

Burglary

Offences and maximum penalties

Burglary with intent to take property	Crimes Act 1961, s 231	10 years imprisonment
Aggravated burglary with intent to take property	Crimes Act 1961, s 232(1)	14 years imprisonment

Exclusions from the guideline

Burglary with intent other than to take property ([Crimes Act 1961, s 231](#)): This guideline must not be directly applied. Although the factors listed and described in this guideline may be relevant, a key driver of sentence will be the nature and seriousness of the offender's purpose.

Aggravated burglary with intent other than to take property ([Crimes Act 1961, s 232\(1\)](#)): See the offence-based guideline on [Robbery and associated offences](#) where the aggravated burglary entails a completed robbery or robbery-associated offence. In all other cases, sentencing for aggravated burglary must take place outside of the guidelines.

Being armed with intent to commit burglary, if the intended burglary was to take property ([Crimes Act 1961, s 232\(2\)](#)): Offenders must be sentenced under the generic guideline on [Attempts](#), but with reference to this guideline.

Imprisonment threshold

If an assessment of band choice and band placement factors places the offender on the imprisonment threshold in band 2, imprisonment is likely to be appropriate if an offender exhibits a significant risk of further serious offending. This is most likely to be indicated by the offender's criminal history or the scale of the current offending.

Summary of key factors

Band choice factors

1. Victim impact (potential and actual)
2. Scale of offending
3. Planning and skill
4. Criminal history (dishonesty offending)

Band placement factors

Factors 1–4 above, and:

5. Whether premises occupied
6. Nature of premises
7. Cooperation with authorities
8. Voluntary repayment of loss or return of property

Band choice factors: The presence or absence of these factors, and their relative intensity, determines the sentencing band (see the [Sentencing methodology](#), sentencing bands table and key factors narrative).

Band placement factors: The presence or absence of these factors, and their relative intensity, influences the starting point and final sentence within the appropriate band (see the [Sentencing methodology](#) and key factors narrative).

All aggravating and mitigating factors influence band placement, whether or not they are listed in this guideline (see the generic guidelines on [Aggravating factors](#) and [Mitigating factors](#)).

Sentencing bands

1

Offending accompanied by some or all of the following factors:

- Low potential or actual victim impact
- Low scale of offending
- Offending that was opportunistic in nature, showing little planning or skill
- An offender whose criminal history includes no or very few convictions for burglary or other dishonesty offences

Sentence levels before recognition of plea:

From **a fine** up to **community detention and/or intensive supervision**

Situations that are likely to fall within band 1 include:

- *Lower placement:* An offender with no previous convictions for burglary or other dishonesty offences noticed an open window in an unoccupied house, and took the opportunity to enter and steal a small amount of cash from a bedside table.
- *Higher placement:* An offender with one previous burglary conviction broke into two different garden sheds and took a bicycle and a lawnmower.

Sentencing bands

<p style="font-size: 2em; font-weight: bold; color: #0070C0;">2</p>	<p>Offending accompanied by some or all of the following factors:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Moderate potential or actual victim impact <input type="checkbox"/> Moderate scale of offending <input type="checkbox"/> Some planning or skill <input type="checkbox"/> An offender whose criminal history includes some convictions for burglary or other dishonesty offences 	<p>Sentence levels before recognition of plea:</p> <p>From community detention and/or intensive supervision up to 3 years imprisonment</p> <hr/> <p>Situations that are likely to fall within band 2 include:</p> <ul style="list-style-type: none"> ■ <i>Lower placement:</i> An offender with a few previous burglary convictions watched several houses for a day until, when sure that the occupants of one of the houses had gone out, she entered the unoccupied house and took jewellery of high sentimental value to the victims. ■ <i>Higher placement:</i> An offender with some previous convictions for theft and burglary broke into a closed local dairy at night, took cash, cigarettes and alcohol, and pushed the owner of the store out of the way to escape when he was disturbed.
<p style="font-size: 2em; font-weight: bold; color: #0070C0;">3</p>	<p>Offending accompanied by some or all of the following factors:</p> <ul style="list-style-type: none"> <input type="checkbox"/> High potential or actual victim impact <input type="checkbox"/> High scale of offending <input type="checkbox"/> Significant planning and skill <input type="checkbox"/> An offender whose criminal history includes so many convictions for burglary or other dishonesty offences that he or she can be categorised as an habitual dishonesty offender 	<p>Sentence levels before recognition of plea:</p> <p>From 3 years imprisonment up to 6 years imprisonment</p> <hr/> <p>Situations that are likely to fall within band 3 include:</p> <ul style="list-style-type: none"> ■ <i>Lower placement:</i> An offender with a few previous convictions for burglary, and several convictions for theft, broke into several local retail stores over the course of a month, taking cash and property to on-sell, while also destroying some stock. ■ <i>Higher placement:</i> An habitual burglar broke into 15 houses within the same suburb over a period of six months, taking DVD players, television sets, game consoles, and computers with a total value in the order of \$50,000. The property was not recovered.

