

Sexual Assaults – Home Invasions

ss 325 and 326 *Criminal Code*

Transitional Sentencing Provisions: This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
agg	aggravated
burg	burglary
sex pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
20.	<p><i>Pool v The State of Western Australia</i></p> <p>[2013] WASCA 274</p> <p>Delivered 02/12/2013</p>	<p>34-41 yrs at time offending. 42 yrs at time sentencing.</p> <p>Convicted after PG (following negotiations) - Cts 1, 3-4 discontinued.</p> <p>Criminal record; none of which had attracted a term of imp; offences include trespass & unlawful use of optical surveillance device.</p> <p>Left school at 17 yrs; worked in various occupations.</p> <p>In early 30's commenced using cannabis & methyl.</p> <p>Suffered significant depression at various times; including when offending.</p> <p>Married since 2005; two sons; youngest suffers from mild cerebral palsy & frequent seizures.</p> <p>Psychiatric, Psychological & PSR Reports indicate the</p>	<p>Indecent deal child u13 yrs s320(4) <i>Criminal Code</i> x 1.</p> <p>Att indecent record child 13-16 yrs s552, 321(6), 321(8)(a) <i>Criminal Code</i> x 1.</p> <p>Indecent deal child 13-16 yrs s321(4), 321(8)(b) <i>Criminal Code</i> x 4.</p> <p>Agg burg in dwelling 401(2) <i>Criminal Code</i> x 2.</p> <p>Agg indecent record child 13-16 yrs s321(6), 321(8)(b) <i>Criminal Code</i> x 1.</p> <p>Indecent ass s323 <i>Criminal Code</i> x 3.</p> <p>Indecent record child s321(6), 321(8)(a) <i>Criminal Code</i> x 1.</p> <p>Dep lib s333 <i>Criminal Code</i> x 1.</p> <p>Agg sex pen s326 <i>Criminal Code</i> x 1.</p> <p>Sex pen s325 <i>Criminal Code</i> x 1.</p> <p>The offending occurred over a period of about 7 yrs and involved numerous acts of sexual violation against 5 victims.</p> <p><u>Ct 2:</u> The appellant and his wife were friends of the victim's mother and regularly babysat the victim. When the victim was 7 yrs old, she stayed at the appellant's home. Whilst his wife was asleep in the same room the appellant rubbed the victim's breasts and vagina.</p> <p><u>Ct 3:</u> The victim was aged 13 yrs. She was a neighbour of the appellant. One evening the victim stayed at the</p>	<p>TES 11 yrs 9 mths imp.</p> <p>EFP.</p> <p>High risk of sexual re-offending.</p> <p>Expressed some regret but has attempted to justify & minimise its severity.</p> <p>Each victim suffered significant & ongoing psychological trauma.</p> <p>Sentencing judge described appellant's attitude as 'predatory'.</p> <p>High risk of future sexual offending.</p>	<p>Dismissed.</p> <p>McLure dissenting.</p> <p>At [71] ... The humiliation and degradation ... was made worse by the appellant's use of a mobile telephone to record visual images of his assaults upon them.</p> <p>At [72] I accept, however that the appellant's individual offences against CLT and TJC were at the lower end of the scale of seriousness in child sex cases and that his individual offences against MJR and MT were not in the worst category of home invasion cases involving sexual violence.</p> <p>At [77] The number of victims, the duration of the offending, the planning, premeditation and persistence, the escalation in the seriousness of the</p>

		<p>offences were committed in the context of marked amphetamine abuse & considerable psychological instability.</p>	<p>appellant's home and went to have a shower. The appellant attempted to record the victim showering from outside. The victim undressed and started to shower before noticing the appellant's phone.</p> <p><u>Cts 6-10:</u> The victim was aged 13 yrs and was the same victim as in Ct 3. The victim slept the night at the appellant's home. Whilst she slept the appellant touched her breast. The appellant then masturbated with his penis close to the victim's face, ejaculated and wiped the fluid on her lips. He then held his erect penis against her lips for a few seconds and again touched her breast. The appellant used a video camera to record his actions.</p> <p><u>Cts 11-13:</u> The 17 yr old victim was at her boyfriend's house; asleep and fully clothed. The appellant entered the house through an unlocked carport/ kitchen door. The appellant cut the victim's outer clothing as she slept with scissors; exposing various parts of her body. He then rubbed her exposed vagina. The victim awoke after hearing a loud bang and the appellant ran from the house. Some months after the incident the victim noticed some videos on her mobile. The videos had been taken by the appellant during the burglary and included a depiction of his hand rubbing the victim's vagina. The victim and appellant were unknown to each other.</p> <p><u>Ct 14:</u> The victim was aged 14 yrs and unknown to the appellant. The appellant used a video camera to film the victim through her bedroom window. The</p>		<p>criminal conduct, the appellant's lack of insight and his high risk of recidivism required the imposition of a very lengthy term of imprisonment.</p>
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			<p>victim noticed the appellant looking at her through the window. When the appellant was arrested about 14 months later; police found 3 cassettes hidden in the bodywork of his motor vehicle. The cassettes contained footage of the victim.</p> <p><u>Cts 15-19:</u> The victim was a 37 yr old woman. The victim and appellant were unknown to each other. The appellant entered the victim's house through an unsecured rear sliding door. After scrimmaging through the house he went to the victim's bedroom, placed his hand over her mouth, wrapped his hand around her throat, and tied her hands together and to the bed. He sexually assaulted and digitally penetrated her with his fingers and vibrator. At the same time he used his mobile to record and take photographs of the victim.</p>		
19.	<p><i>Prempeh v The State of Western Australia</i></p> <p>[2013] WASCA 150</p> <p>Delivered 19/06/2013</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal record for dishonesty offences.</p> <p>Born in Ghana; came to Australia in 2004; as a child suffered sexual abuse.</p> <p>History of substance abuse.</p> <p>Graphic designer in Ghana; Periods of employment in Australia as sign maker.</p>	<p>Ct 1: Agg burglary. Ct 2: Sex pen w/o consent.</p> <p>The victim and appellant were unknown to each other. The victim was a backpacker from the UK.</p> <p>The victim left Club Bayview, Claremont on her own and was waiting for a taxi. She had been drinking and was intoxicated. Whilst waiting for a taxi she was approached by the appellant who suggested they share a taxi. On arriving home the victim paid her share of the taxi fare and left. The appellant got out as well. The victim did not engage in conversation and went inside her house and fell asleep.</p> <p>The appellant entered the house and the victim</p>	<p>Ct 1: 4 yrs 6 mths imp. Ct 2: No penalty – s11.</p> <p>Sentencing judge described the offending as serious. The complainant was particularly vulnerable because she was affected by alcohol. He noted that the appellant's behaviour was persistent.</p> <p>Sentencing judge found that the appellant's intention throughout the</p>	<p>Dismissed - on papers.</p> <p>At [26] ... it is erroneous to view the sentence ... as if it were for an offence solely involving an act of digital penetration. The offending plainly involved more than that and should be seen for what it is – an aggravated burglary involving sexual violence.</p> <p>At [27] Speaking generally, home burglaries which involve the commission of violence</p>

