



## SENTENCING GUIDELINES – BREACH OF CURFEW

### STEP ONE – DETERMINING THE OFFENCE CATEGORY

Police Law (2017 Revision), section 49(7)

Maximum penalty: fine of \$3000.00 or 1 year's imprisonment, or both

#### HARM

##### Greater harm

- Breach causes significant harm or risk of harm (including harm to the public health)
- Breach demonstrates a continuing risk of serious criminal and/or anti-social behaviour
- Breach causes distress to member(s) of the public
- Breach causes the deployment of a significant level of police resources

##### Lesser harm

- Breach causes little or no actual harm or risk of harm

#### CULPABILITY

##### Higher culpability

- Deliberate breach
- Breach intended to facilitate other offending
- Breach activity significant or committed for prolonged period
- Attempt to avoid detection
- Leading role in group activity

##### Lower culpability

- Minor breach - breach activity minimal or committed for short duration
- Genuine misunderstanding of curfew restrictions
- Reason for breach just short of reasonable excuse (eg, emergency)
- Subordinate role in group activity



## STEP TWO – Starting point and category range

Nature of offence	Starting point	Sentencing range
<b>Level 1</b> Greater harm and higher culpability	6 months' custody	3 months' custody - 1 year's custody
<b>Level 2</b> Greater harm and lower culpability; or lesser harm and higher culpability	Community order	Fine – 3 month's custody
<b>Level 3</b> Lesser harm and lower culpability	Fine	Discharge – Community order

### Factors increasing seriousness

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- History of breach of court orders or police bail
- Breach committed on bail, licence or while subject to post sentence supervision
- Breach continued after warnings received
- Breach motivated by personal gain
- Breach committed whilst under the influence of alcohol / controlled drugs
- Location of offence (where it clearly aggravates offence)
- Timing of offence (where it clearly aggravates offence)

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Previous good character and/or exemplary conduct
- Remorse
- Prompt voluntary surrender/admission of breach
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder where linked to the commission of the offence
- Sole or primary carer for dependent relatives



- Location of offence (where it clearly mitigates offence)
- Timing of offence (where it clearly mitigates offence)

A handwritten signature in blue ink, appearing to read 'Anthony Smellie', written over the printed name.

Hon Anthony Smellie  
Chief Justice

11 May 2020