

AVS - Court to Custody

Operating Guidelines – District Court

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1. Introduction

1.1 Purpose

The purpose of this document is to serve as an operational and reference guide for court staff in the District Court using audio-visual services in court proceedings.

These guidelines may be read end-to-end and sections may be referred to separately based on the situation at hand. Sections one, two and the appendices, however, should be read in their entirety to provide the necessary context for the guidelines.

1.2 Background

Remote participation or Audio-Visual Services (AVS) refer to various technologies including audio-visual conferencing to allow one or more people to participate remotely in a court proceeding. These guidelines have been developed for remote participation proceedings between courts and custodial facilities such as:

- Correctional facilities
- Youth residences
- District Health Board (DHB) locations, including hospitals and forensic/psychiatric services
- Police custodial facilities.

AVS as discussed in this document is specific to courtrooms and technology which are designed to meet the needs of sections 5, 6, 8 and 9 of the Courts (Remote Participation) Act 2010 (the Act). The technology facilitates a link between the courtroom and a custody booth in a custodial facility. Some courts have a dedicated AVS courtroom for court to custody remote participation proceedings. Mobile Extended Trolleys can also serve the same purpose when located in a courtroom.

The Act came into force on 7 July 2010 and was amended on 1 March 2017 with the Courts (Remote Participation) Amendment Act 2016. Within the body of the Act remote participation and audio-visual services are referred to as AVL (audio-visual links).

The Act establishes the presumption that AVL is to be used for criminal procedural matters where the participant is in custody and remote participation facilities are available. This presumption only explicitly applies

and is limited to participants held in custody and does not include other participants of hearings of criminal procedural matters. Judicial Officers ultimately determine whether to allow the use of audio-visual services for the appearance of any participant in a criminal proceeding, and whether it would be contrary to the interests of justice.

The Act also allows AVS to be used for hearings where evidence is heard if the judicial officer deems its use appropriate for the appearance (taking into account whether the parties consent) and for sentencing matters. The Act states that AVL may not be used for the appearance of a participant in a trial that determines his or her guilt or innocence unless the participant consents to that use.

The Act allows for remote participants held at DHB sites under the Mental Health (Compulsory Assessment and Treatment) Act 1992 to appear by AVL, in accordance with Judicial Protocols and where appropriate safeguards are in place. Participants that are likely to have a negative reaction to the use of this technology will not appear by AVL.

1.3 Context

In these guidelines, the reference to the 'Court' is the court in which the remote participation hearing is scheduled. The term 'remote location' refers to the place where the person appearing by audio-visual conference is located, including those appearing from custodial facilities.

The term 'remote participant' refers to all participants that appear in court remotely from another location together or individually. Such remote locations form part of a distributed court model for the duration of the hearing. In this document, remote participant predominantly refers to those appearing in the District Court from a custodial facility at a remote location.

In some court sites and custodial facilities, there may be an instruction suite which is used to facilitate private communication between counsel and remote participants or clients in custody. Instruction suites are purpose-built with technology that meets the requirements of the Act.

Proceedings conducted by way of remote participation will proceed as a standard court appearance with the use of standard protocols and procedures. There should not be any adverse view or conclusion drawn against a remote participant appearing remotely. A judicial protocol has been developed to cover all sites and hearings in Appendix 1.

1.4 Authority to Use

Section 103 of the Evidence Act 2006 allows for applications to be made to the court (the Supreme Court, the Court of Appeal, the High Court, any District Court, Family Court or Youth Court) for witnesses to give evidence in an

alternative way. Alternative ways are outlined in section 105. Those which could be facilitated by AVS include a witness giving evidence:

- from an appropriate place outside the courtroom, either in New Zealand or elsewhere; or
- by a video record made before the hearing of the proceeding.

Courts (Remote Participation) Act 2010

Section 5 General criteria for allowing use of audio-visual links

A judicial officer or registrar must consider the following criteria when he/she is making a determination under this Act, whether or not to allow the use of AVL for the appearance of any participant in a proceeding:

- (a) The nature of the proceeding:
- (b) The availability and quality of the technology that is to be used:
- (c) The potential impact of the use of the technology on the effective maintenance of the rights of other parties to the proceeding, including:
 - (i) the reliability of evidence presented to the court; and
 - (ii) the level of contact with other participants:
- (d) Any other relevant matters.

Section 6. Additional criteria for allowing use of audio-visual links in criminal proceedings

A judicial officer or registrar must also consider, when he/she is required to determine under this Act whether or not to allow the use of AVL for the appearance of any participant in a criminal proceeding, the potential impact of the use of the technology on the effective maintenance of the right of the defendant to a fair trial, and on his or her rights associated with the hearing, and, in particular:

- (a) The ability of the defendant-
 - (i) to comprehend the proceedings; and
 - (ii) to participate effectively in the conduct of his or her defence; and
 - (iii) to consult and instruct counsel privately; and
 - (iv) to access relevant evidence; and
 - (v) to examine the witnesses for the prosecution; and

- (b) The level of contact the defendant has with other participants;
- (c) Any adverse impression that may arise through the defendant or any other participant appearing by means of AVL, and
- (d) Whether that adverse impression may be mitigated.

