

Sentencing snapshot: Break and enter, 2009-2010

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Aim: To describe the penalties imposed on adult offenders convicted of break and enter.

Summary: The most common penalty imposed on an offender convicted of break and enter was a prison sentence. Prison penalties were imposed on 64 per cent of offenders convicted of an aggravated break and enter offence and 49 per cent of offenders convicted of a non-aggravated break and enter offence. The average aggregate sentence for aggravated break and enter was 40 months, with an average minimum term of 22 months. The average aggregate sentence for non-aggravated break and enter was 16 months, with an average minimum term of 10 months.

Keywords: break and enter, burglary, penalty, prison, sentence length

Introduction

This Bureau Brief describes sentencing outcomes for adult offenders convicted of the offence of break and enter between 2009 and 2010 in the NSW Local and Higher Criminal Courts.¹ Break and enter includes breaking and/or entering a dwelling-house and committing, or intending to commit, an indictable offence. Under the *Crimes Act 1900*, the maximum penalty for break and enter varies between 10 and 25 years. If an offender is found to be guilty of aggravated break and enter they can receive a penalty of up to 20 years imprisonment. Circumstances of aggravation include those where: an offender possesses or uses a weapon; the break and enter offence is carried out in the company of one or more other persons; the offender inflicts violence on an individual; the offender deprives an individual of their liberty; and/or the offender knows that a person or persons are in the place where the offence is committed. If an offender is found guilty of a specially aggravated offence, such as if the offender is armed with a dangerous weapon or wounds or intentionally or recklessly inflicts grievous bodily harm on someone, the maximum penalty is 25 years imprisonment.

In what follows we define break and enter according to the Australian and New Zealand Standard Offence Classification (Australian Bureau of Statistics, 2011) as the unlawful entry

of a structure with the intent to commit an offence, where the entry is either forced or unforced. Further, we separate break and enter offenders into two groups—those convicted of aggravated break and enter and those convicted of non-aggravated break and enter. An aggravated break and enter is defined as one where violence is inflicted on an individual and/or the offender possesses or uses a weapon and/or the break and enter offence is carried out in the company of one or more other persons. All other burglaries are classified as non-aggravated burglaries.

Age, gender and prior record of offenders

Over the years 2009 and 2010, 3,581 adult offenders, 3,280 males and 301 females, were convicted of break and enter.² More than three quarters of these convictions were for non-aggravated break and enter. Table 1 shows the distribution of offenders convicted of break and enter by age at time of the offence and gender.

It can be seen that approximately 40 per cent of offenders convicted of break and enter were between 18 and 24 years of age. The average age of convicted break and enter offenders was 29 years. Those convicted of aggravated break and enter tended to be younger than those convicted of non-aggravated break and enter (average age 27 years vs. 29 years).

Table 1. Age and gender of offenders convicted of aggravated and non-aggravated break and enter, 2009-2010

		Aggravated (n=634)		Non-aggravated (n=2,947)		Total (n=3,581)	
		n	%	n	%	n	%
Gender	Male	585	92.3	2,695	91.4	3,280	91.6
	Female	49	7.7	252	8.6	301	8.4
Age group	18-21 years	217	34.2	741	25.1	958	26.8
	22-24 years	100	15.8	406	13.8	506	14.1
	25-29 years	117	18.5	543	18.4	660	18.4
	30-34 years	82	12.9	484	16.4	566	15.8
	35-39 years	60	9.5	375	12.7	435	12.1
	40-44 years	31	4.9	224	7.6	255	7.1
	45 years and over	27	4.3	174	5.9	201	5.6

Table 2. Number of prior convictions of offenders convicted of aggravated and non-aggravated break and enter, 2009-2010

