

Aggravated burglary

Sentencing trends in the higher courts of Victoria 2018–19 to 2022–23

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of aggravated burglary in the County and Supreme Courts of Victoria (the higher courts) from 2018–19 to 2022–23.² Adjustments made by the Court of Appeal to sentence or conviction as at June 2023 have been incorporated into the data in this Snapshot.

Detailed data on aggravated burglary and other offences is also available on [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.³ It can be tried summarily in the Magistrates' Court if certain criteria are met.⁴

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.⁵

Aggravated burglary was the principal offence in 5.3% of cases sentenced in the higher courts between 2018–19 and 2022–23.

Effect of COVID-19 on sentencing data

The data in this Snapshot is likely to have been affected by the COVID-19 pandemic – particularly in the 2020–21 and 2021–22 financial years. For instance:

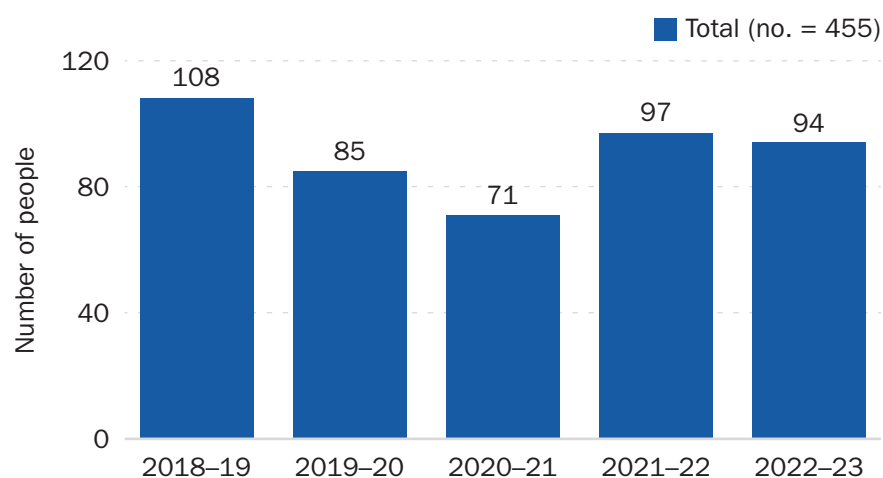
- the number of people sentenced in the period after March 2020 may be lower than in other years because the pandemic caused delays in court proceedings
- court backlogs may have led to prioritisation of more serious cases in that period and therefore higher imprisonment rates than in other years
- prison sentences may be shorter during that period than in other years to reflect the combined effect of:
 - a. guilty pleas having an 'augmented mitigatory effect' (*Worboyes v The Queen* [2021] VSCA 169) because they help to relieve the strain on the justice system and
 - b. the experience of prison being more burdensome due to increased stress on prisoners and their families and changes in custodial conditions.

People sentenced

From 2018–19 to 2022–23, 455 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. There were 94 people sentenced for this offence in 2022–23, down from 97 in the previous year. The number of people sentenced was highest in 2018–19 (108 people) and lowest in 2020–21 (71 people).

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



There were no people who received a custodial or non-custodial supervision order for the principal offence of aggravated burglary during the five-year period.⁶

Sentence types and trends

Figure 2 shows the proportion of people who received an immediate custodial sentence or non-custodial sentence for the principal offence of aggravated burglary. An immediate custodial sentence involves at least some element of immediate imprisonment or detention.⁷ The rate of immediate custodial sentences was lowest in 2021–22 (85.6%) and highest in 2022–23 (92.6%). Over the five-year period, 90.3% of people were given an immediate custodial sentence.

Figure 2: The percentage of people who received an immediate custodial sentence or non-custodial sentence for aggravated burglary, by financial year

