

# Sexual Assaults – Home Invasions

ss 325 and 326 *Criminal Code*

**From 1 January 2014**

**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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
5.	<p><i>Merritt v The State of Western Australia</i></p> <p>[2019] WASCA 203</p> <p>Delivered 17/12/2019</p>	<p>21 yrs at time offending. 45 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Long and extensive criminal history; prior serious convictions for serious sexual and violent offending towards girls and women.</p> <p>Dysfunctional childhood; characterised by neglect; instability and extensive physical abuse in State care.</p> <p>Indigenous heritage; few positive role models.</p> <p>Illicit drug use.</p>	<p>Ct 1: Dep lib. Ct 2: Burglary. Ct 3: Agg indec assault. Cts 4-8: Agg sex pen.</p> <p>The victim, P, was a female about 13 ½ yrs of age.</p> <p>P was at home with her sister when Merritt entered the home without consent. His face was covered to conceal his identity.</p> <p>Entering her bedroom Merritt grabbed P by the back of her head and told her to get up and do as she was told.</p> <p>Merritt then forced P to walk into bushland where he committed various sexual offences against her.</p> <p>Merritt was identified, more than twenty yrs later, through DNA technology.</p>	<p>Ct 1: 4 yrs 6 mths imp (conc). Ct 2: 5 yrs 5 mths imp (conc). Ct 3: 2 yrs 9 mths imp (conc). Ct 5 &amp; 8: 4 yrs 2 mths imp (conc). Ct 6: 6 yrs imp (cum). Ct 7: 6 yrs 6 mths imp (cum).</p> <p>TES 12 yrs 6 mths imp. EFP.</p> <p>At time of sentencing was a declared dangerous sex offender and subject to a continuing detention order.</p> <p>In 1994 (5 days after committing the above offences) the appellant committed further sexual offences against a 9 yr old female. Sentenced in 1995 to a TES of 10 yrs imp with EFP.</p> <p>The sentencing judge</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle; individual sentences not challenged.</p> <p>At [70] ... it is beyond question that the offences committed by him were of the utmost gravity. As serious as the offences were ... the offences committed [5 days later] were, if anything, even more serious. They involved the coercion of a very young and vulnerable child into bushland, where the appellant sexually penetrated her in such a way as to inflict serious physical injuries that required surgery. ... it could not be said that the offences under consideration were uncharacteristic of the appellant. To the contrary, they were entirely consistent with his prior offending to that point. He plainly posed then a danger to the community.</p>