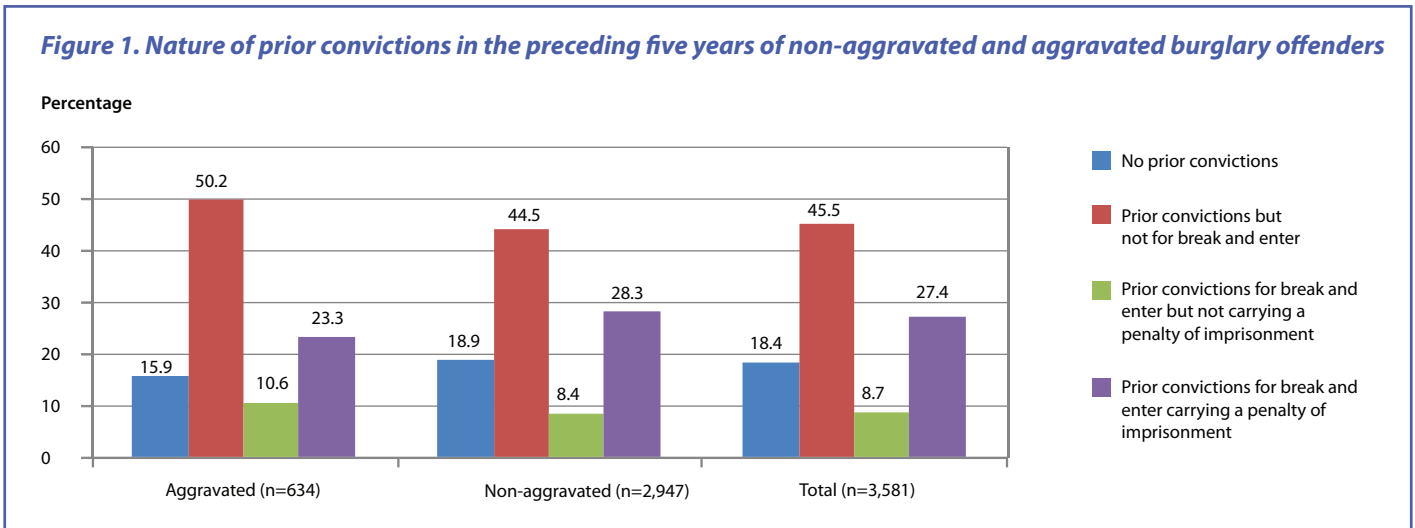
		Aggravated (n=634)		Non-aggravated (n=2,947)		Total (n=3,581)	
		n	%	n	%	n	%
Prior convictions	0	101	15.9	558	18.9	659	18.4
	1	84	13.2	428	14.5	512	14.3
	2	104	16.4	391	13.3	495	13.8
	3	89	14.0	370	12.6	459	12.8
	4	60	9.5	333	11.3	393	11.0
	5+	196	30.9	867	29.4	1,063	29.7

Table 2 shows the number of prior convictions of offenders convicted of break and enter over the last five years.

Less than one in five (18%) offenders convicted of break and enter had no convictions, for any offence, in the preceding five years. The average number of prior convictions in the last five years was 3.3, with more than 30 per cent of offenders having more than five convictions in the preceding five years. On average, those convicted of aggravated and non-aggravated break and enter had similar numbers of prior convictions (3.4 and 3.2, respectively).

Figure 1 shows the proportions of offenders convicted of break and enter who have (a) no prior convictions, (b) prior convictions not for break and enter, (c) prior convictions for break and enter without imprisonment or (d) prior convictions for break and enter with imprisonment. More than one in four offenders (27%) had prior convictions for break and enter in the preceding five years that had resulted in a prison sentence. An additional nine per cent of offenders had prior break and enter convictions that did not result in a prison sentence.

Figure 1. Nature of prior convictions in the preceding five years of non-aggravated and aggravated burglary offenders



Sentence types

Table 3 shows the distribution of penalty types broken down by whether the offender was convicted of aggravated or non-aggravated break and enter.

A prison sentence was imposed on approximately half of those convicted of break and enter. A greater proportion of those convicted of aggravated break and enter received a prison sentence than those convicted of non-aggravated break and enter (64% vs 49%). The next most common penalty imposed on those convicted of aggravated break and enter was a suspended sentence (21%). For those convicted of non-aggravated break and enter the next most common penalty was a bond (20%).

