

Criminal procedure - Administration stage

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Summary

Introduction / background

The administration stage of criminal proceedings consists primarily of the administrative court processes from the first appearance through to the entry of a plea. The [Criminal Procedure Act 2011](#) (CPA) and accompanying [Criminal Procedure Rules 2012](#) provide the framework for the expected timing of pleas, administration of suppression provisions, the transfer of proceedings to the High Court, and the involvement of the Crown.

Purpose of this chapter

This chapter:

- details key procedures for prosecutors and O/C cases relating to the administration stage of proceedings
- provides information about the application of the CPA in the District Court, from the [first appearance](#) through to the [entry of a plea](#).

The chapter also provides information relating to administrative matters, often first encountered in early court appearances, which may occur at any stage of proceedings, such as:

- [remands and adjournments](#)
- warrants to arrest
- [involvement of the Crown](#)
- [suppression](#) of names and evidence.

The information in the chapter is a reference starting point only. Refer to the [Criminal Procedure Act 2011](#), [Criminal Procedure Rules 2012](#) and associated regulations for full guidance.

Administration stage

The administration stage is the second of these five stages of criminal proceedings:



Statutory references

All references in this chapter to the "Act" or to the "CPA" are to the [Criminal Procedure Act 2011](#), and references to the "Rules" or the "CPR" are to the [Criminal Procedure Rules 2012](#), unless otherwise stated.

Other criminal procedure-related chapters

These linked chapters deal with the various stages of the criminal process:

- Criminal procedure - [Introduction and jurisdiction](#)
- Criminal procedure - [Commencement of proceedings](#)
- Criminal procedure - Administration stage
- Criminal procedure - [Review stage \(CMM process\)](#)
- Criminal procedure - [Trial stage](#)
- Criminal procedure - [Disposition](#)
- Criminal procedure - [Costs orders](#)

Different processes apply to youth. See the [Youth justice](#) Police Manual chapter for details.

Related information

Other Police Manual chapters with information related to the criminal procedure chapters are:

- [Bail](#)
- [Charging decisions](#)

- Criminal disclosure
- Prosecution file and trial preparation
- Family harm policy and procedures
- Adult diversion scheme.

Diagram: Criminal Procedure Act - procedure overview

See Criminal procedure - [Introduction and jurisdiction](#) for a diagram illustrating the processes to be followed under the Criminal Procedure Act 2011.

First appearance

The first appearance of a defendant in court is a key event in criminal proceedings and the first occasion that the defendant may formally answer the charge(s).

Initial custody, prosecution position on [bail](#) and [suppression](#) considerations are reviewed by the prosecutor and appropriate submissions made.

As with any other appearance in court, early and thorough disclosure will assist in progressing the prosecution in a timely manner. In most cases the defendant must have receipt of [initial disclosure](#) by, or at, the first appearance.

Initial review by the prosecutor

Following an initial review of the prosecution file, the prosecutor should have an understanding of the issues most relevant to the first appearance. Relevant information should be contained in and, where relevant, referenced to supporting information in the initial [POL 258P](#) (prosecution report) completed by the O/C case and endorsed by the O/C's supervisor. Refer also to the '[Prosecution file and trial preparation](#)' chapter for the contents and order of a file for first appearance.

Initial considerations and possible actions

This table outlines some of the initial considerations and possible actions for a prosecutor appearing at the first appearance.

Consideration	Action
Charging document	<p>Check:</p> <ul style="list-style-type: none"> - that the defendant's particulars and PRN match the summary of facts - date and place of the alleged offences - whether the statutory reference for the alleged offence, and where appropriate, the penalty provision, is correct. (Note: an incorrect reference is not 'fatal' to the validity unless it is likely to mislead. Refer to Sayer v Police [1963] NZLR 221) - whether the charge wording contains sufficient information to fairly inform the defendant of the offence - whether the time limit for filing the charge has been complied with - the overall appropriateness of the prosecution. See also 'Solicitor-General's Prosecution Guidelines'.
Caption summary	<p>Review content and appropriateness.</p> <p>(See also 'Summary of Facts' in this chapter)</p>
Initial disclosure	<ul style="list-style-type: none"> - Note whether initial disclosure has been provided to the defendant (a copy of the initial disclosure receipt should be on the file). - Ensure delivery of initial disclosure if it was not completed before the first appearance.
Bail	<ul style="list-style-type: none"> - Review bail position and whether any statutory onus or restriction applies. (See the 'Bail' chapter for information about granting and opposing bail). - Review opposition and provide relevant documents to the court if bail is opposed or a reverse onus/restriction applies. - Review and amend if appropriate, any proposed bail conditions using the printed bail conditions accompanying the POL 258P. Do this if bail should only be until the next appearance or for the duration of proceedings. The O/C case proposed conditions should also be in NIA, and if so, will be received by the court, but not be immediately viewable by the judicial officer. - Provide a copy of the proposed bail conditions to the defence/duty lawyer as a starting point for discussion and agree to conditions using the conditions form, if possible. The defence will provide the proposed bail conditions form to the court registrar, noting the agreement or disagreement of the defence. The form will confirm or amend the original O/C case proposed conditions. - Present prosecution position on bail when the matter is called.
Victim	<p>Review and action any victim associated issues or concerns disclosed. Refer also to 'Victims (Police service to victims)' chapter.</p>

