction in imprisonment term, higher courts, 2008–09

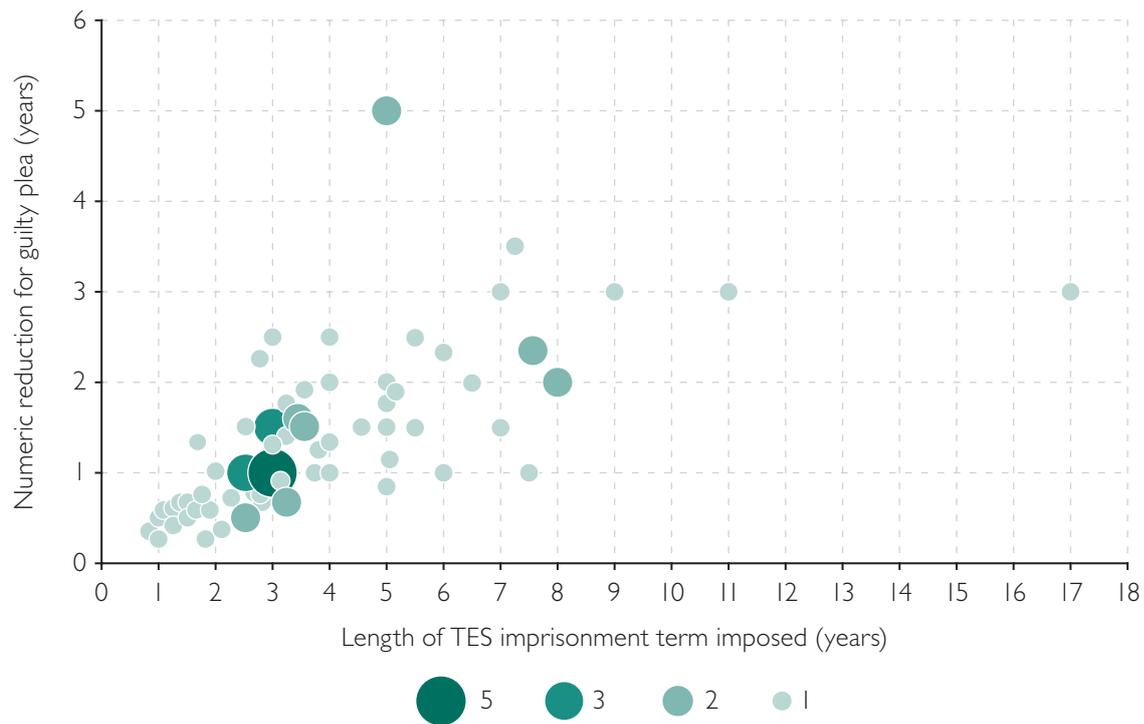
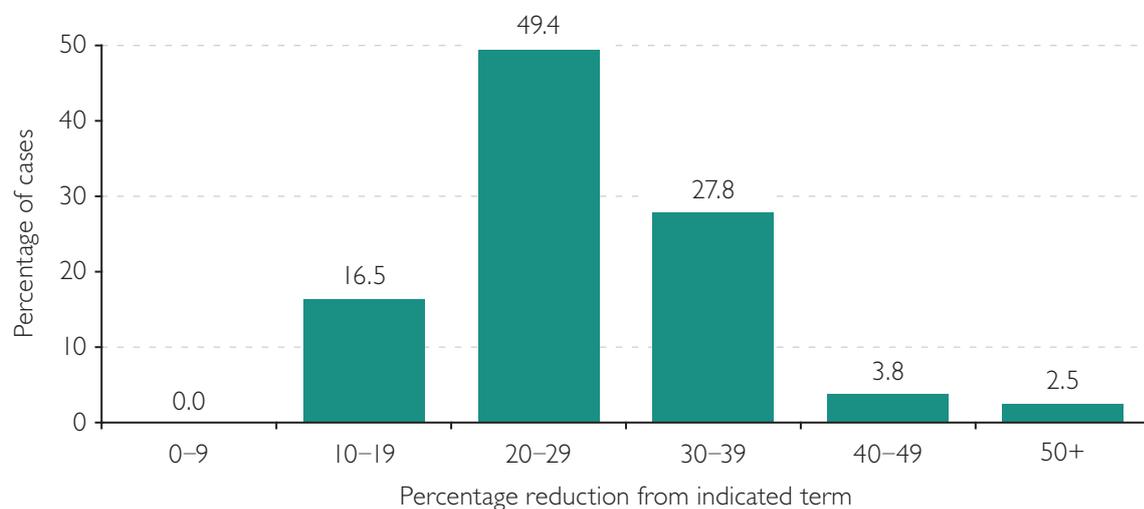


Figure 35 shows the percentage reduction in total effective imprisonment terms according to groups. Percentage reductions ranged from 11.8% to 50.0%. The average percentage reduction was 26.8%.

Figure 35: Percentage of cases that received imprisonment by percentage reduction in sentence based on indicated term, higher courts, 2008–09



Chapter 6

Wholly suspended sentences and community-based orders

Approximately two in five charges for aggravated burglary (38.3%) received a sentence that did not involve immediate custody. This section examines the two most common sentences that did not involve immediate custody: wholly suspended sentences (WSS) and community-based orders (CBO).

Wholly suspended sentences

Overview

Of the 178 offenders sentenced for aggravated burglary in the review period, 54 were sentenced to a wholly suspended sentence (30.3%).

Aggravated burglary offences that received a wholly suspended sentence differed from those that received imprisonment in a number of ways. The offenders were generally younger, less likely to have prior offending, less likely to have personal background issues (in particular relating to substance abuse) and less likely to have worn a disguise. The offence was more likely to be a confrontational aggravated burglary and more likely to be committed with co-offenders. The offence was less likely to be robbery related and more likely to occur in a private dwelling. The offence was also more likely to be sentenced in the same case as causing injury offences and criminal damage but less likely to be sentenced with causing serious injury offences, armed robbery and theft. The victims were less likely to have submitted a Victim Impact Statement.

The offence

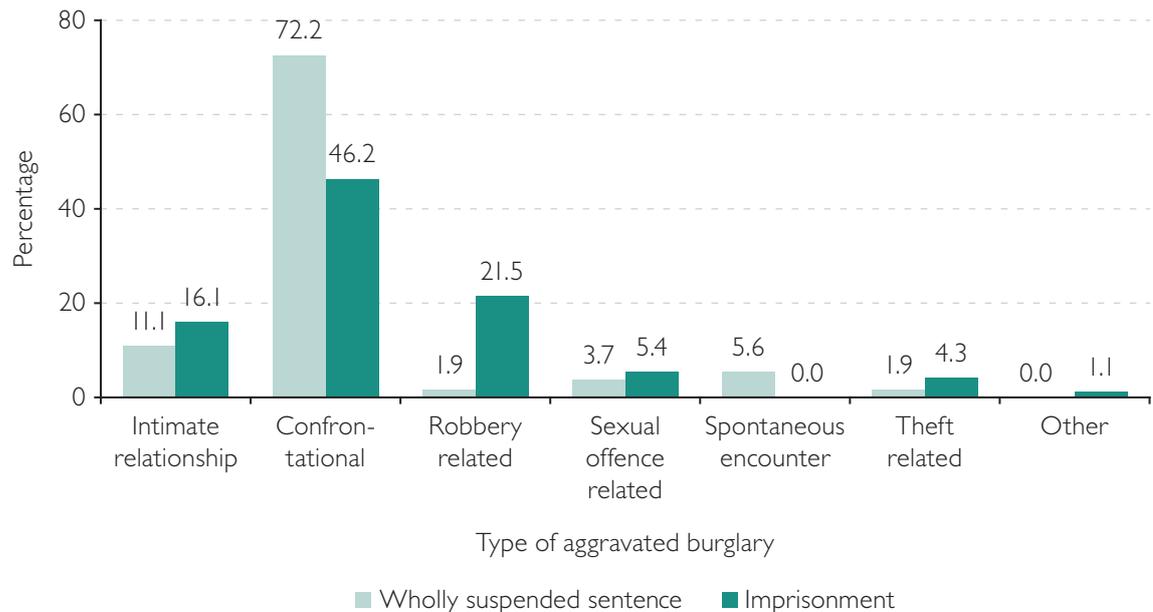
Type of aggravated burglary

Nearly three-quarters of people sentenced to a wholly suspended sentence for a charge of aggravated burglary had committed a *confrontational* aggravated burglary (72.2%). This was substantially higher than for people who received imprisonment (46.2%).

Aggravated burglary

The second most common type was intimate relationship aggravated burglary (11.1%), which occurred at a similar rate among offenders who received imprisonment (16.1%). Only one offender who received a wholly suspended sentence committed a robbery-related aggravated burglary, compared with 21.5% of offenders who received imprisonment.

Figure 36: Percentage of aggravated burglaries by type of aggravated burglary and sentence type – wholly suspended sentence and imprisonment, higher courts, 2008–09



Aggravating factor

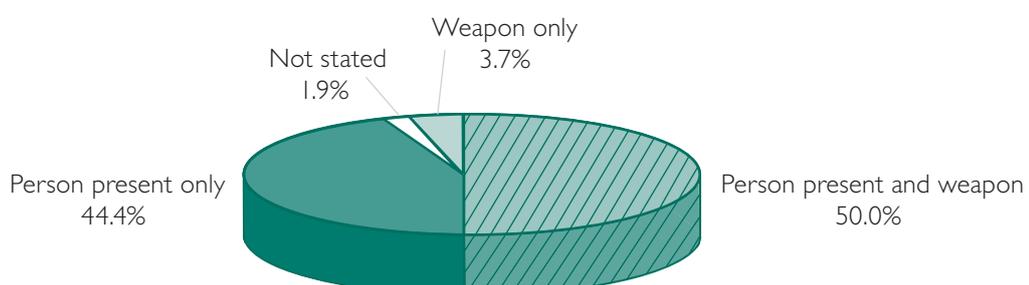
Figure 37 shows the percentage of aggravated burglaries that received a wholly suspended sentence according to the type of aggravating factor:

In 51 cases, the offence was aggravated wholly (24 cases) or partly (27 cases) because a person was present and the offender knew of, or was reckless to, that fact.

In 29 cases, the offence was aggravated wholly (two cases) or partly (27 cases) because the offender had a weapon in his or her possession at the time of entering the premises. In a further five cases, the offender acquired a weapon once inside the premises.

