

## **Criminal procedure - Introduction and jurisdiction**

## Table of Contents

Table of Contents	2
Policy statement and principles	3
What	3
Why	3
How	3
Summary	4
Purpose of this chapter	4
Statutory references	4
Procedures apply only to adults	4
Related criminal procedure chapters	4
Related information	4
Diagram: Criminal Procedure Act - procedure overview	5
Five stage criminal process	6
Categories of offences	8
Conspiring, attempting and being an accessory	8
Offenders liable to higher penalties	8
Definitions	10
Jurisdiction of the courts	14
General jurisdiction	14
Jurisdiction when acts are committed outside New Zealand	14
Jurisdiction with Attorney-General's consent	14
District Court's jurisdiction	15
District Court Judge	15
District Court jury trial Judge	15
Jurisdiction of Justices of the Peace and Community Magistrates	16
When can Justices and Magistrates preside?	16
Full jurisdiction	16
Sentencing jurisdiction	16
Limited and administrative jurisdiction	17
No jurisdiction over continuing offences	18
Declining jurisdiction and transfer to a District Court Judge	18
Access to court documents	19
General right of access	19
Right of prosecutor and defendant to access court file or documents	19
Restriction on access	19
Access during proceedings	19
Deadlines for objecting to access to documents during proceedings	20
Objections - in practice	20
Grounds for objection or release	20
Determining an objection	21
Seeking restriction of access early	21
Costs and sanctions	22
Cost orders	22
Sentencing consideration	22

## Policy statement and principles

### What

The [Criminal Procedure Act 2011](#) sets out a common five stage procedure applying in the adult jurisdiction to the conduct of criminal proceedings from the commencement of a proceeding through to its disposition (Commencement, Administration, Review, Trial, and Disposition). Different processes apply to youth, detailed in the '[Youth justice](#)' chapter.

The Act details the jurisdiction of the courts and of Justices of the Peace and Community Magistrates. It also prescribes four categories of offences, with all prosecutions being commenced in the District Court.

The Act is supported by more detailed procedural requirements prescribed in the [Criminal Procedure Rules 2012](#).

The '[Criminal procedure](#)' Police Manual chapters detail Police procedures and expectations through the five stages of criminal proceedings - Commencement, Administration, Review, Trial and Disposition.

### Why

The Criminal Procedure Act 2011 and related Criminal Procedure Rules 2012:

- enable greater use and acceptance of new technology
- provide greater sentencing discretion for the District Courts and opportunities to resolve cases earlier, through sentence indications and case management processes
- limit in-court appearances, with more administrative functions taking place outside the courtroom
- reduce opportunities for delay to occur
- provide incentives and sanctions to encourage compliance with procedural requirements.

### How

Police prosecutors (and where applicable, the OC case or other employees involved) will:

- exercise proper discretion when deciding whether or not to commence a prosecution
- comply with general administrative requirements in the Act, including timeframes, that apply to all court proceedings commenced through to disposition
- initially review files to ensure they understand the issues most relevant to first court appearances and consult with Crown Solicitors when certain agreed criteria are met
- be familiar with the laws relating to suppression of names and information before the court
- when a not guilty plea is entered, engage in the review stage with defence lawyers in case management discussions and jointly complete the case management memorandum (unless the defendant is self-represented or the court has directed otherwise)
- be bound by agreements made by any other PPS prosecutor through the case management memorandum process, except in limited specified situations
- seek early resolution of pre-trial issues
- thoroughly prepare for trials covering matters such as admissibility of evidence, briefs of evidence, defences, exhibits, looking after witnesses
- ensure the court has relevant information for sentencing and when appropriate, make submissions on sentencing
- except for bail appeals, seek approval to appeal court decisions through the PPS Legal Adviser or Police Legal services.

## Summary

### Purpose of this chapter

The Criminal Procedure Act 2011 provides for a common system governing criminal procedure from the commencement of a proceeding, through to disposition.

This chapter provides:

- an [introduction](#) to the [Criminal Procedure Act 2011](#) (CPA) and its impact on previous proceedings involving **adult** offenders (see [‘Youth justice’](#) for procedures applying to youth)
- an overview of the [five stages](#) of the criminal procedure process detailed in the Act.

It also:

- includes [definitions](#) of key terms used in relation to criminal procedures
- outlines the four [categories of offences](#) in the Act
- outlines the [jurisdiction of the courts](#) and of [Justices of the Peace and Community Magistrates](#)
- explains when costs may be awarded for non-compliance with the CPA, associated rules and regulations and the Criminal Disclosure Act 2008.

### Statutory references

All references to the:

- "Act" or the "CPA", are to the [Criminal Procedure Act 2011](#)
- "Rules" or the "CPR", are to the [Criminal Procedure Rules 2012](#)

unless otherwise stated.

### Procedures apply only to adults

The procedures in the Criminal Procedure Act, as outlined in this chapter, apply to adult offenders.

**Different processes apply to youth.** See the [Youth justice](#) chapter for the application of the CPA in the youth jurisdiction and the procedure applying when adults are charged together with one or more youths.

### Related criminal procedure chapters

This chapter is the first of linked chapters dealing with the various stages of the adult 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](#).