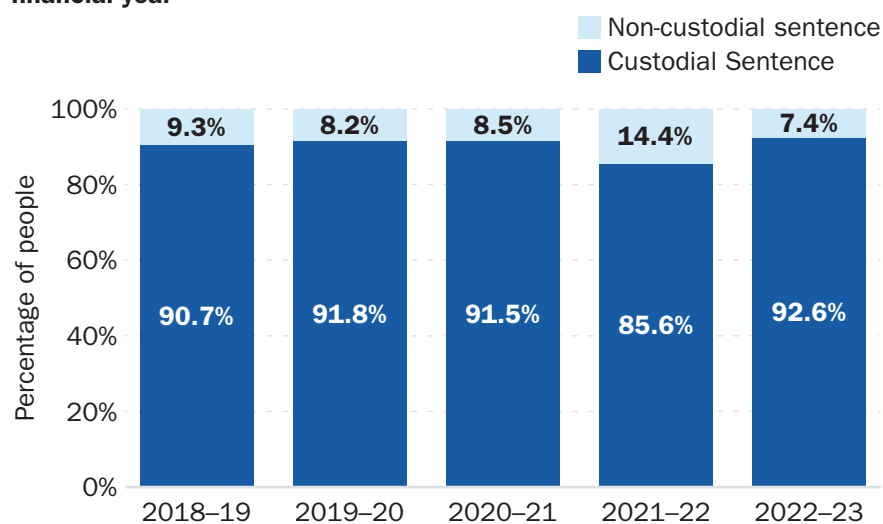


Table 1 (page 3) shows the principal sentence types imposed for aggravated burglary from 2018–19 to 2022–23. The *principal sentence* is the most serious sentence imposed for the principal offence in a case.⁸

Over the five-year period, most people sentenced for aggravated burglary received a principal sentence of imprisonment (89.5% or 407 of 455 people). The remaining people received a community correction order (9.0% or 41 people), a youth justice centre order (0.9% or 4 people), a fine (0.2% or 1 person), a drug and alcohol treatment order (0.2% or 1 person) and a wholly suspended sentence (0.2% or 1 person).

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

Sentence type	2018–19	2019–20	2020–21	2021–22	2022–23	Total
Imprisonment	97 (89.8%)	76 (89.4%)	64 (90.1%)	83 (85.6%)	87 (92.6%)	407 (89.5%)
Community correction order	9 (8.3%)	6 (7.1%)	6 (8.5%)	13 (13.4%)	7 (7.4%)	41 (9.0%)
Youth justice centre order	1 (0.9%)	2 (2.4%)	1 (1.4%)	0 (0.0%)	0 (0.0%)	4 (0.9%)
Other	1 (0.9%)	1 (1.2%)	0 (0.0%)	1 (1.0%)	0 (0.0%)	3 (0.7%)
Total	108	85	71	97	94	455

Principal and total effective sentences of imprisonment

The following sections analyse the use of imprisonment for the principal offence of aggravated burglary from 2018–19 to 2022–23.

The principal sentence describes sentences for the offence at a *charge* level.

The total effective sentence is the sentence imposed for all charges in a case and applies at a case level. Where a case involves multiple charges, the total effective sentence will be either the same as or longer than the principal sentence.

Principal sentences of imprisonment

There were 407 principal sentences of imprisonment for aggravated burglary. Table 2 shows that 372 (91.4%) were non-aggregate imprisonment terms, and 35 were aggregate imprisonment terms.⁹ There were 112 people who received a community correction order in addition to their imprisonment term.

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

Imprisonment type	2018–19	2019–20	2020–21	2021–22	2022–23	Total
Imprisonment	74 (84.1%)	57 (81.4%)	53 (91.4%)	63 (77.8%)	41 (54.7%)	288 (77.4%)
Imprisonment and community correction order	14 (15.9%)	13 (18.6%)	5 (8.6%)	18 (22.2%)	34 (45.3%)	84 (22.6%)
Total non-aggregate imprisonment	88 (90.7%)	70 (92.1%)	58 (90.6%)	81 (97.6%)	75 (86.2%)	372 (91.4%)
Aggregate imprisonment	4 (44.4%)	1 (16.7%)	1 (16.7%)	0 (0%)	1 (8.3%)	7 (20.0%)
Aggregate imprisonment and community correction order	5 (55.6%)	5 (83.3%)	5 (83.3%)	2 (100.0%)	11 (91.7%)	28 (80.0%)
Total aggregate imprisonment	9 (9.3%)	6 (7.9%)	6 (9.4%)	2 (2.4%)	12 (13.8%)	35 (8.6%)
Total people sentenced to imprisonment	97	76	64	83	87	407

Figure 3 shows the imprisonment lengths for the 372 non-aggregate imprisonment terms for the principal offence of aggravated burglary. Imprisonment lengths ranged from 22 days to 8 years,¹⁰ while the median imprisonment length was 2 years and 9 months.