Therefore, offenders who received a wholly suspended sentence possessed and/or used a weapon in 36 cases (66.7%). Although this was a similar proportion to the offenders who received a term of immediate imprisonment and who possessed or used a weapon (63.4%), a lower proportion of wholly suspended sentence cases involved a knife (3.7% of offenders who received a wholly suspended sentence

Figure 37: Percentage of aggravated burglary charges that received a wholly suspended sentence by aggravating factor, higher courts, 2008–09



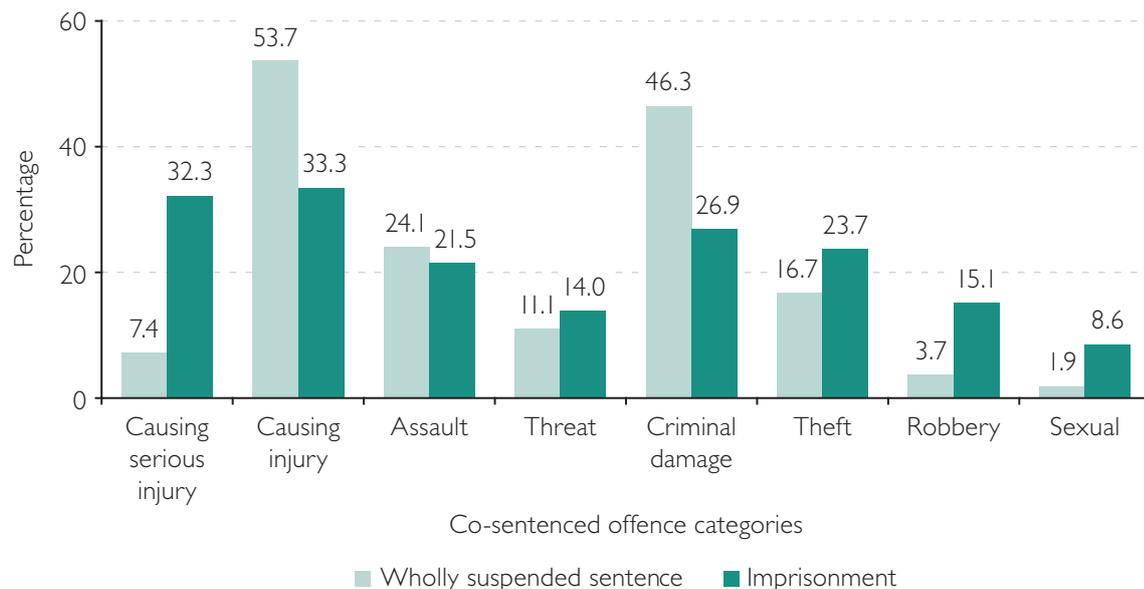
versus 15.1% of those who received imprisonment) and a higher proportion involved a bat, bar or club (40.7% of offenders who received a wholly suspended sentence versus 21.5% of those who received imprisonment). A firearm was used in three cases that received a wholly suspended sentence.

Of the 36 cases involving weapons, the weapon was physically used by the offender in 27 cases (75%, compared with 67.3% for the offence overall) and was used to threaten a person or people in nine cases (25%, compared with 30.9% for the offence overall).

Co-sentenced offences

Of the 54 offenders who received a wholly suspended sentence for their principal (or only) aggravated burglary charge, all were sentenced for at least one other offence in that case. As Figure 38 shows, over half of the offenders were also sentenced for a causing injury offence (53.7%) and just under half for a criminal damage offence (46.3%). Compared with charges that received imprisonment, a higher percentage of wholly suspended sentence charges were sentenced with an offence that caused serious injury or criminal damage, while a lower proportion was sentenced along with causing serious injury, robbery, sexual offences and theft.

Figure 38: Percentage of offenders by type of co-sentenced offence and selected sentence type, higher courts, 2008–09



Type of premises, disguise

Fifty-two of the 54 charges on which a wholly suspended sentence was imposed involved the aggravated burglary of a private dwelling (96.3%). This was higher than the percentage for charges that received imprisonment (76.3%). One case took place in a retail premises, and in one case the type of premises was not specified. Of the 52 cases in private dwellings, the offender knew the victim in 37 cases and the victim was a stranger in 15 cases.

In two of the 54 charges, the offender wore a disguise. At 3.7% this was lower than the proportion of charges sentenced to imprisonment in which the offender wore a disguise.

Alcohol or drugs

In 29 out of 54 charges on which a wholly suspended sentence was imposed, the judge referred to the fact that the offender was under the influence of alcohol or drugs at the time of the offence (53.7%). This was a similar rate to charges that received imprisonment (52.7%).

The victim

Number, age and gender of victims

Of the 54 aggravated burglaries that received a wholly suspended sentence, 27 or 50.0% involved multiple victims. Fourteen involved a child victim (25.9%) and in one such case the child was the sole victim of the offence. Three elderly adults were victims (5.6%), while one was the sole victim of the offence. A female was a victim in 18 wholly suspended sentence cases (33.3%), four of which involved no other victims (7.1% of all wholly suspended sentence cases). A male was a victim in 46 aggravated burglaries (85.2%), nine of which involved no other victims (40.7% of all cases).

Victim Impact Statement

In 23 cases (42.6%) the victim made a Victim Impact Statement, in 21 cases (38.9%) the victim did not do so and in 10 cases whether or not the victim had made a Victim Impact Statement was not stated. The proportion of victims who did not make a Victim Impact Statement was lower than the proportion of victims where the offender was sentenced to imprisonment (45.8%).

Relationship of offender to victim

In 35 cases (64.8%) the victim was a friend or acquaintance or otherwise known to the offender (but not a family member). This proportion was slightly higher than the proportion of offenders who received imprisonment (52.7%).

In two cases (3.7%) the victim was the offender's former partner (lower than the 10.1% of aggravated burglaries overall that were directed at a partner or former partner) and in one case the victim was the offender's current partner (this was the only aggravated burglary committed against a current partner in the review period).

In 14 cases (25.9%) the victim was a stranger, roughly the same proportion as for the offence overall and the proportion for offenders who received imprisonment (29.0%). In one case the relationship was not stated.

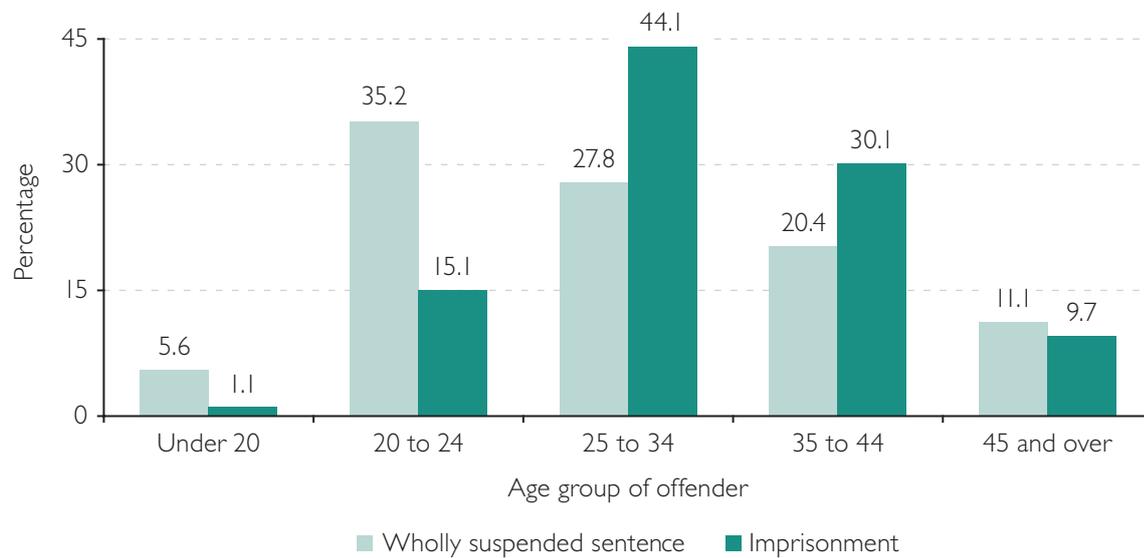
The offender

Age and gender

As Figure 39 shows, a greater proportion of aggravated burglary offenders who received a wholly suspended sentence was aged under 25 years (40.8% were under 25 years) than those who received imprisonment (16.2% of aggravated burglary offenders overall were under 25 years). This was not as marked as the proportion in this age group who received a community-based order, but it was still a noticeable difference compared with the offence as a whole.

Fifty offenders were male and four were female. Overall, females made up a higher proportion of offenders who received a wholly suspended sentence (7.4%) than of offenders who received imprisonment (3.2%).

Figure 39: Percentage of aggravated burglary offenders by age of offender and sentence type – wholly suspended sentence versus imprisonment, higher courts, 2008–09



Substance abuse, mental illness, childhood abuse and other significant issues

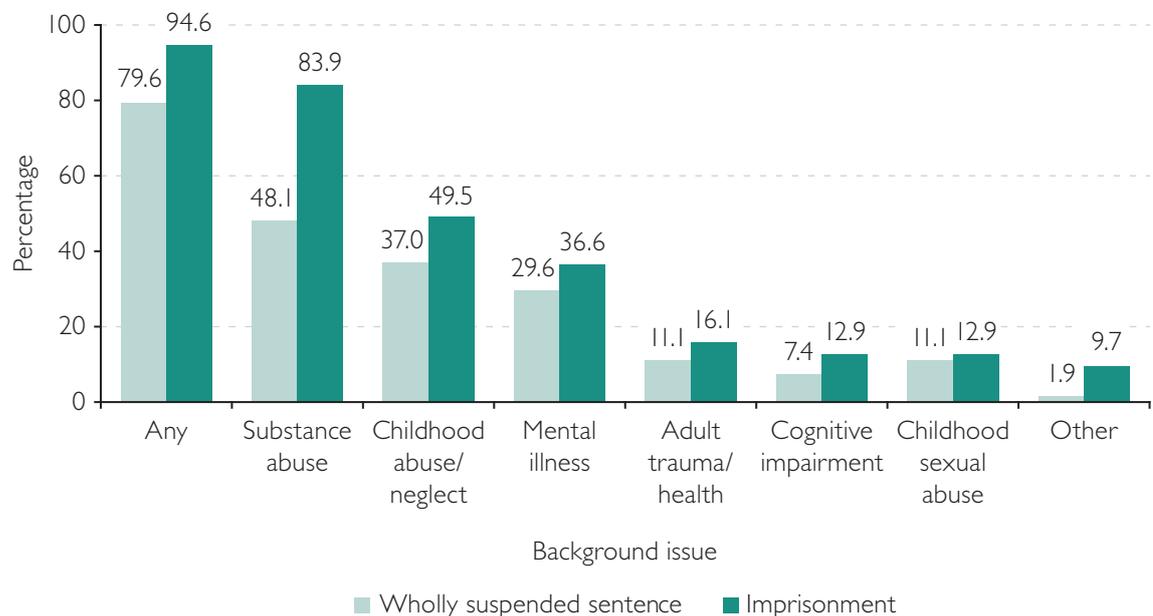
As Figure 40 shows, nearly four in five offenders sentenced to a wholly suspended sentence had at least one personal background issue referred to in sentencing remarks (79.6%), substantially lower than the 94.6% of those who received imprisonment.