### Related information

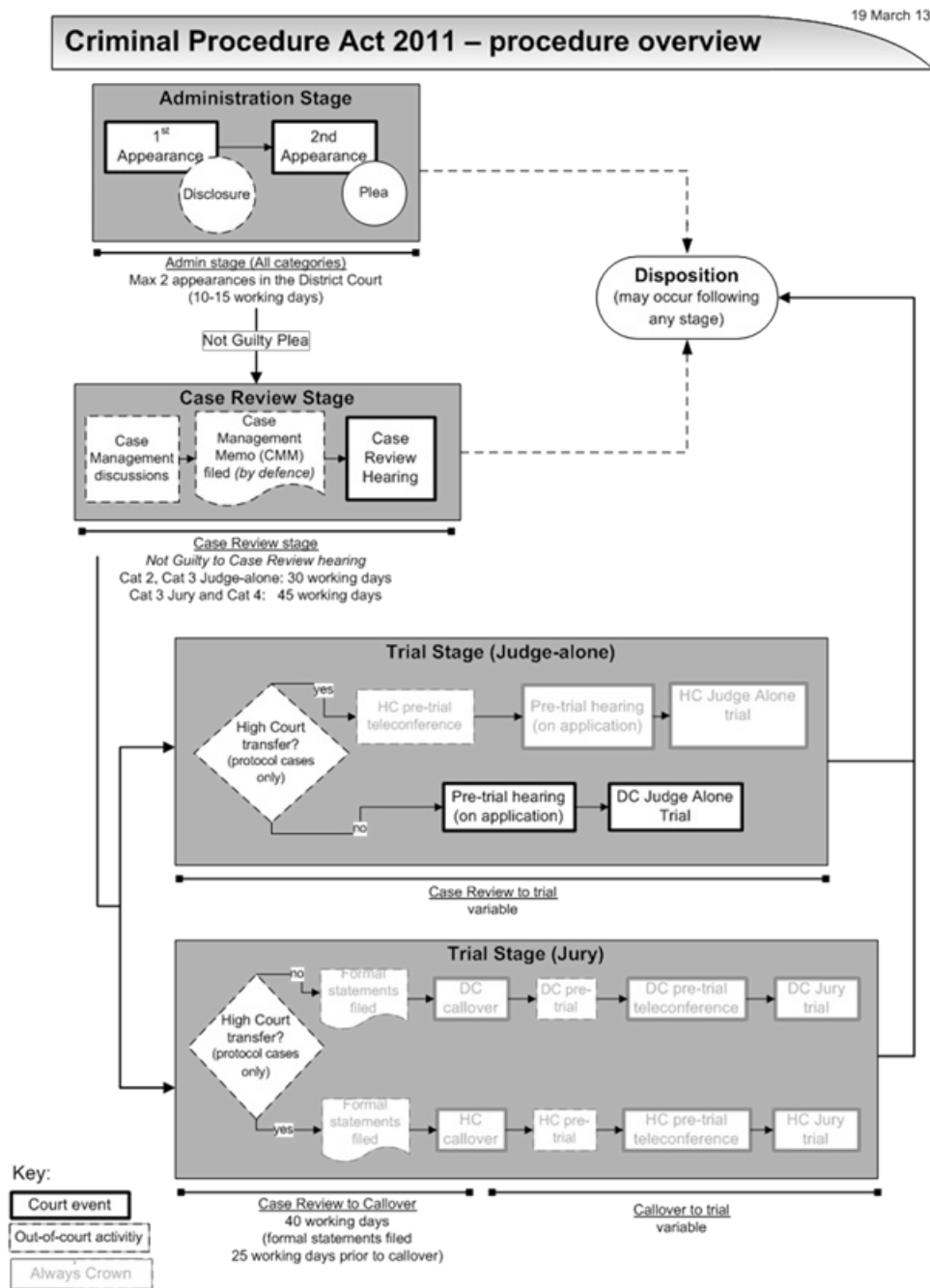
Other Police Manual chapters with information related to criminal procedure include:

- [Youth justice](#)
- [Bail](#)
- [Charging decisions](#)
- [Criminal disclosure](#)
- [Prosecution file and trial preparation](#)
- [Family harm](#)-related policies

- Adult diversion scheme

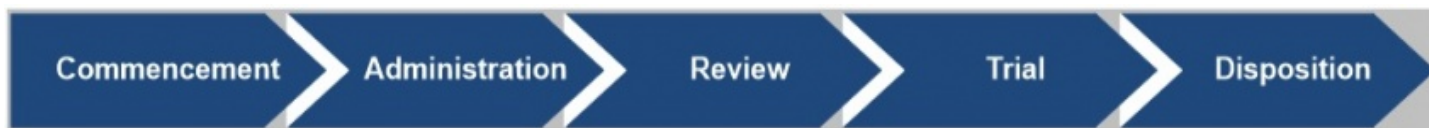
**Diagram: Criminal Procedure Act - procedure overview**

The following diagram illustrates the processes following the commencement of proceedings under the Criminal Procedure Act 2011.



## Five stage criminal process

The adult criminal process consists of 5 procedural stages through to completion: commencement, administration, review, trial and disposition.



This table outlines key matters in each stage for the **adult** jurisdiction. (**Note:** The CPA processes do not fully apply to proceedings involving youth. See the '[Youth justice](#)' chapter for the process involving youth offenders).

