Aggravated Kidnapping

s.86(2) (NSW) *Crimes Act*

s 86(1) take or detain a person without their consent:

(a) with intent hold person for ransom

(a1) with the intention of committing a serious indictable offence, or (*subsection added 24.9.2012*)

(b) with intent of obtaining advantage

s 86(2) commit offence under subsection (1)

(a) in company of another person or persons, or

(b) at time of, or immediately before or after, actual bodily harm is occasioned to alleged victim

Maximum Penalty: **20 years**

Commenced: **14.12.2001**

	Case (age if known)	Offence	Plea	Sentence	Appeal	Record	Facts
1.	**Anforth** (29) [2003] NSWCCA 222	s.86(2)(a) s.86(2)(a)	PG (1/3 plea and assist on appeal)	2y suspended 2y suspended (concurrent)	Crown AA 2y NPP 10m 2y NPP 10m (concurrent)	Not serious	With 2 co-offenders travelled to place where victims staying – victims forced into car, handcuffed and driven to new location – handcuffs removed with angle grinder – offender left group – victims taken interstate by other offenders and further atrocities committed – offender armed with baseball bat – lesser offender Remorse – assistance – good character evidence
2.	**Newell** [2004] NSWCCA 183	s.86(2)(b) Possess prohibited weapon	PG (20%)	8y NPP 5y 18m (concurrent)	AD	Minor but included firearms offences	Picked up hitchhiker, bought drugs from her and had consensual sex – offender "lost it" - bound and gagged victim and threatened her with chainsaw file - detained victim in his car and his house - put victim in wheelbarrow and took her to bushland – victim escaped after several attempts - victim received severe swelling to hands and had cuts and abrasions over most of body - offence in middle range Offender had unremarkable background.

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

	Case (age if known)	Offence	Plea	Sentence	Appeal	Record	Facts
3.	**Li** [2005] NSWCCA 442 Co-offender: LIN	s.86(2)(a) Sched: Aggravated demand money w/menaces	PG (23.8%)	5y 4m NPP 3y 9m	AA 5y 4m NPP 3y 3m	Nil	Chinese student detained, threatened and assaulted over period of time by group of offenders – attempt to extort $20,000.
4.	**Williams** (30) **Saunders** (37) [2006] NSWCCA 33	s.86(2)(a) s.86(2)(a) Cultivate plant Sched Deemed supply leaf	VG (10% on appeal) VG	4y NPP 2y 4y NPP 2y FT 9m (concurrent)	AA 2y 6m NPP 18m AD	Minor Nil – breached bail	Cannabis plants found growing in S's garage during investigation into break in – two days later S and wife picked up 14y burglar and detained in house for several hours – W called in to assist – victim taken to forest area – attempt to find accomplices – offence unplanned and out of character S – instigator and primary offender W – prospects of rehabilitation
5.	**Lin** (22) [2006] NSWCCA 258 Co-offender: LI	s.86(2)(a)	PG	5y 4m NPP 3y 9m	AA 5y 4m NPP 3y 3m	Nil	Chinese student detained, threatened and assaulted over period of time by group of offenders – attempt to extort $20,000. Parity
6.	**Stavropoulos** [2007] NSWCCA 333	s.86(2)(a)	PG(1/3 plea and assist)	2y NPP 10m Suspended	Crown AD		Son died of drug overdose in victim's company – wished to question victim – paid two others to kidnap victim and bring in for questioning
7.	**Hammond** [2008] NSWCCA 138	s.86(2)(b) Larceny	PG (25%)	7y 6m NPP 5y FT 12m (concurrent)	AD	Record	Assaulted wife after evening out – punched and kicked her – forced head onto carpet and held down for ten minutes with foot – forced head into lap and squeezed throat until complainant blacked out – stole credit card
8.	**Jeffries** (38) (2008) 185 A Crim R 500 [2008] NSWCCA 144	s.86(2)(b) s.86(1)(b)	VG	10y NPP 7y 6m FT 5y (concurrent)	AD	Violence – breached bail and subject to AVOs	Detained and assaulted partner and her 15y daughter – choked partner and ripped out part of underneath portion of her tongue. History of domestic violence.