Figure 2 shows the percentage of offenders convicted of break and enter who were given a sentence of imprisonment, broken down by the number of prior convictions in last five years.

Imprisonment was more likely to be imposed on those convicted of aggravated break and enter than non-aggravated break and enter. However, for both offenders of aggravated and non-aggravated break and enter the proportion imprisoned increased with increasing numbers of prior convictions in the preceding five years. Of those convicted of non-aggravated break and enter with no prior convictions, 16 per cent received a prison sentence. In contrast, 27 per cent of those convicted of aggravated break and enter with no prior convictions received a prison sentence. With five or more prior convictions, 74 per cent of non-aggravated break and enter offenders and 85 per cent of aggravated break and enter offenders were given a prison sentence.

Figure 3 shows the percentage of convicted offenders imprisoned broken down according to whether the break and enter was non-aggravated or aggravated and whether they had (a) no prior convictions, (b) prior convictions in the last five years but not for break and enter or (c) prior convictions for break and enter in the last five years without imprisonment or (d) prior convictions for break and enter in the last five years with imprisonment.

Table 3. Principal penalty of offenders convicted of aggravated and non-aggravated break and enter, 2009-2010

	Aggravated (n=634)		Non-aggravated (n=2,947)		Total (n=3,581)	
	n	%	n	%	n	%
Imprisonment	406	64.0	1,456	49.4	1,862	52.0
Home Detention, Periodic Detention & Intensive Correction Order	21	3.3	51	1.7	72	2.0
Suspended Sentence	136	21.5	457	15.5	593	16.6
Community Service Order	14	2.2	251	8.5	265	7.4
Bond	48	7.6	597	20.3	645	18.0
Bond without conviction, no conviction recorded	8	1.3	77	2.6	85	2.4
Other	1	0.2	58	2.0	59	1.6

Figure 2. Imprisonment of offenders convicted of aggravated and non-aggravated break and enter, by number of prior convictions, 2009-2010

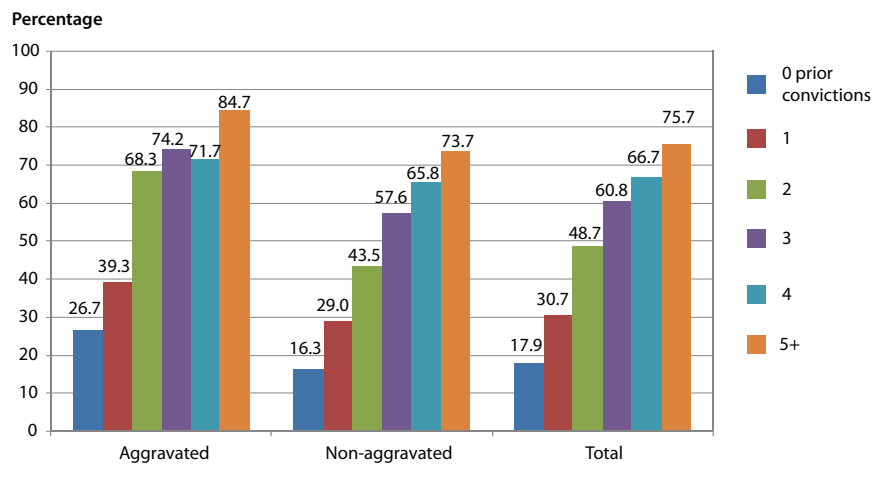
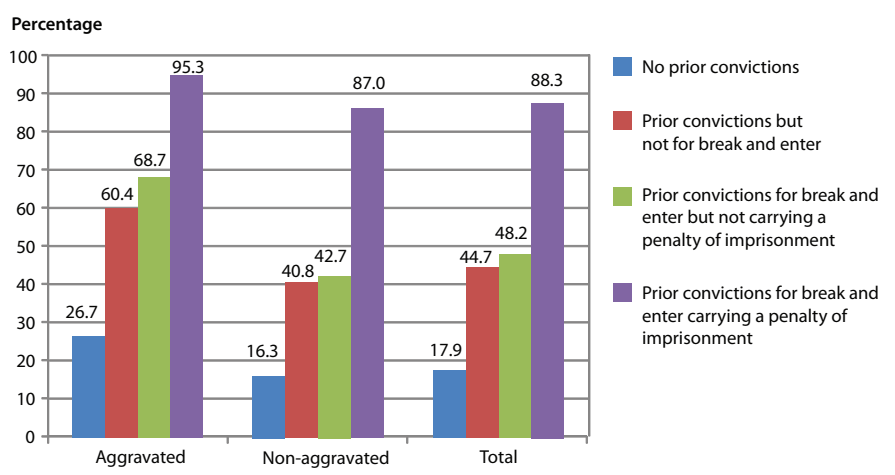