Consideration	Action
Notification of charges to be heard together	<p>Review the need for a notification of charges to be heard together under section 138 CPA when:</p> <ul style="list-style-type: none"> - multiple charges arise from, or are linked to a common sequence of events - existing charges or other defendants are associated with the new charge(s). <p>If applicable, notify the court that the charges are to be heard together. This notification may be made orally, or in writing.</p>
Crown	<p>Note the file, and notify the Crown, if the charge(s) require, or will subsequently require, Crown involvement including:</p> <ul style="list-style-type: none"> - category 4 charges (handled by the Crown from the second appearance) - Crown schedule charges (handled by the Crown after the entry of a plea) - breach of bail matters for charges already transferred to the Crown (e.g. breach of bail for category 4 after the first appearance).
2nd appearance time-frame	<p>Note whether an extension of the timeframe to second appearance may be required either by consent or at the direction of the court. Examples include:</p> <ul style="list-style-type: none"> - diversion - specialist drug court - fitness to plead and mental health consideration - holding charges. <p>Advise the court if an extension is required and make submissions as to the reasons why.</p>
Proof of service	<p>Check:</p> <ul style="list-style-type: none"> - summons proof of service is on the prosecution file - request for warrant in lieu is on the file if summons was unable to be served, with supporting documentation - bail bond on file if defendant was released on Police bail.
Transfer	<p>Consider whether a transfer to another court is required given the location of offending and the court of first appearance. See the 'Commencement of proceedings' chapter for information on the location of filing charging documents.</p>

Offences with criteria

When a charge will become a Crown prosecution due to specific criteria, the District Prosecution Manager (DPM) must be notified. The DPM must review the charges in consultation with the local Crown Solicitor and the Crown Law guidance on criteria document, before the second appearance to determine if the criteria are met.

When the DPM and Crown Solicitor are unable to agree, the matter must be urgently referred to the Director: Police Prosecution Service to decide in consultation with the Deputy Solicitor-General.

Plea or adjournment

At the first appearance, a defendant may [enter a plea](#) and proceed to the review or disposition stage of proceedings. If they do not enter a plea, the proceedings must be adjourned to a date within the period required by the Criminal Procedure Rules 2012 or to a later date by consent for [diversion](#) or [mental health](#) enquiries.

High Court charges

If the defendant is charged with a category 4 offence, the first appearance must be in the District Court. The second and subsequent court appearances must be in the High Court nearest to the court of filing.

The Crown assumes responsibility for category 4 prosecutions after the first appearance. (See also '[Crown involvement](#)' in this chapter).

(s36CPA)

Requirement to attend

Unless an [exception](#) applies, the defendant must appear in court if they are:

- on Police bail to attend that hearing or have been summonsed to attend that hearing, or
- remanded in custody, or are on bail or at large, to attend that hearing.

Exceptions

Despite the general requirement to attend, a defendant is not required to attend a particular appearance if:

- the court excuses them from attending or orders them to be removed from the court for interruption
- the defendant has pleaded guilty to a category 1 offence by notice and has not indicated that they wish to attend
- the defendant is represented by a lawyer and the hearing is only in respect of:
 - the place or date of the trial
 - case review, where the registrar is exercising the court's power under section 57(4) and the defendant is in custody
 - an alternative way of giving evidence under subpart 5 of Part 3 of the Evidence Act 2006
 - whether 2 or more charges are to be tried together, or whether the charges against 1 defendant are to be tried with charges against 1 or more other defendants
 - an application to take oral evidence under section 90
 - a matter concerning the admissibility of evidence.

(s118)

Warrant to arrest for failure to attend

A court or registrar may issue a warrant to arrest the defendant to compel them to appear in court if:

- a summons has been issued but attempts to serve the summons have been unsuccessful
- they fail to appear at any stage of proceedings when required to appear.

Note: A warrant to arrest for a category one offence may only be issued by a Judge.

(ss34, 119, 120, 121CPA)

Proceeding in the defendant's absence

When a defendant is required to attend court on a category 1 offence, and fails to appear, proceedings may be conducted in the defendant's absence. Refer to proceeding in the absence of the defendant in the [trial stage](#) chapter for the requirements.

Appearance following arrest on warrant

When a defendant appears in court following an arrest on warrant, the prosecutor must [review](#) the arrest file as with any first appearance. The Crown must be advised and appear, where the Crown has assumed responsibility for the charges.

The next appearance will ordinarily proceed according to the stage of proceedings that existed at the time the warrant was issued. However, an additional adjournment may be required to confirm witness availability if the matter is at the trial stage.

Note: in particular the required court for the next appearance. (See '[Filing charging documents](#)' in the 'Commencement of proceedings' chapter for information on hearings and transfer.

Second appearance

This section contains the following topics:

- Timeframe for second appearances
- Second appearance [and requirement to plead](#)

Timeframe for second appearances

The defendant's second appearance must not be later than 10 working days for category 1 and 2 offences or 15 working days for category 3 and 4 offences after:

- the first appearance, if [initial disclosure](#) under section 12(1) of the Criminal Disclosure Act 2008 was made before or at the first appearance
- the date notified by the prosecutor that initial disclosure will be completed, if the disclosure was not completed before or at the first appearance. This date must not be later than the expiry of the mandatory initial disclosure date.