Stage	Description
<a href="#">Commencement</a>	<ul style="list-style-type: none"> <li>- Criminal proceedings are commenced following a decision to charge for each offence, or where a defendant requests a hearing for an infringement notice.</li> <li>- Defendant is notified of the charge(s) and court appearance through the arrest, police bail, or police summons process.</li> <li>- The prosecution file is prepared, suitability for diversion considered and the file reviewed by a supervisor.</li> <li>- A charging document is filed within the required timeframes, either singularly or with other charges, or with those relating to co-offenders. Representative charges or charges in the alternative may be filed if some prerequisites are met.</li> <li>- The defendant is advised if the charge filed is different from those for which they are summonsed.</li> </ul>
<a href="#">Administration</a>	<ul style="list-style-type: none"> <li>- The defendant's initial appearances in court following the commencement of proceedings in which they receive initial disclosure, seek legal advice and enter a plea.</li> <li>- Interim name suppression may be considered until the next appearance, if there is an arguable case in favour of suppression.</li> <li>- Defendant may be remanded for Police Adult Diversion, if appropriate.</li> <li>- Some offences may require the Crown's involvement following the first appearance. See Crown involvement in the <a href="#">Administration stage</a> chapter.</li> <li>- Second appearance is timed following initial disclosure, usually no more than 10 working days after the first appearance for a category 1 or 2 offence, or 15 working days for a category 3 or 4 offence.</li> <li>- A plea and election, as appropriate, may be required by the judicial officer if the defendant has initial disclosure and an opportunity to have legal representation. This is expected to be the second appearance for most defendants.</li> </ul>
<a href="#">Review (CMM process)</a>	<ul style="list-style-type: none"> <li>- Automatically applies to <a href="#">offence categories 2 - 4</a> and may apply to category 1 matters if directed.</li> <li>- Following a not guilty plea, dates are set for a <a href="#">case review hearing</a>, and when the defendant is represented by a lawyer, for filing a <a href="#">case management memorandum (CMM)</a>. A case management meeting or other contact is scheduled for discussions between the defence lawyer and prosecutor.</li> <li>- The file is reviewed by a prosecutor and the O/C case is notified of the CMM process and their input and further action requested if required. Full disclosure is made.</li> <li>- The CMM meeting or other contact is held out of court between the defence lawyer (where defendant is represented) and the prosecutor. CMM is jointly completed and filed by the defence lawyer outlining any agreements, judicial intervention required (sentence indication, sentence, pre-trial rulings) and <a href="#">protocol offences</a>.</li> <li>- Case review hearing is held in court, or completed administratively by a registrar if the CMM indicates a formal hearing is not required. The Court, or Registrar if a hearing is not required, may then adjourn the matter for sentencing, sentence indication, pre-trial applications or trial.</li> <li>- <a href="#">Protocol offences</a> are considered by a District Court and a High Court Judge to determine the location of the trial.</li> </ul>
<a href="#">Trial</a>	<ul style="list-style-type: none"> <li>- The term "trial" covers a Judge-alone trial or a jury trial.</li> <li>- In the District Court, a Judge-alone trial may proceed following the CMM process or a case review hearing.</li> <li>- This stage may also include additional pre-trial hearings and applications prior to the trial.</li> <li>- Formal statements are filed for jury trials in the District or High Court, followed by callover, pre-trial hearings and tele-conferences, ending with the trial.</li> </ul>
<a href="#">Disposition</a>	<ul style="list-style-type: none"> <li>- Disposition may occur within any stage. Simply put, disposition is the completion of the prosecution.</li> <li>- A prosecution may be completed following successful diversion, withdrawal of charges, conviction, sentence, appeal, dismissal, mental impairment finding, mental health orders, and the expiry of any appeal period.</li> </ul>

## Categories of offences

There are four categories of offences (s6 CPA). All prosecutions are commenced in the District Court.

Offence category	Description	Tried by
Category 1	<p>Offences not punishable by imprisonment or a community-based sentence (fine only).</p> <p>An infringement offence is a category 1 offence if proceedings relating to that infringement offence are commenced by filing a charging document, rather than by issuing an infringement notice.</p> <p>Exclusions:</p> <ul style="list-style-type: none"> <li>- an offence that if committed by a body corporate is punishable by only a fine, but would be punishable by a term of imprisonment if committed by an individual.</li> </ul>	<p>Any trial will be a Judge-alone trial, tried by:</p> <ul style="list-style-type: none"> <li>- District Court Judge</li> <li>- one or more Community Magistrates</li> <li>- one or more Justices of the Peace</li> </ul>
Category 2	<p>Offences punishable by a community-based sentence or less than two years' imprisonment.</p> <p>Also includes:</p> <ul style="list-style-type: none"> <li>- an offence that if committed by a body corporate is punishable by only a fine, but would be punishable by a term of less than two years imprisonment if committed by an individual.</li> </ul>	<ul style="list-style-type: none"> <li>- Tried by Judge at a Judge-alone trial</li> <li>- <b>Protocol offences</b> are considered for transfer to the High Court for trial</li> <li>- Parties may apply to have offence transferred to the High Court for Judge-alone trial</li> </ul>
Category 3	<p>Offences punishable by two years' imprisonment or more. A defendant may elect a jury trial.</p> <p>Also includes:</p> <ul style="list-style-type: none"> <li>- an offence that if committed by a body corporate is punishable by only a fine, but would be punishable by a term of two years imprisonment or more if committed by an individual.</li> </ul>	<ul style="list-style-type: none"> <li>- Tried by Judge-alone unless defendant elects trial by jury</li> <li>- In some instances the court may order a Judge-alone trial for long and complex cases or where there are issues of juror intimidation (ss102&amp; 103 CPA)</li> <li>- <b>Protocol offences</b> are considered for transfer to the High Court for trial</li> <li>- The prosecutor or defendant may apply to have offence transferred to the High Court for trial.</li> </ul>
Category 4	<p>An offence listed in <a href="#">schedule 1</a> of the CPA.</p>	<ul style="list-style-type: none"> <li>- Tried by High Court jury (commenced in the District Court and transferred to the High Court following first appearance (s36 CPA)</li> <li>- The court may order a Judge-alone trial for long and complex cases or where there are issues of juror intimidation (ss 102&amp;103 CPA).</li> </ul>

## Conspiring, attempting and being an accessory

If an offence is in any given category, then the following is also an offence in that category:

- conspiring to commit that offence
- attempting to commit that offence, or inciting or procuring or attempting to procure any person to commit an offence of that kind that is not committed
- being an accessory after the fact to that offence.

