



# BURGLARY

## A. PENAL CODE (2019 REVISION)

### Burglary

243. (1) A person who -

(a) enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2); or

(b) having entered any building or part of a building as a trespasser steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm,

commits the offence of burglary and is liable to imprisonment for fourteen years.

### Aggravated Burglary

244. (1) A person who commits any burglary and at the same time has with him any firearm or imitation firearm, any offensive weapon or any explosive commits the offence of aggravated burglary and is liable to imprisonment for life.

(2) For the purposes of subsection (1) -

“explosive” means an article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him for that purpose;

“firearm” includes an airgun or air pistol;

“imitation firearm” means anything which has the appearance of being a firearm, whether capable of being discharged or not; and

“offensive weapon” has the meaning ascribed to it in section 78.

*The guideline makes clear that Burglary will usually merit a custodial sentence but that exceptional circumstances may justify a non-custodial penalty for an adult and, more frequently, for a young offender.*

## B. Forms of Burglary

For the purposes of this guideline, two categories of Burglary have been identified.

### 1. Burglary in a Dwelling

### 2. Burglary in a Building other than a Dwelling

## C. BURGLARY IN A DWELLING

### STEP ONE - Determining the offence category

#### Culpability

Demonstrated by one or more of the following:

##### A – Higher culpability

- Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation)
- A significant degree of planning or organisation
- Knife or other weapon carried (where not dealt with separately)
- Equipped for burglary (for example, implements carried and/or use of vehicle)
- Group or gang activity

##### B – Lesser culpability

- Offence committed on impulse with limited intrusion into property
- Offender exploited by others

#### Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

##### Category 1

- Theft of/damage to property causing a significant degree of loss to the victim (whether economic, sentimental or personal value)
- Soiling, ransacking or vandalism of property
- Victim on premises (or returns to premises) while offender present
- Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft
- Violence used or threatened against victim
- Context of general public disorder

##### Category 2

- Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal)
- Limited damage or disturbance to property

**STEP TWO - Starting point and category range**

**NOTE:** Where the offence is aggravated burglary, the maximum sentence increases from 14 years imprisonment to life imprisonment. The starting points and ranges below are for those offences where the maximum is 14 years. Where the higher maximum applies, all starting points and ranges will increase; this increase will be considerable where significant physical or psychological injury or other significant trauma is inflicted within a home.

HARM	CULPABILITY	
	A	B
Category 1	Starting point 7 years' custody	Starting point 5 years' custody
	Category Range 5 – 14 years' custody	Category Range 3 -7 years' custody
Category 2	Starting point 3 years' custody	Starting point 1 years' custody
	Category Range 1 years' custody – 5 years' custody	Category Range Community Based Sentence – 3 years' custody

**See the laminated insert for the Sentencing Process to be followed. Offence specific guidelines only set out those aspects of particular relevance to the offence but all other appropriate information must also be considered.**

The potential aggravating and mitigating factors (see laminated insert) outlined below should only affect the sentence if they have not already been incorporated in the assessment of culpability above.

**Factors increasing seriousness**

- Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability

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- Restraint, detention or additional degradation of the victim

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- Sophisticated organised nature of offence/significant planning

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- A leading role where offending is part of a group activity

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- Attempts to conceal/dispose of evidence

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- Established evidence of community/wider impact

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- Timing of the offence

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- Location of the offence

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- Attempt to conceal identity (for example, wearing a balaclava or hood)

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- Abuse of a position of trust

## D. Burglary of a Building other than a Dwelling

### STEP ONE - Determining the offence category

#### Culpability

Demonstrated by one or more of the following:

##### A – High culpability

- Premises or victim deliberately targeted (to include pharmacy or doctor's surgery and targeting due to vulnerability of victim or hostility based on disability, race, sexual orientation and so forth)
- A significant degree of planning or organisation
- Knife or other weapon carried (where not dealt with separately)
- Equipped for burglary (for example, implements carried and/or use of vehicle)
- Group or gang activity

##### B – Lesser culpability

- Offence committed on impulse, with limited intrusion into property
- Offender exploited by others

#### Harm

The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused to the victim. The victim relates both to the commercial organisation that has been burgled and any individual(s) affected by the commission of the offence.

##### Category 1

- Theft of/damage to property causing a significant degree of loss to the victim (whether economic, sentimental or personal value)
- Soiling, ransacking or vandalism of property
- Victim on premises (or returns to premises) while offender present
- Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft
- Violence used or threatened against victim
- Context of general public disorder
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##### Category 2

- Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal)
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**STEP TWO - Starting point and category range**

**NOTE:** Where the offence is aggravated burglary, the maximum sentence increases from 14 years imprisonment to life imprisonment. The starting points and ranges below are for those offences where the maximum is 14 years. Where the higher maximum applies, all starting points and ranges will increase; this increase will be considerable where significant physical or psychological injury or other significant trauma is inflicted

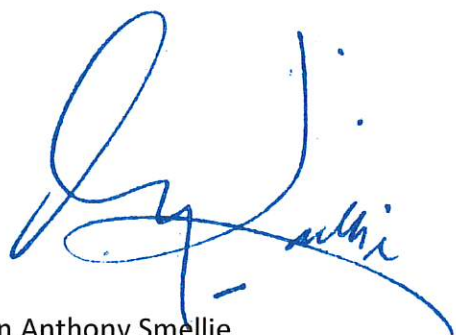
HARM	CULPABILITY	
	A	B
Category 1	Starting point 6 years' custody	Starting point 4 years' custody
	Category Range 4 – 14 years' custody	Category Range 2 -6 years' custody
Category 2	Starting point 2 years' custody	Starting point Community Based Sentence
	Category Range Community Based Sentence – 4 years' custody	Category Range Community Based Sentence – 1 years' custody

**See the laminated insert for the Sentencing Process to be followed. Offence specific guidelines only set out those aspects of particular relevance to the offence but all other appropriate information must also be considered.**

The potential aggravating and mitigating factors (see laminated insert) outlined below should only affect the sentence if they have not already been incorporated in the assessment of culpability above.

## Factors increasing seriousness

- Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability
- Restraint, detention or additional degradation of the victim
- Sophisticated organised nature of offence/significant planning
- A leading role where offending is part of a group activity
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Timing of the offence
- Location of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Abuse of a position of trust

A handwritten signature in blue ink, appearing to read 'Anthony Smellie', written over a horizontal line.

Hon Anthony Smellie  
Chief Justice

16 June 2021