		<p>Told author of PSR that he had ‘an insatiable appetite for sex and often [sought] the services of prostitutes to quell the urge’.</p> <p>Subject to a CBO at time of offences.</p> <p>Appellant’s defence at trial was that he had been invited into the house and that he did not sexually assault the victim.</p>	<p>awoke to find him pulling back her duvet and trying to get into her bed. She told the appellant to get out. One of the victim’s housemates confronted the appellant and told him to leave, which he did. Both the victim and her housemate went back to bed.</p> <p>The victim and her housemate heard noises from the kitchen and found the appellant had somehow re-entered. The housemate told the appellant to leave. She then sought assistance from two other housemates. Rather than leave, the appellant went to the victim. She awoke to find him crouching down next to her bed. A struggle ensued during which the appellant inserted his fingers into the victim’s vagina. This caused both physical injury and significant ongoing psychological trauma to the victim.</p>	<p>events was to have sex with the complainant whether she wanted it or not.</p> <p>Co-operated during the trial.</p>	<p>will be met with more severe penalties than those that do not.</p>
<p>18.</p>	<p><i>Ugle v The State of Western Australia</i></p> <p>[2012] WASCA 104</p> <p>Delivered 10/05/2012</p>	<p>18 yrs 9 mths at time offending (victim 78 yrs). 19 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Offending breached protective bail (4 x agg burg; 3 x stealing; 1 x steal motor vehicle).</p> <p>Prior criminal record – poss stolen property; steal motor vehicle; common assault.</p> <p>Never been sentenced to detention or imprisonment previously.</p>	<p>Ct 1: Agg burg. Ct 2: Agg AOBH. Ct 3: Agg sex pen (digital pen vagina). Ct 4: Agg sex pen (pen vagina with penis). Ct 5: Agg sex pen (pen anus with penis). Ct 6: Agg sex pen (pen vagina with penis). Ct 7: Agg sex pen (pen anus with penis). Ct 8: Agg sex pen (fellatio).</p> <p>Sentenced separately for: 1 x Give false details to police. 1 x Breach protective bail.</p> <p>Assault and sex offences at the upper end of the scale of seriousness.</p> <p>Victim lived alone in an accommodation complex for senior citizens. Victim was showering at approx</p>	<p>Ct 1: 2 yrs imp. Ct 2: 3 yrs imp. Ct 3: 5 yrs imp. Ct 4: 4 yrs imp. Ct 5: 6 yrs imp. Ct 6: 4 yrs imp. Ct 7: 6 yrs imp. Ct 8: 6 yrs imp.</p> <p>TES two charges 14 mths imp (cumulative on sentences above).</p> <p>TES 11 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [46]-[66] Discussion of comparative cases.</p> <p>At [71] Ordinarily, youth is a significant mitigating factor but, in some instances, despite youth a sentence needs to reflect the need to protect the public as wells personal and general deterrence.</p> <p>At [72] “<i>The degree of objective seriousness of the appellant’s offending required that the</i></p>