				<p>found the offending towards the higher end of the scale; clearly persistent and unrelenting and involved various forms of penetration; the offences are not isolated or uncharacteristic.</p> <p>The sentencing judge found the offending had a devastating impact on the victim and that she suffered ‘a terrible ordeal’.</p> <p>Some acceptance of responsibility; a significant danger of serious sexual reoffending.</p>	<p>At [71] ... the appellant remains unrehabilitated and poses a serious risk of reoffending.</p> <p>At [72] ... By the time the appellant came to be sentenced ... for the offences committed ... he was no longer youthful and so the increased importance of efforts to rehabilitate a youthful offender was no longer applicable. ... The time he has spent in custody subject to the continuing detention order and the period referred to in [23] ... were relevant considerations in the application of the totality principle.</p> <p>At [73] However, having regard to all relevant circumstances and all relevant sentencing factors ... the TES imposed ... did not infringe the first limb of the totality principle.</p> <p>At [75] ...the TES was not unreasonable or plainly unjust.</p>
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<p>4.</p>	<p><i>Pickett v The State of Western Australia</i></p> <p>[2019] WASCA 178</p> <p>Delivered 12/11/2019</p>	<p>21 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Atrocious juvenile criminal history; including two convictions for manslaughter by motor vehicle aged 14 yrs.</p> <p>Third child of nine children; non-drinking parents; stable home.</p> <p>Struggled at school often in trouble; frequent truancy; expelled aged 11 yrs.</p> <p>Very little employment history.</p>	<p>Ct 1: Agg burglary. Ct 2: Armed robbery. Ct 3: Agg indec assault. Cts 5 &amp; 6: Agg sex pen.</p> <p>The victim, aged 27 yrs, was home alone. In the early hrs of the morning she was woken by the sound of Pickett, in the company of a co-offender, breaking into her home (ct 1).</p> <p>The victim called the police and hid in her bedroom. Pickett entered the room and, pretending to be armed with a knife, demanded money from her. She gave him \$55 in cash (ct 2).</p> <p>Pickett then made the victim remove her nightdress, so she was naked. He then compelled her to touch herself (ct 3). He also made her walk naked outside, past the co-offender who was keeping watch.</p> <p>Pickett also sexually penetrated the victim without her consent (cts 5 and 6).</p>	<p>Ct 1: 3 yrs imp (conc). Ct 2: 5 yrs imp (cum). Ct 3: 3 yrs imp (conc). Ct 5: 4 yrs imp (cum). Ct 6: 3 yrs imp (conc).</p> <p>TES 9 yrs imp.</p> <p>Sentence to be served partly cum upon a TES of 10 yrs 9 mths imp already serving.</p> <p>Indefinite imp order made under s 98 of the <i>Sentence Act 1995</i>.</p> <p>It was accepted the sexual offending was premeditated.</p> <p>No remorse or victim empathy; high risk of reoffending.</p>	<p>Appeal allowed.</p> <p>Appeal concerned indefinite imp order (imposed 23 June 2000).</p> <p>Resentenced:</p> <p>Ct 1: 3 yrs imp (conc). Ct 2: 5 yrs imp (cum). Ct 3: 3 yrs imp (cum). Ct 5: 5 yrs imp (cum). Ct 6: 5 yrs imp (conc).</p> <p>TES 13 yrs imp.</p> <p>TES with other sentences approx. 14 yrs 7 mths imp.</p> <p>At [81] The judge emphasised ... the seriousness of the appellant's offending, the escalation of its seriousness in November and December 1998 and the rapidity with which the appellant offended each time he was released from custody. We accept all of those matters. Nevertheless, the combination of ... the fact that most of the offending was committed, when the</p>
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					<p>appellant was a child of less than 14 yrs or ... when he had just turned 14 yrs old; ... the appellant's youth – being just 21 yrs old – when he committed his most recent offences; ... the lengthy horizon – more than 7 yrs – before[he] would be released; and ... the absence of any expert opinion ... means that [his] criminal history could not, in our respectful opinion, on its own justify the making of an indefinite imp order.</p> <p>At [83] In the absence of expert psychiatric or psychological evidence, offences committed at the age of 21 yrs or less (and generally at the age of 14 yrs or less) provide an insufficient foundation to conclude, on the balance of probabilities, that, when released from prison aged almost 30 yrs, the appellant would be such a danger to society or part of it as to reasonably justify the making of an indefinite</p>
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					imp order.  At [93] In resentencing the appellant, the starting point is the very serious nature of the appellant's offending, and the effects it has had upon his victim.
3.	<b><i>Eravelly v The State of Western Australia</i></b>  <b>[2018] WASCA 139</b>  Delivered 10/08/2018	<p>Convicted after trial.</p> <p>No prior criminal history in Australia; prior criminal convictions in USA for voyeurism and battery.</p> <p>Raised stable, hardworking and respected family.</p> <p>Held in high regard by family and friends.</p> <p>Good employment history; successful career as international airline pilot.</p> <p>Married three times; suffered loss of second wife due to illness; third wife remains supportive; two children.</p>	<p>Ct 1: Burglary. Ct 2: Dep lib. Ct 3: Unlawful wounding. Cts 4 &amp; 8: Agg sex pen.</p> <p>Eravelly was a stranger to the victim.</p> <p>In the early hours of the morning Eravelly broke into the victim's unit whilst she was sleeping. Once inside he threatened to cut her with a knife, tied her hands behind her back, blindfolded her and sexually penetrated her vagina, anus and mouth with his penis.</p> <p>The victim sustained cuts and abrasions, including a 2cm long laceration to her wrist that required suturing.</p> <p>Eravelly was identified many years later through an international DNA database.</p>	<p>Ct 1: 3 yrs imp (cum). Ct 2: 18 mths imp (conc). Ct 3: 1 yrs imp (conc). Ct 4: 4 yrs imp (cum). Cts 5-7: 5 yrs imp (conc). Ct 8: 6 yrs imp.</p> <p>TES 13 yrs imp.</p> <p>The trial judge found while the offending was not in the worst category, it was very serious; it was premediated; he arrived with a knife, a torch, a stocking to conceal his identify and a rope to bind his victim.</p> <p>The trial judge found the appellant was in denial and without remorse, with no insight into his offending or victim</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [96] ... the appellant subjected the complainant to a sustained, humiliating and degrading series of sexual assaults. The attack was premediated. It involved the appellant violating the sanctity of both the complainant's home and her body. The attack engendered great fear into the complainant. The appellant broke into her unit at night and took advantage of the complainant's vulnerability by attacking her while she was alone in the unit, asleep in her bed. ... This very serious sustained series of sexual assaults demanded a very</p>