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9.	**Owens** [2008] NSWCCA 155 Co-offender: CARROLL	s.86(2)(b)	VG	6y NPP 4y	AD		In company of co-accused detained pregnant female who had been sharing offender's flat - suspected victim of taking offender's money and wallet.
10.	**Kerr** (38) [2008] NSWCCA 201	s.86(2)(b) Sched: 2 offences	PG (20%)	11y NPP 8y	AA Sentence backdated to reflect pre-sentence custody	Violence, dishonesty – on parole	Recently ended relationship with victim - attended victim's home at night asking that she give him a ride – directed her to isolated area where victim was cut on foot with knife and threatened, punched and kicked – took victim to two homes during course of evening where she was tied with duct tape and subjected to further assaults and threats that she would be killed. Drug abuse.
11.	**Carroll** (57) [2008] NSWCCA 300 Co-offender: OWENS	s.86(2)(a)	VG	6y NPP 4y	AD	Violence, drugs – breached bond	In company of co-accused detained pregnant female victim who had been sharing flat with co-offender-victim suspected of taking co-offender's money and wallet – victim needed to go to hospital with contractions – aider and abettor
12.	**Bajouri** (19) [2009] NSWCCA 125	s.86(2)(a) Sched: Demand money Administer stupefying drug	PG (20%)	6y NPP 3y	AA 5y NPP 2y	Insignificant	In company of three others, detained victim for 24 hours demanding victim telephone father for $100k – threat to kill or torture - forced victim to take anti-psychotic tablets – victim aware of gun on table - father telephoned police – victim and father known to offenders through drug supply - offence at upper end – lesser role than co-offenders - became involved at last minute - no part in planning Parity – younger and lesser criminal antecedents.
13.	**Ha** [2010] NSWCCA 83	s.86(2)(a)	VG	3y 4m NPP 2y 6m	AD	Nil	Lured co-offender's ex-partner to offender's apartment - tried to intimidate victim into providing $50,000 – victim physically attacked – offender obtained around $14,000 - pre-planned offence committed with two others – below mid-range offence. Good rehabilitation prospects.
14.	**Yousif** (21) [2010] NSWCCA 206	s.86(2)(a) Sched: s.99(2)	PG	5y NPP 3y	AD	nil	Victim driven to house by group of men in order to give offenders $13,000– participated in hitting victim around the head and threatening him Stringent bail conditions

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15.	**Ayoub** (33) **El Masri** (32) [2010] NSWCCA 196	s.86(2)(a) s.86(2)(a) Sched: 2 offences	VG VG	7y NPP 5y 3m 7y NPP 5y 3m	AD	Record – breached conditional liberty Record including violence	Dispute over purchase of travel agency – two offenders took victim from home and detained him for two days in car repair premises – taken to motel and detained for further five days - took from victim almost $90,000 from bank accounts and forced transfer of car – Ayoub seeking to retrieve money he believed owed to him by victim - El-Masri assisting friend - victim well treated during detention
16.	**Hawkins** (26) [2011] NSWCCA 153	s.86(2)(b) Att administer poison	PG (25% on appeal)	5y NPP 3y FT 12m (concurrent)	AA 5y NPP 3y 3m FT 12m (concurrent)	Nil significant	Detained partner of two years in home unit for two days – assaulted victim, threatened to inject dry cleaning fluid and pricked her with syringe Terrible background – suffered mental illness from early age – alcohol and drug abuse.
17.	**Speechley** (19) [2012] NSWCCA 130	s.86(2)(a)	PG (25%)	1y 11m (suspended)	Crown AA 23m NPP 12m	nil	Female – took male victim with intent to assault and intimidate him in company of two co-offenders – after agreeing to meet offenders victim taken in car to reserve – threatened with firearm – unaware male co-offender brought gun – believed victim had tried to rape female co-offender