		<p>Eldest of 6 children; childhood marred by violent father; family homeless while he was growing up.</p> <p>Entrenched history cannabis and alcohol abuse.</p> <p>Completed high school; minimum work history.</p>	<p>7pm when appellant entered the grounds of the accommodation complex by jumping a perimeter wall. Appellant entered victim's unit by smashing lounge room window after finding the rear door locked (ct 1).</p> <p>Appellant confronted by victim's small dog when he entered. Appellant locked the dog in a cupboard. Victim heard the noises the appellant made and her dog barking and got out of the shower. Appellant entered bathroom and confronted naked victim. Appellant struck the victim and pushed her to the floor. Victim fell and hit her head on the wall causing a laceration on the back of her head (ct 2). Victim screamed for help and appellant placed his hand over her mouth. While victim was on the bathroom floor, appellant removed his penis from his pants, positioned himself on top of the victim and put his fingers inside her vagina (ct 3). Appellant also rubbed her clitoris, causing her pain. Victim told appellant he was hurting her but appellant persisted. Appellant partially penetrated victim's vagina with his penis (ct 4) and then penetrated her anus with his penis, causing her to scream in pain (ct 5).</p> <p>Appellant then dragged victim into the bedroom, pushed her onto the bed and positioned himself over her. Appellant grabbed victim's necklace and ripped it from her neck – appellant later gave the necklace to his cousin. Necklace had two lockets on it and was of sentimental value to the victim. Necklace was not recovered.</p> <p>Appellant then partially penetrated victim's vagina with his penis (ct 6) and then partially penetrated victim's anus with his penis (ct 7). Appellant then demanded victim perform oral sex on him. Victim</p>	<p>Limited victim empathy; no acceptance of responsibility some remorse and shame; some steps towards rehabilitation (attending Alcoholics Anonymous); posed a present danger to the community.</p>	<p><i>mitigating effect of his youth be significantly reduced in determining the appropriate sentencing disposition.</i>"</p> <p>At [90] Vulnerability of the victim is a significant factor in sentencing.</p> <p>At [91] Mazza J notes that the sentence imposed in <i>Cooper v The State of Western Australia</i> [2009] WASCA 37 is in the circumstances a lenient one.</p>
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			<p>said she had not done that before. Appellant thrust his penis into victim's mouth for approx 5 minutes causing her to cough and choke. Appellant then ejaculated in victim's mouth, again causing her to choke (ct 8).</p> <p>Appellant then demanded money, got dressed and left the victim's home.</p>		
17.	<p><i>Royer v The State of Western Australia</i></p> <p>[2009] WASCA 139</p> <p>Delivered 6/08/2009</p>	<p>30yrs at time offending (victim 62 yrs).</p> <p>Convicted after PG.</p> <p>Prior criminal record – drugs; fraud; stealing; and burglary; no violent or sexual offending.</p> <p>History substance abuse.</p>	<p>1 x Agg burg. 1 x Deprivation of liberty. 1 x Threat to kill. 1 x Agg sex assault (digital pen vagina). 1 x Agg sex assault (digital pen anus). 1 x Agg sex assault (pen vagina with penis). 1 x Agg AOBH</p> <p>Offending in worst category and 'horrendous' in nature - justify 'something approaching the statutory maximum penalty'.</p> <p>Appellant separated from de facto of 3 years approx one week prior attack. Under influence of drugs and alcohol. Entered through unlocked door, went to victim's bedroom and forced her onto bed. Removed clothes and tied up victim then placed pillow over victim's face and digitally penetrated vagina. Turned victim onto her stomach, spat on her anus and inserted fingers. Both digital penetrations were repeated, used more than one finger each time and caused severe lacerations, bleeding and immense pain. Appellant masturbated to achieve erection and penetrated vagina until ejaculated. Struck victim on face, threatened to kill her if she told anyone and</p>	<p>5 yrs imp. 3 yrs imp. 3 yrs imp. 8 yrs imp. 8 yrs imp. 8 yrs imp. 2 yrs imp.</p> <p>TES 16 yrs.</p> <p>EFP.</p>	<p>Dismissed – 'severe' but reflective of criminality.</p> <p>NB: original sentence, upheld by the Court of Appeal, was imposed whilst the transitional provisions were in force.</p>

			stole \$200 from purse before leaving. Victim was left naked and bound on her bed, eventually freed herself.		
Transitional Provisions Repealed (14/01/2009)					
16.	<i>Cooper v The State of Western Australia</i> [2009] WASCA 37 Delivered 9/02/2009	36 yrs at time offending (victim 77 yrs). Convicted after trial. Minor prior criminal record - alcohol-related driving offences De facto relationship (13 yrs); 4 children.	1 x Agg burg. 1 x Agg AOBH. 1 x Agg indecent assault. 1 x Agg sex pen. 1 x Agg sex pen. 1 x Agg sex pen.. 1 x Agg sex pen. Offending at the higher end of the scale for this type of offending Appellant next door neighbour of victim. Appellant drinking heavily. Entered victim's bedroom whilst she was sleeping and struck her on forehead. Held screwdriver under pillow whilst committing sex offences.	2 yrs 8 mths imp. 2 yrs imp. 2 yrs imp. 3 yrs 4 mths imp. 6 yrs 8 mths imp. 3 yrs 4 mths imp. 6 yrs 8 mths imp. TES 12 yrs imp. EFP. Remorse, but did not amount to true remorse as he did not admit he was the offender	Dismissed. <i>At [41] 'The total sentence imposed in this case by the Sentencing Judge was a sentence which, although heavy, was within the range of sentences which could be properly imposed.'</i>
15.	<i>Pollock v The State of Western Australia</i> [2009] WASCA 121 Delivered 14/07/2009	29 yrs at time offending. Convicted after PG - part way through trial, after victim suffered ordeal of giving evidence. Prior criminal record - disorderly conduct; damage to property; dishonesty; drugs.	1 x Agg burg. 1 x Dep lib. 1 x AOBH. 1 x Sex pen. 1 x Dep lib. 1 x GBH. 1 x AOBH. 1 x Stealing. 1 x Stealing. Offending at the high end of scale.	7 yrs imp. 3 yrs imp. 2 yrs 8mths imp. 8 yrs imp. 3 yrs imp. 3 yrs imp. 2 yrs 8mths imp. 2 yrs imp. 2 yrs imp. TES 14 yrs.	Dismissed. <i>At [53] 'I am not satisfied that the total effective sentence...was inappropriately long in light of the appellants offending or his personal circumstances.'</i> Nothing in appellant's