Sixteen of the 54 offenders were referred to as having a mental illness (29.6% of offenders who received a suspended sentence), which was marginally lower than the proportion of offenders who received imprisonment and who had a mental illness (36.6%). Four offenders who received a wholly suspended sentence (7.4%) had a cognitive impairment, marginally lower than the 12.9% of offenders who received imprisonment (11.8% of all aggravated burglary offenders in the period had a cognitive impairment).

Twenty-six offenders (48.1%) were referred to as having substance abuse issues, which was substantially lower than the overall proportion of aggravated burglary offenders with these issues (68%) and substantially lower than the proportion of offenders who received imprisonment (83.9%).

Six offenders (11.1%) were referred to as having experienced childhood sexual abuse (a similar proportion to that for the offence as a whole and the proportion of offenders who received imprisonment). Twenty (37%) had suffered physical or emotional abuse or neglect as a child, which again was only slightly lower than the proportion of overall offenders (42.1%) but substantially lower than the 49.5% of offenders who received imprisonment.

Figure 40: Proportion of offenders by type of background issue and selected sentence – wholly suspended sentence versus imprisonment, higher courts, 2008–09



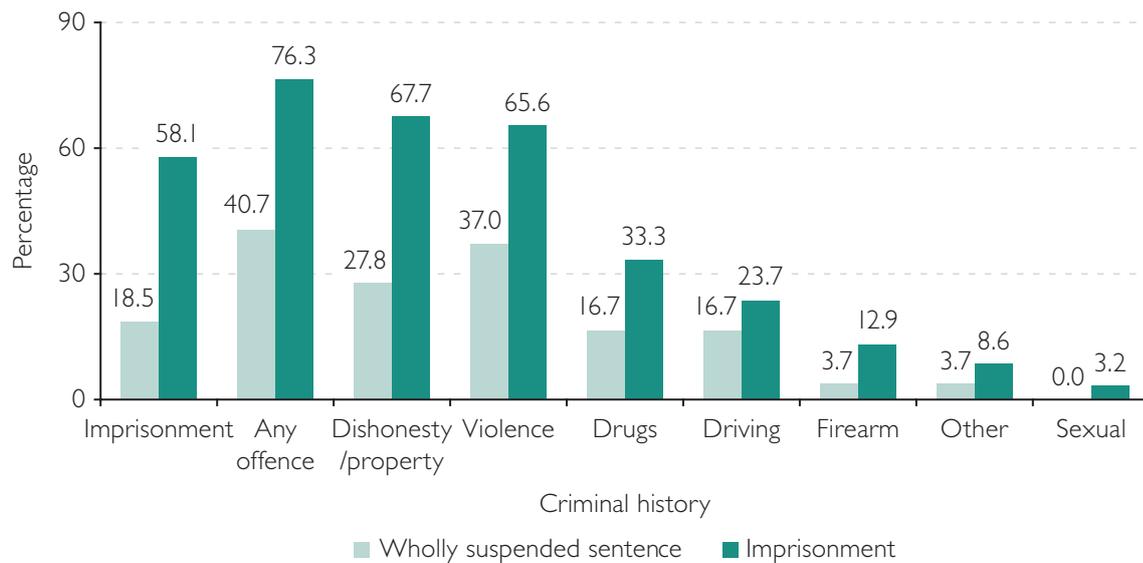
Previous criminal history

Of the 54 offenders who received a wholly suspended sentence, 27 (50.0%) had no previous convictions. Unsurprisingly, given the merciful nature of a wholly suspended sentence for an offence of this kind, a far greater proportion of those receiving a wholly suspended sentence had no previous convictions compared with offenders who received imprisonment (17.2%).

Twenty-two offenders (40.7%) had previous convictions (a lower proportion than the 59% of offenders overall with prior offences) and in five cases whether or not the offender had prior offences was not stated. Twenty had previous convictions for violent offences, 15 for previous dishonesty or property offences, nine for previous drug offences and nine for previous driving offences. Of the offenders with prior offences, 10 had previously been imprisoned (18.5%), which is lower than the proportion of offenders who received imprisonment (58.1%).

Of the 54 offenders who received a wholly suspended sentence, two offenders were on community-based orders, one was serving parole and two were serving a suspended sentence of imprisonment at the time of committing the offence.

Figure 41: Percentage of aggravated burglary charges by criminal history of offender and sentence type, higher courts, 2008–09



Cooperation and plea

Of the 54 offenders who received a wholly suspended sentence, all but one entered a plea of guilty (98.1%). This guilty plea rate was marginally higher than the proportion of offenders who received imprisonment (94.6%).

In eight cases, the sentencing judge mentioned that the offender had assisted the police as an informant.

Community-based orders

Overview

This section examines aggravated burglary sentencing factors for principal aggravated burglary charges that received a community-based order. It also compares each factor with charges that received an imprisonment sentence.

Fourteen principal aggravated burglary charges received a community-based order (7.9%).

Aggravated burglary offences that received a community-based order differed in a number of ways from those that received imprisonment. The offenders were generally younger, less likely to have prior offending and less likely to have personal background issues and the offence was more likely to be a confrontational aggravated burglary and less likely to be robbery related.

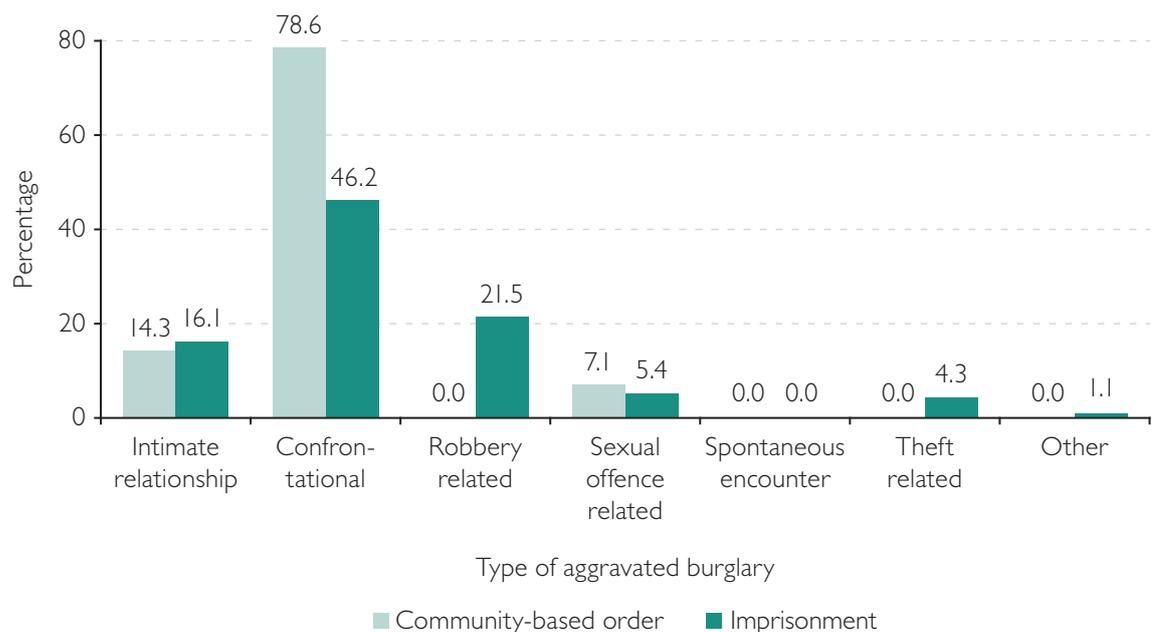
Factors relating to the offence

Type of aggravated burglary

Of the 14 people who were sentenced to a community-based order, 11 committed a confrontational aggravated burglary, two committed an intimate relationship aggravated burglary and one committed an aggravated burglary relating to a sexual offence.

As Figure 42 shows, compared with offenders who received imprisonment, the percentage of offenders who received a community-based order for committing a confrontational aggravated burglary were substantially higher (78.6% versus 46.2%).

Figure 42: Percentage of aggravated burglary by type of aggravated burglary and sentence type – community-based order and imprisonment, higher courts, 2008–09



Aggravating factor

Figure 43 shows the percentage of aggravated burglaries that received a community-based order according to the type of aggravating factor:

In all 14 charges resulting in a community-based order, the offence was aggravated wholly or partly because a person was present and the offender knew of or was reckless to that fact.

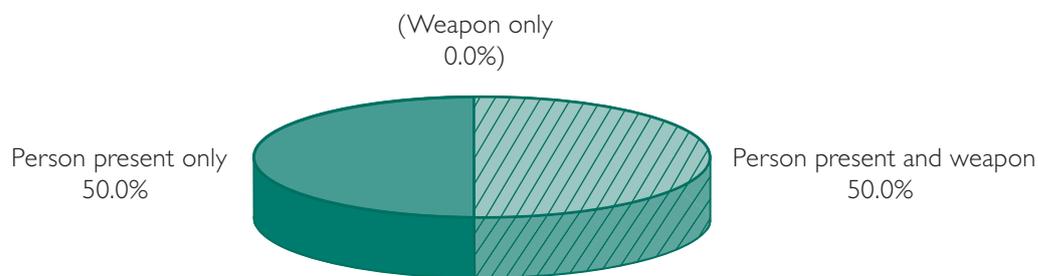
In seven of these cases, the offence was further aggravated because the offender entered the premises with a weapon.

In one case, a weapon was acquired after entry into the premises, and therefore a total of eight cases involved the use of a weapon. In six of these cases, the offender physically used the weapon against a person or people and in two cases the weapon was used to threaten a person or people. In four cases the weapon was a bat, bar or club, in two cases the weapon was a knife and in the remaining two cases the weapon was an 'other weapon'.

For the other seven charges that received a community-based order, the offence was aggravated solely by the presence of a person and the offender's knowledge of or recklessness to that fact. The offender did not enter with a weapon in these cases.

In comparison with aggravated burglaries that received imprisonment, a higher proportion of aggravated burglaries that received a community-based order had a person's presence as the only aggravating factor (50.0% versus 38.7%) and a lower proportion was solely or partially aggravated by a weapon (50.0% versus 57.0%).

