

Specially Aggravated Break, Enter and Steal

s.112(3) (NSW) Crimes Act

s.112 (1) (a) break and enter dwelling-house or building and commit serious indictable offence

(b) commit serious indictable offence in dwelling-house or building and break out

(2) Commit offence under subsection (1) in circumstances of aggravation

(3) Commit offence under subsection (2) in circumstances of special aggravation

s.105A (1) circumstances of aggravation means:

armed with an offensive weapon, or instrument,
in the company of another person or persons,
uses corporal violence on any person,
intentionally or recklessly inflicts actual bodily harm on any person,
deprives any person of his or her liberty,
knows that there is a person, or persons, in the dwelling house or building

s.105A (1) circumstances of special aggravation:

wounds or intentionally or recklessly inflicts grievous bodily harm on any person,
is armed with a dangerous weapon.

(amended on 21.6.2012)

intentionally wounds or intentionally inflicts GBH on any person
inflicts GBH on any person and is reckless as to causing ABH to any person
is armed with dangerous weapon

Maximum Penalty: 25 years

Standard Non-Parole Period (offence committed on or after 1.2.2003): 7 years

NAME (age if known)	OFFENCE	CIRCUMSTANCE OF AGGRAVATION	PLEA	SENTENCE	APPEAL	RECORD	FACTS
LBK (16) [2001] NSWCCA 248	s.112(3)	Infliction of GBH	PG	MT 3y AT 3y	AD	Priors including BES - on bail and probation at time of offence	Broke into home - when confronted by occupant struggled and stabbed occupant several times in chest, arms and legs. Deprived childhood - some evidence of rehabilitation - fresh evidence of ADHD.
X (38) [2003] NSWCCA 56	s.112(3)		PG	23m NPP 9m	Crown AA 4y NPP 2y 6m	Poor record	Informed co-offender of fact that victim stored money in house - Group of men broke into house armed with gun, knife and bat - Occupants threatened and assaulted and property stolen – offender stood guard outside Assistance to police resulted in death threats - Married with 6 children
Voss (17) [2003] NSWCCA 182	s.112(3)	Maliciously inflict GBH	PG	10y NPP 6y 6m	AD	Not stated	Broke into house and stole stereo – Disturbed by 12y male – Hit victim over head with cricket bat twice causing permanent and serious brain damage
Sultan (19) N (17) [2003] NSWCCA 404	s.112(3)		PG (18%)	9y NPP 5y 9y NPP 5y	AA 7y NPP 4y 7y NPP 4y	Minor Minor	Broke into home of 63y male victim and family seeking money – S armed with baseball bat – N armed with knife – Two other co offenders armed with pistol and shotgun – Victim threatened with gun and prodded with knife – Jewellery and cash taken. Appeals allowed on parity grounds with co offenders.
Matthews (2004) 145 A Crim R 445 [2004] NSWCCA 112	s.112(3) Sched: Possess drug	Wounding	PG (20%)	11y NPP 7y	AA 9y NPP 5y 6m	Lengthy	Female - Victim assisted offender and co- accused in pawning goods and received \$50 share – broke into victim's home with co- offender to obtain \$50 – V hit with iron club then stabbed seven times by offender – Property stolen Unwilling participant – SJ failed to take into account dysfunctional background and low intellectual functioning
Hathaway (20) [2005] NSWCCA 368	112(3)	Mal wound	PG (25%)	6y 9m NPP 5y	AD	Significant – includes violence	Broke into school administration block – assaulted principal with tyre lever Protective custody

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

NAME (age if known)	OFFENCE	CIRCUMSTANCE OF AGGRAVATION	PLEA	SENTENCE	APPEAL	RECORD	FACTS
Milane (39) [2006] NSWCCA 281	s.112(3)		PG	6y 10m NPP 4y 4m	AD	Breached bonds	SNPP 7 years Home invasion at home unit with co-offenders – pretended to be police – used replica pistol – threats to kill – one occupant assaulted with pistol – stole property
Chaaban [2006] NSWCCA 107	s.112(3) s.33	Caused GBH	PG (25% + 25% assist)	3y 6m NPP 2y FT 2y <u>Total:</u> 4y 6m NPP 3y	Crown AA 5y NPP 2y 6m FT 3y <u>Total:</u> 6y NPP 3y 6m		SNPP 7 years Home invasion by 6 men at night – stole cannabis plants – offender detained two male teenagers in room during offence – helped pursue adult male occupant – occupant severe injury to arm from knife and machete Orphaned in Lebanon and passed around family – little schooling – intellectually disadvantaged – acutely remorseful
Van Rysewyk (22) [2008] NSWCCA 130	s.112(3)	Wounding	PG (10%)	6y NPP 3y 6m (partially concurrent on another sentence)	Crown AA 8y 7m NPP 5y	On bond and bail - robbery.	SNPP 7 years With co-offenders armed with knives, broke into residential home – threatened elderly couple – stabbed male victim in leg – took cash, jewellery and other items. Drug dependency.
O'Grady (23) [2013] NSWCCA 281	s.112(3)		VG	9y NPP 5y 6m	AD	Breached bond – three offences – no violence	SNPP 7 years Home invasion at home unit with co-offenders – male occupant assaulted – orchestrator – claimed bad drug deal – mid-range
Ngati (32) [2013] NSWCCA 307	s.112(3)	'Every circumstance of aggravation in s105A(1) <i>Crimes Act</i> present in this offence'	PG (25%)	9y NPP 6y 7m	AD	Larceny, robbery. On parole.	SNPP 7 years Home invasion with 5 co-offenders armed with knives – male V stabbed, punched and kicked – knife held to male V's throat and face – female V threatened – prolonged violence - 2 young children present – took electronic equipment – above mid-range.