		Born in Kununurra; left school yr 8; abused drugs and alcohol from early age.	Female victim went to party with appellant, met a female friend, D, and returned to house. Altercation occurred and D asked to leave by male victim. Victim went to bed. D returned to party and informed appellant and co-offender of altercation. As revenge appellant and co-offender, armed with knife and stick, entered house, tied up male victim, assaulted him and cut off his finger. Tied up and assaulted female victim and inserted unknown object into her vagina.	EFP. Minimal acceptance responsibility; serious risk recidivism.	circumstances indicating sentence more crushing than imposed on any other offender. If sentences had been made concurrent then criminality of the offences would effectively be unrecognised
14.	Woodley v The State of Western Australia [2008] WASCA 92 Delivered 24/04/2008	47 yrs at time offending. Convicted after trial. VRO against offender (victim and offender married but separated). Moderate prior record related to misuse of alcohol Aboriginal man; parents alcoholics; grew up on New Norcia mission. Started new relationship whilst awaiting trial, father of 6 month old child	1 x Agg burg. 1 x AOBH. 1 x Dep lib. 1 x Sex pen. Appellant travelled via car with three females to Muchea where victim resides with de facto. Found victim in bathroom, grabbed her by hair and punched her in head. Forced her into car and drove her back to Perth where he raped her at a house in Cloverdale.	2 yrs 8 mths imp. 12 mths imp. 12 mths imp. 4 yrs imp. Total effective sentence 6 yrs 8 mths imp. EFP. No insight; maintains denial and claims consensual.	Dismissed. At [25] ' <i>Total concurrency of the sentences would result in a total sentence of 4 yrs and that would be an inadequate measure of the total criminality of the appellant's conduct</i> '.
13.	Thorn v The State of Western Australia	23 yrs at time offending. 34 yrs at time sentence (DNA match after arrest).	1 x Burglary. 1 x Dep Lib. 1 x Dep Lib. 1 x Att agg sex pen.	18 mths imp. 18 mths imp. 9 mths imp. 3 yrs imp.	Dismissed - total sentence within range; proportionate to criminality.

	<p>[2008] WASCA 36</p> <p>Delivered 27/02/2008</p>	<p>Convicted after late PG.</p> <p>Prior criminal record – arson; burglary; disorderly conduct; drug offences; trespass; breach of probation order.</p> <p>Schizophrenia and organic psychosis; made number of serious suicide attempts; moderate cognitive deficit resulting from trail bike accident.</p> <p>Various substance abuse problems - may have been intoxicated at time of offences with morphine and valium type substances.</p> <p>Psychiatric assessments provide partial explanation but no excuse, legal otherwise, for the gravity of offending, degree of planning that accompanied the criminality.</p>	<p>1 x Agg sex pen. 1 x Agg sex pen. 1 x Agg sex pen.</p> <p>Offences in worst category of offences of the kind in question</p> <p>Broke into victim's home after disconnecting telephone. Entered bedroom armed with knife where victim sleeping with 4 yr old daughter. Sexually assaulted victim whilst daughter lay in bed next to her. Made victim come to lounge room where he sexually assaulted her again.</p>	<p>6 yrs imp. 6 yrs imp.</p> <p>TES 7 yrs 6 mths imp.</p>	<p>At [49] <i>'The dominant sentencing considerations for offences of the kind in question are punishment of the offender, and specific and general deterrence.'</i></p>
12.	<p><i>Ugle v The State of Western Australia</i></p> <p>[2007] WASCA 199</p>	<p>36 yrs at time offending.</p> <p>Convicted after late PG (prior to start of trial and after absconding twice while awaiting trial on plea</p>	<p>1 x Agg indecent assault. 1 x Agg sex pen. 1 x Agg sex pen. 1 x Agg sex pen. 1 x Agg burg.</p>	<p>2 yrs 8 mths imp. 4 yrs 6 mths imp. 8 yrs 1 mth imp. 9 yrs imp. 7 yrs 2 mths imp.</p>	<p>Allowed only in relation to the imposition of no eligibility for parole (by majority) – at [64] public interest best served if incentive to undertake</p>

	Delivered 28/09/2007	not guilty). Prior criminal record - stabbed infant son; several sex offences committed when 18 yrs. Aboriginal man originally from Narrogin; deprived background, exposed to violence, alcoholism and neglect; poly substance abuse (cannabis, amphetamines and alcohol).	Knocked on victim's window at 4am waking her. Attempted to sell her drugs then forced past her asking to use bathroom, pushed her into bedroom. Threatened her with clothes iron, then committed sex offences. Threatened to shoot her if she tried to escape. Assaulted her with iron, wrapped cord round her neck. Upon leaving stole electrical equipment, TV, stereo and mobile.	TES 11 yrs 1 mth. Not EFP. High risk re-offending – refusal cease substance use; unwilling abide by court orders.	steps to rehabilitation. <i>At [42] In light of the analysis of other cases it has to be acknowledged that this is a sentence in full measure: it is at the upper end of the range of sentences that could properly have been imposed. But given all of the circumstances, I do not think it is outside the available range.'</i>
11.	<i>Bentley v The State of Western Australia</i> [2007] WASCA 38 Delivered 18/02/2007	Convicted after trial of first group of offences. Convicted after late PG to second set of offences. On bail at the time for dep lib, 2 x sex pen without consent and threat prevent lawful act (victim 16 yrs; virgin; appellant injected her with drugs and she woke to find herself bound with 'handy ties' and appellant engaged in sex pen with her. Appellant then forced penis in to mouth and ejaculated. Victim drugged further and threatened by appellant to remain quiet).	<u>First set of offences:</u> 1 x Armed robbery. 1 x Dep lib. 4 x Sex pen. 3 x Sex pen. 1 x Burg. <u>Second set of offences:</u> 1 x Dep lib. 2 x Armed robbery. 2 x Stealing. At [18] both sets offences among most serious of their kind. Followed woman home from work, asked her to call him taxi and pushed inside. Produced knife and demanded cash. Subjected victim to series of sexual assaults throughout the afternoon Later in the afternoon, forced woman into her car at	Original sentences not noted in judgement. Error in original sentencing, missing transcript as to structure of sentence and updated psychiatric report all factors requiring the resentencing of appellant. Therefore, not necessary to address appeal as to manifestly excessive sentence. Medium- high risk reoffending.	Sentences imposed on appeal: <u>First set offences:</u> 1 yr imp. 1 yr 4 mths imp. 4 yrs imp each count. 2 yrs 4 mths imp each count. 6 mths imp. TES 7 yrs 8 mths imp. <u>Second set offences:</u> 4 yrs 8 mths imp . 1 yr imp each count. 6 mths imp each count. TES 4 yrs 8 mths cum on sentence for first set of offences

