

Sentencing trends in
the higher courts of
Victoria
2016–17 to 2020–21

December 2021
No. 262

Aggravated burglary

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of aggravated burglary² in the County and Supreme Courts of Victoria (the higher courts) from 2016–17 to 2020–21.³ Adjustments made by the Court of Appeal to sentence or conviction as at June 2021 have been incorporated into the data in this Snapshot.

Detailed data on aggravated burglary and other offences is available on [Sentencing Advisory Council Statistics \(SACStat\)](#).

A person who enters a building, or part of a building, as a trespasser and who intends to steal, assault a person in the building or damage the building, or property in the building, is guilty of burglary. The offence of burglary is aggravated if the person has with them a firearm, imitation firearm, offensive weapon, explosive or imitation explosive. The offence is also aggravated if someone else was present in the building or part of the building and the offender knew, or was reckless as to the fact. Aggravated burglary is an indictable offence that carries a maximum penalty of 25 years' imprisonment and/or a fine of 3,000 penalty units.⁴ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court. Aggravated burglary can also be tried summarily if it involves an intent to steal property that does not exceed a \$100,000 value, the Magistrates' Court considers it appropriate and the accused consents.⁵

This Snapshot focuses on cases where aggravated burglary was the principal offence, that is, cases where aggravated burglary was the offence that received the most severe sentence.⁶

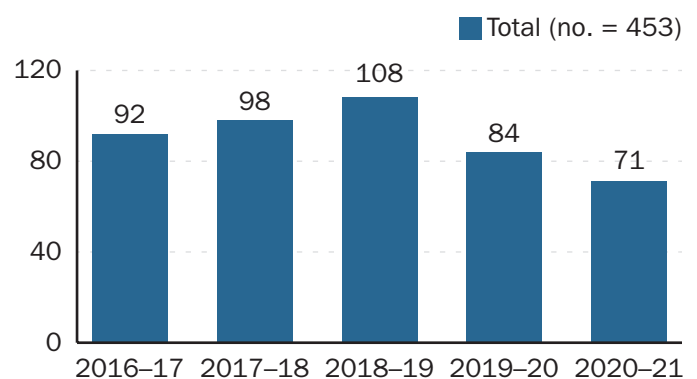
Aggravated burglary was the principal offence in 5.3% of cases sentenced in the higher courts between 2016–17 and 2020–21.

People sentenced

From 2016–17 to 2020–21, 453 people were sentenced in the higher courts for a principal offence of aggravated burglary.

Figure 1 shows the number of people sentenced for the principal offence of aggravated burglary by financial year. The number of people sentenced was highest in 2018–19 (108 people) and lowest in 2020–21 (71 people). The decrease in the number of people sentenced for armed robbery from 84 in 2019–20 to 71 in 2020–21 was probably influenced by the COVID-19 pandemic, which caused delays in court proceedings from March 2020 and throughout the 2020–21 financial year.

Figure 1: The number of people sentenced for aggravated burglary by financial year



Sentence types and trends

Figure 2 shows the proportion of people who received a custodial or non-custodial sentence for the principal offence of aggravated burglary.

A *custodial sentence* involves at least some element of immediate imprisonment or detention.⁷ The rate of custodial sentences was lowest in 2018–19 (89.8%) and highest in 2016–17 (98.9%). Over the five-year period, 93.2% of people were given a custodial sentence.

Table 1 shows the principal sentence imposed for the principal offence of aggravated burglary from 2016–17 to 2020–21.⁸ The *principal sentence* is the most serious sentence imposed for the charge that is the principal offence.⁹ The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished for offences committed after a certain date.¹⁰ Changes to community correction orders may have also influenced sentencing trends over the five years covered by this Snapshot.¹¹

Over the five-year period, more than 90% of all people sentenced for aggravated burglary as the principal offence received a principal sentence of imprisonment (90.7% or 411 of 453 people). The rate of imprisonment sentences was highest in 2016–17 (95.7%) and lowest in 2020–21 (88.7%).