Figure 43: Percentage of aggravated burglary charges that received a community-based order by aggravating factor, higher courts, 2008–09

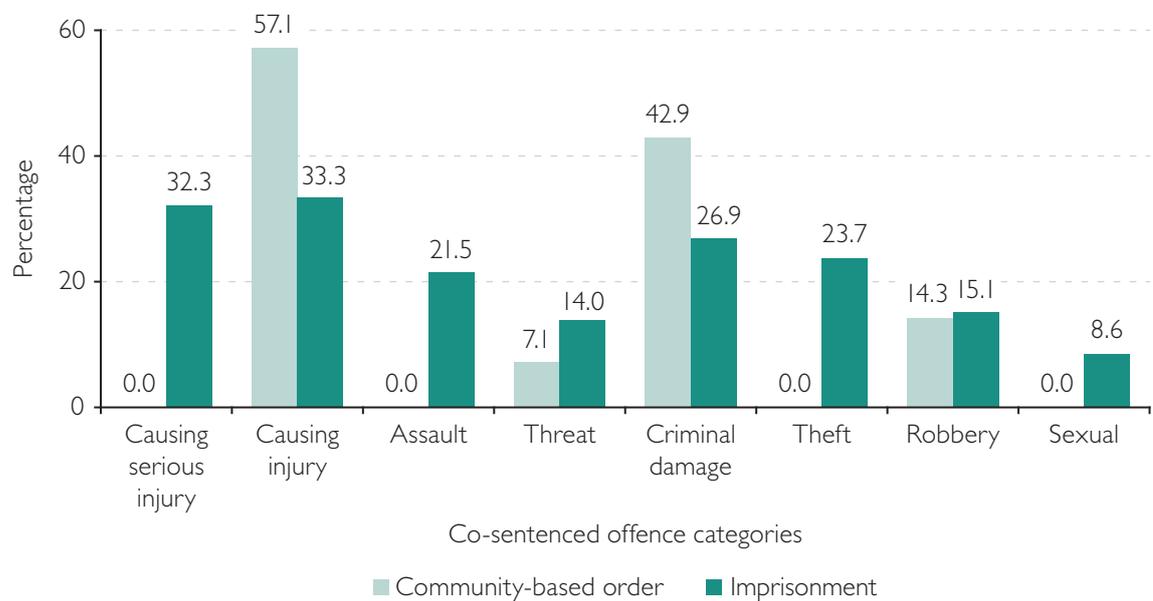


Co-sentenced offences

Offenders who received a community-based order tended to have a smaller number of co-sentenced charges. The maximum number of charges for offenders with a community-based order was three, while more than half (52.7%) of offenders who received imprisonment had more than three co-sentenced charges.

As Figure 44 shows, the most common co-sentenced offence categories for offenders who received a community-based order were causing injury (57.1%) and criminal damage (42.9%). Compared with charges that received imprisonment, a higher proportion of charges that received a community-based order was sentenced with causing injury and criminal damage, but lower proportions were sentenced with causing serious injury, assault, threats, theft and sexual offences.

Figure 44: Percentage of offenders by type of co-sentenced offence and selected sentence type, higher courts, 2008–09



Weapon

Over half (57.1%) of offenders who received a community-based order possessed a weapon during the commission of the aggravated burglary. This is comparable to the percentage of offenders who received an imprisonment sentence (63.1%). Due to the small numbers of offenders who received a community-based order and who possessed a weapon (eight), comparison of the distribution of weapon type and weapon use with offenders who received imprisonment was not made.

Co-offenders

Over half of aggravated burglary offenders who received a community-based order offended with at least one other person (57.1%), a similar proportion to that for offenders who received imprisonment (55.7%).

Type of premises, disguise and relationship with victim

Eleven of the 14 charges on which a community-based order was imposed involved the aggravated burglary of a private dwelling and one charge involved the aggravated burglary of a non-private dwelling (85.7% in dwellings). One case took place in recreational premises and in one case the premises was not specified. Of the 12 cases that occurred in dwellings, the offender knew the victim in all cases: in other words none of the cases involved a victim who was a stranger to the offender.

There was little difference in the proportion of aggravated burglaries that occurred in residential premises between offences that received a community-based order (85.7%) and offences that received an imprisonment sentence (88.2%).

The offender did not wear a disguise in any of the cases in which a community-based order was imposed for the aggravated burglary charge.

Alcohol or drugs

In four out of 14 charges on which a community-based order was imposed, the judge referred to the fact that the offender was under the influence of alcohol or drugs at the time of the offence (28.6%). This was a lower rate than for charges that received imprisonment (52.7%).

Factors relating to the victim

Number, age and gender of victims

Of the 14 aggravated burglary charges that received a community-based order, 10 (71.4%) involved just the one victim. This is a substantially higher percentage than for aggravated burglary charges that received an imprisonment sentence (53.8%).

Only one of the 14 aggravated burglaries that received a community-based order involved a child victim (7.1%) and in this case the child was one of multiple victims. No elderly adults were victims.

A female was a victim in four aggravated burglaries (28.6%), one of which involved no other victims (7.1% of all charges resulting in a community-based order). A male was a victim in 12 aggravated burglaries (85.2%), nine of which involved no other victims (64.3% of all charges resulting in a community-based order).

Relationship of offender to victim

In 11 cases (71.4%) the victim was a friend or acquaintance or otherwise known to the offender (but not a family member). In two cases, the victim was the offender's former partner and in one case the victim was a stranger.

Victim Impact Statement

In seven cases the victim made a Victim Impact Statement, in three cases the victim did not do so and in four cases whether or not the victim had made a Victim Impact Statement was not stated. At 50.0%, this was similar to the level of Victim Impact Statements submitted for aggravated burglaries that received imprisonment (54.7%).

Factors relating to the offender

Age and gender

Aggravated burglary offenders who received a community-based order tended to be younger than those who received imprisonment. As Figure 45 shows, over half (57.1%) of offenders who received a community-based order were under the age of 25 years compared with just one in six (16.2%) of offenders who received imprisonment.

Thirteen offenders (92.9%) were male and one was female.

Figure 45: Percentage of aggravated burglary offenders by age of offender and sentence type – community-based order versus imprisonment, higher courts, 2008–09



Substance abuse, mental illness, childhood abuse and other significant issues

At least one personal background issue was referred to in the sentencing remarks for eight of the 14 aggravated burglary offenders who received a community-based order.

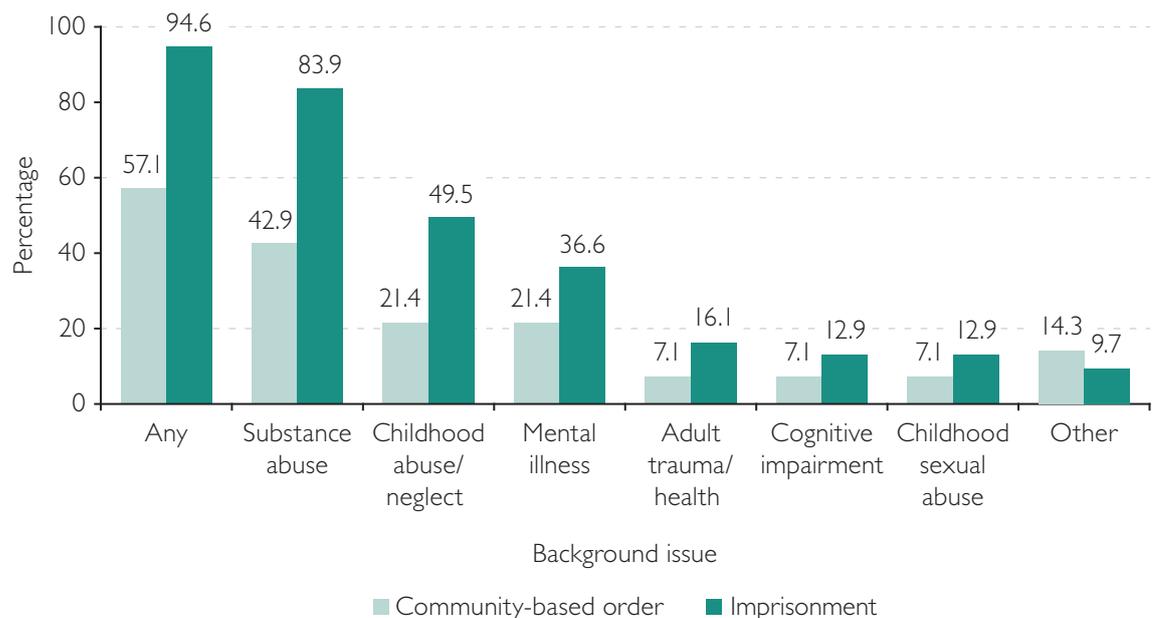
In terms of the type of background issue, a number of the offenders who received a community-based order had significant health or substance abuse issues or were referred to as having suffered trauma as a child or adult:

- Three of the 14 offenders were referred to as having a mental illness and one offender was referred to as having a cognitive impairment.
- Six were referred to as having substance abuse issues.
- One was referred to as having experienced childhood sexual abuse and three were referred to as having experienced physical or emotional abuse or neglect as a child. One was referred to as having experienced trauma or significant health issues as an adult. Two had experienced other issues.

As Figure 46 shows, offenders who received a community-based order tended to have fewer personal background issues than offenders who received imprisonment. Just over half (57.1%) of offenders who received a community-based order had at least one background issue referred to in sentencing remarks, compared with 94.6% of offenders who received imprisonment.

The proportion of offenders with particular types of background issues also differed between those who received a community-based order and those who received imprisonment. Substance abuse characterised only 42.9% of offenders who received a community-based order, nearly half the percentage for offenders who received an imprisonment sentence (83.9%). Offenders were also less likely to have suffered physical abuse or neglect as a child (21.4% versus 35.3%) and a mental illness (21.4% versus 36.6%).