The most common range of imprisonment lengths was 3 to less than 4 years (89 principal sentences).

Figure 3: The number of principal sentences of imprisonment for aggravated burglary, by range of imprisonment lengths, 2018–19 to 2022–23

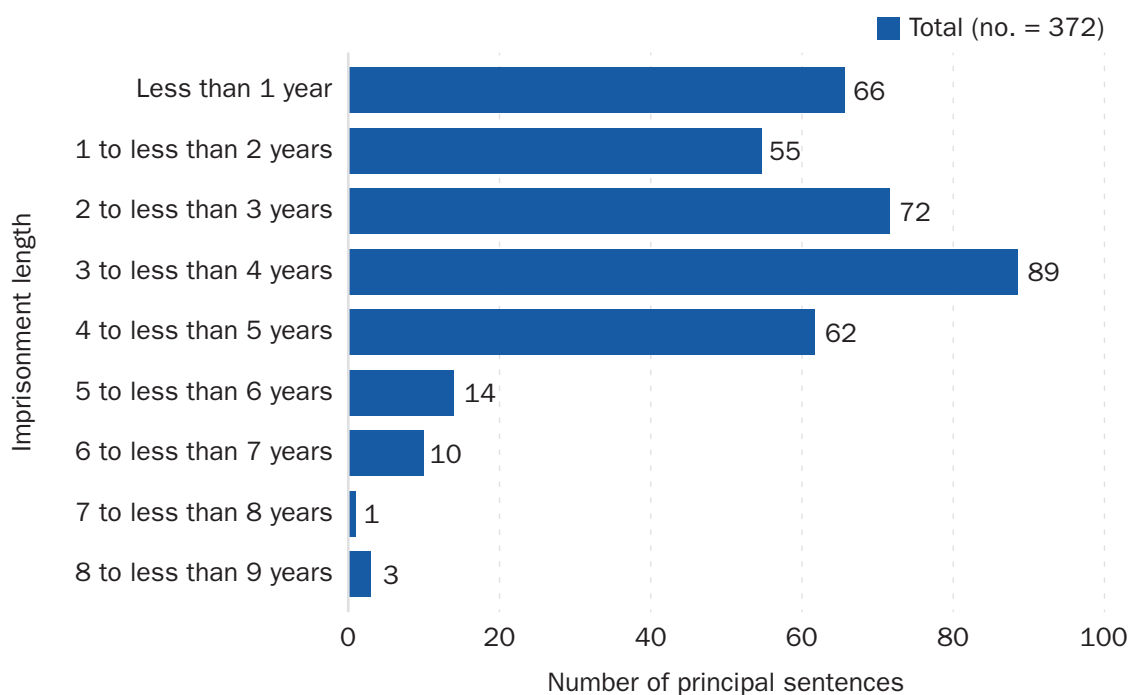
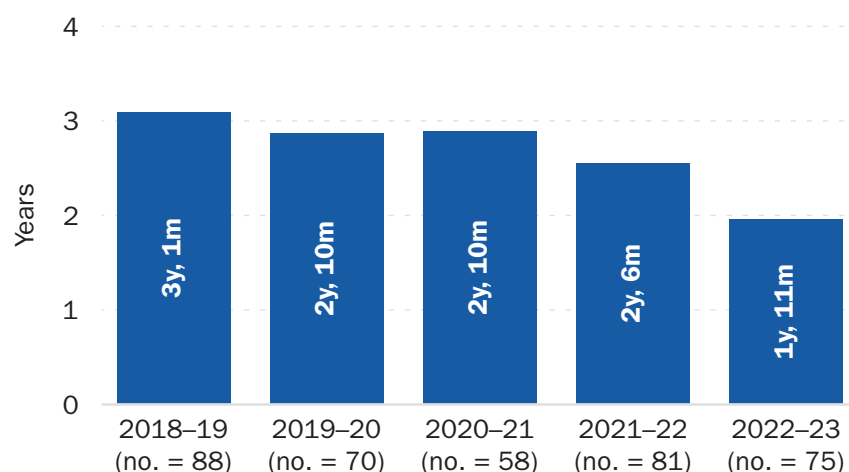


Figure 4 shows the average length of the 372 non-aggregate imprisonment terms for the principal offence of aggravated burglary each financial year. The average imprisonment length decreased from 3 years and 1 month in 2018–19 to 1 year and 11 months in 2022–23. Over the five-year period, the average imprisonment length for aggravated burglary was 2 years and 8 months.