		<p>Prior criminal record - assault; burglary; drug offences.</p> <p>Disturbed childhood due to domestic violence and parental alcoholism; ward of the state; sexually abused in a boy's home and prison.</p> <p>Alcohol and amphetamine abuse; suffered from paranoid psychosis at time of his offending</p>	<p>knifepoint and took control of vehicle whilst demanding cash. Obtained credit card and PIN details before victim managed to escape.</p>		<p>TES (both sets of offences) 12 yrs 4 mths imp.</p>
<p>10.</p>	<p><i>The State of Western Australia v Turaga</i></p> <p>[2006] WASCA 199</p> <p>Delivered 5/10/2006</p>	<p>28 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Offending breached parole (dep lib and agg sex pen w/o consent involving same victim).</p> <p>Prior criminal record – armed robbery; agg sex pen (same victim).</p> <p>Alcoholic; history violent offending when intoxicated.</p>	<p>1 x Dep lib. 1 x Threat to kill. 15 x Agg sex pen (includes digital, oral and penile pen of vagina; one penile pen of anus).</p> <p>Victim was respondent's former wife – 3 children together. VRO in place. Reconciled briefly when appellant released on parole but separated at time attack due to appellant's alcoholism.</p> <p>Offending occurred over period approx 3hrs – at [3] 'horrible, humiliating and violent ordeal.'</p> <p>Respondent went to victim's home at approx 5am, knowing she would not be there (living with her father and only returning to own home in afternoons and evenings to turn security lights on and off). Respondent hid bike so victim would not know he was there and used key to enter house.</p>	<p>4 yrs 6 mths each count.</p> <p>Owed 490 parole days.</p> <p>Total effective sentence 4 yrs 6 mths.</p> <p>EFP.</p> <p>Medium-high risk re-offending in a sadistic as well as sexual way.</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u> 8 yrs imp each first count penile pen, anal pen and oral pen. 3 yrs imp each other count oral or digital pen. 5 yrs imp each other count sex pen. 6 mths imp dep lib. 2 yrs 6 mths imp threat to kill.</p> <p>TES increased to 7 yrs 4 mths.</p> <p>EFP.</p>

			<p>Victim came to house at approx 8.45am and as she walked down hall saw respondent sitting in chair in bedroom. Victim went to leave house. Respondent stopped her. Spoke for a short time before respondent became aggressive and pulled a knife from behind his back. Respondent put knife to victim's throat and demanded she walk to the bedroom. Victim pleading not to rape her. Respondent told victim remove all clothes, threatening to 'run the knife through her' if refused. Respondent then committed 15 acts sex pen. During offending rubbed genitals on face and chest, cut her hair, made her crawl throughout house on hands and knees, demanded she dance for him and express pleasure at sexual assaults. Sex pen caused lacerations to victim's vagina (including one over 1cm in length) – speaks to force used.</p> <p>At [29] offending designed to 'demean, degrade and humiliate'.</p>		<p>NB: double jeopardy applied to State appeals (appropriate TES without this consideration 8 yrs 6 mths imp).</p> <p>At [12] no tariff for sexual offending but range 6 yrs-9 yrs single act penile pen vagina reaffirmed. Noted that 6 yrs often imposed after mitigating factors considered.</p>
9.	<p><i>Rigby v The State of Western Australia</i></p> <p>[2005] WASCA 134</p> <p>Delivered 22/07/2005</p>	<p>28 yrs at time offending.</p> <p>Convicted after late PG (in face of prosecution's overwhelming case - much less mitigation).</p> <p>Offending breached parole.</p> <p>Prior criminal record – burglary; dishonesty offences; drug and motor vehicle related offences</p>	<p>1 x Agg burg. 1 x Dep lib. 1 x Dep lib. 1 x Agg sex pen.</p> <p>Jumped fence and entered house, victim awoke to noises. Confronted by appellant and overpowered. Screaming woke 3 yr old daughter. Victim attempted to escape when told to return daughter to bedroom. Daughter refused to return to bedroom and was left standing alone in hallway screaming whilst appellant shut study door and raped victim.</p>	<p>2 yrs 8 mths imp. 16 mths imp. 16 mths imp. 5 yrs 4 mths imp.</p> <p>TES 9 yrs 4 mths imp</p>	<p>Dismissed.</p> <p>At [32] '<i>Having regard to the seriousness of the offences committed by the applicant I conclude that the total aggregate or head sentence is not manifestly excessive.</i>'</p>

		Custody of 2 children - due to abuse by ex-partner's boyfriend; commenced substance use at 14 yrs (cannabis, ecstasy, amphetamine).	Held in sentencing offence was invasion of victim's sense of autonomy, dignity, privacy and sense of security, as well as a physical violation. Attack had a lasting impact on victim's daughter.		
8.	<i>The State of Western Australia v Miller</i> [2005] WASCA 53 Delivered 24/03/2005	25 yrs at time offending (victim 42 yrs). Convicted after late PG (on day trial due to begin). Prior criminal record – minor offences and one previous agg burg. Supportive family; reasonably good work history.	Ct 1: Agg burg. Ct 2: Sex pen (cunnilingus). Ct 3: Indecent assault. Ct 4: Sex pen (penile pen vagina). Respondent had met victim on several occasions prior to offending. Respondent aware that, owing to psychiatric illness (schizophrenia), victim more vulnerable than average person. Respondent, after consuming substantial amount alcohol and taking 2-3 ecstasy tablets, armed himself with an iron bar and a screwdriver, concealed his face with a pillow cover and went to victim's unit. Victim heard respondent breaking in and called out for help. Respondent went to victim, began hitting the bar on his hand in a threatening manner and told victim he wanted sex. Victim, believing she had no choice, agreed and took pillow cover off respondent's head. Victim recognised respondent and asked him to shower first. Respondent showered and took victim into bedroom – performed cunnilingus (ct 2), lifted her top and put her breast in his mouth (ct 3) and engaged in sexual intercourse, withdrawing before ejaculation at the request of the victim (ct 4).	Ct 1: 2 yrs 8 mths imp. Ct 2: 2 yrs 4 mths imp. Ct 3: 4 mths imp. Ct 4: 4 yrs imp. TES 4 yrs imp.	Allowed. Ct 1: 4 yrs imp. Ct 2: 4 yrs 8 mths imp. Ct 3: 1 yr 4 mths imp. Ct 4: 5 yrs 4 mths imp. TES increased to 6 yrs imp.