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18.	**Akkawi, M** (21) **Akkawi, P** [2012] NSWCCA 11 [2013] NSWCCA 72	s.86(2)(a) s.86(2)(a) Sched 2 x Rob in Co s.86(2)(a) s.86(2)(a) Discharge firearm w/i GBH Sched: 2 x Rob in Co	PG (15%) PG (15%)	5y 11m 12d NPP 3y 6m 25d 6y 9m 16d NPP 4y 28d <u>Total</u>: 8y 9m 16d NPP 6y 27d 5y 11m 12d NPP 3y 6m 25d 6y 9m 16d NPP 4y 28d 6y 9m 18d NPP 4y 28d <u>Total</u> 10y 9m 16d NPP 8y 27d	AA 5y 6m NPP 3y 3m 6y NPP 4y <u>Total</u>: 7y NPP 5y 5y 6m NPP 3y 3m 6y NPP 4y 6y NPP 2y 9m <u>Total</u> 9y 3m NPP 6y	Driving offences - conspiracy to steal – on bail. Driving offences – trespass – receiving - offensive language	Brothers - on separate occasions offender's kidnapped two victims seeking whereabouts of third person who had stolen from offenders during drug deal - robbed both victims of their mobile phones – AP shot one victim in leg at close range. AM: gambling addiction – potential – stable, loving upbringing – student AP: gambling addiction – troubled upbringing – student
19.	**Sen** (31) [2013] NSWCCA 30	s.86(2)(a) Rob in Co		5y 4m 24d NPP 4y 18d 5y 4m 24d NPP 4y 18d (concurrent)	AA 4y 9m NPP 3y 4y 9m NPP 3y (concurrent)	Minor – breached conditional liberty	Involved in robbery of drug dealer with two females – victim forced into bedroom and stabbed with knife by female offender History of mental illness
20.	**Ball** (26) [2013] NSWCCA 126	s.86(2)(b) Drive manner dangerous Sched: Four offences	PG (15%)	2y ICO	Crown AA 2y 11m NPP 1y 6m FT 6m (concurrent)	Records included assault and breach AVO	Went to assist ex-girlfriend late at night with car – inflicted sustained assault both in and out of car - hitting and kicking - struck victim with car in arm – forced victim into car and drove at high speed – crashed into street signs – threatened to kill – stole phone –attempted to drag into unit – spontaneous offence Intoxicated with alcohol and prescription drug – alcohol problem – psychiatric problem – remorse – out of character

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21.	**Hazell** (27) [2015] NSWCCA 26	s.86(2)(b) AOABH s.35(4)	PG (25%)	6y NPP 4y FT 2y FT 3y (all concurrent)	AD	Significant – violence	Sustained assault of partner after forcing her home from her mother's - detained victim in bedroom of house – kicked, stomped and assaulted victim – threatened with knife – threatened to torture and kill Violent childhood – alcohol abuse – mental illness issues
22.	**Batcheldor** [2015] NSWSC 1688 Bellew J	s.86(2)(b) Acc after fact murder	PG (10%)	5y 4y 6m NPP 3y 4m Total: 6y 6m NPP 5y 4m		Minor drug offences	Female - met with victim and male co-offender at park to discuss stolen property – victim taken to home of third person and detained in garage – period of offender's involvement only one hour - victim later killed by co- offender in absence of offender – in series of acts over several days assisted in arrangements to move body – no direct involvement in moving body and unaware body was incinerated – motivated by loyalty Genuine remorse – good prospects of rehabilitation
23.	**Diaz** (35) [2018] NSWCCA 33	s.86(2)(b) s.61I Sched: 4 property offences AOABH Common assault	PG (25%)	7y 6m NPP 4y 3m 3y 6m NPP 2y Total: 7y 9m NPP 4y 6m	AD	record for violence and sexual offences – current offences committed on parole for similar but more serious offences	On several occasions over several weeks because angry with female partner and destroyed property – on one occasions grabbed at hair causing it to rip out – on final evening became angry with victim and pinned her to bed – forced digital penetration – looked through phone and assaulted her with phone multiple times over several hours – victim detained until escaped the following morning – at least mid-range Difficult and violent childhood
24.	**Little** (31) [2018] NSWCCA 63	s.86(2)(a)	PG (25%)	7y 6m NPP 5y	AA to backdate commencement	poor record	Met up with male victim and took him to shed – hogtied arms and legs behind back – with other persons detained victim over several days – tortured victim with knives, saws, power tools and cattle prod – left victim chained to tree in bush overnight twice – forced victim to drive around town – threats made – approaching worst case – offence related to drug debt Difficult childhood – Bugmy considerations – accepted responsibility – drug user – fair prospects of rehabilitation On appeal backdated to make allowance for subsequent quashing of earlier sentence for unrelated offence by District Court