(r [4.1](#))

The court may extend or shorten the timeframe for the second appearance on its own motion or by consent of all parties. A registrar may extend or shorten the timeframes only by consent of all parties. An extension of time is required for the defendant to complete [diversion](#) without entering a plea.

(r [1.7](#))

Second appearance and requirement to plead

The ability to require a defendant to enter a plea is confirmed in section [39](#) of the CPA and corresponds with rule [4.1](#) of the CPR specifying the required timeframe for the second appearance.

Requirement to plead

The court, or a registrar for category 1-3 matters, may require a defendant to enter a plea if they have had initial disclosure. However, if the defendant states an intention to enter a plea outside the jurisdiction of the judicial officer or the registrar, the court or registrar may adjourn the proceedings to a date and time in a court where a judicial officer able to receive the plea is sitting.

A defendant who is required to enter a plea but who refuses to enter a valid plea is deemed to have pleaded not guilty and the proceedings must be continued accordingly through to the review stage.

(s [41](#)CPA)

Entering a plea

When can pleas be entered?

A defendant may voluntarily plead guilty or not guilty, or enter a [special plea](#) at any time. The court or a registrar may also require a defendant to enter a plea in certain situations to ensure that prosecutions are not needlessly delayed.

Self represented defendants

Before putting the substance of the charge to a self-represented defendant, the court must be satisfied the defendant:

- has been informed of their rights to legal representation, including the right to apply for legal aid
- has fully understood their rights and had a reasonable opportunity to exercise them.

Court appearances to enter pleas

Any defendant indicating a desire to plead guilty to a charge other than a category 1 offence must be brought before the relevant court to enter a plea.

Defendants represented by a lawyer may plead not guilty or enter a [special plea](#), by filing a notice in the court. Notwithstanding the rule of service on other parties, (see '[Service requirements](#)' in the 'Commencement of proceedings' chapter) the registrar must notify the prosecutor if a notice of a not guilty or special plea is filed.

(Note: a not guilty plea to a category 4 offence may only be entered in the High Court).

Category 1 offences

When a defendant is charged with a category 1 offence, they may enter a plea of guilty, not guilty or a [special plea](#) by notice to the court. The decision to enter a plea by notice must be independently made by the defendant. Police must not facilitate the entry of a guilty plea by notice under any circumstances.

Any defendant pleading guilty by notice may also state if they wish to appear in court for sentence, and regardless of whether they do so, include in or with the notice, written submissions to be taken into account at sentencing.

The registrar must notify the prosecutor if a notice of a guilty plea is filed in court.

(s38CPA)

Pleas before a registrar

A registrar may receive not guilty pleas for category 1, 2 or 3 offences. Other than receiving a notice of guilty plea under section 38 of the CPA, a registrar may not receive a guilty plea to an offence.

Where a registrar does not have jurisdiction to receive a plea, they may adjourn the proceedings to a date and time in a court where a judicial officer able to receive the plea is sitting.

Pleas before a Community Magistrate or Justice(s)

Justices and Community Magistrates may receive all pleas for category 1 offences over which the CM or JP has full jurisdiction and any category 2 matter over which the CM or JP has sentencing jurisdiction. If the defendant wishes to plead guilty to a charge that a CM does not have full or sentencing jurisdiction over, the defendant must be brought before a Judge to enter the plea.

(s361CPA)

The summary of facts

The summary of facts is one of the most significant parts of the prosecution file. The summary is read following the entry of a guilty plea and may be referred to pre-plea in matters of bail consideration. If the defendant appeals a sentence following the entry of a guilty plea, the High Court may rely on the summary when hearing the appeal. The summary of facts must fairly and accurately reflect the circumstances and seriousness of the offending. Refer to R v Hockley (2009) NZCA 74.

Check that the summary of facts:

- relates to the charging document(s)
- covers all the elements of the offence and:
 - states what the defendant did in relation to the elements, and any consequences of that (e.g. injury or damage)
 - includes the time, date and place of the offence
- provides a fair, accurate, and relevant description of the defendant's actions
- does not contain emotive language
- addresses any aggravating and/or mitigating circumstances
- follows a logical sequence and reads well
- is supported by admissible evidence. (It is accepted that a prosecutor is unlikely to be aware of the available evidence when an arrest case is first called)
- refers to the defendant's explanation, if any
- includes details of any orders sought, such as reparation or return of property, or mandatory orders (e.g. confiscation of car, driver licence disqualification)
- has a separate reparation sheet with victim's particulars available to hand to the Judge for sentencing or a sentence indication (Note: if the amount of reparation is disputed, you must call evidence).

Altering the summary of facts

If the O/C case is asked by defence counsel to alter a summary of facts, consider whether the relevant part:

- is provable by admissible evidence
- forms a material part of the offence.

If the answer to both is 'yes', do not alter the summary without consulting a prosecutor.

Disputing the summary of facts

A defendant can plead guilty to a charge but dispute parts of the summary under the [Sentencing Act 2002](#). Where a charge includes a specific mens rea such as an intent to injure, the summary can not be amended to state that the defendant did not intend to injure the complainant. If a guilty plea is entered, the defendant has admitted all elements of the offence and cannot dispute any of them.

If significant parts are disputed that are not part of the elements of the charge, a disputed facts hearing may be arranged. The Judge should indicate whether they consider the disputed parts to be significant or not and the weight that would be placed on the fact in dispute.