Section 8. use of audio-visual links in criminal procedural matters

- (1) AVL must be used for the appearance of a participant in a criminal procedural matter if AVL is available and the participant is in custody, unless a Judicial Officer or a registrar determines that the use of AVL is contrary to the interests of justice.
- (2) AVL may be used for the appearance of a participant in a sentencing matter if -
 - (a) AVL is available; and
 - (b) the participant is in custody; and
 - (c) a judicial officer determines that the use of AVL is not contrary to the interests of justice.
- (3) Before making a determination under subsection (1) or (2), the judicial officer or registrar (as the case may be) must take into account the criteria specified in **sections 5** and **6**.
- (4) To avoid doubt, a motion to determine whether AVL is contrary to the interests of justice may be made by the participant or the judicial officer or registrar (as the case may be).

Section 9. Use of audio-visual links in criminal substantive matters

- (1) AVL must not be used in any criminal substantive matter for the appearance of a participant unless a judicial officer determines to allow its use for the appearance of that participant in the proceeding—
 - (a) in accordance with the criteria in **sections 5** and **6**; and
 - (b) taking into account whether the parties to the proceeding consent to the use.
- (2) Despite subsection (1), AVL must not be used for the appearance of the remote participant in a trial that determines his or her guilt or innocence unless the remote participant consents to that use.

Section 10. Judicial officer or registrar may vary or revoke determination

- (1) A judicial officer may at any time vary or revoke a determination to allow the use of AVL for the appearance of a participant if the judicial officer considers that any reason for the determination, with respect to

the criteria in **section 5**, or **sections 5 and 6** (as the case may be), no longer applies.

- (2) A registrar may at any time vary or revoke his/her determination, or the determination of another registrar, to allow the use of AVL for the appearance of a participant if the registrar considers that any reason for the determination, with respect to the criteria in **section 5**, or **sections 5 and 6**, as the case may be, no longer applies.

Section 11. Judicial officer or registrar may make direction

- (1) A judicial officer or registrar who makes a determination under this Act in relation to the use of AVL for the appearance of a participant in a proceeding may make a direction in accordance with that determination.

2. General

2.1 Emergencies

- In Court:

In the case of an emergency at the court, either the presiding judicial officer or the registrar will advise the remote location that the remote appearance will be terminated. When the emergency is over the court taker will contact the remote location by phone and arrange the continuation of the remote appearance, unless the presiding judicial officer issues a direction.

- In custodial facilities:

In the case of a lock down or an emergency at the custodial facility, a staff member at the custodial facility will advise the presiding judicial officer (over the audio-visual link) that they need to leave. The remote appearance will be terminated by the court. When the building can be reoccupied, the custodial facility will contact the court. The remote appearance may be re-established and the hearing continued, or the presiding judicial officer may give other directions.

2.2 Technical Failure

In the event of technical failure while preparing for, or during, a hearing, court staff must, **in all instances**, contact the service desk on ext. 50600 or 0800 425 555 and log an incident. This will ensure that standard response times are adhered to. Staff should **not** contact Kodum directly.

Staff must ensure that they give the service desk all the information so the correct priority can be given to the job i.e. court required that day, time before court is due to start. For the definitions around priorities see priority definitions for service desk (Appendix 2).

Please note: If you are in court and cannot be contacted by phone, you must be logged into Jabber in the courtroom or hearing room so that the service desk can contact you.

Response Time Guide

Remote	On site
P1 resolved within 30 mins	P1 resolved within 2 hours
P2 resolved within 30 mins	P2 resolved within 4 hours
	P3 resolved within 2 business days
	P4 resolved within 4 business days or as otherwise agreed

The hearing, if commenced, may be stood down by the presiding judicial officer.

If it is determined that the remote appearance cannot be restored within a reasonable timeframe as determined by the presiding judicial officer, court staff will, after consultation with the presiding judicial officer, inform the remote location that the hearing has been adjourned and/or re-scheduled. The remote location will then inform the remote participant/s in person of the outcome.

If there is a technical issue prior to the appearance in court or in the instruction suite, court staff should contact the remote location by phone and any other parties to explain the situation. If the problem is not able to be resolved in time for the hearing, other arrangements are to be made for an alternative time and date (if necessary) and the remote participant, counsel, police, on-site custodial facility staff and victim advisors should be advised.

For more detail, see the technological failure protocol (Appendix 3).

2.3 Appearance by person in custody

Remote participants in custody where facilities are available will appear by AVS in a hearing for a criminal procedural matter unless directed otherwise by a judicial officer or registrar.

The court will liaise with counsel and the remote location regarding the appearances scheduled for the day to ensure the smooth running of the court. This will also include liaison regarding the order of the appearances.

