



District Court Protocol – COVID-19 Alert Level 4

Current as at 25 August 2021

Nothing in this document is intended to reduce fair trial rights, the right to natural justice, or rights under the New Zealand Bill of Rights Act 1990.

This protocol recognises that there are likely to be regional variations and that local solutions will be necessary to best address local issues. Any such variations or solutions must be approved by the Chief District Court Judge.

The District Court Alert Level 4 protocol (this document) applies to any and all locations that are subject to Alert Level 4).

In this document “AVL” means any platform which allows for audio and visual remote participation. Without limitation, this includes VMR, MS Teams and any other electronic platform approved by the presiding Judge.

In this document, “vulnerable” means a person at higher risk of severe illness, immune-compromised or with a relevant underlying health condition.

This protocol will be reviewed and modified to the extent considered necessary by the Chief District Court Judge.

District Court at Alert Level 4

1. This protocol outlines how the District Court will operate at Alert Level 4. During Alert Level 4 the District Court will continue to provide an essential service subject to workforce capacity levels and the requirement to observe requisite physical distancing and heightened hygiene practices including that masks are to be worn at all times within the courthouse, unless permission is given by a judge.

Manner of Hearing all Cases in all Jurisdictions of the District Court

2. The District Court will conduct priority proceedings at Alert Level 4. To the extent practicable all priority proceedings at Alert Level 4 will be conducted remotely in the Criminal, Family, Youth, and Civil jurisdictions of the District Court.
3. If facilities for the defendant to appear by AVL are not available, the defendant will appear in person.
4. All counsel and other stakeholders are permitted and expected to appear by AVL or telephone if such facilities are available and to the extent that it is practicable to do so. If such facilities are not available or are not practicable, counsel are expected to appear in person (this includes Duty Solicitors in the District Court, and Duty Youth Advocates and Assigned Youth Advocates in the Youth Court).

Priority Proceedings at Alert Level 4

5. Priority proceedings will include matters considered to be of such significant national or community importance that the immediate attention of a Judge of the District Court is warranted. This category may include proceedings taken by or that arise out of actions taken by public officials.
6. The selection of priority proceedings is guided by these over-arching principles:
 - Liberty of the individual;
 - Protection of the at-risk or vulnerable, including children;
 - The national and community safety interest;
 - Facilitating and promoting public order.
7. Priority proceedings during Alert Level 4 are:

Family

- Applications for Compulsory Treatment Orders, IDCCR, Protection Orders, Without Notice Interim Parenting Orders including enforcement, guardianship disputes (COCA), Without Notice Custody Orders or Place of Safety warrants (Oranga Tamariki); Welfare Guardianship or Property Orders (PPPR).

- Any other application considered by a judge to warrant an urgent hearing or judicial conference.
- Other urgent applications normally considered on the eDuty platform

Criminal

- During Alert Level 4 the District Court will conduct all priority proceedings in the criminal jurisdiction. The District Court recognises that the conduct of additional proceedings in the criminal jurisdiction should be subject to ongoing consultation with leaders of the profession.
- The priority proceedings are:
 - a. All those involving defendants who are in custody and due to appear during the Alert Level 4 period, including those involving defendants who are in custody for a scheduled appearance during Alert Level 4.
 - b. Sentencing of defendants who are in custody where sentencing can be brought forward and rescheduled by arrangement with the relevant stakeholders to a sentencing date agreed to by counsel.
 - c. Urgent applications (heard by AVL unless directed otherwise by the presiding Judge) for variation of conditions of Bail including EM Bail on a hearing date agreed to by counsel.
 - d. Section 147 applications (heard by AVL unless directed otherwise by the presiding Judge) that may be determinative in relation to a particular proceeding, and other pre-trial applications, where counsel consent but that do not require evidence or the presence of a defendant.
 - e. Appearances at an Alcohol and Other Drug Treatment Court which will be by way of telephone or AVL, subject to availability. Where a participant is in custody awaiting entry into treatment any further remand in custody by consent is to be dealt with by telephone or AVL subject to availability. In any other case the matter is to be listed before a Judge dealing with custody hearings.
 - f. Applications made under the [Returning Offenders \(Management and Information\) Act 2015](#) including:

- i. For new offenders arriving into the country and requiring an initial application for interim special conditions; or
 - ii. For offenders who have interim special conditions (or extensions to interim special conditions) which are about to expire; or
 - iii. For offenders who require variations to their interim or final special conditions
8. Priority proceedings will also include any other matter considered by a Judge to warrant urgent judicial consideration or determination. Any person may apply to the Registrar for reference of a particular matter to the consideration of a Judge for a determination of urgency under this provision.
9. Following on from consultation with the leaders of the profession and other relevant stakeholders, the Chief District Court Judge may, from time to time, vary this protocol by, amongst other things, adding additional proceedings that can be conducted during Alert Level 4.