Figure 4: The average imprisonment length imposed for aggravated burglary, by financial year

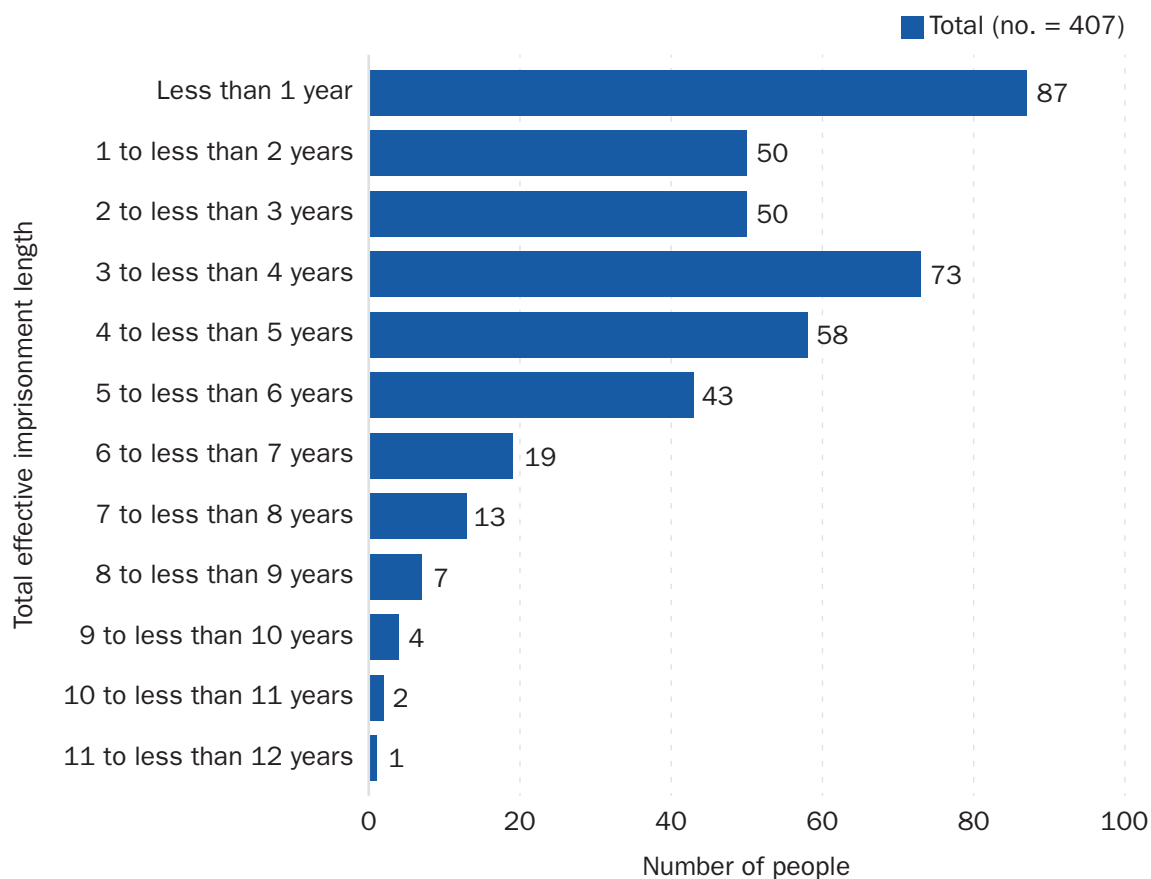


Total effective sentences of imprisonment

Figure 5 shows the lengths of total effective sentences of imprisonment in cases where aggravated burglary was the principal offence. Total effective sentences ranged from 3 days to 11 years,¹¹ while the median total effective sentence was 3 years.

The most common range of total effective sentences was less than 1 year (87 cases).