Figure 2: The percentage of people who received a custodial sentence and non-custodial sentence for aggravated burglary by financial year

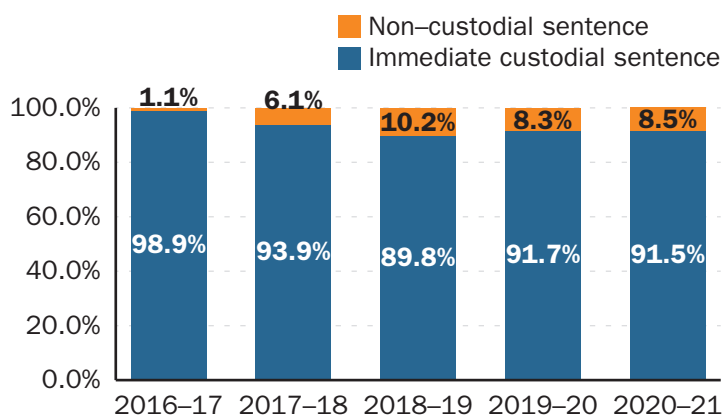


Table 1: The number and percentage of people sentenced for aggravated burglary by principal sentence type and financial year

Sentence type	2016–17	2017–18	2018–19	2019–20	2020–21	Total (2016–17 to 2020–21)
Imprisonment	88 (95.7%)	89 (90.8%)	96 (88.9%)	75 (89.3%)	63 (88.7%)	411 (90.7%)
Community correction order	0 (0.0%)	5 (5.1%)	10 (9.3%)	6 (7.1%)	6 (8.5%)	27 (6.0%)
Youth justice centre order	3 (3.3%)	3 (3.1%)	1 (0.9%)	2 (2.4%)	2 (2.8%)	11 (2.4%)
Other	1 (1.1%)	1 (1.0%)	1 (0.9%)	0 (0.0%)	0 (0.0%)	3 (0.7%)
Fine	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (1.2%)	0 (0.0%)	1 (0.2%)
Total people sentenced	92	98	108	84	71	453

Principal and total effective sentences of imprisonment

The principal sentence describes sentences for the offence at a *charge* level (as described in the previous section). The total effective sentence describes sentences at a *case* level.

The total effective sentence in a case with multiple charges receiving imprisonment is the sentence that results from the court ordering the individual sentences of imprisonment to be served concurrently (at the same time) or wholly or partially cumulatively (one after the other). The total effective sentence in a case with a single charge is the principal sentence.

Therefore, where a case involves multiple charges, the total effective sentence imposed on a person is sometimes longer than the principal sentence. Principal sentences for aggravated burglary must be considered in this broader context.

The following sections analyse the use of imprisonment for the offence of aggravated burglary from 2016–17 to 2020–21.

Principal sentence of imprisonment

Table 2 shows that a total of 411 people received a principal sentence of imprisonment for aggravated burglary. Of these, 387 (94.2%) received a non-aggregate term of imprisonment and 24 (5.8%) received an aggregate term.¹² There were 75 people who received a community correction order in addition to their term of imprisonment.

Table 2: The number and percentage of people sentenced to imprisonment for aggravated burglary by sentence type and financial year

Type of imprisonment sentence	2016–17	2017–18	2018–19	2019–20	2020–21	Total (2016–17 to 2020–21)
Imprisonment	74 (84.1%)	74 (83.1%)	73 (76.0%)	56 (74.7%)	52 (82.5%)	329 (80.0%)
Mix (imprisonment and community correction order)	14 (15.9%)	12 (13.5%)	14 (14.6%)	13 (17.3%)	5 (7.9%)	58 (14.1%)
Total non-aggregate imprisonment	88 (100.0%)	86 (96.6%)	87 (90.6%)	69 (92.0%)	57 (90.5%)	387 (94.2%)
Aggregate imprisonment	0 (0.0%)	1 (1.1%)	4 (4.2%)	1 (1.3%)	1 (1.6%)	7 (1.7%)
Mix (aggregate imprisonment and community correction order)	0 (0.0%)	2 (2.2%)	5 (5.2%)	5 (6.7%)	5 (7.9%)	17 (4.1%)
Total aggregate imprisonment	0 (0.0%)	3 (3.4%)	9 (9.4%)	6 (8.0%)	6 (9.5%)	24 (5.8%)
Total people sentenced to imprisonment	88	89	96	75	63	411

Figure 3 shows the length of imprisonment for the 387 people who received a non-aggregate term. Imprisonment terms ranged from 23 days to 8 years (2 cases),¹³ while the median length of imprisonment was 3 years (meaning that half of the imprisonment terms were below 3 years and half were above).