2.4 No Assigned Counsel

The judicial officer is still able to make directions for a remote appearance if the remote participant is represented by a duty lawyer and legal services have not assigned counsel. Once a direction has been made this will be passed on to legal services who will ensure the assigned counsel is available for the appearance. The court will ensure an instruction suite appointment is made

available for counsel in the morning and the subsequent hearing held after that instruction suite appointment time, where applicable.

2.5 Notification

Once it has been determined that an appearance will be made remotely the court will email all parties to confirm date and time. There will also be a link to the guidelines.

Court lists will be displayed as standard at each court or on the electronic notice board if available. For information on any future appearances the court should be contacted.

2.6 Court Victim Advisors

When the Judicial Officer has determined that an appearance will be made remotely, the court must ensure that the direction is entered in CMS. This should be seen by the court victim advisor who can notify the victim. The court will also provide the court victim advisor a notification email to confirm date and time of remote appearances.

The court victim advisor will also let the victim know where they can be seated if they wish to be seen, or not to be seen, by the remote participant during the hearing.

2.7 Additional Information

The material in this document may not answer all the practical questions which could arise regarding the use of AVS. If you have a question that is not answered by this guide, please email info@justice.govt.nz.

3. In Court

3.1 Prior to remote appearance: Filing submissions

If a case has been set down for a hearing via AVS any submissions must be filed with the court 48 hours prior to the hearing, unless otherwise directed by a judicial officer. If this is not done it may result in the case being adjourned.

3.2 Transferring an AVS case

3.2.1 Within a Justice Service Area

When a judicial officer directs that a case be transferred from one AVS enabled court to another AVS enabled court within the same area, the registrar must obtain a date from CMS. The future date must be more than **48 hours** from the transfer date. The registrar must scan a copy of the file and AVS warrant to the transfer court immediately.

3.2.2. Outside a Justice Service Area

When a judicial officer directs that a case be transferred from one AVS enabled court to another AVS enabled court outside the area, the registrar must obtain the date from CMS. The future date must be more than **72 hours** from date of transfer.

Note: These above timeframes will ensure new counsel have time to take instruction and will enable the court and prosecution files to be received at the new court. Once the transfer court receives the file they must notify any counsel of the time of hearing as normal.

3.3 Change of Venue for AVL Appearance

In the event a change of venue is required to facilitate a remote appearance the court is to check whether time is available on the day requested and what prison the remote participant will be held at. If the appearance can be facilitated the home court is to ensure that the correct paper work is sent to the prison and that counsel have been notified as per standard procedure.

Mental Health Act – Change of Venue for Remote Appearance

In the event a remote participant on remand develops mental health issues which necessitate the transfer of the remote participant to a DHB site (e.g. a hospital) under section 45 of the Mental Health Act, the section 45 documentation must be signed by the Superintendent of the prison and forwarded to the DHB site, along with the original warrant. This should be

given to medical records at the DHB site who will advise counsel of the transfer of the remote participant.

The DHB site should then liaise with the court to advise the change of venue. If the remote participant was due to appear remotely from the prison and is now unable to attend the scheduled AV appearance, the DHB site should obtain a new date and time for the remote participant to appear via AVS.

If a change of venue is required for a remote participant who has been sanctioned under the Mental Health Act to a DHB site, the registrar at the court where the remote participant first appeared should liaise with the on-site forensic nurse/court liaison officer to provide for a temporary/permanent change of venue to the court to allow the remote participant to appear for future remand hearings remotely from the DHB site. The judicial officer (or registrar if it is a procedural matter) will direct if the case can be transferred after discussion with counsel (see section 6 Courts (Remote Participation) Act 2010).

3.4 Display screen (In Court)

At the court, the presiding judicial officer will see the remote participant at the remote location. At some remote locations, there may be a requirement for the remote participant to be accompanied by an officer or staff member. This is at the discretion of the presiding judge, refer to the judicial protocol (Appendix 1) and the architectural and courtroom transition protocol (Appendix 4) for details.

Courtroom participants will be able to see the remote participant via the television screens in the court. These screens can show up to four tiled images at the same time if needed, including documents and other forms of evidence.

3.5 Display screen (remote location)

At the remote location, the monitor can display up to four tiled images which are pre-set, these can include the following:

- the judge or judicial officer
- the registrar
- the prosecutor
- defence counsel
- public gallery
- witness
- co-accused.

The monitor can also be set up to just show one or two images if required or directed by the judicial officer or registrar.

3.6 “Last Minute” Handset

In some courtrooms, a handset is available for counsel in the courtroom and can be used during a hearing for any last-minute instructions. The handset is only to be used for unforeseen or incidental requests from the remote participant during the hearing and only after permission is given by the judicial officer. Once the handset is lifted it will disable the feed (audio and visual) so communications can occur between counsel and the remote participant. On a mobile extended trolley the audio-visual feed will need to be manually disabled by the court taker. These communications will not be recorded or form part of the evidential transcription.