Figure 3. Imprisonment of offenders convicted of aggravated and non-aggravated break and enter, by type of prior convictions, 2009-2010



It can be seen that offenders with a prior break and enter conviction with imprisonment were almost guaranteed to receive another prison sentence (95% of aggravated and 87% of non-aggravated break and enter offenders). Offenders convicted of aggravated break and enter who had previous convictions for break and enter without a penalty of imprisonment were more likely to receive a prison sentence than those who had previous convictions for other offence types (69% vs. 60%). Around 40 per cent of offenders convicted of non-aggravated break and enter with prior convictions for offences other than break and enter, or prior break and enter convictions without a prison sentence, were given a sentence of imprisonment.

Sentence length

Table 4 shows the average, median, minimum, and maximum prison sentences for offenders convicted of aggravated and non-aggravated break and enter. The upper panel shows descriptive statistics for aggregate prison terms (i.e. the longest period an offender can spend in custody). The lower panel shows minimum prison terms (i.e. the shortest period an offender can spend in custody).

As expected, the lengths of prison sentences were longer for aggravated break and enter than for non-aggravated break and enter. The average aggregate sentence for offenders convicted of non-aggravated break and enter was 16 months, and the median 14 months. The average aggregate sentence for aggravated break and enter was 40 months, and the median three years. Aggregate sentences ranged from 0.2 months to 10 years. The average minimum term for non-aggravated break and enter was 10 months and for aggravated break and enter 22 months. Average minimum terms ranged from 0.2 months to 7 years. Note that although the minimum terms recorded under the column 'min' may appear short these terms are unlikely to reflect the actual minimum time spent in custody, as offenders are often incarcerated whilst awaiting trial and this time is taken into account when the sentence is set.

Conclusion

The average age of an adult offender convicted of break and enter in NSW in 2009-2010 was 29 years. Over 90 per cent of those convicted were male. More than 80 per cent of convicted break and enter offenders were convicted for non-aggravated break and enter. The most common penalty imposed on an offender convicted of break and enter was a prison sentence. As the number of prior convictions increased the proportion of offenders given a prison sentence increased. Among those who received a prison sentence, the average minimum term was 13 months and the average aggregate sentence was 21 months. For aggravated break and enter, the average minimum term was 22 months and the average aggregate term 40 months.

Acknowledgements

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Notes

1. This data comprises conviction episodes and therefore may include multiple records for individuals convicted of break and enter offences on more than one occasion in the study timeframe.
2. Data presented throughout this brief relate to court appearances with a principal offence of break and enter. The principal offence of an appearance is defined as the offence which received the most serious penalty.

Table 4. Descriptive statistics on length of prison sentences imposed on offenders convicted of aggravated and non-aggravated break and enter, 2009-2010

		n	mean	median	min	max
Aggregate sentence (months)	Aggravated	406	40.2	36.0	2.7	120.0
	Non-aggravated	1,456	16.2	14.0	0.2	78.0
	Total	1,862	21.4	18.0	0.2	120.0
Minimum term (months)	Aggravated	406	21.6	18.0	2.0	84.0
	Non-aggravated	1,456	10.3	9.0	0.2	50.0
	Total	1,862	12.8	10.0	0.2	84.0