The most common range of imprisonment terms was 3 to less than 4 years (106 people).

Figure 4 shows the average length of imprisonment imposed on people sentenced for aggravated burglary. Imprisonment terms ranged from 2 years and 10 months in 2019–20 and 2020–21 to 3 years and 3 months in 2016–17. Over the five years, the average length of imprisonment for aggravated burglary was 3 years.

Other offences finalised at the same hearing

Sometimes people prosecuted for aggravated burglary face multiple charges, which are finalised at the same hearing. This section looks at the range of offences that offenders were sentenced for alongside the principal offence of aggravated burglary.

Figure 5 shows the number of people sentenced for the principal offence of aggravated burglary by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 54, and the median was 4 offences. There were 33 people (7.3%) sentenced for the single offence of aggravated burglary. The average number of offences per person was 5.3.

Table 3 (page 5) shows the 10 most common offences, by number and percentage, for people sentenced for aggravated burglary. The last column sets out the average number of offences sentenced per person. For example, 167 of the total 453 people (36.9%) were also sentenced for theft. On average, they were sentenced for 2.3 charges of theft per case.

Figure 3: The number of people sentenced to imprisonment for aggravated burglary by length of imprisonment term, 2016–17 to 2020–21

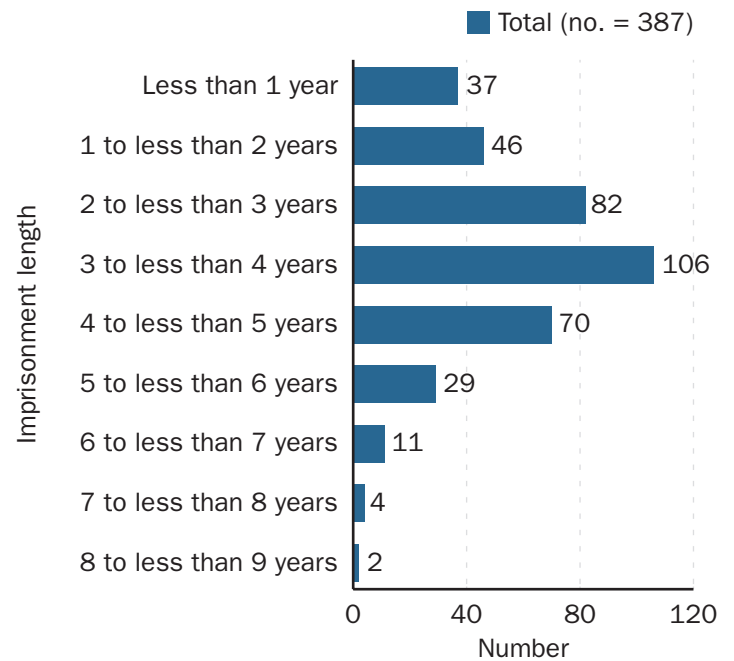


Figure 4: The average length of imprisonment imposed on people sentenced for aggravated burglary, by financial year

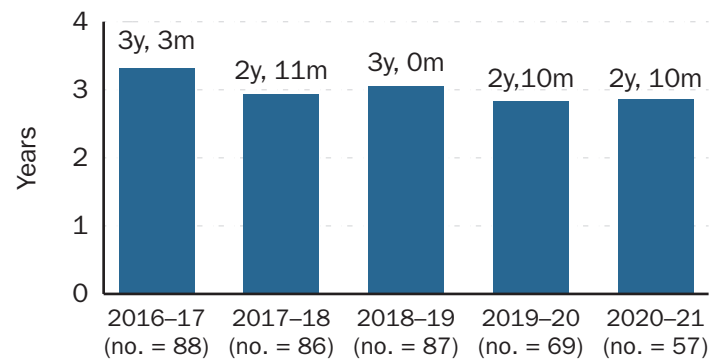


Figure 5: The number of people sentenced for the principal offence of aggravated burglary by the number of sentenced offences per person, 2016–17 to 2020–21