3.7 Attire

Court staff, judicial officers and counsel should wear standard court attire. The remote participant will have the option to appear in his or her own clothing or in custodial facility issued clothing.

3.8 Testing and set up

Testing of both the equipment and the audio-video connection must take place at the court and the remote location prior to the scheduled time for the remote hearing. Testing of the instruction suite should also occur on days it is being used.

This testing should be completed by the court taker and remote location between 8am and 8.30am each day AVS is to be used.

Note: regular checks should be undertaken as to soundproofing quality of the seal on the bottom of the instruction suite door. Any issues should be logged with property for repair.

3.9 Commencing hearing

The judicial officer will enter the courtroom prior to the AVL being established. Standard court etiquette and procedures will apply, e.g. the remote participant will stand if required to do so by the court.

Judicial officers will follow the Judicial Protocol in relation to communications with the remote participant and process during the hearing.

3.10 Conclusion of hearing

At the conclusion of the hearing, the court taker will disconnect the call. This will be at the end of the hearing or at the request from the judicial officer.

3.11 Court Outcome E-mail

At the end of the hearing, the court will email the custodial facility with the result. The subject line of the email should include the remote participant's

- name
- remand status abbreviation (see below table)
- next hearing date

EXAMPLE: Joe Bloggs - RIC - 21/08/2011

Remand Status	Abbreviation
Remand in Custody	RIC
Convicted and Remanded in Custody	CRIC
Remand on Bail	ROB
Stood down	SD
Sentenced	SENT

This outcome email is to notify remote location for internal management purposes only. The remote participant's status **should not** be acted on until the official documentation has been received from the court.

3.12 Problematic remote participant

If the remote participant fails to comply with any direction, or is acting inappropriately, the judicial officer can direct the court to disconnect the link. The court will then contact the remote location coordinator directly in the first instance and advise them of the outcome.

If the remote location has any safety concerns for the remote participant, they may make an application to the court to be present in the booth during the hearing. In extreme situations, i.e. violence or self-harm the remote location may enter the booth and disconnect the link using the remote control.

3.13 Recording

The audio component of the hearings in the Court will be recorded for the purpose of standard evidential transcription. There will be no recording of the visual component of the hearing. As noted above any communications via the handset will not be recorded or form part of the evidential transcript.

3.14 Oaths and Affirmations

If required, any oaths or affirmations will be administered from the court by the court registrar (court taker). A bible or an alternative (e.g. Koran or Talmud) will be available at the remote location.

3.15 Interpreters

If a remote participant requires an interpreter, the interpreter will be located in the courtroom. Depending on availability of the camera they will either stand

next to counsel or in the witness box. The court will administer the oath or affirmation to the interpreter, as per standard court protocol.

If an interpreter is required, this should be accounted for in the decision whether it is appropriate for the participant to appear remotely.

3.16 Correspondence

If a remote participant would like a letter or document to be given to a judicial officer, they will need to provide this to custodial facility staff the day before or before 8:00am on the morning of their appearance.

The remote location will then scan the letter or correspondence to the court. This should happen by 8:00am on the morning of the hearing.

The court will then pass the letter or document on to the remote participant's counsel who will, if appropriate, advise Police prosecutions and give the letter or document to the judge.

3.17 Public access

Unless the presiding judicial officer directs otherwise, members of the public may be present in the courtroom during the remote appearance by a participant in custody. Members of the public, family members or partners etc are **not** permitted in the instruction suite.

If the family or victim would like to be seen, or alternatively would not like to be seen by the remote participant, they can sit in the specified seating in the public gallery. The allocated seating must be labelled in the courtroom.

4. Media

4.1 Applying for in-court media coverage

The process for applying for access to the AV feed of the remote participant is the same as the process for in-court media coverage. This process is set out in the Media Guide for Reporting Courts and Tribunals edition through the media centre of the Ministry of Justice website: www.justice.govt.nz.

If an application is granted for access to the AV feed of the remote participant, the media will be able to access the live feed (audio and visual) from plugs located in the courtroom.

4.2 General

- Courtroom courtesy still applies as set out in the Media Guide for reporting the courts and tribunals edition 3.1.
- Checks should still be made on each occasion in relation to suppression.
- Standard conditions for television coverage still apply as set out in schedule 2 of the media guide for reporting the courts and tribunals edition 3.1.
- The AVL feed will not be recorded by the court so the District Court Access to Court Documents Rules 2017 do not apply.
- Press sheets will be available for one month after the first appearance within the registry.
- Links can only be established and recorded if an application for in court coverage has been granted by the judicial officer.

4.3 Access to Feed

Once a media application has been granted the media will be able to set up in court prior to the judicial officer arriving.

When the case is called, the court will enable the media feed on the touch screen. Once the case is finished the feed will be disabled again.