<p>7.</p>	<p><i>Hart v The Queen</i></p> <p>[2003] WASCA 265</p> <p>Delivered 5/11/2003</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record - burglary and violent offences but none with sexual component.</p> <p>Long term relationship broken down due to domestic violence and alcohol and amphetamine abuse; present offences fuelled by amphetamines</p>	<p>4 separate home invasions.</p> <p><u>Cts 1-4 (home invasion 1):</u></p> <p>1 x Agg burg. 1 x Dep lib. 1 x Agg indecent assault. 1 x Unlawful wounding.</p> <p>Victim, 20 yrs, at home with 20 mth old son when appellant smashed window of her home and entered in the early hours of the morning. On entry, appellant unlocked deadbolt so he could easily escape. Victim got out of bed, appellant hid and grabbed her from behind as she walked past him. Appellant put his hands over her mouth, waved a knife in front of her face and told her not to scream. Appellant then dragged victim to a bedroom and she began to scream. Appellant pulled victim by her hair into her child's room. Child woke up and appellant pushed him out of the room and closed and locked the door behind him. Appellant pushed victim to floor, causing laceration to back of her head, and tried to remove her underwear. Victim struggled violently and grabbed appellant's testicles. Appellant ran from room and out of the door he had earlier unlocked, pushing the child against the wall in the process.</p>	<p>TES all offences 34 yrs imp.</p> <p>Equivalent to 22 yrs 8 mths imp after implementation of transitional provisions.</p> <p>6 yrs imp. No sentence. 2 yrs imp. 3 yrs imp.</p> <p>TES 6 yrs imp.</p> <p>Equivalent to 4 yrs imp after implementation of transitional provisions.</p> <p>High risk re-offending.</p>	<p>Allowed – on totality.</p> <p>TES reduced to 28 yrs imp.</p> <p>At [32] ‘<i>The concern of the learned sentencing judge to separately mark each of the four groups of offences with cumulative sentences has, in the result, produced a sentence which, in totality, is beyond that which is appropriate.</i>’</p> <p>At [3] ‘<i>The severity of a term of imprisonment increases exponentially with its length.</i>’</p> <p>NB: original sentence was imposed whilst the transitional provisions were in force.</p>
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		<p><u>Cts 5-7 (home invasion 2):</u> 1 x Agg burg. 1 x Dep lib. 1 x Agg indecent assault. Victim 30 yr old female living alone. In early morning, 2 days after first home invasion, appellant forced entry into victim's home, entered her bedroom. Victim woke up to find appellant on top of her, pinning her down. Appellant verbally threatened victim and victim noticed appellant armed with a knife. Victim struggled and cried out for help. Appellant fled house.</p> <p><u>Cts 8-14 (home invasion 3):</u> 1 x Agg burg. 1 x Dep lib. 1 x Indecent deal child u 13 yrs. 1 x Sex pen child u 13 yrs. 3 x Sex pen child u 13 yrs. 12 yr old victim spending night at 68 yr old grandmother's house. Appellant broke in, stole money from a purse and searched the rest of the house. Appellant discovered victim in bed asleep, placed his hand over her mouth and rubbed her breasts and body. Victim woke up and appellant told her not to scream or her grandmother would get hurt. Appellant pulled victims' underwear to the side and penetrated vagina with fingers. Appellant then pulled own pants down and inserted penis into vagina, attempting sexual intercourse. Appellant stopped after moment and said it wasn't working. Appellant removed victim's underwear and again inserted penis into vagina. Victim felt cold metal object, knife or screwdriver, against her neck. Victim allowed to go to toilet, appellant</p>	<p>6 yrs imp. No sentence. 2 yrs imp.</p> <p>TES 6 yrs imp. Equivalent to 4 yrs imp after implementation of transitional provisions.</p> <p>6 yrs imp. No sentence. 3 yrs imp. 7 yrs imp. 10 yrs imp each count.</p> <p>TES 10 yrs. Equivalent to 6 yrs 8 mths imp after implementation of transitional provisions.</p>	
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		<p>accompanied her with his hand around her throat and walked her back to bedroom where he again inserted penis into vagina, attempting sexual intercourse while holding knife or screwdriver to her throat. Appellant eventually ejaculated onto bed. Appellant then left, after again threatening victim, and took the telephone with him.</p> <p><u>Cts 15 -31 (home invasion 4):</u> 1 x Agg burg. 1 x Agg sex pen. 1 x Agg indecent assault. 1 x Att agg sex pen. 1 x Agg sex pen. 1 x Agg indecent assault. 1 x Agg sex pen. 1 x Agg sex pen. 1 x Agg sex pen. 1 x Agg indecent assault. 1 x Agg sex pen. 1 x Agg indecent assault. 1 x Dep lib. 1 x Agg armed robbery. 1 x Steal motor vehicle.</p> <p>Immediately after third home invasion, appellant entered home 68 yr old woman living alone. Victim asleep in bed. Appellant entered bedroom, placed hand over mouth and held a knife to her throat. Appellant put hands inside victim's underwear, rubbed her vagina and then digitally penetrated her. Appellant removed victim's tracksuit pants and underwear, forced her onto her stomach and pushed her legs apart. After several unsuccessful attempts at inserting penis into vagina, appellant pushed</p>	<p>6 yrs imp. 7 yrs imp. 1yr imp. 4 yrs imp. 10 yrs imp. 1 yr imp. 12 yrs imp. 10 yrs imp. 10 yrs imp. 2 yrs imp. 7 yrs imp. 2yrs imp. No sentence. 4 yrs imp. 4 yrs imp.</p> <p>TES 12 yrs imp. Equivalent to 8 yrs imp after implementation of transitional provisions.</p>	
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			<p>victim into keeling position, spread her vagina with his hands and penetrated her vagina with his penis. Appellant engaged in sexual intercourse to ejaculation. During intercourse, appellant had knife in teeth. Appellant then threw victim onto her stomach, lay on top of her and inserted his penis into her anus. Victim resisting, crying and pleading with appellant to stop. Appellant removed penis from anus, pushed victim onto her side, knelt on the bed and attempted to force his penis into her mouth. Victim resisted and shut mouth. Appellant grabbed her mouth and jaw and prised mouth open and then moved penis in and out of her mouth. Appellant stopped after short while and attempted to wipe victim's vagina, mouth and buttocks with sheet to remove DNA evidence. Appellant held pillow over victim's head and demanded car keys while holding knife to her throat. Victim told appellant where keys were and appellant left, after cutting phone lines.</p>		
<i>Transitional Provisions Enacted (31/08/2003)</i>					
6.	<p><i>Yarran v The Queen</i></p> <p>[2003] WASCA 130</p> <p>Delivered 18/06/2003</p>	<p>Convicted after PG (Northam offences).</p> <p>Convicted after trial (Midland offences).</p> <p>Considerable prior criminal record - agg assault on females; AOBH on female; wilful exposure; trespass; indecent assault; threat to</p>	<p><u>First Northam offences: (1993)</u></p> <p>1 x Burglary. 8 x Agg indecent assault. 7 x Sex pen.</p> <p><u>Second Northam offences: (1993)</u></p> <p>1 x Burglary. 3 x Indecent assault. 13 x Sex pen. 1 x Threat to prevent unlawful act.</p>	<p>TES 17 yrs imp. Equivalent to 11 yrs 4 mths imp after implementation of transitional provisions.</p> <p>Order for indefinite imp made.</p> <p>Reports pessimistic</p>	<p>Appeal against indefinite sentence dismissed.</p>