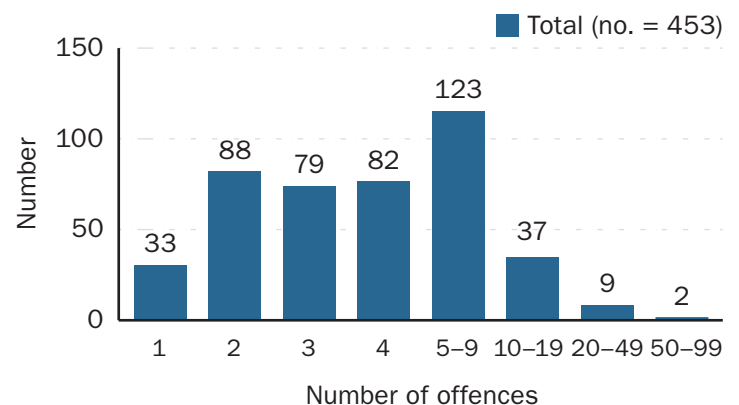


Table 3: The number and percentage of people sentenced for the principal offence of aggravated burglary by the most common offences that were sentenced and the average number of those offences that were sentenced, 2016–17 to 2020–21

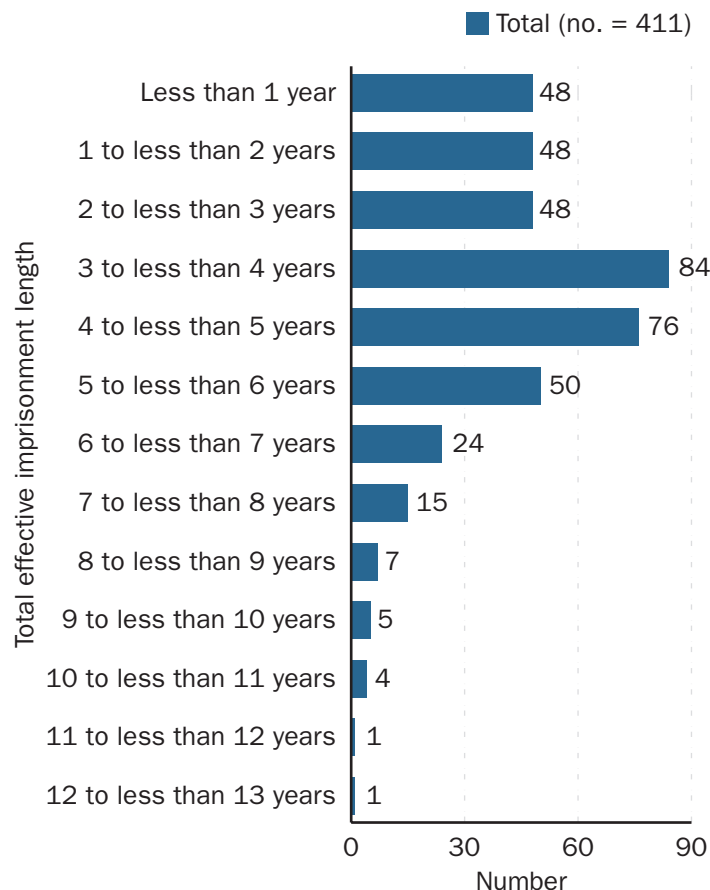
Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Aggravated burglary	453	100.0%	1.1
2. Theft	167	36.9%	2.3
3. Intentionally damage property	114	25.2%	1.2
4. Commit an indictable offence while on bail	87	19.2%	1.4
5. Common law assault	84	18.5%	1.4
6. Causing injury intentionally	82	18.1%	1.2
7. Causing injury recklessly	53	11.7%	1.0
8. Unlawful assault	52	11.5%	1.6
9. Possess a drug of dependence	40	8.8%	1.4
10. Make threat to kill	37	8.2%	1.1
People sentenced	453	100.0%	5.3

Total effective imprisonment terms

Figure 6 shows the 411 people sentenced to imprisonment for aggravated burglary by length of their total effective sentence. Total effective sentences ranged from 3 days to 12 years, while the median total effective sentence was 3 years and 7 months (meaning that half of the total effective sentences were below 3 years and 7 months and half were above).

The most common range of total effective sentences was 3 to less than 4 years (84 people).