5. Instructions Suite

5.1 Communication with counsel

Counsel and remote participants at the remote location may communicate using an AVS enabled instruction suite. These are present in some sites. The suites are usually booked in 15 minute slots.

Instruction suites in the Auckland metropolitan area (Auckland, North Shore, Waitakere and Manukau district courts) are booked through Corrections. Call 0800 990 017 and speak to one of the Corrections operations support officers. The Operations support officer will locate the prisoner, check courts and prisons AVL schedules, and confirm arrangements for them.

In other locations, each instruction suite booking will be made through Ministry of Justice in 15 minute blocks, from 8.30am to 4.15pm Monday to Friday. The key requirement for these communications is privacy with both ends of the conversation being secure and private. As noted previously these communications are not recorded.

Due to time restraints, it will be expected that parties keep to the timeslot allocated as there will be no leeway to extend links.

Preference for remote participants from other custodial facilities (excluding Corrections facilities) is for a face to face meeting however a link through the instruction suite can be arranged where a face to face visit is not appropriate or possible.

If counsel wish to communicate with a remote participant who is in a DHB site remotely, the remote participant's clinician must verify that the patient's mental health is sufficient to be left alone in the AV booth. For DHB sites, an appropriate DHB representative will be stationed outside the booth. In the event safety is an issue the DHB representative will arrange for the link to be stopped.

On the occasion that paper work is required to be seen by the remote participant in the remote location, counsel must give this to the court as soon as possible. This will be scanned to the remote location and handed to the remote participant. At the end of the instructions suite session the remote location will scan the signed copy and post the originals to the court.

5.2 Other Authorised Parties

To assist with the progression of a case there may be a requirement of other authorised parties to use the instruction suite to communicate with a remote participant or witness.

Authorised parties include Police officers, community probations services, restorative justice coordinators or other court representatives for the purpose of completing reports and assessments or taking statements. Bookings are to be made with the local court with priority being given to cases with hearings due within 24 hours of a booking.

Due to time restraints, it is expected that parties keep to the timeslot allocated as there will be no leeway to extend links.

On the occasion that paper work is required to be seen by the remote participant in the remote location, the authorised party must give this to the court as soon as possible. This will be scanned to the remote location and handed to the remote participant. At the end of the instruction suite session, the remote location will scan the signed copy and post the originals to the court.

5.3 Restrictions

At no time is the AV instruction suite to be used for personal communication.

The only persons allowed in the instruction suite are counsel or other authorised parties (listed above) who have booked time through the court or Corrections. No family members, partners or associates of a remote participant are permitted.

To prevent unauthorised access, a PIN code or swipe card is required to enter the instruction suite.

5.4 Counsel obligations

It is the responsibility of counsel to notify the court if they no longer require a pre-arranged timeslot in the instruction suite. This should be done as early as possible. If there is a technical issue with the instruction suite it is expected that counsel will advise the court immediately.

On site managers will be able to provide support and training material is located on the intranet and internet.

6. Remote Location

6.1 Contact

All communication with the custodial facility will be done through the court taker or case manager and the custodial facility; this includes notification of problems or issues and movement of remote participants.

All communications with other remote locations will be done through the court and remote location; this will include notification of problems or issues and movement of remote participants.

6.2 Scheduling of AV Booths

The court will issue a draft list 48 hours prior to the appearances to the custodial facility and a confirmed list by 3.30pm the day prior to the appearances. The court will resend the confirmed list by 8.00am on the day.

6.3 Security

Standard security procedures will be used for appearances held remotely. Confirmation of identification of remote participants will be carried out at the remote location by checking remote participant ID cards and IOMS remote participant details report (process already used to ensure there are no misidentifications).

Confirmation of identification of remote participants and their movements to and from the AV booth will be in accordance with remote location protocols and practices to ensure there are no misidentifications.

6.4 Authority to hold - prison

The remote participant will be held at the custodial facility under the authority of a warrant to detain, warrant of commitment or the Mental Health Act. Once the remote appearance has been completed the court will either forward a new warrant, order to produce, or a bail bond depending on the outcome of the appearance.

It is the expectation that all paper work will be sent to the prison or site contact within two hours of each remote participant's appearance.

- (a) It is an expectation that under the Bail Act 2000 that the prison manager or justice of the peace in which the remote participant is detained must give the notice of bail to the remote participant; and
- (b) be satisfied that the remote participant understands the conditions of bail; and

(c) require the remote participant to sign the notice of bail.

The bail process is not complete until the remote participant signs the Notice of Bail containing the bail conditions. Should the remote participant refuse to sign the notice, or for some other reason the process is **not** completed within the **2 hours** provided for this process, a warrant for the remote participant's detention **must** be issued under s 28.

The requirement for the remote participant to be released as soon as the bail bond is signed continues, even if the remote participant is detained in a prison pursuant to the warrant.

If a request is made to bring a case on for another hearing an Order to Produce (OTP) will be forwarded to the prison and the receiving office.