([s24](#) Sentencing Act 2002)

Charges disclosing previous convictions

When a charging document discloses the existence of a previous conviction(s), e.g. driving with excess breath alcohol - 3rd or subsequent, the defendant is not required to plead to the allegation of previous convictions unless they plead guilty to the rest of the charge.

Using the example of the excess breath alcohol charge, the defendant should enter a plea to driving with excess breath alcohol and, only if a guilty plea is entered, be required to acknowledge or deny the 3rd or subsequent component of the charge.

In this situation, the defendant must be asked whether or not they have been previously convicted as alleged before they can be sentenced. If they say that they have not been previously convicted as alleged, or do not say that they have, the judicial officer must determine the matter.

([ss44](#) & [145](#) CPA)

Election of trial by jury

When entering a not guilty plea to a category 3 offence, the defendant may elect to be tried by a jury at the time the not guilty plea is entered. If no election is made the trial proceeds as a Judge-alone trial.

When a jury trial is elected for a category 3 offence, all other joined charges will also be tried before a jury, regardless of the offence category.

([s139](#) CPA)

Further information

See also '[Special pleas](#)' in this chapter.

Special pleas

This section contains the following topics:

- What is a special plea?
- Process when a special plea is entered

What is a special plea?

A special plea is one or more of three pleas that may be entered other than guilty or not guilty under section [45](#) of the CPA. Some defendants refer to a special plea as "plea and bar" or "plea in bar". This means that they believe there is a bar to proceedings going further.

In New Zealand the only special pleas that, if accepted by the court, would stop or bar criminal proceedings from progressing further are a plea of:

- previous conviction
- previous acquittal
- pardon.

Any other plea must be considered a not guilty plea and continued through to the review stage.

Process when a special plea is entered

When a special plea is entered, a Judge must determine whether the special plea is available to the defendant.

If the defendant enters any of the special pleas, they must provide information about the conviction, acquittal, or pardon on which the plea is based.

In deciding whether a special plea is available, the Judge may consider any evidence that the Judge considers appropriate. Refer also to sections [45-49](#) of the CPA.

If the Judge decides that a special plea is not available, the defendant must enter a plea of guilty or not guilty. Failure to enter a valid plea will result in the plea being deemed to be a not guilty plea.

Remands, adjournments and holding charges

Seeking remands and adjournments

A defendant is 'on remand' if they are in prison, on bail or at large, pending resolution of the charges against them.

An adjournment is moving the hearing of a case to a later date.

If you are seeking an adjournment, tell the court why it is being sought (e.g. that the charge is a holding charge, or a further witness has been identified that may impact on the proceedings), as the court will want to ensure timeframes for pleas are met. Be prepared for the possibility that the judicial officer may decline the application for an adjournment.

Holding charges

Under section [46](#) of the CPA, before more charges can be filed against a suspect who was previously convicted of an offence in respect of the same set of facts:

- the charges must relate to a more serious offence, and
- the evidence must not have been available at the time the previous proceedings were commenced.

([s46\(2\)\(b\)](#))

This differs from the previous approach under section [359\(3\)](#) of the Crimes Act 1961 which provided that a person convicted or acquitted of an offence against a person punishable by 3 or more years' imprisonment, could not subsequently be charged with murder or manslaughter if the victim died after the conviction or acquittal, as a result of the conduct constituting the original offence charged.

Unlike section [359](#) (3) Crimes Act, section [46](#) CPA has no maximum penalty threshold, and it does not matter what offence a person was previously convicted of.

The court will make an assessment of both section [46\(2\)\(b\)](#) matters on a case-by-case basis. Adams commentary is likely to state that the more serious charge can be filed and will be sound, if evidence of the more serious offence was not "readily available" when the original charge was filed. This means that a plea of previous conviction would be available if the current charge could reasonably have been filed at the time of the original charge. This is helpful when considering evidential sufficiency and its relevance to the test for prosecution in the '[Solicitor-General's Prosecution Guidelines](#)'.

Anticipating further evidence supporting more serious charges

Follow this process if you anticipate further evidence will become available in future to support the filing of more serious charges against a suspect.

Role	Recommended action
Investigators	<ul style="list-style-type: none"> - File the charge that is most appropriate in the circumstances at the time of filing, in accordance with the Solicitor General's Prosecution Guidelines, and - clearly communicate to the prosecutor that more serious charges are being contemplated, along with an indication of the timeframe within which more serious charges are likely to be filed.
Prosecutors	If a guilty plea to the holding charge is intimated, prosecutors should request that the judicial officer does not enter a conviction, pending the filing of more serious charges.

Note: Section [46\(2\)](#) should be used only as a backstop. You will avoid the need to rely on section 46 by following the practice above.

Examples of how [s46\(2\)\(b\)](#) CPA works in practice

If an assault victim has not died when a holding charge is filed, but the victim subsequently dies, a charge of murder is permitted under section [46\(2\)](#), because the evidence that supports filing of the more serious charge (i.e. evidence of the death), was not available at the time the previous proceedings were commenced.

Similarly if the death of an assault victim occurred before the holding charge was filed, but the cause of death was not yet available, a

charge of murder is clearly permitted under section 46(2), because evidence supporting the murder charge (i.e. evidence relating to the cause of death) was not available at the time the previous proceedings were commenced.