Figure 46: Proportion of offenders by type of background issue and selected sentence – community-based order versus imprisonment, higher courts, 2008–09



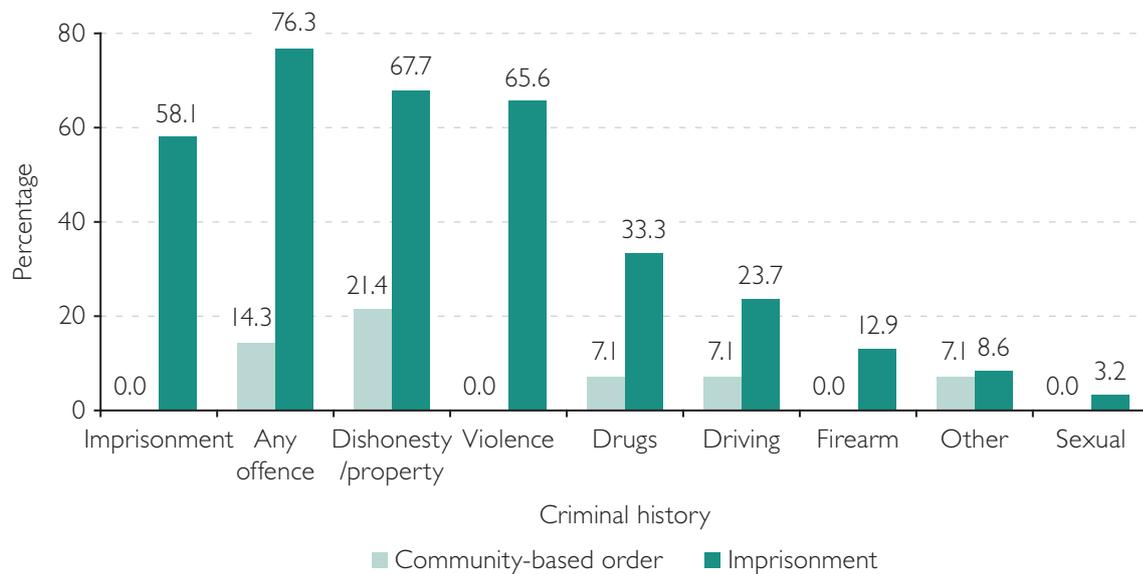
Previous criminal history

As Figure 47 shows, compared with offenders who received imprisonment, those who received a community-based order had less substantial criminal histories. Twelve (78.6%) offenders who received a community-based order had no prior offences compared with 23.7% of offenders who received imprisonment. Those with prior offences had previously committed property and drug offences: none of the offenders who received a community-based order had committed violent, sexual or firearm-related offences.

None of the offenders sentenced to a community-based order had served a prior imprisonment sentence, compared with over half (58.1%) of offenders who received imprisonment.

Only one offender who received a community-based order was subject to an existing order at the time of the offence. That offender was subject to an intervention order.

Figure 47: Percentage of aggravated burglary charges by criminal history of offender and sentence type, higher courts, 2008–09



Cooperation and plea

A lower proportion of offenders who received a community-based order pleaded guilty (85.7%), compared with offenders who received imprisonment (94.6%). A similar proportion of offenders who received a community-based order assisted police as informants (14.2%), compared with offenders who received imprisonment (12.9%).

Appendix 1: Tables of sentencing factors

Factors relating to the offence

Table A1: Definition and coding options for variables relating to the offence

| Variable | Definition | Coding options |
|---------------------------------|--|---|
| Statutory aggravating factor(s) | Offender possessed a weapon when he/she entered the premises and/or a person was present in the premises entered | Person present only Weapon only Person present and weapon Not stated |
| Weapon | Whether offender possessed a weapon or imitation weapon while inside the premises | Yes No Not stated |
| Type of weapon | The type of weapon possessed by the offender | Firearm Knife Bat/bar/club Glass Syringe Other Not stated |
| Method of weapon use | How the weapon was used | Physical Threat |
| Disguise | A disguise was used by the offender during the offence | Yes No Not stated |
| Drugs or alcohol influence | Offender was under the influence of drugs or alcohol at the time of offending | Drugs Alcohol Drugs and alcohol Neither |
| Aggravated burglary type | Type of aggravated burglary | Intimate relationship Confrontational Sexual offence related Robbery Theft Spontaneous Other Unknown |
| Premises | The type of premises subject to the aggravated burglary | Residential (private dwelling or non-private dwelling) Commercial (retail) Other (justice, health) Not stated |
| Co-offenders | Whether the offender had co-offenders | Yes No Not stated |
| Co-sentenced offences | Other offence types sentenced in aggravated burglary case | Statutory reference code |

Factors relating to the victim

Table A2: Definition and coding options for variables relating to the victim

| Variable | Definition | Options |
|------------------------------------|---|---|
| Number of victims | Number of victims present in premises | One Multiple |
| Child victims | At least one child was a victim | Yes No Not stated |
| Elderly adult victims | At least one victim was an elderly adult | Yes No Not stated |
| Gender | Victim's gender | Male Female Both |
| Victim Impact Statement submitted | A Victim Impact Statement was submitted to the court by one or more victims in the case | Yes No Not stated |
| Relationship of offender to victim | The type of relationship | Known to victim – family member (parent, child, partner, other family member) Known to victim – non-family member (acquaintance, ex-partner, other non-family member) Unknown to victim Not stated |

Factors relating to the offender

Table A3: Definition and coding options for variables relating to the offender

| Factor | Definition | Options |
|--|---|---|
| Plea | Plea entered by the offender for a charge | Guilty Not guilty Not stated |
| Assisted police | Offender assisted police as an informant | Yes No |
| Previously imprisoned | Offender had been imprisoned prior to the offence being sentenced | Yes No |
| Previous offending | Offender had been convicted of an offence prior to the aggravated burglary | Yes No |
| Previous violent offence | Offender had been convicted of a violent offence prior to the aggravated burglary | Yes No |
| Previous dishonesty or property offence | Offender had been convicted of a dishonesty or property offence prior to the aggravated burglary | Yes No |
| Previous drug offence | Offender had been convicted of a drug offence prior to the aggravated burglary | Yes No |
| Previous driving offence | Offender had been convicted of a driving offence prior to the aggravated burglary | Yes No |
| Previous firearm offence | Offender had been convicted of a firearm offence prior to the aggravated burglary | Yes No |
| Previous sex offence | Offender had been convicted of a sex offence prior to the aggravated burglary | Yes No |
| Existing order | Offender was serving an existing order at the time of offence | Yes No |
| Type of existing order | Type of order being served by the offender at the time of offending | WSS IVO ICO CBO Bail Parole Other |
| Mental illness history | Offender has suffered from a mental illness in past or at time of offending | Yes No |
| Substance abuse history | Offender has engaged in substance abuse in the past | Yes No |
| Cognitive impairment | Offender has a cognitive impairment | Yes No |
| Childhood sexual abuse | Offender suffered sexual abuse as a child | Yes No |
| Childhood non-sexual abuse, neglect or severe disruption | Offender suffered non-sexual abuse (e.g. physical assault), neglect or severe disruption as a child | Yes No |
| Adult trauma or significant health | Offender has suffered from a physical illness or trauma as an adult | Yes No |

Appendix 2: Data tables

Tables for aggravated burglary type

Offence circumstances

Table A4: Number of aggravated burglary charges by offence circumstances and aggravated burglary type, higher courts, 2008–09

| Offence circumstance | Intimate relationship | Confrontational | Robbery related | Sexual offence related | Theft related | Total ^(a) |
|-----------------------------|-----------------------|-----------------|-----------------|------------------------|---------------|----------------------|
| Aggravating factor | | | | | | |
| Person present and weapon | 12 | 60 | 15 | 2 | 0 | 92 |
| Person present only | 15 | 35 | 5 | 7 | 6 | 75 |
| Weapon only | 0 | 5 | 0 | 0 | 0 | 5 |
| Not stated | 1 | 2 | 1 | 0 | 0 | 6 |
| Weapon used? | | | | | | |
| Yes | 15 | 70 | 16 | 2 | 0 | 110 |
| No | 12 | 29 | 4 | 7 | 6 | 59 |
| Not stated | 1 | 3 | 1 | 0 | 0 | 9 |
| Method of weapon use | | | | | | |
| Physical | 10 | 52 | 4 | 1 | 0 | 73 |
| Threat | 5 | 18 | 10 | 1 | 0 | 35 |
| Not stated | 0 | 2 | 2 | 0 | 0 | 2 |
| Type of weapon | | | | | | |
| Firearm | 1 | 4 | 5 | 1 | 0 | 11 |
| Knife | 4 | 11 | 3 | 1 | 0 | 21 |
| Bottle/glass | 1 | 5 | 0 | 0 | 0 | 6 |
| Bat/bar/club | 4 | 43 | 0 | 0 | 0 | 48 |
| Other weapon | 5 | 7 | 8 | 0 | 0 | 24 |
| Location | | | | | | |
| Dwelling non-private | 1 | 9 | 2 | 1 | 0 | 13 |
| Dwelling private | 26 | 83 | 15 | 8 | 6 | 148 |
| Health | 0 | 0 | 1 | 0 | 0 | 1 |
| Justice | 0 | 1 | 0 | 0 | 0 | 1 |
| Recreational | 0 | 2 | 1 | 0 | 0 | 3 |
| Retail | 0 | 5 | 1 | 0 | 0 | 6 |
| Unspecified location | 1 | 2 | 1 | 0 | 0 | 6 |

Table A4: *cont.*

| Offence circumstance | Intimate relationship | Confrontational | Robbery related | Sexual offence related | Theft related | Total ^(a) |
|--------------------------------------|-----------------------|-----------------|-----------------|------------------------|---------------|----------------------|
| Influence by drugs or alcohol | | | | | | |
| Alcohol | 10 | 40 | 3 | 3 | 0 | 62 |
| Drugs | 0 | 5 | 6 | 0 | 2 | 15 |
| Drugs and alcohol | 4 | 7 | 1 | 2 | 0 | 14 |
| No drugs or alcohol | 1 | 10 | 2 | 1 | 0 | 14 |
| Not stated | 13 | 40 | 9 | 3 | 4 | 73 |
| Co-offenders? | | | | | | |
| Yes | 8 | 75 | 12 | 2 | 1 | 105 |
| No | 20 | 26 | 9 | 7 | 5 | 70 |
| Not stated | 0 | 1 | 0 | 0 | 0 | 3 |
| Disguise? | | | | | | |
| Yes | 1 | 2 | 7 | 1 | 0 | 11 |
| No | 27 | 100 | 13 | 8 | 5 | 165 |
| Not stated | 0 | 0 | 1 | 0 | 1 | 2 |
| Total | 28 | 102 | 21 | 9 | 6 | 178 |

^(a) Includes counts of spontaneous, other and not stated aggravated burglary types.