				<p>empathy.</p> <p>Average risk of reoffending.</p> <p>Accepted the appellant's experience in prison would be more isolating and difficult than usual as a foreign national.</p>	<p>significant term of immediate imp.</p> <p>At [99] ... the TES bears a proper relationship to the overall criminality involved in all the offences, viewed in their entirety and having regard to the circumstances of the case, ...</p>
2.	<p><b><i>Atkinson v The State of Western Australia</i></b></p> <p><b>[2017] WASCA 154</b></p> <p>Delivered 17/08/2017</p>	<p>45 yrs at time sentencing. 25 and 27 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>Minor criminal history.</p> <p>Dysfunctional family; parents separated when young adult; eldest sister epileptic; younger brother involved in heavy drug use; mother imprisoned for fraud.</p> <p>Strained relationship with mother for many yrs, now close; maintains some contact with father.</p> <p>Frequently truant at school; expelled in yr 10.</p>	<p>Cts 1 &amp; 5: Agg burglary. Cts 2, 6-8: Agg sex pen. Cts 3 &amp; 9: Dep lib. Ct 4: Att agg robbery.</p> <p>The offences arise from two separate incidents. One in 1997 and the other in 1999.</p> <p><u>Cts 1-4 (1997)</u></p> <p>The victim, N, was 18 yrs old and home alone. He forced his way into her home after knocking on her door wearing a balaclava on his face.</p> <p>Atkinson held a knife to N's throat, tied her up and covered her face before sexually penetrating her and demanding money, which she said she did not have.</p> <p>He warned her not to talk, scream or move before leaving the premises.</p> <p><u>Cts 5-9 (1999)</u></p>	<p>Ct 1: 7 yrs 6 mths imp (head) Ct 2: 7 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 2 yrs imp (conc). Ct 5: 7 yrs 6 mths imp (cum ct 1). Ct 6: 7 yrs imp (conc). Ct 7: 3 yrs imp (conc). Ct 8: 7 yrs imp (conc). Ct 9: 2 yrs imp (conc).</p> <p>TES 15 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge noted the offences only came to light following a DNA match to the 1999 offences and it was to the appellant's credit that he made some admissions with respect</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence, totality, failure to consider remorse and discount for voluntary disclosure of guilt on cts 1-4.</p> <p>Re-sentenced:</p> <p>Ct 1: 5 yrs 6 mths imp. Ct 2: 5 yrs 2 mths imp. Ct 3: 1 yr 6 mths imp. Ct 4: 1 yr 6 mths imp.</p> <p>All other sentences and orders for cum, conc and EFP otherwise unaffected.</p> <p>TES 13 yrs imp.</p> <p>At [61] The offences were extremely serious offences</p>