Figure 5: The number of people sentenced to imprisonment for aggravated burglary, by range of total effective sentences, 2018–19 to 2022–23



Non-parole periods

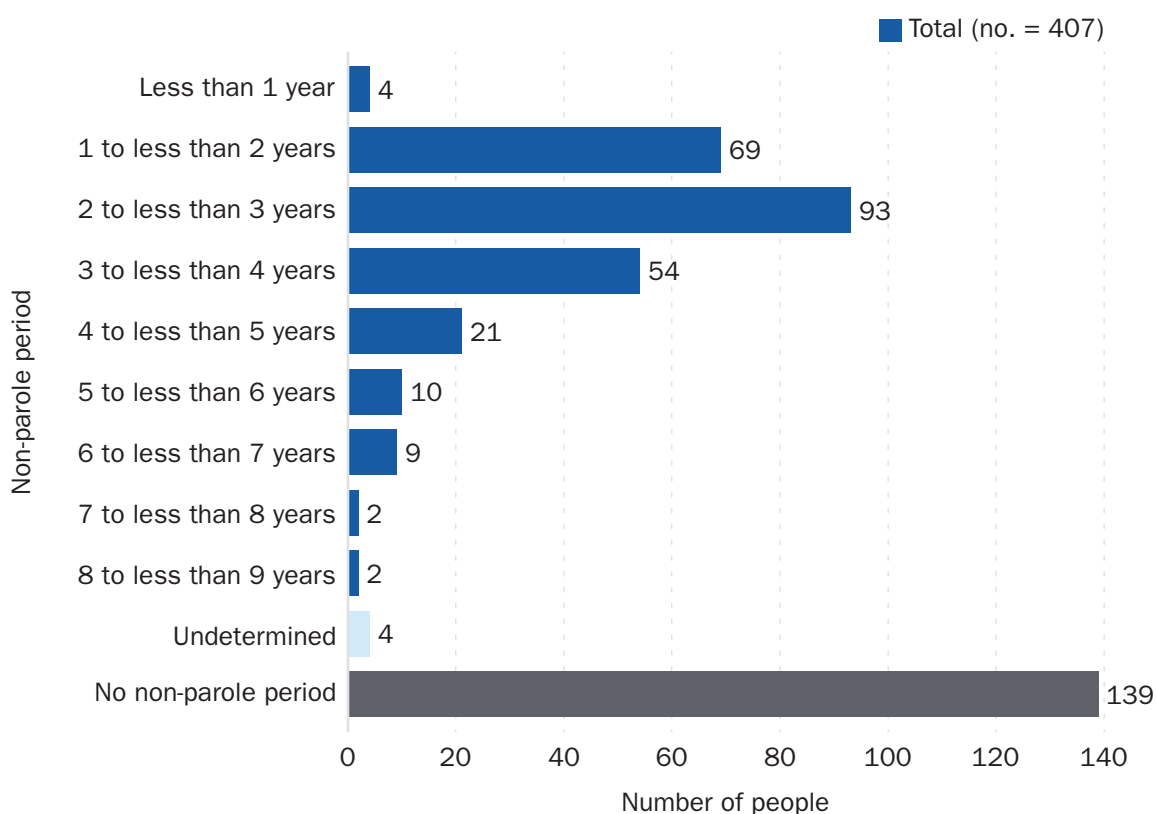
If a person is sentenced to an imprisonment term of less than 1 year, the court cannot impose a non-parole period. For imprisonment terms between 1 year and less than 2 years, the court has the discretion to fix a non-parole period. For imprisonment terms of 2 years or more, the court must impose a non-parole 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 407 people who were sentenced to imprisonment for the principal offence of aggravated burglary, 320 were eligible to have a non-parole period fixed.¹² Of these people, 268 were given a non-parole period (83.8%).¹³ It was not possible to determine the non-parole period for 4 of those people.¹⁴

Figure 6 shows the lengths of the 264 non-parole periods for people sentenced to imprisonment for the principal offence of aggravated burglary. Non-parole periods ranged from 8 months to 8 years and 4 months, while the median non-parole period was 2 years and 5 months.

The most common range of non-parole periods was 2 to less than 3 years (93 people).