Victim circumstances

Table A5: Number of aggravated burglary charges by victim circumstances and aggravated burglary type, higher courts, 2008–09

| Victim circumstance | Intimate relationship | Confrontational | Robbery related | Sexual offence related | Theft related | Total ^(a) |
|---|-----------------------|-----------------|-----------------|------------------------|---------------|----------------------|
| Victim Impact Statement submitted? | | | | | | |
| Yes | 16 | 41 | 11 | 8 | 6 | 89 |
| No | 8 | 38 | 6 | 1 | 0 | 56 |
| Not stated | 4 | 23 | 4 | 0 | 0 | 33 |
| Relationship of offender to victim | | | | | | |
| Partner | 1 | 0 | 0 | 0 | 0 | 1 |
| Other related family member | 0 | 2 | 0 | 0 | 0 | 2 |
| Ex-partner | 17 | 0 | 0 | 0 | 0 | 17 |
| Other non-family member | 5 | 84 | 8 | 4 | 0 | 104 |
| Unknown to victim | 4 | 13 | 11 | 5 | 6 | 44 |
| Not stated | 1 | 3 | 2 | 0 | 0 | 8 |
| Number of victims | | | | | | |
| One | 9 | 56 | 11 | 6 | 3 | 89 |
| Two or more | 18 | 45 | 9 | 3 | 2 | 82 |
| Not stated | 1 | 1 | 1 | 0 | 1 | 7 |
| Child victims? | | | | | | |
| Yes | 9 | 18 | 1 | 5 | 1 | 36 |
| No | 17 | 75 | 18 | 4 | 4 | 123 |
| Not stated | 2 | 9 | 2 | 0 | 1 | 19 |
| Gender of victims | | | | | | |
| Both | 11 | 22 | 6 | 1 | 2 | 44 |
| Female | 10 | 3 | 8 | 7 | 1 | 32 |
| Male | 6 | 68 | 5 | 1 | 1 | 85 |
| Not stated | 1 | 9 | 2 | 0 | 2 | 17 |
| Total | 28 | 102 | 21 | 9 | 6 | 178 |

^(a) Includes counts of spontaneous, other and not stated aggravated burglary types.

Offender circumstances

Table A6: Number of aggravated burglary charges by offender circumstances and aggravated burglary type, higher courts, 2008–09

| Offender circumstances | Intimate relationship | Confrontational | Robbery related | Sexual offence related | Theft related | Total ^(a) |
|---------------------------------|-----------------------|-----------------|-----------------|------------------------|---------------|----------------------|
| Age group at sentence | | | | | | |
| Under 20 | 0 | 3 | 2 | 0 | 1 | 7 |
| 20 to 24 | 7 | 30 | 1 | 4 | 0 | 46 |
| 25 to 34 | 9 | 29 | 10 | 1 | 4 | 60 |
| 35 to 44 | 7 | 31 | 7 | 2 | 0 | 47 |
| 45 and over | 5 | 9 | 1 | 2 | 1 | 18 |
| Gender | | | | | | |
| Male | 27 | 96 | 21 | 9 | 6 | 170 |
| Female | 1 | 6 | 0 | 0 | 0 | 8 |
| Offender background | | | | | | |
| Mental illness | 6 | 32 | 10 | 4 | 2 | 57 |
| Substance abuse | 18 | 67 | 18 | 4 | 5 | 121 |
| Cognitive impairment | 2 | 12 | 1 | 4 | 1 | 21 |
| Childhood sexual abuse | 4 | 9 | 5 | 1 | 0 | 20 |
| Childhood abuse/neglect | 13 | 30 | 18 | 4 | 4 | 75 |
| Adult trauma/significant health | 2 | 12 | 5 | 1 | 0 | 24 |
| Other | 2 | 7 | 2 | 1 | 0 | 12 |
| Prior offences? | | | | | | |
| Yes | 16 | 53 | 18 | 4 | 6 | 105 |
| No | 12 | 39 | 3 | 4 | 0 | 61 |
| Not stated | 0 | 10 | 0 | 1 | 0 | 12 |
| Previously imprisoned? | | | | | | |
| Yes | 7 | 33 | 14 | 4 | 6 | 68 |
| No | 19 | 55 | 5 | 5 | 0 | 88 |
| Not stated | 2 | 14 | 2 | 0 | 0 | 22 |
| Existing order? | | | | | | |
| Yes | 8 | 17 | 5 | 2 | 3 | 38 |
| No | 20 | 78 | 16 | 7 | 3 | 131 |
| Not stated | 0 | 7 | 0 | 0 | 0 | 9 |

Table A6: cont.

| Offender circumstances | Intimate relationship | Confrontational | Robbery related | Sexual offence related | Theft related | Total ^(a) |
|---|-----------------------|-----------------|-----------------|------------------------|---------------|----------------------|
| Type of existing order | | | | | | |
| Bail | 2 | 6 | 1 | 1 | 0 | 10 |
| CBO | 0 | 3 | 0 | 0 | 0 | 3 |
| ICO | 1 | 1 | 1 | 0 | 0 | 3 |
| IVO | 3 | 0 | 0 | 0 | 0 | 3 |
| Parole | 0 | 3 | 1 | 0 | 3 | 9 |
| Suspended sentence | 2 | 4 | 2 | 1 | 0 | 10 |
| Prior offence type | | | | | | |
| Violence | 14 | 48 | 16 | 4 | 3 | 90 |
| Dishonesty/property | 11 | 45 | 20 | 4 | 5 | 91 |
| Drugs offences | 8 | 23 | 7 | 2 | 2 | 44 |
| Driving offences | 4 | 22 | 6 | 1 | 1 | 37 |
| Firearm offences | 0 | 6 | 4 | 1 | 1 | 14 |
| Sex offences | 1 | 0 | 0 | 2 | 0 | 3 |
| Other offences | 4 | 5 | 2 | 2 | 0 | 13 |
| Co-sentenced offence category | | | | | | |
| Causing serious injury | 4 | 25 | 5 | 1 | 0 | 36 |
| Causing injury | 12 | 46 | 6 | 1 | 0 | 72 |
| Assault | 9 | 21 | 2 | 0 | 0 | 35 |
| Threats | 8 | 10 | 3 | 1 | 0 | 24 |
| Criminal damage | 12 | 45 | 0 | 1 | 1 | 64 |
| Theft | 6 | 9 | 11 | 1 | 5 | 34 |
| Robbery | 0 | 9 | 11 | 1 | 1 | 22 |
| Sexual | 2 | 1 | 0 | 7 | 0 | 10 |
| Assisted police as an informant? | | | | | | |
| Yes | 5 | 14 | 1 | 2 | 3 | 26 |
| No | 20 | 50 | 17 | 6 | 2 | 101 |
| Not stated | 3 | 38 | 3 | 1 | 1 | 51 |
| Plea | | | | | | |
| Guilty | 27 | 97 | 21 | 6 | 6 | 169 |
| Not guilty | 1 | 5 | 0 | 3 | 0 | 9 |
| Total | 28 | 102 | 21 | 9 | 6 | 178 |

^(a) Includes counts of spontaneous, other and not stated aggravated burglary types.

Sentencing

Table A7: Number of aggravated burglary charges by sentence outcome at charge and case level and aggravated burglary type, higher courts, 2008–09

| Sentence type | Sentence length | Intimate relationship | Confrontational | Robbery related | Sexual offence related | Theft related | Total ^(a) |
|--------------------|-----------------|-----------------------|-----------------|-----------------|------------------------|---------------|----------------------|
| Charges | | | | | | | |
| CBO | 0–2 | 2 | 11 | 0 | 1 | 0 | 14 |
| WSS | <1 | 2 | 5 | 1 | 0 | 0 | 11 |
| | 1–<2 | 3 | 30 | 0 | 2 | 0 | 36 |
| | 2–3 | 1 | 4 | 0 | 0 | 1 | 7 |
| YJC | 0–3 | 1 | 2 | 0 | 0 | 1 | 4 |
| PSS | 0–3 | 2 | 4 | 0 | 0 | 0 | 7 |
| IMP | agg. | 0 | 2 | 0 | 0 | 0 | 3 |
| | <1 | 0 | 1 | 0 | 0 | 0 | 2 |
| | 1–<2 | 5 | 16 | 0 | 0 | 2 | 24 |
| | 2–<3 | 9 | 15 | 11 | 0 | 1 | 38 |
| | 3–<4 | 1 | 5 | 3 | 4 | 1 | 14 |
| | 4–<5 | 0 | 3 | 5 | 0 | 0 | 9 |
| IMP | 5+ | 0 | 1 | 1 | 1 | 0 | 3 |
| | 3–<4 | 1 | 5 | 3 | 4 | 1 | 14 |
| | 4–<5 | 0 | 3 | 5 | 0 | 0 | 9 |
| 5+ | 0 | 1 | 1 | 1 | 0 | 3 | |
| OTH ^(b) | n.a. | 2 | 3 | 0 | 1 | 0 | 6 |
| Cases | | | | | | | |
| CBO | 0–2 | 2 | 11 | 0 | 1 | 0 | 14 |
| WSS | <1 | 1 | 5 | 1 | 0 | 0 | 10 |
| | 1–<2 | 3 | 23 | 0 | 1 | 0 | 28 |
| | 2–3 | 2 | 11 | 0 | 2 | 1 | 17 |
| YJC | 0–3 | 1 | 2 | 0 | 0 | 1 | 4 |
| PSS | 0–3 | 2 | 4 | 0 | 0 | 0 | 7 |
| IMP | <2 | 2 | 12 | 0 | 0 | 0 | 16 |
| | 2–<4 | 10 | 21 | 6 | 0 | 3 | 43 |
| | 4–<6 | 1 | 6 | 7 | 1 | 0 | 16 |
| | 6–<8 | 2 | 3 | 4 | 2 | 1 | 12 |
| | 8–<10 | 0 | 0 | 2 | 2 | 0 | 4 |
| | 10+ | 0 | 1 | 1 | 0 | 0 | 2 |
| OTH ^(b) | n.a. | 2 | 3 | 0 | 0 | 0 | 5 |
| Total | | 28 | 102 | 21 | 9 | 6 | 178 |

^(a) Includes counts of spontaneous, other and not stated aggravated burglary types.^(b) Includes the following sentence types: intensive correction order, fine, adjourned undertaking, partially suspended sentence and residential treatment order.