		<p>Single; no children.</p> <p>Worked many yrs mining industry; currently unemployed.</p> <p>Long history of alcohol and illicit drug use.</p> <p>Diagnosed bipolar disorder; history of non-compliance with medication.</p>	<p>The victim, E, was 19 yrs old and home alone.</p> <p>Atkinson let himself into her home and covered her face, before tying her up and repeatedly sexually penetrating her.</p> <p>He told her not to phone anyone because he would be watching before leaving the premises.</p> <p>In 2016 Atkinson's DNA was matched to the 1999 offences. During a second interview he voluntarily disclosed the 1997 offences to police.</p>	<p>to the 1997 offences.</p> <p>The sentencing judge found the appellant's cooperation indicated some degree of contrition and acceptance of culpability and that he understood the issues likely to have been confronted by the two victims. He took a neutral stance on the appellant's remorse as the psychologist and psychiatrist had differing views as to whether the appellant had victim empathy and was genuinely remorseful.</p> <p>Moderate to low-risk of reoffending.</p>	<p>of their type. They involved planning and the use of force to overwhelm young and vulnerable victims at night in their homes. Physical restraints and threats were used, including the use of weapons, in order to obtain the victim's compliance. The offences caused great psychological trauma to the victims and have had long-lasting effects.</p> <p>At [64] ... the appellant's disclosure of the 1997 offending was significant because it was a disclosure to the authorities of otherwise unknown offences. ... It might be suggested that the appellant made the disclosure because he feared ... other undisclosed DNA evidence that would implicate him. However, there was no suggestion of that ... and in fact it was not the case. Whatever the appellant's motivations, and he said that he was motivated by remorse, the fact is that but for his</p>
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					<p>disclosure there is no reason to think that the appellant would have been charged with the 1997 offences. In these circumstances his disclosure was a significant matter to the credit of the appellant to be taken into account in sentencing on cts 1 to 4.</p> <p>At [65] ... the individual sentences for cts 1 to 4 were the same as those imposed for the similar offending in cts 5 to 9. This cannot be accounted for by any significant difference in the offending. The two groups of offences were of a comparable level of seriousness. Indeed, the respondent accepted before this court that, if anything, the second group of offences were more serious.</p>
1.	<p><b><i>PSS v The State of Western Australia</i></b></p> <p><b>[2015] WASCA 98</b></p>	<p>15 yrs 11 mths at time offending. 16 yrs 8 mths at time sentencing.</p> <p>Convicted after PG.</p>	<p>Ct 1: Agg burg. Ct 2: Sex pen. Ct 3: Common assault. Ct 4: Common assault. Ct 5: Poss prohibited dug.</p> <p><u>Ct 1 and 2</u></p>	<p>Ct 1: 3 yrs detention (conc). Ct 2: 3 yrs 9 mths detention. Ct 3: 3 mths detention (conc). Ct 4: 4 mths detention</p>	<p>Dismissed.</p> <p>At [26]-[30] Discussion of comparable cases.</p> <p>At [35] Having regard to the seriousness of the</p>

<p>Delivered 19/05/2015</p>	<p>Committed cts 1-2 while on bail for cts 3-4.</p> <p>No history for violent or sexual offending. Criminal history, including agg burgs, stealing, trespass, poss a prohibited weapon, breach of bail and IYSO.</p> <p>Turbulent childhood.</p> <p>Extensive cannabis use from age 13.</p> <p>Commenced sexual relations from age 12.</p>	<p>The victim was 24 yrs old. The appellant was taller and heavier than the victim. He committed the offences under the influence of alcohol and cannabis.</p> <p>Between 2.00am and 3.00am, The appellant climbed through a window into the victim's house. The victim was alone and asleep in bed. She woke from noises. The appellant crawled into her bed, held her down with his left leg and said "I want sex". She began to cry loudly and replied that she could not as she was a Christian. The victim pushed his chest but he stood his ground. He forcefully demanded that she hug him. She was crying and shaking with fear, but agreed. The appellant kissed the victim, forcing his tongue into her mouth. He forced the victim on her knees and forced his erect penis into her mouth. He took hold of her head with both hands and pulled her towards him while thrusting his hips forward and back. He ejaculated in the victim's mouth and then left the house.</p> <p><u>Ct 3 and 4</u></p> <p>The appellant was with two others at a train station. He approached the victim, who was standing with her partner. The victim's partner had been assaulted by a co-offender. He held the victim by her arms, restraining her from assisting her partner. When the victim stood in front of her partner to protect him from being assaulted further, the appellant grabbed her by the arms and pulled her down to the ground.</p> <p>The second victim had seen the appellant</p>	<p>(conc). Ct 5: NFP.</p> <p>TES 3 yrs 9 mths detention.</p> <p>Eligible for supervised release after 22.5 mths.</p> <p>Sentencing judge classified sex pen as a very serious offence of its kind. Penetration was violent, frightening, humiliating and degrading. Impact of offending on victim was serious and profound.</p> <p>Sentencing judge found appellant had some remorse and empathy.</p>	<p>circumstances of the sex pen offence, the sentence imposed by the sentencing judge was within the sound exercise of the sentencing discretion.</p>
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			<p>attacking a person on the platform and ran down the stairs to try and prevent the assault. The appellant ran at the second victim and punched and kicked him repeatedly.</p> <p><u>Ct 5</u> The appellant was found in poss of a small bag of cannabis.</p>		
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***Transitional Provisions Repealed (14/01/2009)***

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***Transitional Provisions Enacted (31/08/2003)***

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