Figure 6: The number of people sentenced to imprisonment for aggravated burglary, by range of non-parole period, 2018–19 to 2022–23

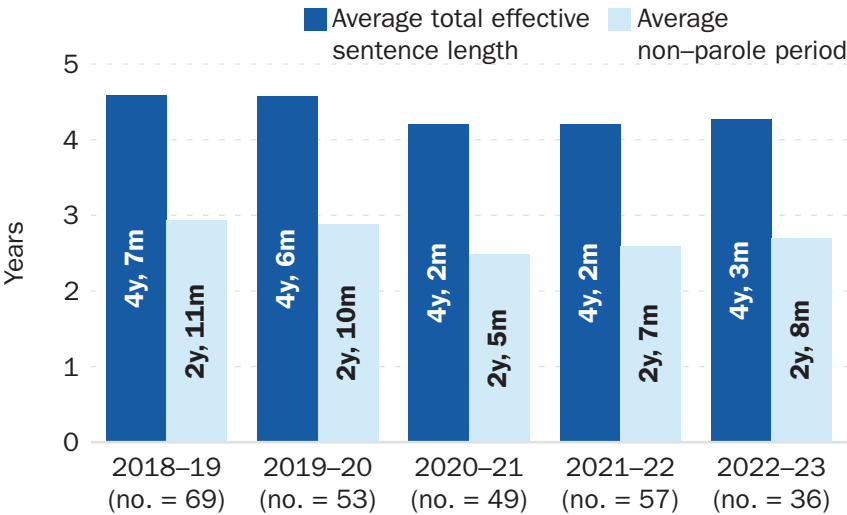


Average total effective sentences of imprisonment and non-parole periods

Figure 7 represents the average total effective sentence and average non-parole period each year for the 264 people who were sentenced to imprisonment for the principal offence of aggravated burglary and who received a non-parole period that could be determined.

The average total effective sentence ranged from 4 years and 2 months in 2020–21 and 2021–22, to 4 years and 7 months in 2018–19. Over the same period, the average non-parole period ranged from 2 years and 5 months in 2020–21 to 2 years and 11 months in 2018–19.

Figure 7: The average total effective sentences and non-parole periods for people sentenced to imprisonment with a non-parole period for aggravated burglary, by financial year



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 8 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 68, and the median was 4 offences. There were 44 people (9.7%) sentenced for the single offence of aggravated burglary. The average number of offences per person was 5.3.

Figure 8: The number of people sentenced for the principal offence of aggravated burglary, by the number of sentenced offences per person, 2018–19 to 2022–23

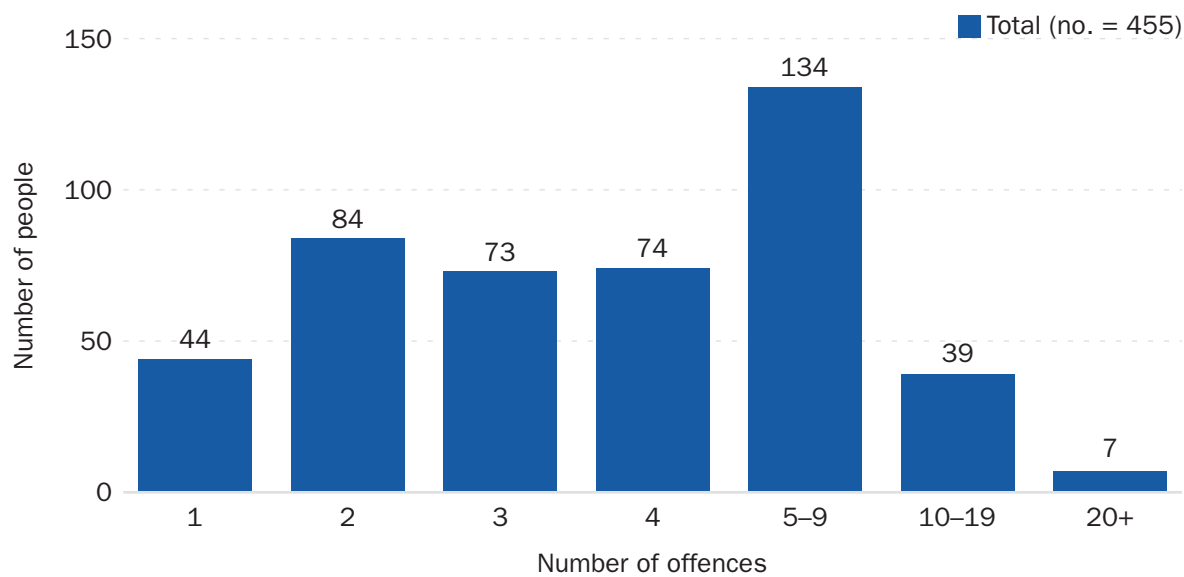


Table 3 shows the 10 most common offences co-sentenced alongside aggravated burglary. The last column sets out the average number of offences sentenced per case. For example, 154 of the total 455 people (33.8%) were also sentenced for theft. On average, those 154 people were sentenced for 2.4 charges of theft per case.