Youth Court

- The Youth Court will only deal with priority proceedings where Alert Level 4 applies.
- Priority proceedings in the Youth Court are those affecting the liberty of children and young persons including bail applications, early release hearings, secure care applications, the extension of any remand under s238(1)(d) of the Oranga Tamariki Act 1989 and any consideration of an order under s283 which may result in the release of a child or young person from custody.
- In any priority proceeding the Youth Court will operate to the extent practicable with remote participation by way of AVL.
- At the commencement of Alert Level 4 all cases which are not priority proceedings will be administratively adjourned for two weeks from their existing scheduled hearing date.

Civil

- Injunction applications, Harmful Digital Communication applications, Restraining Order applications, and Tenancy Tribunal Appeals considered by a judge to warrant an urgent hearing.

Other Proceedings at Alert Level 4

10. To the extent practicable, and subject to workforce capacity levels, the District Court may conduct other proceedings in all jurisdictions by AVL or by telephone link involving a judge and counsel, provided that;
 - a. the use of AVL or telephone link is lawful in the particular proceeding; and
 - b. counsel consents; and
 - c. it is determined by the judge to be otherwise appropriate for the matter to proceed in that manner, including for the attendance of parties (including the attendance of a defendant in a criminal proceeding) to be excused; and
11. Remote access to the particular proceeding would be available pursuant to paragraphs 18 and 19.

Access to the Court

12. Entry to the court is restricted during Alert Level 4 and will be limited to members of the Judiciary, Ministry of Justice staff members, counsel, accredited news media and other permitted or required defendants, parties, stakeholders or other persons. Any person who enters the court must observe all Ministry of Health distancing, hygiene and other relevant health requirements and any additional requirements imposed by the Ministry of Justice and any relevant conditions imposed by a judge.
13. Defendants on bail, victims and members of the public (including a whānau support person or persons for a defendant) whose presence is not required at court will not be permitted to enter unless granted permission by the presiding Judge. Such permission should be sought in the first instance by email to the Registrar in advance (if granted this must be supplied to the Court Security Officer at the front entrance), or alternatively, on the day of the hearing by requesting a Court Security Officer at the front entrance to convey an application via the registrar to the Presiding Judge. All such applications will need to identify the reason or reasons why permission is sought and will be determined on a case-by-case basis by a judge who may impose conditions in relation to any permission which is granted.
14. Public counters will be closed, and all documents can be filed by email to the Registrar.
15. Identification for contact tracing purposes is required to be produced in order to gain entry to the court.

16. Masks are to be worn at all times within the courthouse, unless permission is given by a judge for the removal of a mask.

17. Any person who is unwell, experiencing COVID-19 symptoms, or required to be either in isolation or quarantine will be refused entry to the court.

Virtual Courtrooms

18. A number of courtrooms now have a virtual hearing facility for all counsel, court participants, defendants on bail, victims and accredited media to participate in priority proceedings by AVL from their homes or offices. A Judge and Registrar would generally be in the courtroom, except in situations where the judge determines it to be inappropriate. Counsel are encouraged to appear by AVL where practicable. Registries will advise when these facilities are available.

Accredited news media

19. Accredited news media will be afforded remote access to the court in order to report court proceedings, and to ensure continued open and transparent justice. Media representatives should introduce themselves to the judge when present remotely at any hearing.

Remote Bail Applications

20. If a local Judge is unavailable to hear a bail application, any other Judge will, where practicable, in appropriate cases, be allocated to hear the application by AVL. Counsel should apply to the Registry in these cases.

Rostering and Scheduling

21. The statutory function of the Chief District Court Judge is to determine the rostering of judges and scheduling of work. Rostering and scheduling will continue to be determined by the Chief District Court Judge in consultation with the National Judicial Resource Manager and the National Scheduler.