Tables for aggravated burglary charge and case sentence

Offence circumstances

Table A8: Number of aggravated burglary charges by offence circumstances and charge and case sentence, higher courts, 2008–09

| Offence circumstance | Charge sentence | | | | | | Case sentence: total effective sentence of imprisonment | | | Total |
|-----------------------------|-----------------|-----|--------------|--------------|--------------------------|----------------------|---|----------------------------|-------------------|-------|
| | CBO | WSS | IMP <2 years | IMP 2+ years | IMP total ^(a) | Other ^(b) | < median | Median - < 75th percentile | 75th percentile + | |
| Aggravating factor | | | | | | | | | | |
| Person present and weapon | 7 | 27 | 10 | 38 | 51 | 7 | 25 | 8 | 18 | 92 |
| Person present only | 7 | 24 | 15 | 21 | 36 | 8 | 18 | 10 | 8 | 75 |
| Weapon only | 0 | 2 | 0 | 2 | 2 | 1 | 0 | 2 | 0 | 5 |
| Not stated | 0 | 1 | 1 | 3 | 4 | 1 | 3 | 0 | 1 | 6 |
| Weapon used? | | | | | | | | | | |
| Yes | 8 | 36 | 10 | 46 | 59 | 7 | 26 | 13 | 20 | 110 |
| No | 5 | 16 | 14 | 16 | 30 | 8 | 16 | 7 | 7 | 59 |
| Not stated | 1 | 2 | 2 | 2 | 4 | 2 | 4 | 0 | 0 | 9 |
| Type of weapon | | | | | | | | | | |
| Firearm | 0 | 3 | 0 | 7 | 7 | 1 | 0 | 1 | 6 | 11 |
| Knife | 2 | 2 | 2 | 11 | 14 | 3 | 6 | 2 | 6 | 21 |
| Bat/bar/club | 4 | 22 | 5 | 13 | 20 | 2 | 2 | 0 | 1 | 48 |
| Bottle/glass | 0 | 3 | 2 | 1 | 3 | 0 | 12 | 5 | 3 | 6 |
| Other weapon | 2 | 6 | 1 | 14 | 15 | 1 | 6 | 5 | 4 | 24 |
| Not stated | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Method of weapon use | | | | | | | | | | |
| Physical | 6 | 27 | 7 | 30 | 37 | 3 | 19 | 6 | 12 | 73 |
| Threat | 2 | 9 | 3 | 14 | 20 | 4 | 6 | 6 | 8 | 35 |
| Not stated | 0 | 0 | 0 | 2 | 2 | 0 | 1 | 1 | 0 | 2 |
| Location group | | | | | | | | | | |
| Residential | | | | | | | | | | |
| Dwelling non-private | 1 | 0 | 1 | 10 | 11 | 1 | 6 | 2 | 3 | 13 |
| Dwelling private | 11 | 52 | 23 | 47 | 71 | 14 | 34 | 14 | 23 | 148 |
| Commercial | | | | | | | | | | |
| Retail | 0 | 1 | 0 | 3 | 4 | 1 | 1 | 2 | 1 | 6 |

Table A8: cont.

| Offence circumstance | Charge sentence | | | | | | Case sentence: total effective sentence of imprisonment | | | Total |
|---------------------------------|-----------------|-----|--------------|--------------|--------------------------|----------------------|---|----------------------------|-------------------|-------|
| | CBO | WSS | IMP <2 years | IMP 2+ years | IMP total ^(a) | Other ^(b) | < median | Median - < 75th percentile | 75th percentile + | |
| Other | | | | | | | | | | |
| Health | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 1 |
| Justice | 0 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 1 |
| Recreational | 1 | 0 | 1 | 1 | 2 | 0 | 1 | 1 | 0 | 3 |
| Unspecified location | 1 | 1 | 0 | 2 | 3 | 1 | 3 | 0 | 0 | 6 |
| Drugs/alcohol influence | | | | | | | | | | |
| Alcohol | 3 | 26 | 9 | 17 | 27 | 6 | 18 | 5 | 4 | 62 |
| Drugs | 0 | 1 | 2 | 11 | 13 | 1 | 7 | 3 | 3 | 15 |
| Drugs and alcohol | 1 | 2 | 2 | 7 | 9 | 2 | 3 | 2 | 4 | 14 |
| No drugs or alcohol | 1 | 7 | 1 | 4 | 5 | 1 | 2 | 0 | 3 | 14 |
| Not stated | 9 | 18 | 12 | 25 | 39 | 7 | 16 | 10 | 13 | 73 |
| Co-offenders? | | | | | | | | | | |
| Yes | 8 | 37 | 14 | 35 | 52 | 8 | 23 | 12 | 17 | 105 |
| No | 6 | 16 | 11 | 28 | 39 | 9 | 21 | 8 | 10 | 70 |
| Not stated | 0 | 1 | 1 | 1 | 2 | 0 | 2 | 0 | 0 | 3 |
| Aggravated burglary type | | | | | | | | | | |
| Confrontational | 11 | 39 | 17 | 24 | 43 | 9 | 25 | 10 | 8 | 102 |
| Intimate relationship | 2 | 6 | 5 | 10 | 15 | 5 | 9 | 3 | 3 | 28 |
| Robbery | 0 | 1 | 0 | 20 | 20 | 0 | 5 | 5 | 10 | 21 |
| Sexual predation | 1 | 2 | 0 | 5 | 5 | 1 | 0 | 1 | 4 | 9 |
| Theft | 0 | 1 | 2 | 2 | 4 | 1 | 2 | 1 | 1 | 6 |
| Spontaneous encounter | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| Other | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 0 | 0 | 2 |
| Unknown | 0 | 2 | 2 | 3 | 5 | 0 | 4 | 0 | 1 | 7 |

Table A8: cont.

| Offence circumstance | Charge sentence | | | | | | Case sentence: total effective sentence of imprisonment | | | Total |
|--------------------------------------|-----------------|-----------|--------------|--------------|--------------------------|----------------------|---|----------------------------|-------------------|------------|
| | CBO | WSS | IMP <2 years | IMP 2+ years | IMP total ^(a) | Other ^(b) | < median | Median - < 75th percentile | 75th percentile + | |
| Co-sentenced offence category | | | | | | | | | | |
| Causing serious injury | 0 | 4 | 8 | 22 | 30 | 2 | 12 | 5 | 13 | 36 |
| Causing injury | 8 | 29 | 8 | 22 | 31 | 4 | 19 | 6 | 6 | 72 |
| Assault | 0 | 13 | 8 | 9 | 20 | 2 | 12 | 3 | 5 | 35 |
| Threat | 1 | 6 | 3 | 9 | 13 | 4 | 7 | 3 | 3 | 24 |
| Criminal damage | 6 | 25 | 9 | 13 | 25 | 8 | 16 | 7 | 2 | 64 |
| Theft | 0 | 9 | 5 | 17 | 22 | 3 | 8 | 5 | 9 | 34 |
| Robbery | 2 | 2 | 1 | 13 | 14 | 4 | 2 | 5 | 7 | 22 |
| Sexual | 0 | 1 | 2 | 6 | 8 | 1 | 0 | 1 | 7 | 10 |
| Number of charges in case | | | | | | | | | | |
| 1 | 3 | 0 | 0 | 1 | 1 | 2 | 1 | 0 | 0 | 6 |
| 2 | 4 | 18 | 4 | 16 | 20 | 3 | 10 | 4 | 6 | 45 |
| 3 | 7 | 13 | 7 | 15 | 23 | 5 | 12 | 7 | 4 | 48 |
| 4 | 0 | 11 | 5 | 9 | 14 | 0 | 9 | 3 | 2 | 25 |
| 5 | 0 | 8 | 2 | 12 | 14 | 3 | 8 | 2 | 4 | 25 |
| 6+ | 0 | 4 | 8 | 11 | 21 | 4 | 6 | 4 | 11 | 29 |
| Disguise worn? | | | | | | | | | | |
| Yes | 0 | 2 | 1 | 1 | 8 | 1 | 1 | 4 | 3 | 11 |
| No | 14 | 52 | 0 | 8 | 83 | 16 | 44 | 16 | 23 | 165 |
| Not stated | 0 | 0 | 25 | 55 | 2 | 0 | 1 | 0 | 1 | 2 |
| Total | 14 | 54 | 26 | 64 | 93 | 17 | 46 | 20 | 27 | 178 |

^(a) Includes imprisonment sentences with aggregate terms.

^(b) Includes the following sentence types: intensive correction order, fine, adjourned undertaking, partially suspended sentence and residential treatment order.

Victim circumstances

Table A9: Number of aggravated burglary charges by victim circumstances and charge and case sentence, higher courts, 2008–09

| Victim circumstance | Charge sentence | | | | | | Case sentence: total effective sentence of imprisonment | | | Total |
|---|-----------------|-----|--------------|--------------|--------------------------|----------------------|---|----------------------------|-------------------|-------|
| | CBO | WSS | IMP <2 years | IMP 2+ years | IMP total ^(a) | Other ^(b) | < median | Median - < 75th percentile | 75th percentile + | |
| Victim Impact Statement submitted? | | | | | | | | | | |
| Yes | 7 | 23 | 15 | 36 | 51 | 8 | 22 | 13 | 16 | 89 |
| No | 3 | 21 | 7 | 19 | 28 | 4 | 15 | 6 | 7 | 56 |
| Not stated | 4 | 10 | 4 | 9 | 14 | 5 | 9 | 1 | 4 | 33 |
| Relationship of offender to victim | | | | | | | | | | |
| Partner | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Other related family member | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 2 |
| Ex-partners | 2 | 2 | 4 | 6 | 10 | 3 | 6 | 2 | 2 | 17 |
| Other non-family member | 11 | 35 | 14 | 33 | 49 | 11 | 26 | 9 | 14 | 106 |
| Unknown to victim | 1 | 14 | 6 | 21 | 27 | 2 | 10 | 7 | 10 | 44 |
| Not stated | 0 | 1 | 2 | 3 | 6 | 1 | 4 | 1 | 1 | 8 |
| Number of victims | | | | | | | | | | |
| 1 | 10 | 27 | 14 | 40 | 55 | 4 | 26 | 11 | 18 | 96 |
| 2 or more | 4 | 27 | 12 | 24 | 38 | 13 | 20 | 9 | 9 | 82 |
| Child victims? | | | | | | | | | | |
| Yes | 1 | 14 | 7 | 8 | 16 | 5 | 9 | 3 | 4 | 36 |
| No | 13 | 35 | 17 | 49 | 66 | 9 | 30 | 15 | 21 | 123 |
| Not stated | 0 | 5 | 2 | 7 | 11 | 3 | 7 | 2 | 2 | 19 |
| Elderly adult victims? | | | | | | | | | | |
| Yes | 0 | 3 | 1 | 2 | 3 | 1 | 0 | 2 | 1 | 7 |
| No | 12 | 50 | 19 | 60 | 81 | 15 | 40 | 16 | 25 | 158 |
| Not stated | 2 | 1 | 6 | 2 | 9 | 1 | 6 | 2 | 1 | 13 |

Table A9: *cont.*

| Victim circumstance | Charge sentence | | | | | | Case sentence: total effective sentence of imprisonment | | | Total |
|--------------------------|-----------------|-----------|--------------|--------------|--------------------------|----------------------|---|----------------------------|-------------------|------------|
| | CBO | WSS | IMP <2 years | IMP 2+ years | IMP total ^(a) | Other ^(b) | < median | Median - < 75th percentile | 75th percentile + | |
| Gender of victims | | | | | | | | | | |
| Male | 10 | 32 | 26 | 12 | 38 | 5 | 21 | 8 | 9 | 85 |
| Female | 2 | 4 | 17 | 5 | 23 | 3 | 8 | 6 | 9 | 32 |
| Both | 2 | 14 | 16 | 6 | 22 | 6 | 10 | 4 | 8 | 44 |
| Not stated | 0 | 4 | 5 | 3 | 10 | 3 | 7 | 2 | 1 | 17 |
| Total | 14 | 54 | 26 | 64 | 93 | 17 | 46 | 20 | 27 | 178 |

^(a) Includes imprisonment sentences with aggregate terms.