In case they are called into question later, you should keep a detailed record of any:

- assessments/opinions sourced before filing a lesser charge
- evidential gaps which existed at the time of the filing of the lesser charge.

Crown involvement

The Crown's role under the CPA

The [CPA](#), [Crown Prosecution Regulations 2013](#) and the [Crown Law Memorandum of Understanding \(MOU\)](#), all provide for clarity of responsibility. The Crown is responsible for the most serious charges and conducts jury trials. Jury trials must proceed on the basis of the charging document.

Police must, through the [MOU](#), notify the Crown if a charge will become a Crown prosecution. This notification must be made by the prosecutor before the first appearance, or when a non-schedule jury election is made, during the file analysis following a not guilty plea.

Crown responsibilities

When the Crown assumes responsibility for a prosecution, it must file a notice advising the parties that it has taken responsibility for the prosecution.

Following the notification, the Crown may amend, add and withdraw charges as appropriate. In most circumstances, if the Crown apply within the CRP timeframes, the court's leave will not be required for the Crown to make changes to the charges, unless it intends to withdraw all the charges in a prosecution.

Contact your local Police Prosecution Service office for the local protocol on file delivery and liaison with the Crown.

High Court matters

The Crown assumes responsibility for:

- all Category 4 charges after the first appearance, with the second and subsequent appearances required to be in the High Court
- any other matter transferred to the High Court as a result of a protocol determination or an application by either party for the matter to be heard in the High Court.

Crown schedule

The Crown schedule is contained in the [Crown Prosecution Regulations 2013](#) and outlines the charges that must ultimately be prosecuted by the Crown. The list contains many of the former purely indictable matters and a large number of more serious offences. All offences carrying a maximum penalty of 14 years imprisonment or more are generally included unless a proviso applies, such as class A drug possession for supply, where the Crown will only prosecute the most serious cases determined by the application of set criteria. Refer to the regulations for the full list of offences that must be prosecuted by the Crown.

The Crown assumes responsibility for Crown schedule matters after the entry of a plea. Refer also to identification of [offences with criteria](#) earlier in this chapter.

Jury trial

When a defendant pleads not guilty to a category 3 offence and elects to be tried by a jury, the Crown assumes responsibility following the entry of a plea if the matter is on the Crown schedule, or on adjournment to the trial callover in all other circumstances. When the matter is not on the Crown schedule, Police maintain responsibility for the review process up to and including the case review hearing.

Police may prosecute some serious offences

This table lists many of the more serious offences and who is responsible for prosecution.

Offence		Automatic Crown	Police
Crimes Act 1961			
s68	Party/inciting murder outside NZ	Cat 4	
s69(1)& (2)	Party crime outside NZ	Cat 4	

Offence		Automatic Crown	Police
s69(3)	...other than treason, mutiny, espionage		Cat 3
s73	Treason	Cat 4	
s74(3)	Attempted treason	Cat 4	
s76	Accessory to, or failure to prevent treason	Cat 4	
s77	Inciting mutiny	Cat 4	
s78	Espionage	Cat 4	
s79	Sabotage	Cat 4	
s80	Oath to commit an offence		Cat 3
s90	Riotous damage		Cat 3
s92	Piracy	Cat 4	
s94	Piratical act	Cat 3 Crown only	
s95	Attempt to commit piracy	Cat 4	
s96	Conspiracy to commit piracy	Cat 4	
s97	Accessory after the fact to piracy	Cat 3 Crown only	
s98	Slave dealing	Cat 4	
s98AA	Dealing in people under 18 for exploitation	Cat 3 Crown only	
s98C	Smuggling migrants	Cat 3 Crown only	
s98D	Trafficking people	Cat 3 Crown only	
s100	Judicial corruption	Cat 4	
s101	Bribery of judicial officer	Cat 4	
s102	Corruption/bribery/Crown Minister	Cat 4	
s103	Corruption/bribery of MP	Cat 4	

Offence		Automatic Crown	Police
s104	Corruption/Bribery of Police	Cat 3 Crown only	
s105	Corruption/bribery of official	Cat 3 Crown only	
s105A	Corrupt use of official information	Cat 3 Crown only	
s105B	Use or disclosure of personal information disclosed in breach of s 105A	Cat 3 Crown only	
s105C	Bribery of foreign public official	Cat 3 Crown only	
s105D	Bribery outside New Zealand of foreign public official	Cat 3 Crown only	
s109	Perjury, where perjury is committed in the context of a Crown prosecution or in an appeal to the High Court, Court of Appeal, or Supreme Court	Cat 3 Crown only	
s109	Perjury in all other cases		Cat 3
s113	Fabricating evidence where fabrication is committed in the context of a Crown prosecution or in an appeal to the High Court, Court of Appeal, or Supreme Court	Cat 3 Crown only	
s113	Fabricating evidence in all other cases		Cat 3
s115(a)	Conspiring to bring false allegation (offence alleged punishable by imprisonment for 3 years or more)	Cat 3 Crown only	
s115(b)	Conspiring to bring false allegation (offence alleged punishable by imprisonment for less than 3 years)		Cat 3
s116	Conspiring to defeat justice, where that conspiracy is committed in the context of a Crown prosecution or in an appeal to the High Court, Court of Appeal, or Supreme Court	Cat 3 Crown only	
s116	Conspiring to defeat justice in all other cases		Cat 3
s117	Corrupting juries and witnesses	Cat 3 Crown only	