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Robinson (25) [2014] NSWCCA 12	s.112(3) Sched: Assault		PG (40% plea and assist)	4y 3m NPP 2y 3m	Crown AA 5y 3m NPP 3y	Extensive record for violence - Breached conditional liberty	SNPP 7 years Targeted home of Vietnamese because believed contained gold – broke into home at night and ransacked premises with four co- offenders – kicked 19y female occupant in abdomen – assaulted 16y male with hammer – during struggle male stabbed in shoulder by co-offender Evidence of remorse and rehabilitation
Zechel (40) Tuimauualuga (39) Puru (25) [2015] NSWCCA 32	s.112(3)	Armed with dangerous weapon – shotgun	PG (25%) PG (10%) PG (25%)	12y NPP 8y 12y 6m NPP 8y 12y 6m NPP 8y 6m	AA 7y 6m NPP 4y 6m 8y 11m NPP 5y 4m 7y 6m NPP 4y 6m	Minor Minor More extensive	SNPP 7 years Home invasion – four men forced entry to house – one offender armed with shot gun – children present – occupants assaulted and threatened Fourth offender De Jong returned to District Court for re-sentence
MM (35) [2016] NSWCCA 235	s.112(3)	Armed with off weapon Inflict GBH	PG (15%)	9y NPP 6y	AD	Extensive - BES, AR, agg robbery, rob with wounding, assault, AOABH, stalking - on parole.	SNPP 7 years Approached home of 2 victims - told female V1 he was armed and wanted to buy drugs – V1 shut door – smashed door's glass panel with hammer and entered – male V2 went to arm himself with pole - struck V2 to head twice with hammer, causing him to fall to floor - struck V2 to head five more times with hammer as he lay on ground – took \$25 and handbag containing \$600 and camera - V2 suffered serious jaw and skull fractures. Drug abuse – assistance to authorities.

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Burrows (18) [2017] NSWCCA 45	s.112(3)	Intentionally wounded	PG (25%)	6y 6m NPP 4y	AD	Nil	SNPP 7 years Home invasion – group of men forced entry to house believing occupant was drug dealer – wrong house – occupants in 70s assaulted – offender not armed but joined group to make it look more formidable – aware co-offenders armed – other aggravating factors include in company – armed with offensive weapon – corporal violence Drug user hoping to obtain some cannabis – some rehabilitation
TL (20) [2017] NSWCCA 308	s.112(3) s.112(1) s.112(2) s.33 – wound with intent to inflict GBH	In company Armed with dangerous weapon	VG	<u>Indicative:</u> 8y 6m NPP 5y 6m 18m NPP 12m 22m NPP 15m 7y NPP 4y 6m <u>Aggregate</u> 13y 6m NPP 8y 6m	AA <u>Indicative:</u> 6y 4m NPP 4y 2m 15m NPP 10m 18m NPP 12m 5y 3m NPP 3y 4m <u>Aggregate</u> 10y NPP 6y 3m	Breached parole for drug offence	SNPP 7 years Broke into a home through window during day stealing cash – assisted co-offender in stealing property from another home during day – one of three men who entered home at night – co-offender broke down locked bedroom door - female occupant threatened with gun – second co-offender armed with knife – forced to reveal father's safe and provided tools – left with safe and property - one of three men who assaulted male acquaintance in park – victim taken to park by offenders – kicked and punched and stabbed Sexually assaulted in prison during interstate sentence – good prospects of rehabilitation After error found took into account assistance given in unrelated matter – 25% discount on appeal

NAME (age if known)	OFFENCE	CIRCUMSTANCE OF AGGRAVATION	PLEA	SENTENCE	APPEAL	RECORD	FACTS
Franklin (37) [2018] NSWCCA 245	s.112(3) Detain with intent obtain advantage: s.86(2) Sched: 2 offences	In company Inflict GBH	PG (45% plea and assist)	11y NPP 6y 7m 8y <u>Aggregate:</u> 14 years NPP 8y 5m	AA 10y NPP 6y 6y 7m <u>Aggregate</u> 12y 6m NPP 8y	Nil	SNPP 7 years Home invasion with co-offenders – male victim seriously assaulted, beaten to head, suffered serious ongoing injuries – offender inflicted no acts of violence - not far below upper end of range of objective seriousness. Assistance - long-term drug addiction - prospects for rehabilitation better than reasonable

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