^(b) Includes the following sentence types: intensive correction order, fine, adjourned undertaking, partially suspended sentence and residential treatment order.

Offender circumstances

Table A10: Number of aggravated burglary charges by offender circumstances and charge and case sentence, higher courts, 2008–09

| Offender circumstance | Charge sentence | | | | | | Case sentence: total effective sentence of imprisonment | | | Total |
|-------------------------------|-----------------|-----|--------------|--------------|--------------------------|----------------------|---|----------------------------|-------------------|-------|
| | CBO | WSS | IMP <2 years | IMP 2+ years | IMP total ^(a) | Other ^(b) | < median | Median - < 75th percentile | 75th percentile + | |
| Age group of offender | | | | | | | | | | |
| Under 20 | 0 | 3 | 0 | 1 | 1 | 3 | 1 | 0 | 0 | 7 |
| 20 to 24 | 8 | 19 | 6 | 8 | 14 | 5 | 10 | 3 | 1 | 46 |
| 25 to 34 | 3 | 15 | 11 | 28 | 41 | 1 | 22 | 7 | 12 | 60 |
| 35 to 44 | 2 | 11 | 7 | 20 | 28 | 6 | 9 | 9 | 10 | 47 |
| 45 and over | 1 | 6 | 2 | 7 | 9 | 2 | 4 | 1 | 4 | 18 |
| Gender of offender | | | | | | | | | | |
| Female | 1 | 4 | 0 | 3 | 3 | 0 | 1 | 2 | 0 | 8 |
| Male | 13 | 50 | 26 | 61 | 90 | 17 | 45 | 18 | 27 | 170 |
| Background issue | | | | | | | | | | |
| Any | 8 | 43 | 24 | 62 | 88 | 14 | 42 | 20 | 26 | 153 |
| Substance abuse | 6 | 26 | 21 | 55 | 78 | 11 | 39 | 17 | 22 | 121 |
| Childhood abuse/neglect | 3 | 20 | 6 | 39 | 46 | 6 | 17 | 13 | 16 | 75 |
| Mental illness | 3 | 16 | 8 | 26 | 34 | 4 | 14 | 9 | 11 | 57 |
| Adult trauma/health | 1 | 6 | 5 | 10 | 15 | 2 | 9 | 3 | 3 | 24 |
| Cognitive impairment | 1 | 4 | 3 | 9 | 12 | 4 | 8 | 1 | 3 | 21 |
| Childhood sexual abuse | 1 | 6 | 3 | 9 | 12 | 1 | 3 | 6 | 3 | 20 |
| Other | 2 | 1 | 1 | 8 | 9 | 0 | 4 | 2 | 3 | 12 |
| Existing order? | | | | | | | | | | |
| Yes | 1 | 5 | 10 | 18 | 28 | 4 | 16 | 5 | 7 | 38 |
| No | 13 | 47 | 13 | 43 | 58 | 13 | 26 | 15 | 17 | 131 |
| Not stated | 0 | 2 | 3 | 3 | 7 | 0 | 4 | 0 | 3 | 9 |
| Type of existing order | | | | | | | | | | |
| Bail | 0 | 0 | 4 | 5 | 9 | 1 | 7 | 0 | 2 | 10 |
| CBO | 0 | 2 | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 3 |
| ICO | 0 | 0 | 0 | 3 | 3 | 0 | 2 | 1 | 0 | 3 |
| IVO | 1 | 0 | 2 | 0 | 2 | 0 | 0 | 1 | 1 | 3 |
| Parole | 0 | 1 | 1 | 6 | 7 | 1 | 4 | 2 | 1 | 9 |
| WSS | 0 | 2 | 2 | 4 | 6 | 2 | 2 | 1 | 3 | 10 |

Table A10: cont.

| Offender circumstance | Charge sentence | | | | | | Case sentence: total effective sentence of imprisonment | | | Total |
|---|-----------------|-----------|--------------|--------------|--------------------------|----------------------|---|----------------------------|-------------------|------------|
| | CBO | WSS | IMP <2 years | IMP 2+ years | IMP total ^(a) | Other ^(b) | < median | Median - < 75th percentile | 75th percentile + | |
| Previously Imprisoned? | | | | | | | | | | |
| Yes | 0 | 10 | 13 | 39 | 54 | 4 | 24 | 15 | 15 | 68 |
| No | 13 | 35 | 8 | 20 | 28 | 12 | 15 | 5 | 8 | 88 |
| Not stated | 1 | 9 | 5 | 5 | 11 | 1 | 7 | 0 | 4 | 22 |
| Prior offences | | | | | | | | | | |
| Yes | 2 | 22 | 17 | 52 | 71 | 10 | 30 | 19 | 22 | 105 |
| No | 12 | 27 | 6 | 9 | 16 | 6 | 11 | 1 | 4 | 61 |
| Not stated | 0 | 5 | 3 | 3 | 6 | 1 | 5 | 0 | 1 | 12 |
| Type of prior offence | | | | | | | | | | |
| Violence | 0 | 20 | 15 | 44 | 61 | 9 | 24 | 18 | 19 | 90 |
| Dishonesty/ property | 3 | 15 | 15 | 46 | 63 | 10 | 28 | 16 | 19 | 91 |
| Drugs | 1 | 9 | 7 | 23 | 31 | 3 | 14 | 11 | 6 | 44 |
| Driving | 1 | 9 | 4 | 17 | 22 | 5 | 14 | 3 | 5 | 37 |
| Firearm | 0 | 2 | 5 | 6 | 12 | 0 | 6 | 2 | 4 | 14 |
| Sexual | 0 | 0 | 1 | 2 | 3 | 0 | 0 | 0 | 3 | 3 |
| Other | 1 | 2 | 2 | 6 | 8 | 2 | 4 | 2 | 2 | 13 |
| Plea | | | | | | | | | | |
| Guilty | 12 | 53 | 24 | 61 | 88 | 16 | 46 | 19 | 23 | 169 |
| Not guilty | 2 | 1 | 2 | 3 | 5 | 1 | 0 | 1 | 4 | 9 |
| Assisted police as an informant? | | | | | | | | | | |
| Yes | 2 | 8 | 2 | 9 | 12 | 4 | 6 | 1 | 5 | 26 |
| No | 7 | 31 | 14 | 39 | 53 | 10 | 25 | 12 | 16 | 101 |
| Not stated | 5 | 15 | 10 | 16 | 28 | 3 | 15 | 7 | 6 | 51 |
| Total | 14 | 54 | 26 | 64 | 93 | 17 | 46 | 20 | 27 | 178 |

^(a) Includes imprisonment sentences with aggregate terms.

^(b) Includes the following sentence types: intensive correction order, fine, adjourned undertaking, partially suspended sentence and residential treatment order.

References

Legislation

Crimes Act 1958 (Vic)

Sentencing Act 1991 (Vic)

Cases

Director of Public Prosecutions v Brown (2004) 10 VR 328

Director of Public Prosecutions v CPD (2009) 22 VR 533

Director of Public Prosecutions v DDJ (2009) 22 VR 444

Director of Public Prosecutions v El Hajje [2009] VSCA 160 (26 June 2009)

Director of Public Prosecutions v Howe (Unreported, Victorian Court of Criminal Appeal, Crockett, ACJ, Murphy and Gray JJ, 6 September 1988)

Director of Public Prosecutions v Moses [2009] VSCA 274 (27 November 2009)

Director of Public Prosecutions v Smeaton [2007] VSCA 256 (15 November 2007)

Hasan v The Queen [2010] VSCA 352 (17 December 2010)

Kane v The Queen [2010] VSCA 213 (23 August 2010)

Leeder v The Queen [2010] VSCA 98 (23 April 2010)

Nguyen v The Queen [2010] VSCA 127 (13 April 2010)

R v Benis [2010] VSCA 62 (25 March 2010)

R v Gruber [2008] VCC (21 November 2008)

R v Hayes (1984) 11 A Crim R 187

R v MacNeil-Brown; R v Piggott (2008) 20 VR 677

R v Mai [2000] VSCA 184 (19 September 2000)

R v Olbrich (1999) 199 CLR 270

R v Oliver & Ors [2009] VCC (17 February 2009)

R v Stephenson [2008] VCC (17 December 2008)

R v Thanh Phong Tran [2009] VSCA 252 (12 October 2009)

R v Yates (Unreported, Victorian Court of Criminal Appeal, McInerney, Kaye and Brooking JJ, 12 February 1982)

Saltalamacchia v The Queen [2010] VSCA 83 (15 April 2010)

Van Hung Le v The Queen [2010] VSCA 199 (20 July 2010)

Walsh v Tattersall (1996) 188 CLR 77

White v The Queen [2010] VSCA 261 (4 October 2010)

Winch v The Queen [2010] VSCA 141 (17 June 2010)

Bibliography

Director of Public Prosecutions, 'Director of Public Prosecutions Calls for Increased Sentences' (Media Release, 31 August 2010).

Judicial College of Victoria, *Sentencing Manual* (2005–) <www.judicialcollege.vic.edu.au>.

Loeber, Rolf and Magda Stouthamer-Loeber, 'Family Factors as Correlates and Predictors of Juvenile Conduct Problems and Delinquency' (1986) 7 *Crime and Justice* 29.

Polk, Kenneth, *When Men Kill: Scenarios of Masculine Violence* (Cambridge University Press, 1994).

Tabachnick, Barbara and Linda Fidell, *Using Multivariate Statistics* (Pearson Education Inc., 5th ed, 2007).

Widom, Cathy and Michael Maxfield, *An Update on the 'Cycle of Violence'*, Research in Brief (National Institute of Justice, 2001).

Victoria, *Parliamentary Debates*, Legislative Assembly, 24 April 1997, 873 (Jan Wade, Attorney-General).