Offence		Automatic Crown	Police
s123	Blasphemous libel		Cat 2
s128 & 128B	Rape/Sexual violation	Cat 3 Crown only	
s129	Attempt/Assault to commit sexual violation	Cat 3 Crown only	
s129A(1)	Sexual connection induced by coercion/ threats	Cat 3 Crown only	
s132	Sexual connection, attempt and indecent act with/on child under 12	Cat 3 Crown only	
s142A	Compelling indecent act with animal	Cat 3 Crown only	
s143	Bestiality		Cat 3
s144A	Sexual conduct with children outside New Zealand	Cat 3 Crown only	
s144C	Organising or promoting child sex tours	Cat 3 Crown only	
s172	Murder	Cat 4	
s173	Attempted murder	Cat 4	
s174	Counselling/procuring murder	Cat 4	
s175	Conspiracy to murder	Cat 4	
s176	Accessory to murder	Cat 3 Crown only	
s177	Manslaughter	Cat 4	
s178	Infanticide	Cat 4	
s179	Aid/abet suicide	Cat 3 Crown only	
s180(1)	Suicide pact where murder or manslaughter	Cat 4	

Offence		Automatic Crown	Police
s180(2)	Suicide pact where one kills themselves	Cat 3 Crown only	
s182	Killing unborn child	Cat 3 Crown only	
s183	Procuring abortion	Cat 3 Crown only	
s188(1)	Wounding with intent	Cat 3 Crown only	
s188(2)	Wounding with reckless disregard		Cat 3
s191(1)	Aggravated wounding	Cat 3 Crown only	
197	Disabling		Cat 3
s198(1)	Discharging firearm/dangerous act with intent	Cat 3 Crown only	
s198(2)	Discharging firearm/dangerous act with reckless disregard		Cat 3
s198A(1)	Using firearm against enforcement officers	Cat 3 Crown only	
s199	Acid throwing	Cat 3 Crown only	
s200(1)	Poisoning with intent	Cat 3 Crown only	
s201	Infecting with a disease	Cat 3 Crown only	
s204	Impeding rescue		Cat 3
s208	Abduction of woman or girl	Cat 3 Crown only	

Offence		Automatic Crown	Police
s209	Kidnapping	Cat 3 Crown only	
s232(1)	Aggravated burglary	Cat 3 Crown only	
s235	Aggravated robbery	Cat 3 Crown only	
s236(1)	Assault with intent to rob	Cat 3 Crown only	
s238	Blackmail	Cat 3 Crown only	
s239(1)	Demanding with intent to steal	Cat 3 Crown only	
s267(1)	Arson	Cat 3 Crown only	
s270	Endangering transport	Cat 3 Crown only	
Misuse of Drugs Act 1975			
ss6(1)(b) or 6(2A) (or equivalent offence under s10)	Manufacture of methamphetamine	Cat 3 Crown only	
ss6(1) or 6(2A) (or equivalent offence under s10)	Dealing in a Class A drug (except manufacture of methamphetamine) if: <ul style="list-style-type: none"> a. the quantity of drugs is more than 5 times the quantity of the presumption threshold, including in combination with any other charges being heard together in the proceeding; or b. there is other evidence of large-scale dealing beyond the actual quantity seized; or c. there is substantial evidence derived from a surveillance device involving audio interception. 	Cat 3 Crown only	
ss6(1) or 6(2A) (or equivalent offence under s10)	Dealing in a Class A drug (except manufacture of methamphetamine) if criteria not met for automatic Crown involvement		Cat 3

Offence		Automatic Crown	Police
ss6(1) or 6(2A) (or equivalent offence under s10)	Dealing in a Class B drug if: <ul style="list-style-type: none"> a. the quantity of drugs is more than 10 times the quantity of the presumption threshold, including in combination with any other charges being heard together in the proceeding; or b. there is other evidence of large-scale dealing beyond the actual quantity seized; or c. there is substantial evidence derived from a surveillance device involving audio interception. 	Cat 3 Crown only	
ss6(1) or 6(2A) (or equivalent offence under s10)	Dealing in a Class B drug if criteria not met for automatic Crown involvement		Cat 3
s12C	Commission of offences outside NZ (where offence would be ss6(1) or 6(2A) Class A or B)	Cat 3 Crown only	

Protocol offences

What is a protocol offence

Protocol offences are similar to offences that were previously referred to as "middle band" and are able to be tried in the High or District Court dependant upon a judicial decision. The issue of protocol is raised through the review stage of proceedings in respect of those matters where a not guilty plea is entered. If the court determines that the trial should be heard in the High Court, then the Crown will assume responsibility for the prosecution.

Early identification of protocol

Although the issue of protocol is only required to be raised for consideration in matters proceeding to trial, early identification of protocol will assist the process if a not guilty plea is entered. The majority of protocol offences are either category 4 or Crown schedule offences, however, a limited number that are not automatically Crown matters will be prosecuted by Police. When a protocol offence is identified through file analysis, the District Prosecution Manager must be notified for a decision to recommend or not recommend transfer to the High Court for trial. Any decision to recommend transfer to the High Court must be done in consultation with the local Crown Solicitor.

For a full list of protocol offences, refer to the [gazetted protocol](#).