## Offenders liable to higher penalties

If an offence is punishable by a greater penalty because the defendant has previously been convicted of that offence or of some other



offence, the offence is an offence in the category that applies to offences punishable by that greater penalty only if the charge alleges that the defendant has such a previous conviction.

An example is driving with excess breath/blood alcohol, where a first or second offence is category 2, third or subsequent offences are category 3.

## Definitions

This table outlines the meanings of terms used in the [Criminal procedure chapters](#). For additional or more substantive definitions refer to section 5 of the CPA and rule 1.4 of the CPR.

Term	Meaning
<b>Authenticate</b>	<p>Authentication for the purposes of the CPA is a manner in which a person responsible for the content of a document indicates an acceptance of the information in it. The person may authenticate a document by:</p> <ul style="list-style-type: none"> <li>- signing and dating it</li> <li>- in the case of documents in an electronic form, by electronic means that adequately identifies the person responsible for the document's content and date of the authentication.</li> </ul> <p>Note that any document that must be sworn, such as affidavits, must be signed and dated.</p>
<b>Before the trial</b>	<p>In the case of a:</p> <ul style="list-style-type: none"> <li>- Judge-alone trial, means before the trial formally begins</li> <li>- jury trial, means before the defendant is given in charge to the jury.</li> </ul>
<b>Case Management Memorandum (CMM)</b>	<p>The document jointly completed by the defence and the prosecution and filed in court by the defence lawyer as part of the review stage. The CMM covers matters such as:</p> <ul style="list-style-type: none"> <li>- changes in pleas or charges</li> <li>- whether there is any intervention or order(s) required to be made by a judicial officer to progress the case.</li> </ul> <p>If the case will proceed to a Judge-alone trial, information is also provided to assist with the scheduling of the trial and to ensure the trial will be ready to proceed. Unrepresented defendants must attend a case review hearing where the same information is provided and discussed with the defendant. See also information on the CMM process in the <a href="#">Review stage (CMM process)</a> chapter.</p>
<b>Case Review Hearing</b>	<p>A hearing scheduled following the entry of a not guilty plea for offence categories 2-4. The hearing is scheduled to follow the completion of the <a href="#">CMM</a>.</p> <p>At this hearing, any matter requiring judicial intervention may be discussed and ruled upon. If pre-trial judicial intervention is not required, the case review hearing may be heard administratively before a Registrar.</p>
<b>Category of offence</b>	See <a href="#">offence categories</a> in this chapter.
<b>Charging document</b>	The document filed in court commencing a prosecution outlining the details of the offence charged. A charging document remains relevant throughout the life of any prosecution. (See also information on charging documents in the <a href="#">Commencement of proceedings</a> chapter).
<b>Community-based sentence</b>	<p>A sentence of:</p> <ul style="list-style-type: none"> <li>- community work</li> <li>- supervision</li> <li>- intensive supervision</li> <li>- community detention</li> </ul> <p>(<a href="#">s 44</a> sentencing Act 2002)</p>
<b>Complainant</b>	The person against whom the offence is alleged to be committed. This term is specifically used only when required in a statutory context such as the suppression provisions of the CPA. In all other circumstances the term victim is to be used.

Term	Meaning
<b>Continuing offence</b>	An offence where there is a maximum penalty for the initial offence and an additional maximum penalty for each period of time (stipulated in the offence statute) that the offence continues.
<b>Court</b>	A court presided over by a judicial officer (not a registrar) with authority to exercise the court's jurisdiction in relation to the matter.
<b>Crown prosecution</b>	A prosecution conducted by the Crown. Refer to the <a href="#">Crown Prosecution Regulations</a> made under section 387 of the CPA and also "Crown involvement" in the <a href="#">Administration stage</a> chapter.
<b>Crown prosecutor</b>	A Crown Solicitor or a lawyer representing a Crown Solicitor or any other lawyer employed or instructed by the Solicitor-General to conduct a Crown prosecution.
<b>Defendant</b>	Any person charged with an offence including: <ul style="list-style-type: none"> <li>- a person against whom proceedings have been commenced by the filing of a charging document in relation to an offence in any category</li> <li>- a Crown organisation, if proceedings are brought against it for an offence referred to in section 6 of the Crown Organisations (Criminal Liability) Act 2002</li> <li>- a person in respect of whom an application is made for a bond to keep the peace.</li> </ul>
<b>Document</b>	A document in <b>any</b> form. Section 5 of the CPA gives an extensive definition of document. Without limitation, it may include: <ul style="list-style-type: none"> <li>- a document in an electronic form</li> <li>- any writing on any material</li> <li>- information recorded or stored by means of a tape recorder, computer, or other device or material subsequently derived from that information</li> <li>- labels, markings, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means</li> <li>- books, maps, plans, graphs, or drawings:</li> <li>- photographs, films, negatives, tapes, or any other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced.</li> </ul>
<b>Electable offence</b>	A category 3 offence (punishable by 2 or more years imprisonment) whereby the defendant may elect to be tried by a jury.
<b>Electronic</b>	Includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic.
<b>Formal statement</b>	A statement required to be filed in jury trial proceedings following the case review hearing date. Formal statements need not be written. Formal statements may be recorded in any medium by a person who is a potential witness in a criminal proceeding where the statement: <ul style="list-style-type: none"> <li>- contains the evidence of that witness, or</li> <li>- is accompanied by, a declaration by the witness that the statement is true and was made with the knowledge it is to be used in court proceedings.</li> </ul> <p>If the statement is made by a person under 18 years of age, it must include the person's age. Additional requirements exist under <a href="#">s82</a> of the CPA, if the statement is written and the person making the statement cannot read it. (See also 'Formal statements' in the '<a href="#">Prosecution file and trial preparation</a>').</p>
<b>Infringement offence</b>	Any offence under any Act in respect of which a person may be issued with an infringement notice
<b>Judicial officer</b>	A High Court Judge (HCJ), a District Court Judge (DCJ), a Community Magistrate (CM), or a Justice of the Peace (JP).

