

Q&A: THREE STRIKES FOR BURGLARY

QUICK FACTS:

52,247

Burglaries reported across New Zealand in 2013.

7,235

Burglaries 'resolved' by police in 2013. 'Resolved' means an offender has been apprehended and a decision made how to deal with him or her.

2,424

Burglaries resulted in a conviction in 2013 (less than 5% of reported burglaries)

953

Burglaries resulted in a term of imprisonment in 2013 (less than 2% of reported burglaries)

Sources: <http://www.police.govt.nz/sites/default/files/publications/crime-stats-national-20131231.pdf>;
<http://datalab.justice.govt.nz>

Burglary has the highest recidivism rate (repeat offending) of any serious offence (Nadesu, 2008)¹

Q: Why are the minimum sentences to be served without parole?

A: Currently, any person serving a sentence of 2 years or less is automatically released at 50% of their sentence, and a person serving a sentence of more than 2 years is eligible to apply for parole at just 1/3rd of their sentence. We think this undermines deterrence and fails to incapacitate repeat burglars for long enough. Parole or early release should be available for first and second-time burglary offenders only.

This policy effectively allows a person two chances before imposing a tough, non-parole sentence. An important part of the deterrence of this policy is its simplicity and that it "means what it says". If a sentence of 3 years is imposed, that is the sentence that should be served.

Q: What happens at the First or Second burglary convictions?

A: We propose no change for first and second convictions, except that a Judge would be expected to warn a convicted burglar of the serious future consequences of continued offending. This can be expected to provide some deterrence. The purpose of the policy

¹Arul Nadesu, *Reconviction patterns of released prisoners: A 48-months follow-up analysis*, New Zealand Department of Corrections, March 2008]

is to target recidivist and spree burglars, not first or second time burglars.

Q: Why does the minimum sentence not apply to under 18s but allow convictions of under 18s to count as priors?

A: This policy is consistent with the UK's Three Strike approach to burglary. Youth offenders are understood to constitute a significant proportion of burglars. This policy is a compromise between taking a tough stance by counting convictions for burglaries committed when under 18 as priors, but not imposing the mandatory minimum sentence on offenders under that age. A Judge would still retain the right to imprison youth burglars, as they sometimes do, for particularly serious burglary convictions. Equally, a judge could use the "manifestly unjust" provision to exempt someone over 18 with two burglary convictions when under the age of 18 from receiving the minimum three year sentence.

Q: What about Judicial discretion?

A: The sentence for a burglar's first and second conviction would remain entirely at the discretion of the Judge. It is only for a third or subsequent burglary conviction (or three or more burglary convictions sentenced at the same time) that the Judge must sentence the offender to at least the minimum sentence of three years. The Judge retains full discretion to apply a sentence between the minimum specified and the 10 year maximum. We would expect tougher sentences than the minimum for burglary offences that have aggravating factors.

Q: Does this policy apply to both residential and commercial premises?

A: Yes. Recidivist burglars typically target all types of premises. The UK regime only applies to residential premises. We think this is an unfortunate decision. Commercial

premises deserve the protection of the law. A policy that is tough on residential burglaries but weak on commercial burglaries is likely to encourage more targeting of commercial premises.

Q: What about mitigating factors such as a guilty plea?

A: This policy sets minimum sentences for recidivist and spree burglars, applicable after all mitigating factors have been taken into account. Sentences higher than the minimum would be expected where mitigating factors such as a guilty plea are not present.

The deterrence effect of the UK Three Strikes for burglary regime has been undermined to some degree by Judges routinely allowing discounts below the three year minimum for a guilty plea. This policy has been carefully developed to avoid this.

Q: Won't minimum sentences discourage guilty pleas and encourage more trials?

A: It is our expectation that in addition to the strong deterrence and incapacitation effects of this policy, some offenders will be discouraged from pleading guilty and choose to take their case to trial. That is their right. However, a person convicted of burglary after trial may be subject to a higher sentence than the mandatory minimum. We expect persons charged with burglary will continue to weigh their options and take advice from their lawyer on pleading guilty or taking their case to trial given the strength of the evidence against them.

Q: What about persons sentenced for multiple burglary convictions at the same time?

A: In so called "spree" offending, a burglar will commit multiple burglaries in a relatively short period of time. When caught they usually benefit from lighter sentences than would be the case if each burglary

was followed by a separate conviction and sentence. In effect, current sentencing practice encourages (or, at least, fails to deter) spree offending. Some burglars are able to evade the police for quite some time before police are able to link a range of evidence against them. Our three strikes policy will deter spree offending as well as recidivist offending that takes place over a longer period of time.

Q: Burglaries are often committed by people with drug or alcohol addiction. How will this policy address that?

A: We expect this policy to strongly deter most burglars, particularly recidivists and spree burglars. However, some burglars with serious drug or alcohol addictions may remain undeterred. When convicted they will be imprisoned for longer periods. This will prevent them from continuing to burgle and will restrict their access to drugs and alcohol. This increased time spent in prison will give the state a better opportunity to assist them with their addictions.

The current Government has significantly increased the funding and availability of drug and alcohol treatment to prisoners. We think this is a valuable investment to assist those people to deal with issues that may drive some of their criminal offending.

Q: What about circumstances in which it would be unduly harsh to apply the mandatory minimum?

A: As with the current Three Strikes regime for serious violent offending, the policy will allow rare exceptions where imposing the mandatory minimum would be “manifestly unjust” given the circumstances of the offence or the offender. In those cases, a strong presumption would remain that the mandatory minimum sentence be imposed, but the judge may depart from ordering

that the sentence be served without the opportunity for parole.

Q: Are people who already have burglary convictions subject to the policy?

A: Yes. An important aspect of the policy is that it is not a “clean slate” policy in which convicted burglars start with no strikes. An important aspect of the policy is to implement the regime quickly and send a strong message that recidivist or spree burglary will not be tolerated.

Q: Will the policy rely on formal warnings as the current Three Strikes regime for serious violent offending does?

A: No. The Three Strikes for Burglary policy is based on prior *convictions*, not prior formal *warnings*. However, for the purposes of deterrence Judges would be expected to warn burglars of the consequences of subsequent burglary convictions. It can also be expected that police officers, youth aid officers, lawyers, corrections and other justice sector staff would routinely warn burglars, informally, of the consequences of future offending.

Q: What about aggravated burglary?

A: A degree of overlap exists in this policy, as aggravated burglary (burglary with a weapon) is a specified serious violent offence under the current ‘Three Strikes’ law. Aggravated burglary convictions will be deemed to be subject to this policy given it is a more serious form of burglary. The law will be carefully written to ensure this is taken into account.