Suppression of names and information before the court

Overview of suppression provisions

The [CPA](#) (sections 194 - 211) provides the legislative framework and guidelines for the publication or suppression of names and other particulars of criminal proceedings before the courts.

The provisions build upon case law and the public expectation that justice and judicial proceedings should be open, transparent and consistent with the right of the media to report fairly and accurately.

While recognising that the principle of "open justice" should prevail, the CPA also provides for situations where information should be restricted automatically or when the court is satisfied sufficient grounds exist for information to be suppressed.

In addition to the prosecutor and defendant, members of accredited media have a statutory right to be heard in court with regard to suppression orders and may also appeal the decision of the court.

Although interim suppression orders are most common in the early administrative stage of proceedings, suppression of names and evidence may be ordered at any stage through to the final disposition of the charge.

When making, varying or revoking a suppression order, the court must give reasons for its decision in open court ([s207](#)). However, the court may, if it is satisfied that exceptional circumstances exist, decline to state in public all or any facts, reasons, or other considerations taken into account to reach the decision.

Offences relating to suppression

It is an offence to...	Maximum penalty
knowingly or recklessly publish details in breach of a suppression order or of automatic suppression	- 6 months imprisonment (individual), or - \$100,000 fine (body corporate). (s 211 (1))
publish in breach of a suppression order or of automatic suppression (not necessary to prove intent or recklessness)	- \$25,000 fine (individual), or - \$50,000 (body corporate) (This does not apply to a person that hosts websites or other electronic retrieval systems unless the material is placed or entered by that person). (s 211 (2))

Related information

See also:

- [Automatic suppression](#)
- [Suppressing defendant details](#)
- [Suppressing other persons details, evidence or submissions](#)

in this chapter.

Automatic suppression

Prohibition against publishing names in specified sexual cases

Section [201](#) of the CPA automatically prohibits the publication of the defendant's details for offending under section [130](#) or [131](#) of the Crimes Act 1961 (incest or sexual conduct with family members).

Section [203](#) of the CPA prohibits the publication of the name or particulars leading to the identification of any person upon or with whom a specified sexual offence (ss 128 - 142A or 144A of the [Crimes Act 1961](#)) has been or is alleged to have been committed unless:

- that person is of or over the age of 18 years, and
- the court, by order, permits such publication.

A complainant in prosecutions relating to the above specified sexual offences, once they have reached the age of 18 years, may apply to the court for an order permitting the publication of their name or identifying particulars, or those of the offender, if the court is satisfied they understand the nature and effect of their decision. Where the offending is incest or sexual conduct with a family member and involves multiple complainants, the court must be satisfied that all complainants consent to the publication.

Automatic protection of identity of child victims and witnesses

Section [204](#) CPA prohibits the publication of the name, address, or occupation of any person under the age of 18 years who is a complainant or witness in criminal proceedings.

Despite the general prohibition on publication of the details of child complainants, the details of a child who died as a result of the offence may be published.

A complainant or witness in a proceeding may apply to the court for an order permitting the publication of their details once they have reached the age of 18 years and the court is satisfied that they understand the nature and effect of their decision.

Orders restricting disclosure of information about bail

Section [19](#) of the Bail Act 2000 prohibits the publication of a report or account of any matters dealt with at a bail hearing apart from the following, unless specifically ordered otherwise:

- identity of the defendant applying for bail
- charges faced by the defendant
- decision of the court on the application
- conditions of bail, if bail is granted.

Despite the above, the court may make an order specifically permitting the publication of any other details.

The general prohibition and any additional prohibition ordered by the court remains in force, unless the court directs otherwise, until the expiry of any appeal period or appeal following the conclusion of a prosecution.

Prohibition on publishing details of a sentence indication

Details relating to a request for a sentence indication, or the indication given, may not be published before a defendant is sentenced or the charge is dismissed.

([s63](#)) See also '[Sentence indications](#)' in the 'Review stage (CMM)' chapter).

Related information

See also '[Suppressing defendant details](#)' and '[Suppressing other persons details, evidence or submissions](#)' in this chapter.

Suppressing defendant details

Power to suppress defendant details

The court may prohibit the publication of the defendant's name (including particulars likely to lead to their identification), address and occupation, in addition to any automatic suppression for [specified sexual cases](#).

In prohibiting the publication of details, the court must be satisfied to the standard required by section [200](#) that an order should be granted.

Any order for suppression may be revoked, reviewed or varied by the court at any time and the reasons for making, varying, or revoking the order must be given in open court. The court may decline to state in public any fact, reason or other consideration, if it is satisfied that exceptional circumstances exist.

Community Magistrates and Justices

Community Magistrates (CMs) and Justices (JPs) may make interim and final suppression orders in any matter for which they have full or sentencing jurisdiction.

For matters outside the full or sentencing jurisdiction, a CM or JP may grant interim suppression at a first appearance. The granting or renewing of a suppression order at a subsequent appearance by a CM or JP may only be made if both parties agree. A suppression order made by a CM or JP for a matter outside their full or sentencing jurisdiction is only valid for 28 days from the date the order was made.

([s362](#))

Interim suppression - first appearance

The court may order the interim suppression of the defendant's details until the next court appearance if an arguable case is presented showing that publication would be likely to:

- cause extreme hardship to the person charged with, or convicted of, or acquitted of the offence, or any person connected with that person
- cast suspicion on another person that may cause undue hardship to that person
- cause undue hardship to any victim of the offence
- create a real risk of prejudice to a fair trial
- endanger the safety of any person
- lead to the identification of another person whose name is suppressed by order or by law
- prejudice the maintenance of the law, including the prevention, investigation, and detection of offences
- prejudice the security or defence of New Zealand.