Term	Meaning
<b>Judge-alone trial</b>	A trial presided over by a judicial officer without a jury.
<b>Jury trial</b>	A trial presided over by a Judge and a jury.
<b>Level of trial court</b>	Either the District Court or the High Court as determined by the <a href="#">offence category</a> , or a High Court Judge. See also 'protocol offences' and 'Crown involvement' in the <a href="#">Administration stage</a> chapter.
<b>Permanent court record</b>	The permanent record of criminal proceedings maintained by the court in accordance with the <a href="#">s184</a> of the CPA and <a href="#">part 7</a> of the CPR. The permanent court record is, subject to the power of the court to amend it, conclusive evidence of the matters recorded in it.
<b>Plea</b>	The defendant's formal response to the allegation in a charging document. If the defendant has initial disclosure the court should require them to enter a plea at the second appearance of the charge, if a plea was not stated at the first appearance. The defendant may plead either guilty or not guilty, or enter a special plea. (see <a href="#">ss37-49</a> CPA).
<b>Private prosecution</b>	A proceeding against a defendant in respect of an offence that is not: <ul style="list-style-type: none"> <li>- a public prosecution, or</li> <li>- a proceeding in respect of an offence commenced by or on behalf of a local authority, or other statutory public body or board.</li> </ul>
<b>Private prosecutor</b>	A prosecutor conducting a private prosecution.
<b>Prosecutor</b>	The person who is for the time being conducting the prosecution case against the defendant.
<b>Protocol offence</b>	A category 2 or 3 offence that is covered by the protocol established under <a href="#">s66</a> of the CPA requiring consideration as to whether the trial should be held in the High Court rather than the District Court. See also 'Protocol offences' in the <a href="#">Administration stage</a> chapter.
<b>Rules of court</b>	Rules made pursuant to CPA, District Courts Act 1947, or the Judicature Act 1908
<b>Sentence indication</b>	A statement by the court indicating to the defendant what the court would or would not (as the case may be) be likely to impose as a sentence if a guilty plea is entered to the charge or to another offence.  A defendant may seek a sentence indication at any stage of proceedings prior to the commencement of a trial. Refer to 'Sentence indications' in the <a href="#">Review stage (CMM Process)</a> chapter for further information.
<b>Special plea</b>	One or more of three pleas that may be entered other than guilty or not guilty under <a href="#">s45</a> of the CPA. The only special pleas that may be entered are a plea of: <ul style="list-style-type: none"> <li>- previous conviction</li> <li>- previous acquittal</li> <li>- pardon</li> </ul> Refer to <a href="#">ss45-49</a> for the requirements following the entering of a special plea. See also 'Special pleas' in the <a href="#">Administration stage</a> chapter.
<b>Trial</b>	Either a Judge-alone trial or a jury trial where evidence is heard and a determination of guilt is made.
<b>Victim</b>	The same definition of victim as contained in <a href="#">s4</a> of the Victims' Rights Act 2002.

Term	Meaning
<b>Working day</b>	A day that is not: <ul style="list-style-type: none"><li>- Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, or Waitangi Day; or</li><li>- A day in the period commencing on 25 December in one year and ending on 15 January in the next year.</li></ul>

## Jurisdiction of the courts

### General jurisdiction

New Zealand courts have jurisdiction over all offences:

- for which the offender may be proceeded against and tried in New Zealand and all acts done or omitted in New Zealand (s5 Crimes Act 1961)
- where any act or omission forming part of the offence, or any event necessary to the completion of the offence, occurs in New Zealand. This:
  - applies whether the person charged with the offence was in New Zealand or not at the time of the act, omission or event (s7 Crimes Act 1961))
  - means any case where any ingredient of the offence is committed or occurs in New Zealand, e.g. where a person obtains something under false pretences from a New Zealand resident by way of letters written from overseas.

### Jurisdiction when acts are committed outside New Zealand

New Zealand courts have **no** jurisdiction over acts committed outside New Zealand unless an enactment gives the court that power (s6 Crimes Act 1961).

This table lists some provisions giving New Zealand courts jurisdiction over acts committed outside New Zealand.

Section - Crimes Act 1961	Jurisdiction over people...
s68(1) & (2)	in New Zealand who are parties to murder outside New Zealand, where the act complained of would have constituted murder under New Zealand law
s69(3)	in New Zealand who are parties to an offence other than murder punishable by life or by 2 or more years imprisonment outside New Zealand, where the act complained of would have constituted a offence under New Zealand law
s73	who commit treason within or outside New Zealand
s77	who incite mutiny within or outside New Zealand
s92	who commit piracy within or outside New Zealand
s98	who deal in slaves within or outside New Zealand
s205	who commit bigamy within or outside New Zealand
s175	who conspire to commit murder within or outside New Zealand

### Jurisdiction with Attorney-General's consent

This table lists provisions giving New Zealand courts jurisdiction, if the

Attorney-General consents, when acts may have been committed outside New Zealand.