		kill.	<p><u>Midland offences: (1994)</u> 1 x Burglary. 1 x Dep lib. 3 x Agg indecent assault. 11 x Agg sex pen. 1 x Att agg sex pen.</p> <p>3 home invasions in which women were raped – appellant walked streets looking for suitable targets. Over significant periods of time in each case appellant repeatedly degraded and humiliated the victims.</p> <p><u>First offence:</u> armed with knife or pretended to be. Victim home alone. <u>Second offence:</u> penetrated victim with hockey stick and a spoon. Children in the house. <u>Third offence:</u> armed, threatened to kill victim, penetrated victim with knife handle. Children in the house and awake, calling out to victim.</p>	about offender's understanding of and desire to resolve the problems.	
5.	<p><i>Fowler v The Queen</i></p> <p>[2002] WASCA 296</p> <p>Delivered 1/11/2002</p>	<p>Convicted after trial.</p> <p>Offending breached VRO – appellant could not enter victim's home to retrieve his belongings or see his children.</p>	<p>1 x Sex pen.</p> <p>Victim was appellant's estranged wife.</p> <p>Appellant phoned victim's home phone and hung up when she answered. Appellant then went broke into the victim's home and forced victim into the bedroom. Appellant tried to force her legs apart and victim asked him not to. Victim eventually submitted and appellant engaged in sexual intercourse.</p>	<p>5 yrs imp.</p> <p>TES 5 yrs imp. Equivalent to 3 yrs 4 mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	Dismissed.
4.	<p><i>Collins v The Queen</i></p>	<p>26 yrs at time offending.</p> <p>Convicted after early PG.</p>	<p>1 x Agg burg. 1 x Sex pen. 1 x Sex pen.</p>	<p>3 yrs imp. 6 yrs imp. 6 yrs imp.</p>	Dismissed - sentences appropriate length, if anything rather lenient.

	<p>[2002] WASCA 142</p> <p>Delivered 29/05/2002</p>	<p>Prior minor assaults; disturbances; resisting arrest.</p> <p>De facto relationship (8 yrs); two young children; suffered severe physical and emotional abuse as a child; suffering relationship, business and financial difficulties</p>	<p>1 x Sex pen. 1 x Sex pen. 1 x Sex pen. 1 x AOBH. 1 x Agg burg. 1 x Robbery. 1 x Agg burg. 1 x Assault to prevent arrest.</p> <p>Appellant entered random house, disconnected telephone, threatened victim with bottle. Appellant then committed 5 sex offences. In process, appellant assaulted brother who came home and tried to prevent the rape. Appellant left house then returned demanding keys to car, crashed car and entered and ransacked neighbouring house. Appellant assaulted police when being apprehended.</p> <p>Appellant had patchy recollection of offending and could not believe he had behaved so violently or that he sexually violated victim in the way described - severely intoxicated by alcohol at time offending.</p>	<p>8 yrs imp. 6 yrs imp. 8 yrs imp. 2 yrs imp. 3 yrs imp. 4 yrs imp. 1 yr imp. 1 yr imp.</p> <p>TES 11 yrs imp. Equivalent to 7 yrs 4 mths imp after implementation of transitional provisions.</p> <p>Genuine remorse.</p>	<p>Aggregate term well within range of properly proportionate response by the court to the total criminality involved.</p>
3.	<p>Narrier v The Queen</p> <p>[2000] WASCA 86</p> <p>Delivered 6/04/2000</p>	<p>25 yrs at time offending.</p> <p>Prior criminal record – frequent appearances in children’s court in WA and SA (including juvenile convictions for agg sex assault; dep lib; armed robbery); served term juvenile detention;</p>	<p>1 x Agg burg. 1 x Agg sex pen. 1 x Agg burg. 1 x AOBH.</p> <p>Offending occurred on one night.</p> <p>Appellant intended to steal money from first victim’s house. On arrival, saw victim 1 through window and decided to sexually assault her.</p>	<p>4 yrs imp. 8 yrs imp. 4 yrs imp. 3 yrs imp.</p> <p>TES 12 yrs imp.</p> <p>Equivalent to 8 yrs imp after implementation of transitional provisions.</p>	<p>Allowed – only order for indefinite imp appealed.</p> <p>Order for indefinite imp quashed. TES undisturbed.</p> <p>At [35] <i>In my view and in the sense discussed by the High Court Justices in Chester, this was not one</i></p>