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25.	**Turner** (48) [2018] NSWSC 1929 Hamill J	s.86(2)(a)	PG (10%)	4y 6m NPP 2y 3m		lengthy – breached parole	In company with co-offender brought victim from place he was staying to home of co-offender – co-offender seeking to retrieve money – held for 24h before offender left – victim a vulnerable homeless man held in humiliating and demeaning circumstances – offender acted to maintain accommodation with co-offender – secondary participant – victim later killed by co-offender Troubled life – psychological problems – drug abuse - heavily institutionalised
26.	**Nguyen** (41) [2019] NSWCCA 87	s.86(2)(b) Intimidation AOABH	VG	9y 1y 6m 1y Aggregate: 9y 6m NPP 6y 6m	AD		Arranged to spend time with estranged wife in their shared house – bound hands and feet tightly with duct tape and poured boiling water over bare chest in bedroom – more water poured over thigh and back and burned on breast with metal implement – attempt to make victim admit to affair – next morning victim left but returned after offender threatened to harm sister and mother – that night inured victim's back Difficult early life in Vietnam
27.	**Cross** (46) [2019] NSWCCA 280	2 x s.86(2)(a)	PG	2y 6m NPP 15m (each - concurrent)	AD		Female - threatened two teenage girls, aged 14 – believed one victim had been seeing her ex-partner - demanded victims enter car – threatened with pocket knives - drove with co-offender in dangerous manner – released victims with threat she would kill them if they told Police.
28.	**Jibran** (30) [2020] NSWCCA 86	s.86(2)(b) Damage property Disqualified driving	PG (25%)	3y 4m 9m Aggregate: 4y NPP 3y	AA 3y 3m 9m Aggregate: 3y 10m NPP 2y 10m	no custody – driving, possess drugs, assault, dishonesty – breached bail and driving disqualification	Male – released on police bail including condition not to drive – met up and drove around with ex-girlfriend – when victim tried to leave car and walk home forced her back into car and locked door – threw mobile phone out window – attempted to strike victim in car – victim escaped by jumping out car, injuring herself – arrest next day driving car – kidnapping slightly below range – spontaneous offence of short duration – in domestic context Drug user – never held a licence On appeal – factual and backdate error

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29.	**Christou** (26) [2020] NSWCCA 193	s.86(2)(b) s 35(2)(b)	PG (25%)	6y 3y 6m NPP 2y Aggregate: 8y 3m NPP 6y	AD	Significant including multiple violence - assault	Harassed and detained female acquaintance in motor vehicle – took car keys and phone - pushed victim downwards, hit to face, back and head, kicked in face and torso as victim lay on the ground and "kneed" to her face - victim suffered broken tooth; fractures to jaw requiring surgery and metal plates permanently fixed. Deprived childhood - long standing drug problem
30.	**McFarland** (26) [2021] NSWCCA 79	s.86(2)(b) AOABH s.59 s.166 Certificate: Drive high range PCA Sched: Assault s.61	PG (25%)	6y 10m 2y 6m Aggregate: 7y NPP 4y 4m	AD	Contravene AVO, prior domestic violence (assault) against previous partner, damage property.	Domestic violence – punched female partner to nose and face several times; pinned victim to ground strangling her and placing hand over nose and mouth to prevent screaming - drove vehicle with victim's legs outside dragging along gravel road for 2.9km - victim fell out of car momentarily losing consciousness – suffered serious abrasions - infliction of actual bodily harm and advantage being psychological gratification – "horrific" injuries - above mid-range. Remorse – reasonable prospects of rehabilitation.
31.	**Munaindy** (36) [2021] NSWCCA 305	s.86(2)(b)	VG	20m NPP 10m	AA 12m NPP 7m		Cousins with victim, both from Malaysia - victim's relatives complained to offender that victim had not been sending money – with co-accused, told victim to get in vehicle – asked why victim had not contacted his family - victim made negative comments about offender's mother – co-offender stopped vehicle - offender pushed victim out of vehicle and assaulted her for two to three minutes with arms and knees – detained victim for 20 minutes / not lengthy detention - no planning – no intention to assault until lost control in response to comments about mother Medium low risk reoffending – good character – remorse - very good prospects rehabilitation. CCA: sentence manifestly excessive - objective gravity at or towards bottom of range - strong subjective case