Section	Jurisdiction (with the Attorney-General's consent) over...
s7A Crimes Act 1961	people who commit an offence against the Crimes Act in the course of carrying out a terrorist act (where certain requirements are met) wholly outside of New Zealand
ss78, 78A and 78B Crimes Act 1961	people who commit espionage or wrongfully communicate, retain or copy official information
ss98C and 98D Crimes Act 1961	smuggling migrants and trafficking in people by means of coercion
s7 Continental Shelf Act 1964	acts that take place on, under, above or about any installation being used in connection with the exploitation of New Zealand's continental shelf for minerals and petroleum
s3 Antarctica Act 1960	acts committed in the Ross Dependency and other parts of Antarctica
ss5 & 15 New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987	people who are servants or agents of the Crown, who manufacture or obtain any nuclear explosive device, or who aid any other person to manufacture or obtain such a device
ss8 and 400 Crimes Act 1961	offences committed upon certain ships and aircraft beyond New Zealand
ss144A Crimes Act 1961	sexual conduct with children and young people outside New Zealand

## District Court's jurisdiction

The District Court has jurisdiction to deal with a proceeding for any offence with the following limitations:

- where the level of the trial court for a proceeding in respect of a category 2 or 3 offence is the High Court, a District Court has jurisdiction over the proceeding only until the time it is transferred to the High Court
- in a proceeding in respect of a category 4, a District Court has jurisdiction to deal with the proceeding only for the first appearance.

(s9CPA)

## District Court Judge

A District Court Judge without a jury warrant may exercise the full jurisdiction of the District Court except for:

- jury trial matters, or
- when limited by another statute, e.g. High Court only bail for certain drug dealing defendants (see [Bail](#) chapter).

A District Court Judge may also hear and determine appeals against decisions of Justices of the Peace and Community Magistrates.

A District Court Judge has jurisdiction over any matter and may now sentence up to the maximum penalty for the offence, with the following restrictions:

- **Life imprisonment** - if sentencing for an offence with a maximum penalty of life imprisonment and the court has reason to believe that a sentence of life imprisonment may be appropriate, sentencing must be transferred to the High Court (s114(2)(a) CPA)
- **Preventive detention** - if the court has reason to believe that a sentence of preventive detention is available and may be appropriate, sentencing must be transferred to the High Court (s114(2)(b) CPA)
- **Category 4 offence** - sentencing for a category 4 offence must occur in the High Court (s114(2)(c) CPA)

All offences have a single penalty.

## District Court jury trial Judge

A District Court Judge with a general (Judge-alone) warrant has the same sentencing powers as a District Court Judge with a jury trial warrant. However, only a jury trial Judge has jurisdiction over jury trials.

# Jurisdiction of Justices of the Peace and Community Magistrates

## When can Justices and Magistrates preside?

The jurisdiction of Justices and Community Magistrates varies depending on the offence charged or the function being carried out.

Their criminal jurisdiction is conferred by sections [355 - 363](#) of the CPA.

**Note:** Justices of the Peace and Community Magistrates are not always legally qualified.

## Full jurisdiction

Full jurisdiction includes an ability to hear evidence and determine guilt or otherwise by way of a Judge-alone trial and conclude proceedings through to final disposition. Any trial of a charge that is not within the full jurisdiction of one or more Justices or one or more Community Magistrates, must be before a District Court Judge or, where applicable, a High Court Judge.

This table details when Justices of the Peace and Community Magistrates have full jurisdiction.

Courts presided over by...	Have jurisdiction over...
one Justice	- category 1 offences where the enactment creating the offence expressly provides for that jurisdiction
two or more Justices	- infringement offences - category 1 offences where the enactment creating the offence expressly provides for that jurisdiction, e.g. category 1 offences under the Land Transport Act 1998 subordinate transport regulations (other than regulations relating to heavy motor vehicles) (s 135(2) Land Transport Act 1998)
one or more Community Magistrate(s)	- a category 1 offence in respect of which a District Court presided over by 1 or more Justices has jurisdiction under section <a href="#">355(1)</a> or <a href="#">(2)(a)</a> of the CPA - a category 1 offence, if the enactment creating the offence or another enactment states that the jurisdiction may be exercised by 1 or more Community Magistrates - a category 1 offence punishable by a fine not exceeding \$40,000 that is prescribed by regulations - an infringement offence.

## Sentencing jurisdiction

If the defendant pleads guilty, one or more Community Magistrates may impose sentence in respect of certain category 1 and 2 offences. This table outlines the type of offence and possible disposition options available to them.

([s357-359](#) CPA).



Category 1 or 2 offence (not being a <a href="#">continuing offence</a> ) penalty:	Disposition options available if defendant pleads guilty:
<ul style="list-style-type: none"> <li>- maximum imprisonment (if any) does not exceed 3 months; and</li> <li>- maximum fine (if any) does not exceed \$7,500</li> </ul>	<p>under the <a href="#">Sentencing Act 2002</a>, 1 or more of the following:</p> <ul style="list-style-type: none"> <li>- sentence of reparation</li> <li>- sentence to pay a fine</li> <li>- sentence of supervision</li> <li>- sentence of intensive supervision</li> <li>- sentence of community work on the offender:</li> <li>- sentence of community detention</li> <li>- discharge without conviction and, if the court thinks fit, make an order under <a href="#">s106(3)</a></li> <li>- convict and discharge and, if the court thinks fit, make an order under <a href="#">s108(2)</a></li> <li>- order to appear for sentence if called upon and, if the court thinks fit, make an order under <a href="#">s110(3)</a></li> <li>- a non-association order</li> <li>- disqualify from holding or obtaining a driver licence under <a href="#">s124</a></li> <li>- order the confiscation of a motor vehicle under <a href="#">ss128</a> or <a href="#">129</a></li> <li>- order that an offender is prohibited from acquiring any interest a motor vehicle under <a href="#">s131(2)</a></li> <li>- set aside the disposition by the offender of a motor vehicle or of an interest in a motor vehicle under <a href="#">s131(3)</a></li> </ul>

## Limited and administrative jurisdiction

Justices and Community Magistrates may have specific administrative or sentencing jurisdiction for criminal matters. This table details some examples. If you are unsure and the matter is not listed, consult the PPS.