If the remote participant is moved to a DHB site under section 45 and a request is made to bring a case on for another hearing an OTP will be forwarded to the hospital.

If bail is granted the court will scan through a bail bond to the remote location. The Registrar will, via AVS explain the terms and conditions of bail to the defendant and require them to sign a copy.

Once the bail bond has been signed this copy is to be posted back to the originating court within 24 hours by the standard transport arrangements.

The case officer will ensure signed copies (the Registrar who served the bail bond and the remote participant) are placed on the court file. The court will ensure that the original warrant is sent to the prison receiving office on the same day.

The receiving office staff will then be responsible, to ensure that the original warrant is placed on the remote participants penal file. Medical records at the DHB site will then be responsible to ensure that the original bail bond is placed on the remote participant's hospital file.

6.5 Authority to hold – DHB sites

The defendant will be held at a DHB site under the authority of an adjournment warrant, warrant of commitment, or the Mental Health (Compulsory Assessment and Treatment) Act 1992. Once the remote appearance has been completed the court will either forward a new adjournment warrant, order to produce or a bail bond depending on the outcome of the appearance.

Paper work will be sent to the relevant DHB site within a reasonable period of time e.g. two hours for bail bonds of each defendant appearance.

It is an expectation that under the Bail Act 2000 that a judge, justice, community magistrate, justice of the peace or registrar must:

- (a) give the notice of bail to the defendant
- (b) be satisfied that the defendant understands the conditions of bail
- (c) require the defendant to sign the notice of bail.

The bail process is not complete until the defendant signs the notice of bail containing the bail conditions. Should the defendant refuse to sign the notice, or for some other reason the process is not completed within the two hours provided for this process, a warrant for the defendant's detention must be issued under section 29. The requirement for the defendant to be released as soon as the bail bond is signed continues, even if the defendant is detained in the institution pursuant to the warrant.

If a request is made to bring a case on for another hearing an OTP will be forwarded to the relevant DHB site contact.

If the judicial officer grants bail the court will scan through a bail bond to the DHB site contact. Once the bail bond has been signed a copy is to be scanned back to the court as a pdf document. This then becomes the original signed document. A second copy should be kept and filed at the DHB site.

The court will place this document on the court file or pass it onto the appropriate stakeholder, e.g. counsel or police. The court will ensure that the original bail bond is sent to DHB site contact to place on the defendant's medical file.

6.6 Confirmation of Identity

Corrections facilities must ensure that the movement practices and protocols are adhered to in the prison as per Prison Services Operations Manual. That is, ID must be checked before the remote participant is placed in the AV booth.

Other custodial facilities must ensure that the movement practices and protocols are adhered to in the facility. ID must be checked before the remote participant is placed in the AV booth.

7. Booking system/process

7.1 Court time slots

Court bookings can be made Monday to Friday between 9am and 4.30pm. Bookings will not be made at custodial facilities during lock down times or movement times. It is expected that all parties keep to the booking times allocated.

7.2 Court to court and instruction suite booking (witnesses appearance)

If a witness is required to appear in court remotely staff should contact the closest court with AV capability. Staff will allocate time to the remote appearance list.

7.3 AVS booking (Corrections AV booth)

If a remote participant is required to appear in court, and is located at a custodial facility with remote participation technology outside of the courts own booking system, staff should contact the closest court to the custodial facility. They will allocate a suitable time and notify the custodial facility and court making the request of the confirmed booking.

7.4 Instruction suite time slots

Each instruction suite booking will be made in 15 minute blocks, from 8.30am to 4.15pm Monday to Friday. When authorised by the court, an instruction suite may be able to be booked by the same person for more than one slot at a time. The court will have to balance this request with the need to ensure that instruction suites are available for all parties requiring their use.

Bookings will not be made during movement times. It is expected that all parties keep to the booking times allocated.

7.5 Obtaining a date and time

Bookings for court appearances should be updated in CMS with a specific AV event type and a duration, for example, a bail application 15 minutes and case review 10 minutes.

Each court may differ in the days remote appearances are rostered and what work can be rostered each day, this is defined by court schedulers.

Appendix 1: Judicial Protocol – Audio Visual Links



CHIEF DISTRICT COURT JUDGE FOR NEW ZEALAND
TE KAIWHAKAWĀ MATUA O TE KŌTI-Ā-ROHE

Judge Jan-Marie Doogue

Judicial Protocol

Audio Visual Links Procedure for Prisoner Appearances in Courts

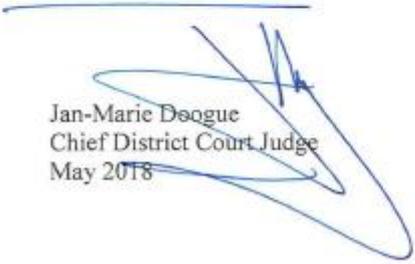
Background

1. The purpose of this Judicial Protocol is to provide guidance to judicial officers and Registrars when determining whether court to custody Audio Visual Links (AVL) should be used for the purpose of a prisoner appearance. The Protocol has been developed for AVL prisoner appearances between the District Court or Senior Courts and remote locations including Corrections facilities and forensic and psychiatric units. The prisoner will hereafter be referred to as the participant for the purposes of this protocol.
2. The protocol should be read in conjunction with the Courts (Remote Participation) Act 2010. The revised Protocol came into force in June 2012 and applies until superseded by any subsequent protocol.