		<p>numerous adult convictions (burglary; child stealing; assault)</p> <p>Sexual offending related to alcohol dependence.</p> <p>In foster care until 7 yrs – little physical or emotional care; returned to natural parents – regular domestic violence and excessive alcohol consumption; father died alcoholism when appellant 13 yrs;</p>	<p>Appellant waited until victim 1 opened rear door to let her dog out. Appellant then grabbed victim 1 by throat and pushed her back into the house while holding her mouth closed. Took victim 1 into lounge room and threatened to kill her. Pushed victim 1 onto sofa and pulled her pants down to her ankles. Appellant lowered shorts and penetrated vagina with his penis. After withdrawing, appellant went into kitchen and waited for victim 1 to come to him. Appellant then apologised. Victim 1's two young children asleep in house at time offending. Appellant went to victim 2's house with intent to steal money. Victim 2 asleep on sofa and woke up. Victim 2 tried to run away but appellant grabbed her by the neck and head and restrained her. Victim 2 struggled free and ran outside. Appellant grabbed her again and another struggle ensued. Victim 2 told appellant she recognised him from the neighbourhood and appellant fled.</p>	<p>Order of indefinite imp made s 98 <i>Sentencing Act</i>.</p> <p>Remorse; embarrassment & distress at offending; no attempt to minimise responsibility; no attempts to blame victims; no attempt to justify behaviour.</p>	<p><i>of the very exceptional cases where the exercise of the power was demonstrably necessary to protect society from physical harm.</i></p>
2.	<p><i>Vilai v R</i></p> <p>[1999] WASCA 275</p> <p>Delivered 5/12/1999</p>	<p>30 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No relevant prior criminal history.</p> <p>Exhibited good qualities whilst in remand</p>	<p>1 x Deprivation of liberty. 1 x Agg sexual pen. 1 x Unlawful wounding with intent to do GBH (Acquitted of Att Murder).</p> <p>Victim attempting to break off relationship with appellant. Appellant attended victim's house and was allowed inside to talk. Victim noticed knife in appellant's back pocket, Appellant then held knife to her throat, forced her to the bedroom where he had sexual intercourse with her. Victim grabbed knife and attempted to escape, appellant caught victim and used knife to stab her 9 times in the chest, back, legs and arms.</p>	<p>4 yrs imp. 6 yrs imp. 8 yrs imp.</p> <p>TES 14 yrs imp. Equivalent to 9 yrs 4 mths imp after implementation of transitional provisions.</p> <p>Remorse.</p>	<p>Allowed;</p> <p>TES reduced to 10 yrs imp.</p> <p>NB indiv sentences not disturbed.</p>

<p>1.</p>	<p><i>Krencej v R</i> [1999] WASCA 20 Delivered 19/05/1999</p>	<p>19 yrs at time offending.</p> <p>Prior criminal record – burglary; stealing; robbery. History breaching parole.</p> <p>Offending breached parole.</p> <p>Affected by alcohol, cannabis and amphetamine at time offending – significant history substance abuse.</p> <p>Educated to yr 8; limited numeracy and literacy skills; some periods of employment.</p>	<p>Ct 1: Stealing. Ct 2: Dep lib. Ct 3: Sex pen without consent. Ct 4: Armed robbery (money). Ct 5: Armed robbery (car). Ct 6: Attempt pervert course justice. Ct 7: Attempt pervert course justice. 5 x s 32 offences.</p> <p>Appellant stole items from victim 1’s house by removing flyscreen on kitchen window and reaching in (ct 1). Appellant then jumped several fences and entered property of victim 2 (59 yr old woman living alone). Appellant followed victim 2 into her house when she re-entered the house. Appellant removed a vest and a short from a drawer and used them to disguise his face. Appellant walked into victim 2’s bedroom as she was dressing, produced a knife and demanded money. Victim 2 indicated a drawer for the appellant to open and appellant then bound victim’s hands and legs using stockings (ct 2). Appellant penetrated victim 2’s vagina with his penis and victim lost consciousness (ct 3). Victim 2 awoke and appellant forced her into the shower (still bound and clothed) and turned the water on. Appellant stole victim 2’s keys, money and car (ct 4 & 5). Appellant later involved in car accident with victim 2’s car and lied to police about his involvement (ct 6 & 7).</p>	<p>Ct 1: 8 mths imp. Ct 2: 5 yrs imp. Ct 3: 15 yrs imp. Ct 4: 4 yrs imp. Ct 5: 1 yr imp. Ct 6: 1 yr imp. Ct 7: 1 yr imp. \$1,000 fines & 3 mths imp.</p> <p>TES 16 yrs 8 mths imp. Equivalent to approx 11 yrs imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>Lack victim empathy; high risk sexual re-offending.</p>	<p>Allowed.</p> <p>TES reduced to 13 yrs 8 mths imp.</p> <p>EFP.</p> <p>Ct 3 reduced to 12 yrs imp for reasons of totality only.</p> <p>Allowed primarily owing to youth and the fact that the offending could not be said to fall into the worst case category.</p>
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