Courts presided over by...	May...
one or more Justices	<ul style="list-style-type: none"> <li>- receive and require <a href="#">pleas</a> to be entered for category 1-3 charges. If the defendant wishes to plead guilty to a charge that a Justice does not have full or sentencing jurisdiction over, the defendant must be brought before a Judge to enter the plea (<a href="#">s361 CPA</a>)</li> <li>- grant interim suppression (see 'Suppression' in the <a href="#">Administration stage</a> chapter)</li> <li>- renew suppression if consented to</li> <li>- grant/decline <a href="#">bail</a> except when bail is restricted</li> <li>- hear oral evidence after an oral evidence order is made (excludes complainant oral evidence in cases of a sexual nature) (ss <a href="#">95-96 CPA</a>)</li> <li>- issue a warrant to arrest in lieu of summons or for non-appearance for category 2 - 4 offences</li> <li>- withdraw a warrant to arrest before it is executed (<a href="#">s163(1) CPA</a>)</li> <li>- adjourn proceedings and remand the defendant to the appropriate court, including proceedings outside the jurisdiction of a Justice</li> <li>- adjourn proceedings and consider custody in the Youth Court when youth first appears following arrest (see 'Criminal procedure in the Youth Court' in the <a href="#">Youth justice</a> chapter)</li> <li>- exercise administrative functions, such as issuing warrants, where the enactment specifically gives jurisdiction</li> </ul>
one or more Community Magistrate(s)	<ul style="list-style-type: none"> <li>- receive and require <a href="#">pleas</a> to be entered for category 1-3 charges. If the defendant wishes to plead guilty to a charge that a Community Magistrate does not have full or sentencing jurisdiction over, the defendant must be brought before a Judge to enter the plea (<a href="#">s 361 CPA</a>)</li> <li>- grant interim suppression (see 'Suppression' in the <a href="#">Administration stage</a> chapter)</li> <li>- renew suppression if consented to if charge is beyond full or sentencing jurisdiction</li> <li>- grant/decline <a href="#">bail</a> except when bail is restricted</li> <li>- hear oral evidence after an oral evidence order is made (excludes complainant oral evidence in cases of a sexual nature) (ss <a href="#">95-96 CPA</a>)</li> <li>- issue a warrant to arrest in lieu of summons or for non-appearance for category 2 - 4 offences</li> <li>- withdraw a warrant to arrest before it is executed (<a href="#">s 163(1) CPA</a>)</li> <li>- adjourn proceedings and remand the defendant to the appropriate Court, including proceedings outside the jurisdiction of a Community Magistrate</li> <li>- adjourn proceedings and consider custody in the Youth Court when youth first appears following arrest (see 'Criminal procedure in the Youth Court' in the <a href="#">Youth justice</a> chapter)</li> <li>- adjourn proceedings and consider custody in the Youth Court when youth first appears following arrest (see 'Criminal procedure in the Youth Court' in the <a href="#">Youth justice</a> chapter)</li> <li>- exercise administrative functions, such as issuing warrants, where the enactment specifically gives jurisdiction</li> <li>- sentence in some instances (see <a href="#">sentencing jurisdiction</a>)</li> </ul>

## No jurisdiction over continuing offences

Despite the above, Justices and Community Magistrates have no jurisdiction over a [continuing offence](#). A Judge-alone trial or sentencing of a continuing offence must be by a Judge. (ss [355\(3\)](#), [356\(2\)](#) & [357\(4\)](#))

## Declining jurisdiction and transfer to a District Court Judge

Despite having jurisdiction over a particular charge, a Community Magistrate may decline jurisdiction and adjourn the matter to a District Court Judge.

A District Court Judge may also direct, if he/she considers it appropriate, that any matter before one or more Justices or Community Magistrates, be transferred to a District Court Judge.

(ss [360](#) and [363](#))

## Access to court documents

The rights to and limitations on access to court documents in criminal proceedings are dealt with by the [District Court \(Access to Court Documents Rules\) 2017](#), made under section [386](#)(1) CPA and section [228](#) of the District Court Act 2016.

The term 'access' is defined as, to search, inspect, or copy under the supervision of an officer of a court.

### General right of access

Unless a specific restriction on access applies, every person has the right to access the following court documents:

- the permanent court record under [Part 7](#) of the CPR 2012
- any published list providing notice of a hearing
- any judgment, order, or minute of the court given in a criminal proceeding, including any record of the reasons given by a judicial officer
- any judicial officer's sentencing notes.

However, the court may direct that judgments, orders, or sentencing notes not be accessed without the permission of the court.

Any request to exercise a general right of access may be made orally to a Registrar, but if the request relates to a document with a specific restriction on access, or a requirement for permission from the court, the Registrar may require the request to be made in writing.

### Right of prosecutor and defendant to access court file or documents

The prosecutor and the defendant in a criminal proceeding, and their lawyers, may access the court file during or after the completion of the criminal proceeding. They may also copy any part of the file or document, under the supervision of the Registry. However, if there is more than 1 defendant, a defendant or defendant's lawyer may only access the court file with the permission of the Judge.