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32.	**Thorp** (28) [2022] NSWCCA 180	s.86(2)(b) Contravene ADVO Sched: Intimidation	PG (25%)	3y 3m NPP1y 9m 2m Total: 3y 5m NPP 1y 11m	AD	Priors for domestic violence and other personal violence	Maintained intermittent personal relationship with victim and subject to ADVO – while in car driven by victim became agitated and angry, demanding phone and making threats – when victim sought to escape car tackled her to ground and dragged her to car – victim rescued by four men from nearby restaurant – period of detention short – context of domestic violence – below mid-range Dysfunctional childhood and other Bugmy considerations reduced moral culpability – mental health and substance abuse issues - remorse
33.	**Kennedy** (30) [2022] NSWCCA 215	s.86(2)(b)	VG	7y NPP 3y 8m	AA 7y NPP 3y 8m (commencement date adjusted)	Extensive.	Detained female partner for 9 hours at unit and in vehicle – domestic violence – demanded "pin" for phone app - took victim's phone and car keys –serious physical assaults, punched victim to head, struck head with piece of timber, held up by neck, kicked and broke two ribs, threat to kill – not planned - upper end of mid-range Aboriginal male - significant childhood deprivation – *Bugmy* applied – drug abuse - repeated incarceration CCA: error in sentence commencement date.
34.	**Lawrence** (30) [2023] NSWCCA 110	s.86(2) Intimidation Sched: 6 offences s.166 Certificate Breach ADVO	PG (10%)	Indicative: 6y 18m Aggregate: 6y 6m NPP 4y	AD	Lengthy – including violence against victim	Entered home of former de facto and threatened her with knife – next day detained victim in car for 9 hours while driving erratically and dangerously from Sydney to and around Wollongong – abused, assaulted and threatened victim with knife – threat to kill if she escaped – all committed in breach of ADVO – above mid-range High risk of re-offending – no remorse or insight – no good prospects of rehabilitation – difficult childhood – exposure to violence and drugs and alcohol – sexual abuse – limited education – Bugmy and La Rosa applied On appeal: no error in principles and sentence not excessive

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35.	**Campbell** [2023] NSWCCA 258	s.86(2) s.166 Certificate: Destroy property Breach ADVO	PG (25%)	Indicative: 4y 2m 6m 16m Aggregate: 5y 4m NPP 3y 4m	AD	Substantial – includes domestic violence and breaches of ADVO – breached ICO for domestic violence offences	Became jealous and angry at message on complainant's phone – smashed phone and forcibly detained her in unit over 5 hours – assaulted, spat on and threatened complainant – dragged complainant back when she attempted to escape – finally escaped through bathroom window - caused ABH – breached ADVO by constantly messaging complainant seeking her to withdraw charges *Bugmy* considerations – exposed to violence On appeal: error in relying upon reference to complainant's PTSD in victim impact statement – no lesser sentence
36.	**Al-Shamari** (26) [2024] NSWCCA 155	s.86(2)	VG	3y 9m NPP 2y 3m	AD	Drug and traffic offences	Victim detained in house and threatened by co-offenders – offender arrived later – physically assaulted victim, threated to cut fingers with knife and made death threats to victim and children – involved in detaining victim for less than one hour – not involved in planning – sister believed victim had stolen safe with money – detained for financial advantage Married with young child – no remorse – prospects of rehabilitation if address mental health and drug issues On appeal: SJ give insufficient reasons for fact finding – no lesser sentence
37.	**Shen** (73) [2024] NSWCCA 252	s.86(2)(b)	PG (not stated)	5y 6m NPP 2y 10m	AA 4y 6m NPP 2y 3m	Nil	Victim was offender's ex-wife – divorced 9 years prior to offence – lived next door – offender knocked on victim's door armed with stick, struck victim with stick and fists to face and body - disconnected victim's landline by pulling out of wall, took mobile phone, tied feet together, covered with blanket and left - victim escaped 3-4 hours later – suffered significant swelling and bruising to face, neck, eyelids, body, forehead laceration. Traumatic brain injury – anxiety, depression – advanced age. CCA: Sentence manifestly excessive – failure to give full effect to principles regarding mental health issues

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38.	**Forbes** (41) [2026] NSWCCA 147	s 112(3) 6 x s.86(2)(b)	VG	Indicative: 12y NPP 7y Each: 4y Aggregate: 17y NPP 10y	Indicative: 9y NPP 7y Each: 12m Aggregate: 10y NPP 7y	Yes, details not provided.	Applicant and co-offender disguised in balaclavas, sunglasses and gloves - entered RSL armed with sledgehammers, while co-offender also carried sawn-off double-barrelled shotgun - smashed way into premises - confronted six staff members, forced one victim to sit in gaming area at gunpoint, demanded that safe be opened - threatened and controlled movements of staff - stole $62,345 in cash from safe before directing all six staff members into safe and locking them inside for approximately 20 minutes while offenders escaped. Drug use. CCA: Original sentence under s 112(3) highest recorded in statistics and a significant outlier – sentence manifestly excessive. Some level of planning - no victim suffered physical injury, period of detention relatively brief. s112(3) upper end mid-range objective seriousness; s86(2) offences somewhat below mid-range. Significant childhood hardship and disadvantage - good prospects rehabilitation - hardship in custody through loss of multiple close family members and unable to attend funerals.

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