Note: The fact that a defendant is well known does not of itself, mean that publication of their name will result in extreme hardship.

Initial orders by registrars

A registrar may make an interim suppression order at the first appearance, if the matter is to be adjourned and all parties consent. An order granted by a registrar is only valid for 28 days. However, the registrar may renew interim suppression at the expiry of the 28 days if the next appearance has not occurred.

([ss200](#), [206](#), [208](#)(1)(b))

Further suppression - limited period or permanent

The court may order ongoing suppression of the defendant's details for a limited period or permanently, if it is satisfied that publication would be likely to result in any of the consequences listed under 'Interim suppression- first appearance' above.

Victim's views on suppression

The court must take into account any views of a victim before ordering permanent name suppression. Prosecutors must make all reasonable efforts to ensure any views the victim has on the application are ascertained and must inform the court of those views. ([s28](#) Victims' Rights Act 2002)

Duration of orders

Prosecutors must be vigilant in clarifying the duration of the suppression order when it is made. If the term of a suppression order is not specified by the court, it has permanent effect.

The court may revoke permanent name suppression at any time.

Defendants completing diversion

If a defendant successfully completes [diversion](#) and seeks permanent name suppression, they must apply to the court for consideration and determination as above. A defendant, having completed diversion, will not be able to have permanent name suppression granted by a registrar.

Diagram: Defendant suppression

This diagram summarises the defendant details suppression process.



Related information

See also '[Automatic suppression](#)' and '[Suppressing other persons details, evidence or submissions](#)' in this chapter.

Suppressing other persons' details, evidence or submissions

Suppression of witness, victim, or connected person details

In addition to the [automatic suppression](#) provisions of the Act, other witnesses, victims and connected persons (those connected with the proceedings or the defendant) may have their details suppressed.

(s202)

The court may make an order prohibiting the publication of the name, address, or occupation of a victim or witness of or over 18 years of age or of a connected person if satisfied that publication would be likely to:

- cause undue hardship to the witness, victim, or connected person
- create a real risk of prejudice to a fair trial
- endanger the safety of any person
- lead to the identification of another person whose name is suppressed by order or by law
- prejudice the maintenance of the law, including the prevention, investigation, and detection of offences
- prejudice the security or defence of New Zealand.

Duration of orders

Any suppression order relating to a witness, victim or connected person other than [automatic suppression](#) may be for a limited period or permanent. Any order may be renewed, varied or revoked at any stage. If a specific period is not specified, the order is considered permanent.

When can evidence and submissions be suppressed?

The court may make an order forbidding the publication of any report or account of the whole or any part of the evidence adduced or submissions made in any proceedings, if the court is satisfied that publication is likely to:

- cause undue hardship to any victim of the offence
- create a real risk of prejudice to a fair trial
- endanger the safety of any person
- lead to the identification of another person whose name is suppressed by order or by law
- prejudice the maintenance of the law, including the prevention, investigation, and detection of offences
- prejudice the security or defence of New Zealand.

It is important that the prosecutor is made aware of any of the above issues that may be present, so that an application for suppression can be made, if required.

Duration of orders

Any suppression order relating to evidence or submissions may be for a limited period stated by the court or permanent. If a specific period is not specified, the order is considered permanent.

Any order may be renewed, varied or revoked at any stage.

Related information

See also '[Automatic suppression](#)' and '[Suppressing defendant details](#)' in this chapter.

Clearing the court

Cases of a sexual nature

In any case of a sexual nature, those permitted in the courtroom when the complainant gives evidence are automatically restricted to the following:

- the Judge and jury
- the prosecutor
- the defendant and any custodian of the defendant
- any lawyer engaged in the proceedings
- any officer of the court
- the Police employee in charge of the case
- any member of the media (media may be excluded if their presence would prejudice the security or defence of New Zealand)
- any person whose presence is requested by the complainant
- any person expressly permitted by the Judge to be present.

Before the complainant in respect of a sexual offence gives evidence, the Judge must ensure that no person other than those referred to above is present in the courtroom, and advise the complainant of their right to request the presence of any person in the courtroom.

Cases not of a sexual nature

In cases other than those of a sexual nature, the court may make an order excluding all or any persons other than:

- the Judge and jury
- the prosecutor
- the defendant and any custodian of the defendant
- any lawyer engaged in the proceedings
- any officer of the court
- the Police employee in charge of the case
- any member of the media (media may be excluded if their presence would prejudice the security or defence of New Zealand).

When can orders be made?

The court may only make the above order in cases other than those of a sexual nature if it is necessary and a suppression order is not sufficient to avoid these risks:

- undue disruption to the conduct of the proceedings
- prejudicing the security or defence of New Zealand
- a real risk of prejudice to a fair trial
- endangering the safety of any person
- prejudicing the maintenance of the law.

Announcements that must be made in court

The court must announce the verdict or decision of the court, and the passing of sentence in public but if satisfied that exceptional circumstances exist may decline to state in public all or any facts, reasons, or other considerations taken into account to reach its decision or verdict, or in determining the sentence.