A Judge may also direct that the court file or any document relating to a criminal proceeding may not be accessed without permission of the court.

### Restriction on access

Access to any document is subject to any statutory provision or court order that limits or prohibits access or publication. Furthermore, the following documents require the specific permission of a Judge prior to a grant of access:

- any pre-trial judgement, order, or minute in a criminal proceeding, including any bail judgement order or minute
- any document containing evidence of a complainant or of a person who gives or intends to give propensity evidence
- electronically recorded documents of interviews with a defendant
- any document that identifies, or enables the identification of a person, if the publication of any matter relating to the person's identity (e.g. the person's name) is forbidden by an enactment or by an order of the court or a Registrar
- any document received, or any record of anything said, in a proceeding while members of the public are excluded from the proceeding by an enactment or by an order of the court
- any document containing evidence provisionally admitted into evidence and any document containing evidence that has been ruled inadmissible by the court.

### Access during proceedings

Any person who is not a party to proceedings requires specific permission of the court to access documents between the time that proceedings are commenced and the expiry of any appeal period. The person seeking access must request access in writing, identifying the requested document and the reasons for the request.

The process for accessing and objecting to requests for access of court documents during proceedings is:

Step	Action
1	<p>A request for access to any document is made informally to a Registrar in writing:</p> <ul style="list-style-type: none"> <li>- identifying the person and giving the persons' address</li> <li>- identifying the requested document</li> <li>- giving the reasons for the request, and</li> <li>- setting out any conditions of the right of access that the person proposes and would be prepared to meet were a Judge to impose those conditions (e.g. conditions preventing or restricting a person from disclosing the document or its contents, or conditions enabling the person to view the document but not copy it).</li> </ul>
2	<p>A Registrar must promptly serve on the parties or their lawyers a copy of the request.</p> <p>If the request relates to any document that is subject to a specific direction or a restriction, the Registrar must refer the request to a Judge to determine.</p>
3	<p>A party who wishes to object, must before the <a href="#">relevant deadline</a>, give written notice of the objection to a Registrar, the person who made the request, and the other parties or their lawyer.</p> <p>On receipt of an objection, a Registrar must promptly refer the objection and the request to a Judge to determine.</p>
4	<p>Unless the document is subject to a specific direction or a restriction, a Registrar must promptly give the person who made the request access to the document if:</p> <ul style="list-style-type: none"> <li>- the Registrar receives no objection before the expiry of the relevant <a href="#">deadline</a>,</li> <li>or</li> <li>- the parties or their lawyer earlier agree that the person be given access.</li> </ul>

## Deadlines for objecting to access to documents during proceedings

The deadline for giving a notice of objection to access documents is whichever of the following applies:

- if the copy of the request is received on a day on which a pre-trial hearing or the trial is proceeding, 3 pm on the first working day after the day on which the copy is received
- if the copy of the request is received on any other day, 3 pm on the third working day after the day on which the copy is received.

## Objections - in practice

The prosecutor must give written notice of objection to the Registrar, the person who made the request, and to the other parties or their counsel, within the relevant deadline.

Special attention should be given to sexual cases, family violence cases, cases involving undercover witnesses, and any references to informants.

Where possible, prosecutors should confer with the O/C case, bearing in mind the tight timeframes for filing a written Notice of Objection.

## Grounds for objection or release

The factors that the court will consider in determining a request for access or objection are covered in rule [12](#) District Court (Access to Court Documents) Rules 2017. These are:

- the orderly and fair administration of justice
- the right of the defendant in criminal proceedings to a fair trial
- the right to bring and defend civil proceedings without the disclosure of any more information about the private lives of individuals or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice
- the protection of confidentiality, privacy interests (including those of children and other vulnerable members of the community), and any privilege held by, or available to, any person
- the principle of open justice, namely, encouraging fair and accurate reporting of, and comment on, trials and decisions

- the freedom to seek, receive, and impart information
- whether any document to which the application or request relates is subject to any restriction under rule 7
- any other matter that the Judge thinks appropriate.

Police should refer to the relevant matters listed above when developing their notice of objection.

Because there is no guarantee that the Judge will allow the parties to be heard as part of determining the objection, it is recommended that full grounds for objection are stated in the Notice of Objection.

### **Determining an objection**

Where the Registrar receives an objection, the Registrar must refer the objection and request to a Judge for determination. Once a determination has been made, the Registrar (or delegated court staff) will notify parties as soon as the decision comes to hand.

### **Seeking restriction of access early**

It is important that any Judge's orders restricting access are obtained in respect of formal written statements at the time they are submitted to court. This should ensure the court does not apply the default release position and a safeguard exists in the absence of a timely objection being entered.

Finally, the extremely short [time-frame to raise an objection](#) should be noted and, in the absence of sufficient time to fully consider a matter of concern, prosecutors may wish to raise an objection as a regular practice.

## Costs and sanctions

### Cost orders

See [Criminal procedure - Costs orders](#) for information on:

- when costs orders can be made under the Criminal Procedure Act (note costs may also be awarded under the [Costs in Criminal Cases Act 1967](#))
- procedures for making and responding to applications
- what to do when costs orders are made against Police.

### Sentencing consideration

In addition to costs that may be ordered, the [Sentencing Act 2002](#) provides additional aggravating and mitigating factors relating to compliance and non-compliance with the CPA, associated rules and regulations, and the [Criminal Disclosure Act 2008](#).

(s9 Sentencing Act 2002)

---