Figure 6: The number of people sentenced to imprisonment for aggravated burglary by length of total effective sentence, 2016–17 to 2020–21



Non-parole period

If a person is sentenced to a term of immediate imprisonment of less than 1 year, the court cannot impose a non-parole period. For terms between 1 year and less than 2 years, the court has the discretion to fix a non-parole period. For terms of imprisonment of 2 years or more, the court must impose a non-parole period in most circumstances. If the court fixes a non-parole period, the person must serve that period before becoming eligible for parole. If the court does not set a non-parole period, the person must serve the entirety of their imprisonment term in custody.

Of the 411 people who were sentenced to imprisonment for aggravated burglary, 363 were eligible to have a non-parole period fixed.¹⁴ Of these people, 320 were given a non-parole period (88.2%).¹⁵

Figure 7 shows the number of people sentenced to imprisonment for aggravated burglary, by length of non-parole period. Non-parole periods ranged from 8 months to 9 years, while the median non-parole period was 2 years and 6 months (meaning that half of the non-parole periods were below 2 years and 6 months and half were above).

The most common range of non-parole periods was 2 to less than 3 years (119 people).

Note that it was not possible to determine the length of the non-parole period for 6 people.¹⁶

Total effective sentences of imprisonment and non-parole periods

Figure 8 represents the 314 people who were sentenced to imprisonment for aggravated burglary and for whom the non-parole period could be determined. Figure 8 shows the average total effective sentence and average non-parole period for these people by financial year.

From 2016–17 to 2020–21, the average total effective sentence ranged from 4 years and 1 month in 2017–18 to 4 years and 10 months in 2016–17. Over the same period, the average non-parole period ranged from 2 years and 5 months in 2017–18 and 2020–21 to 3 years in 2016–17.

Further data on total effective sentences of imprisonment and corresponding non-parole periods for aggravated burglary is available on [SACStat](#).

Figure 7: The number of people sentenced to imprisonment for aggravated burglary by length of non-parole period, 2016–17 to 2020–21

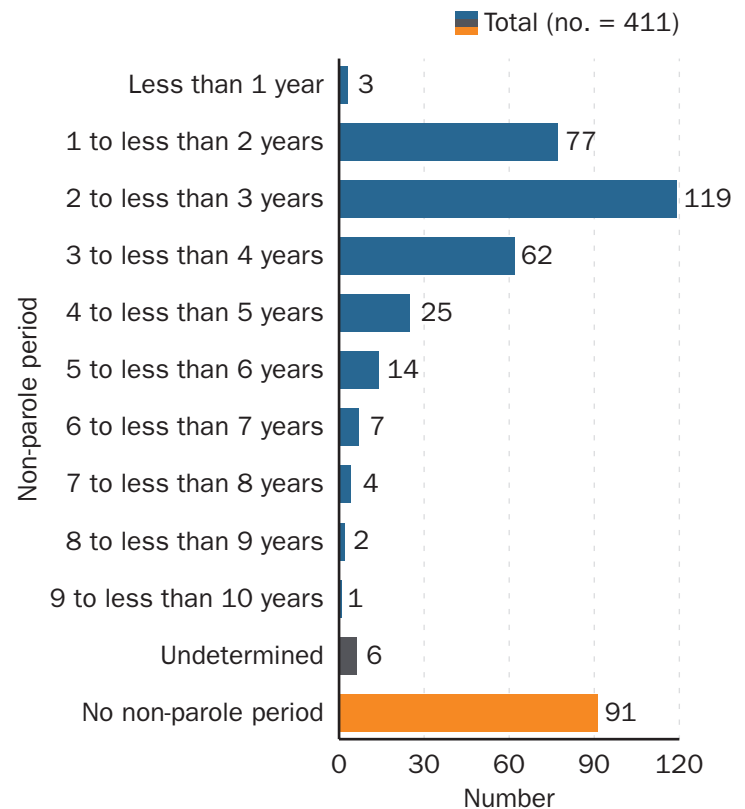
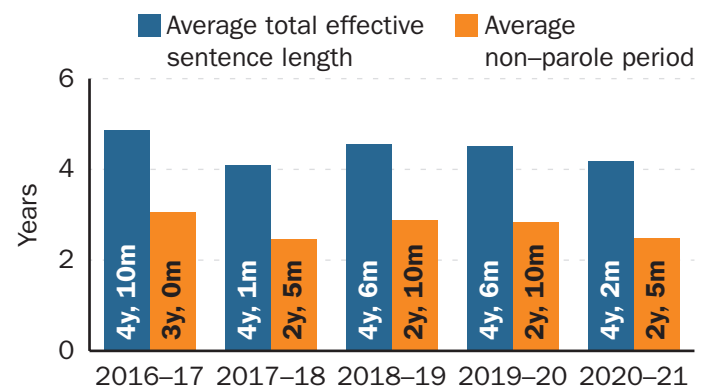