Protocol

3. This Protocol applies to any judicial officer or Registrar making a determination for a criminal appearance.
4. When a determination is made that AVL be used for the appearance of a participant the judicial officer or Registrar should state the following:
"You are remanded in custody and directed to appear by audio-visual link at (time) on (date)"
5. The judicial officer or Registrar should note the particulars of the direction on the court file.
6. When the judicial officer or Registrar presides over a hearing where AVL is used for an appearance of a participant he or she should:
 - a. Introduce themselves to the participant
 - b. Satisfy themselves that the person appearing by AVL is the person directed by an earlier judicial officer
 - c. Confirm either:
 - i. no-one else is present within the remote facility (this is the expectation for all criminal appearances held in adult prison facilities unless an application has been made due to safety concerns and approved by a judicial officer); or

- ii. where the remote facility has staff present, for example during Mason Clinic appearances or following an approved application as above, they are not permitted to coerce or influence the participant during the hearing and must be in view of the camera at all times.
 - d. Satisfy themselves that the participant is able to see required parties to comply with legislation, such as:
 - i. the judicial officer / Registrar
 - ii. the prosecutor
 - iii. defence counsel
 - iv. co-accused where the co-accused appears in the dock / witness / allocated seating in the public gallery and that they can hear all the participants
 - e. And that they can hear all the participants
 - f. State the specific purpose of the hearing, for example, bail application
 - g. State that the participant may if necessary speak with defence counsel in a private communication
- 7. At the conclusion of the hearing ensure that the participant has understood what has occurred by requesting verbal confirmation of understanding from the participant, or by direction to defence counsel to do so after the conclusion of the hearing.



Jan-Marie Doogue
Chief District Court Judge
May 2018

Appendix 2: Technological failure protocol



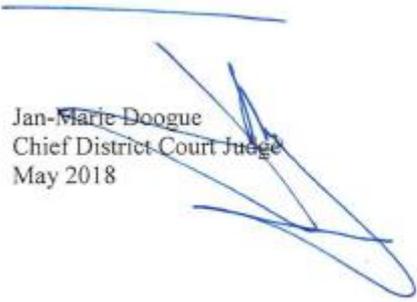
CHIEF DISTRICT COURT JUDGE FOR NEW ZEALAND
TE KAIWHAKAWĀ MATUA O TE KŌTI-Ā-ROHE

Judge Jan-Marie Doogue

Technological Failure Protocol

1. There may be technological faults that arise in the course of hearings of the distributed courtroom. For example:
 - a. The audio-link may fail;
 - b. The visual-link may fail;
 - c. Either the audio or visual elements of the link, or both, may experience drops in quality for reasons such as the fidelity of the internet connection faltering.
2. Where this occurs, there are grounds to consider a substantial change in the quality of the technology for the purposes of the s 5(b) criteria of the Courts (Remote Participation) Act 2010 has occurred, such that it will be appropriate for the presiding judicial officer to invoke s 10 to vary or revoke a determination in respect of the use of AVL for the defendant's appearance.
3. In the first instance, the determination may be varied to allow for the recommencement of proceedings within an appropriate period of time should the technological fault be remedied. Standard practice may be to stand down the matter for one hour (subject to scheduling considerations). If the fault has not been corrected in that time the determination may be revoked, for the matter to be reconvened at a later time either in person or via AVL, at the judicial officer's discretion.
4. Given the possibility of such faults occurring, and their impact on defendants, defendants should be informed about what to do in circumstances where there are technological faults. This may include judicial officers providing the following directions [which practice ought to in turn reflect]:
 - a. If you [the remote defendant] cannot see / hear proceedings due to a technical fault then bring this to the courts attention by:
 - i. Use of [the solution arising from clause 9 of the Architectural and Courtroom Transition Protocol] so that you can inform defence counsel;
 - ii. Verbally addressing the court;
 - iii. Raising your hand; or
 - iv. If the above steps fail, inform the remote location AVL coordinator [such a practice may need to be permitted, given the above options will not always be suitable].

- b. If the court cannot see / hear you due to a technical fault this will be brought to your attention by the remote location AVL coordinator.
- c. Where a technical fault does occur, the court will inform you (through the remote location AVL coordinator) the status of the fault, whether it is anticipated it will be fixed in an adequate time frame such that the matter may be reconvened, or whether the matter has been stood down until a later time (and if so, when).



