

PROACTIVE INFORMATION	
Court Proceedings under COVID-19 Alert Level 3	
Deadline: N/A	Date of Response: 23/04/2020

Purpose

1. This briefing outlines how courts will operate under COVID-19 Alert Level 3, and the potential impact for Police.

Section 24 of the Epidemic Preparedness Act 2006

2. Section 24 of the Epidemic Preparedness Act 2006 permits a District Court Judge, while an epidemic notice is in force, to modify any rule of court to the extent necessary in the interests of justice, to take account of the effects of the quarantinable disease stated in the notice.
3. The Chief District Court Judge expects that judges will:
 - Use their powers under s 24 of the Epidemic Preparedness Act 2006, where necessary and appropriate, to modify the requirements and restrictions imposed by the District Court Rules 2014, and
 - Exercise their existing discretion under the rules, where the COVID-19 emergency is relevant to their doing so.

District Court Protocol – COVID-19 Alert Level 3

Criminal Jurisdiction

4. The protocol states that:

At Alert Level 3 the District Court will continue to provide an essential service and intends to resume undertaking all of its usual business in the criminal and civil jurisdiction (apart from Jury Trials which have been suspended until 31 July 2020) subject to workforce capacity levels and the requirement to observe physical distancing. Heightened hygiene practices will need to be observed.

5. Entry to the court will generally be limited to members of the Judiciary, Ministry of Justice staff members, defendants, one support person for each defendant, parties, witnesses, victims, and other stakeholders. There may be restrictions on maximum numbers of people permitted in a courthouse at one time.
6. The District Court will conduct all criminal cases that are currently scheduled during Alert Level 3. The criminal cases that were administratively adjourned during Alert Level 4 are to be reviewed by Criminal Liaison Judges. The objective will be to prioritise and, if necessary or possible, allocate call-over dates or earlier hearing dates for those priority cases.

7. All defendants in Police and Corrections custody are to appear by Audio Visual Link (AVL) where available, except for those appearing for Judge Alone Trials, where an in-person appearance will be required unless otherwise directed. A defendant may also request an in-person appearance in preference to AVL.
8. Further advice is provided regarding the way bail hearings, warrants, list courts and other court processes are to be carried out under Alert Level 3, to enable the courts to continue normal business, to the extent possible, while maintaining social distancing and other requirements.

Civil Jurisdiction

9. The District Court will conduct all civil cases that are currently scheduled during Alert Level 3. The civil cases that were administratively adjourned during Alert Level 4 are to be reviewed by Civil Liaison Judges to prioritise and, if possible, allocate earlier hearing dates for those priority cases.
10. Civil Liaison Judges are to conduct pre-trial call-overs of defended civil trials that are scheduled to be heard during the Alert Level 3 period.
11. Guidance is provided regarding participation in hearings and at trials, filing requirements, the power to limit acceptable methods of service, signatures, reliance on unsworn affidavits and briefs of evidence.

Youth Court Protocol for the hearing of cases under Alert Level 3

12. The Youth Court will continue to prioritise those cases affecting the liberty of young people, including those in mental health facilities, and where decisions need to be made affecting those who are already in custody. Those cases which have been administratively adjourned during Alert Level 4 will be assessed and prioritised.
13. The protocol provides guidance on:
 - Young People who have been arrested and are in Police Custody
 - Young People in Oranga Tamariki Custody
 - Criminal Procedure (Mentally Impaired persons) Act proceedings
 - Adjourned cases
 - Cross Over Cases that engage the processes of the Family Court.
14. In the case of young people in Police custody, AVL will be the default position for a first appearance where available. Where AVL is not available, the young person will be taken to the nearest courthouse that is open and operating.
15. Police has worked closely with the Principal Youth Court Judge, and Oranga Tamariki, during the development of this protocol.

Family Court Protocol

16. The Family Court will undertake all priority work and, where possible, extend it to scheduled work, subject to registry staff capacity, the availability of technology

for remote participation and the need to observe physical distancing for in-person appearances.

17. However, given that there are significant regional differences, the Liaison Judges and Principal Family Court Judges Advisory Board members will consult with Registrars, stakeholders and Judges to determine the manner and extent of the work to be undertaken in each court.

There are some risks for Police which are being worked through

18. There have been instances where AVL is enabled but the Judge prefers a face-to-face hearing and makes the decision not to use AVL, exposing Police, Courts and Corrections staff to greater risk. The Health and Safety at Work Act 2015 requires the elimination or mitigation of risks in the workplace.
19. As you are aware, prior to COVID, we intended to align with the Ministry of Justice and brief you on the use of AVL as a tool in court proceedings and obstacles to its use. Generally Alert Level 4 has significantly increase the use of, and familiarity with AVL among the judiciary and courts generally. However, for some of the judiciary its use remains problematic. As the country settles back to normality, we will revisit this issue with the Ministry and brief you.
20. While Jury Trials are not intended to resume until 31 July 2020, high priority Judge alone trials will commence under Alert Level 3. There is a potential risk to all parties involved in the trial that exhibits, such as photograph booklets, may be handled by a range of people – the judge, counsel, defendant, victim, supporters and Police – and thereby present a risk. Suitable risk mitigation strategies will need to worked through.
21. Due to the 'check in' functionality to enable contact tracing at the main door, and limitations on the numbers of people permitted in the court at one time, people are required to queue or congregate outside courts. This raises significant issues for Courts and Police, which will need to be effectively managed.
22. There is a significant backlog of cases waiting to go through the courts, and Police is anticipating a surge of cases as we step down the COVID-19 alert levels. Additionally, Court processes will likely be slowed with risk mitigation strategies like hearing appointments, PPE usage and extra cleaning requirements.
23. The Justice Sector DCE Operations Group are meeting daily to work through the issues/risks, as are the Justice Sector Working Group (including Health). This approach is working well.

Reviewed by	s9(2)(a)	
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