Figure 8: The average total effective sentence and the average non-parole period for people sentenced to imprisonment with a non-parole period for aggravated burglary by financial year



Summary

From 2016–17 to 2020–21, 453 people were sentenced for aggravated burglary in the higher courts. Of these people, 411 (90.7%) were given a principal sentence of imprisonment.

The number and range of offences for which people with a principal offence of aggravated burglary were sentenced help explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. Total effective sentences ranged from 3 days to 12 years, and non-parole periods ranged from 8 months to 9 years. The median total effective sentence was 3 years and 7 months, while the median principal imprisonment length was 3 years.

On average, people sentenced for aggravated burglary were found guilty of 5.3 offences each, with a maximum of 54 offences.

Endnotes

1. This Sentencing Snapshot is an update of Sentencing Snapshot no. 237, which describes sentencing trends for aggravated burglary between 2014–15 and 2018–19.
2. *Crimes Act 1958* (Vic) s 77.
3. Data on first-instance sentence outcomes presented in this Snapshot was obtained from the Strategic Analysis and Review Team at Court Services Victoria. Data on appeal outcomes was collected by the Sentencing Advisory Council from the [Australasian Legal Information Institute](#), and was also provided by the Victorian Court of Appeal. The Sentencing Advisory Council regularly undertakes extensive quality control measures for current and historical data. While every effort is made to ensure that the data analysed in this Snapshot is accurate, the data is subject to revision.
4. The value of a penalty unit changes each year and can be found in the [Victorian Government Gazette](#) and on the [Victorian legislation website](#).
5. *Criminal Procedure Act 2009* (Vic) s 28 sch 2 cl 4.7.
6. If a person is sentenced for a case with a single charge, the offence for that charge is the principal offence. If a person is sentenced for more than one charge in a single case, the principal offence is the offence for the charge that attracted the most serious sentence according to the sentencing hierarchy.
7. Custodial sentences are mostly imprisonment but can also include partially suspended sentences, youth justice centre orders, hospital security orders, residential treatment orders, custodial supervision orders, and combined custody and treatment orders.
8. Principal sentence types can include custodial and non-custodial supervision orders imposed under Part 5 of the *Crimes (Mental Impairment and Unfitness to Be Tried) Act 1997* (Vic) as sentencing outcomes and in the count of people sentenced. These are not sentencing orders as they are imposed in cases in which the accused is found unfit to stand trial or not guilty because of mental impairment. However, they are included in this Snapshot as they are an important form of disposition of criminal charges.
9. For example, if the principal offence receives a combined order of imprisonment and a community correction order pursuant to section 44 of the *Sentencing Act 1991* (Vic), imprisonment is recorded as the most serious sentence type.
10. Suspended sentences have been abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.
11. For example, initially the maximum term of imprisonment that could be combined with a community correction order was set at 3 months, but it was increased to 2 years in September 2014 and reduced to 1 year in March 2017.
12. A court may impose an *aggregate* sentence of imprisonment on multiple charges sentenced at the same time. These sentences are a single term of imprisonment in which the parts of the term attributable to the individual charges are not specified. A case may include a combination of aggregate and non-aggregate sentences.
13. *DPP v Tuite* [2019] VSC 159; *DPP v Till* [2016] VCC 1976.

14. Forty-eight people were not eligible to have a non-parole period fixed because they were given a total effective sentence length of less than 1 year.
15. Forty-three people were eligible to have a non-parole period fixed but did not receive one. This included 41 people who had a sentence length between 1 year and less than 2 years, and 2 people who had a sentence of 2 years or more.
16. Six people were given a non-parole period that related to more than one case (for example, they may have already been serving a prison sentence at the time). It was not possible to separately determine the non-parole periods that related to each individual case

SACStat higher courts – aggravated burglary

<http://www.sentencingcouncil.vic.gov.au/sacstat/home.html>

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