Jan-Marie Doogue
Chief District Court Judge
May 2018

Appendix 3: Architectural and courtroom transition protocol



CHIEF DISTRICT COURT JUDGE FOR NEW ZEALAND
TE KAIWHAKAWĀ MATUA O TE KŌTI-Ā-ROHE

Judge Jan-Marie Doogue

Architectural and Courtroom Transition Protocol

Camera Views

1. The remote defendant should have a similar sensory experience of the courtroom that they otherwise would have in person.
2. AVL installations / trolley units should be employed / implemented to facilitate the remote defendant's ability to see and hear the:
 - a. judicial officer;
 - b. bar table;
 - c. other participants; and
 - d. public gallery.
3. The booth camera should be placed in a manner that fosters a fair impression of the remote defendant, at a face-on angle with the defendant being the focal point of the image.
4. AVL installations in booths ought to substantially replicate eye contact with the presiding judicial officer to the greatest extent practicable.
5. AVL installations in courtrooms and trolley placement in courtrooms ought to substantially replicate eye contact with the remote defendant to the greatest extent practicable.
6. Camera angles should frame the head to mid-torso of the remote participant to enable non-verbal gestures to be visible from the courtroom.
7. If, in accordance with the Judicial Protocol, another person is in the booth with the defendant (e.g. an interpreter), that person **MUST** be situated in the line of sight of the camera at all times.

Ability to Provide Instructions

8. If the defendant expresses a desire to speak to their defence counsel during proceedings, defence counsel should be able to take instructions from the defendant in a setting that ensures the discussion remains confidential.
9. During proceedings, defendants must have the means to effectively alert their defence counsel of their desire for consultation that they feel comfortable using in addition to gesture or verbalisation by the defendant to indicate that desire.
10. AVL booths should be soundproofed at a level that:
 - a. prevents someone outside the booth hearing the defendant inside speak; and

- b. prevents sound from outside the booth disrupting proceedings occurring or instructions being communicated within the booth.

Access to Evidence

11. Appropriate provision should be made to facilitate the remote defendant's access to evidence (if this is not adequately done then defendants ought to be required to appear in person for judge-alone trials, jury trials, or any other matter where evidence is called).
12. Adequate provision should be made to facilitate the remote defendant's understanding of documents that they may be required by a judicial officer to acknowledge, including by way of signing those documents, on a case-by-case basis.
 - a. Documents dealt with under this clause must, at the end of a proceeding, be returned to the Court and thereafter dealt with in accordance with the District Court (Access to Court Documents) Rules 2017 unless a Judge directs otherwise.

Booth Design and Transition

13. The design of the booth must provide a clear visual distinction from the facility within which the defendant is based which makes it clear that the defendant is transitioning into the courtroom.
14. Where practical, AVL booths located within Prisons and Police Cells ought to include design cues of the courtroom, including:
 - a. A removable sign on the door to the booth itself that reads "Courtroom", as a cue to the defendant that they are crossing the threshold from Corrections or Police custody, to the custody of the court.
15. Prior to the defendant entering the AVL booth for a court appearance, the remote defendant must be briefed by booth end staff on the following:
 - a. That they are entering the custody of the court;
 - b. What to do if they experience a technical fault, including that they may raise their hand or use other means to bring this to the attention of the court; and
 - c. That they are able to talk to their counsel during proceedings, and how they might go about alerting their counsel of their desire to do so, including that they may raise their hand or use the solution arising from clause 9.
16. To ensure that it is clear the defendant that the AVL booth is a part of the distributed courtroom, processes of entering and removing a defendant from a booth should replicate those in a courtroom, where possible.



Jan-Marie Doogue
Chief District Court Judge
May 2018

Appendix 4: Priority definitions for service desk

Priority Guide

Priority One Critical Impact

An application, system, item of infrastructure or service is down with critical impact on the Ministry's business. No bypass or alternative is available that is acceptable to the Ministry. This is applicable to where:

- Incident is causing an interruption or delay to a session (in progress or impending).
- The session cannot continue until fixed.

Priority Two Severe Impact

An application, system, item of infrastructure or service is down, unusable or degraded with significant impact or potential critical impact on the Ministry's business. No bypass or alternative is available that is acceptable to the Ministry.

- Incident is causing an interruption or delay to a session (in progress or impending).
- The session can continue until fixed.

Priority Three Some Operational Impact

An application, system, item of infrastructure or service is down, unusable or degraded which results in operational impact on one or several users, but no immediate impact on the Ministry's business.

- Incident is not causing an interruption or delay to a session (in progress or impending).
- Urgency is assessed by the Ministry as high.

Priority Four No Operational Impact

Any Incident not covered by the other priority level categories, but should apply only to incidents that have no operational or business impact and where there is a readily available bypass or alternative that is acceptable to the Ministry. Low impact single end user incident where a workaround is available or a scheduled activity is agreed with the end user.

- Incident is not causing an interruption or delay to a session (in progress or impending).
 - Urgency is assessed by the Ministry as low.
-

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