Table 3: The number and percentage of people sentenced for the principal offence of aggravated burglary, by the most common offences that were sentenced alongside aggravated burglary, 2018–19 to 2022–23

Offence	Number of cases	Percentage of cases	Average number of proven offences per case
Aggravated burglary	455	100.0%	1.1
Theft	154	33.8%	2.4
Intentionally destroy or damage property	138	30.3%	1.4
Commit an indictable offence while on bail	107	23.5%	1.2
Intentionally causing injury	88	19.3%	1.2
Common law assault	85	18.7%	1.3
Recklessly causing injury	51	11.2%	1.0
Possess a drug of dependence	45	9.9%	1.4
Make threat to kill	41	9.0%	1.1
Unlawful assault	37	8.1%	1.5
Total	455	100.0%	5.3

Summary

From 2018–19 to 2022–23, 455 people were sentenced in the higher courts for the principal offence of aggravated burglary. Of those 455 people, 407 (89.5%) received a principal sentence of imprisonment.

Total effective sentences of imprisonment ranged from 3 days to 11 years, and non-parole periods ranged from 8 months to 8 years and 4 months. The median total effective sentence was 3 years, while the median non-parole period was 2 years and 5 months.

On average, people sentenced for the principal offence of aggravated burglary were sentenced for 5.3 offences each, with a maximum of 68 offences.

Further data on aggravated burglary is available on [SACStat](https://www.sentencingcouncil.vic.gov.au/sacstat/index.html):
<https://www.sentencingcouncil.vic.gov.au/sacstat/index.html>

Endnotes

1. This Sentencing Snapshot is an update of [Sentencing Snapshot no. 262](#), which describes sentencing trends for aggravated burglary between 2016–17 and 2020–21.
2. Data on first-instance sentencing 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.
3. *Crimes Act 1958* (Vic) s 77(1).
4. *Criminal Procedure Act 2009* (Vic) s 28, sch 2 cl 4.7.
5. If a person is sentenced for a case with a single charge, that offence is the principal offence. If a person is sentenced for more than one charge in a single case, the principal offence is the offence that attracted the most serious sentence according to the sentencing hierarchy.
6. Custodial and non-custodial supervision orders 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 mentioned in this Snapshot as they are an important form of disposition of criminal charges.
7. Immediate custodial sentences are mostly imprisonment, but they can also include partially suspended sentences, youth justice centre orders, hospital security orders, residential treatment orders, and combined custody and treatment orders.
8. 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 principal sentence.
9. A court may impose an *aggregate* sentence of imprisonment on multiple charges sentenced at the same time. These sentences are a single imprisonment term, but the sentences imposed on individual charges are not specified. A case may include a combination of aggregate and non-aggregate sentences.
10. *DPP v Tuite* [2019] VSC 159; *DPP v Deen and Anor* [2018] VCC 1558 (2 offenders each received 8 years' imprisonment for aggravated burglary).
11. *DPP v Begg & Ors* [2019] VCC 337 (1 of 3 co-offenders received a total effective sentence of 11 years' imprisonment).
12. 87 people were not eligible to have a non-parole period fixed because they were given a total effective sentence of less than 1 year.
13. 52 people were eligible to have a non-parole period fixed but did not receive one. This included 45 people who had an imprisonment length between 1 year and less than 2 years, and 7 people who had an imprisonment length of 2 years or more.
14. 4 people were given a non-parole period that related to more than 1 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.

Authored by Zsombor Bathy

Published by the Sentencing Advisory Council, Melbourne Victoria Australia

© Copyright State of Victoria, Sentencing Advisory Council, 2024

ISSN 1836-6384 (Online)

Authorised by the Sentencing Advisory Council, Level 3, 333 Queen Street, Melbourne

Telephone: 1300 363 196

contact@sentencingcouncil.vic.gov.au

www.sentencingcouncil.vic.gov.au

Disclaimer: The Sentencing Advisory Council draws data for the Sentencing Snapshots from a variety of sources. All original data sources are noted. The Sentencing Advisory Council makes every effort to ensure that data used in the Sentencing Snapshots is accurate at the time of publishing.