STANDARD APPROACH TO CASE APPLIES: The requirement that “some or all” band choice factors be present is only a guide, because the relative intensity of those factors is also important. The intensity of one band choice factor will occasionally justify sentencing in a particular band, even if no other factors from that band are present.

Key factors

1. Victim impact (potential and actual)

Seriousness increases with the level of potential or actual property loss or damage resulting from the offence, as well as any emotional or physical harm caused to victims.

In terms of property loss, a low impact may be indicated by the theft of a small amount of property (such as cash left lying around, or a few low-value items). A high impact may be indicated by offending that caused high-value loss or that involved the targeting of high-value goods. In terms of damage, the value of damage caused has greater weight if it was the result of gratuitous destruction of property, ransacking, or vandalism.

The level of victim impact should not be assessed solely by the actual value of property loss or damage. Depending on the circumstances, burglary from a victim with few other resources may cause more harm and inconvenience than a similar burglary from a victim with a higher level of resources. Similarly, the loss of sentimental or irreplaceable property is likely to have a high emotional impact on victims regardless of that property's actual value.

The emotional or physical impact of offending is likely to be greater if the burglary involved a confrontation with occupiers, actual danger to occupiers, or the risk of confrontation or danger, or if the offender had repeatedly burgled the same premises.

2. Scale of offending

The scale of offending is indicated by the number of burglaries, their frequency, the period of time over which the burglaries were committed, and/or the number of victims. Seriousness increases as the scale of offending on one or more of these dimensions increases

A low scale of offending may be indicated by an offender being sentenced for one or two burglaries. A moderate scale of offending may be indicated by an offender being sentenced for a spree of burglaries, or for several burglaries committed over a longer period of time. A high scale of offending may be indicated by an offender being sentenced for a large number of burglaries.

A particular number of burglaries committed over a short period of time (for example, a spree) may indicate a lower scale of offending than the same number of burglaries committed regularly over an extended period of time, because the second example more easily allows an inference to be drawn that the offender's behaviour is entrenched.

3. Planning and skill

Seriousness increases with the level of planning or skill involved in the offending. Premeditation, preparation, targeting, and stealing to order are all indicators of planning and skill.

This factor is at band 1 level if the burglary was opportunistic or amateurish, and at band 3 level if the offending was well-planned and organised. Burglaries demonstrating organisation and planning, such as targeting particular premises or types of premises, and dispersal of goods through receiving networks, are candidates for band 3 sentencing.

4. Criminal history (dishonesty offending)

An offender's criminal history for burglary or dishonesty offending is relevant to the extent that it demonstrates a pattern of offending. An offender's previous convictions must be considered in the context of their distance in time and difference in character from the offending currently being sentenced.

This factor is at band 1 level if the offender is a first-time burglar and at band 3 level if the offender is an habitual burglar.

Previous convictions for burglary and dishonesty offences aggravate the offending more than previous convictions for non-dishonesty offences, because they show that the offender is continuing an established pattern of behaviour. The former affect band choice and the latter affect band placement.

5. Whether premises occupied

Seriousness increases if the premises burgled were occupied at the time of the burglary, as this is likely to increase the emotional impact of the offending on victims, and increase the risk of personal confrontation.

It is an additional aggravating factor if the offender knew or thought the premises were occupied and pressed on regardless.

6. Nature of premises

The type of premises burgled is not, without considering the wider circumstances, determinative of seriousness. A judge must take into account, if it is applicable, that an offence involved unlawful entry into, or unlawful presence in, a dwelling place. A house burglary has the added elements of invasion of personal privacy, increased risk of confrontation with occupiers, and likelihood of greater emotional impact on victims. However, these factors may not feature in every domestic burglary, and are not exclusive to domestic burglaries.

7 Cooperation with authorities

Genuine cooperation with the Police is a mitigating factor that is particularly significant if it led to the clearance of previously unsolved dishonesty offences and the recovery of stolen property.

8 Voluntary repayment of loss or return of property

Voluntary repayment of loss or return of property may indicate remorse and is a mitigating factor personal to the offender, particularly if the voluntary repayment or return was made in full at an early stage. The extent of mitigation arising from partial repayment or return depends on the extent of repayment or return at the time of sentencing and the likelihood of further repayment or return in the future.

In terms of the return of physical property, such as personal possessions, mitigation is greater if the property was returned in a similar state to its pre-theft state, than if returned in a damaged or unusable state.

Repayment or return in circumstances that are beyond an offender's control (for example, property recovered during the execution of a search warrant) may be relevant to victim impact, but is not relevant in personal mitigation.

Departure from the guideline

For grounds of departure upwards or downwards from any band, see the generic guideline on [Departure from the guidelines](#).

A departure upwards from band 3 may be justified if the offender has a long criminal history of burglary offending and is being sentenced on a number of burglaries involving high value property.