



# Protocol for Remote Participation by the Defendant in Custody in District Court Criminal Proceedings

Chief District Court Judge – 18 July 2025

Issued pursuant to s24 (3)(i) District Court Act 2016

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

## Introduction and Overview

1. Significant use is already made of remote participation technology in the courts. The Judiciary supports enabling greater use of remote participation in appropriate cases across the civil, family and criminal jurisdictions. Remote technology, used well, has the potential to enhance access to justice, and to support the efficient and timely determination of court proceedings.
2. The *Digital Strategy for Courts and Tribunals* published by the Chief Justice in March 2023 identifies implementation of a high quality, reliable, and flexible system for remote participation as one of the Judiciary's four highest priority digital initiatives.
3. The better the available technology, facilities and processes, the wider the circumstances in which remote participation will be an available option consistent with the interests of justice.
4. Considering remote participation by the defendant in custody involves addressing two questions:
  - a. What is necessary to achieve fair and effective remote participation by the defendant in custody? Providing for fair and effective remote participation requires more than good quality, dependable technology. It also requires facilities (such as the room used by the defendant) and processes (such as access to a lawyer before, during and after the appearance) to be at an appropriate



standard. Part D of this protocol specifies the key features of fair and effective remote participation by the defendant in custody.

- b. Assuming those requirements are met, when is it appropriate for the defendant to participate in the hearing remotely? Part E of this protocol identifies the types of appearances where registries, Police and Corrections can proceed on the basis that the default setting is remote participation. These default settings are subject to the key features of fair and effective remote participation described in Part D being provided, and the judgment of the judicial officer as to the interests of justice in each case<sup>1</sup>.
5. This protocol operates within the statutory framework of the Courts (Remote Participation) Act 2010. This protocol does not constrain the exercise of judicial discretion to ensure a fair hearing in each case that is contemplated by that Act. However, this protocol responds to the practical need for greater guidance for all court participants about the way in which different types of hearing are likely to be conducted, in the interests of justice and in light of the various factors identified in the Act, other things being equal. Where in a particular case a judicial officer reaches a different view, having regard to all relevant factors in that case, that view must and will prevail over the generic default outcomes described in the protocols.

## General Context

6. The very large majority of defendants are released on Police bail and / or court bail, and attend hearings throughout the criminal process in person. A minority of defendants are in the custody of the Police or Corrections for some or all of the criminal process. For these defendants there is the potential to appear remotely when in Police custody or the custody of Corrections.
7. The defendant will be in Police custody following arrest on a new charge, in execution of a warrant to arrest, or for breach of bail or a Police Safety Order, where Police bail has not been granted prior to the Police bringing the defendant before the court.
8. Once the Police have placed the defendant before the court, if the defendant is not granted court bail the defendant will be in the custody of Corrections.
9. There are relevant differences between Police and Corrections custody. When a defendant is in Police custody, the context will be all participants in the hearing (defendant, lawyer, prosecutor) responding following an arrest when events are fresh and information is evolving. In contrast, hearings from Corrections custody are scheduled events where

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<sup>1</sup> An example that arises regularly is health and wellbeing concerns. Where Police or Corrections staff believe that arranging for a defendant to appear in person would entail demonstrable safety risks this can be, and regularly is, raised with the presiding judicial officer.

participants should have the ability to prepare. In addition, and importantly, Police custody is the first opportunity to assess the defendant.

10. Facilitating remote participation requires adequate resourcing at the Police or Corrections custody facility. When a change is made from in-person appearance to remote participation the operational complexity that is normally handled solely at the courthouse needs to also be supported at the custody facility (facilitating access to a lawyer, access to documents and initial disclosure, legal aid arrangements, facilitating calls needed to settle bail arrangements, bail bonds, standing the matter down and resuming, and so on). This is illustrated in the key features of remote participation described in Part C.
11. There are limits to the appropriate use of remote participation, even with a high-quality system, as core standards of justice are in play:
  - a. Some kinds of hearing require the defendant to be present in person, to enable the court to conduct a fair and effective hearing;
  - b. Some people need to appear in person to get a fair hearing – for example because they need an interpreter or communication assistant or are young or vulnerable.
12. Given the imperfect state of the available information on the needs of vulnerable defendants and their ability to participate in a hearing by remote participation or in person, a precautionary approach is required. The current way in which that uncertainty is managed is by preferring that the judicial officer meet the defendant in person in court, and that is carried through into this protocol. However that general default of an in-person appearance will not be optimal for every person with a vulnerability who is being held in custody, and over time with better information and resourcing a more sophisticated approach needs to be developed.
13. Further practical constraints are the challenges in precisely defining the vulnerabilities that impact on a defendant's ability to participate fairly and effectively in a hearing by remote participation, and identifying who makes that assessment. The assessment needs to be purposive, not technical – the question is whether there is confidence that an individual can fairly and effectively participate in the hearing that is about them, remotely.
14. As a matter of practice, this assessment of the defendant will be made face to face by the senior officer at the Police custody unit or the Corrections officer facilitating an AVL appearance, with input from the defendant's lawyer who will have engaged with the defendant over AVL or audio. Concerns have been expressed about this, and we invite Police and Corrections to give greater visibility to sector participants of the training their staff receive in this area. It is relevant that at the Police custody hub in particular trained police staff are making these assessments as part of the management of the custody hub, and where the hearing will be substantive all defendants are to appear in person in any event.

15. More work needs to be done on the interests of vulnerable defendants in this area. What we do know is that it is important to have in mind the sequence of discussions and interactions with a vulnerable defendant, before, during and after an appearance, and the defendant's lawyer plays an important role here.

## Implementation

16. When considering implementation of this protocol there are again relevant differences between Corrections and Police custody.
17. A significant volume of appearances from Corrections custody are currently done over AVL. The default settings for the use of remote participation described in section E of this protocol are not expected to materially alter the volume of AVL appearances from Corrections custody, at least initially. The principal change will be the introduction of more detailed expectations as to the standard of processes, facilities and technology that Corrections provide.
18. Appearances from Corrections custody are scheduled events. The defaults in this protocol will be implemented by court staff when scheduling the defendant's next appearance. Requests by the defendant or defence counsel for a departure from the default can be made orally when the next appearance is being scheduled, or by communication with the registry. Formalities can be kept to a minimum, the objective is to draw the attention of the judicial officer to the particular circumstances of the defendant, the nature of the next hearing, and relevant statutory considerations.
19. Only a small number of Police custody sites currently offer the ability to regularly facilitate remote participation by the defendant in their hearing following arrest. This protocol describes an option that Police can invest in – the processes, facilities and technology that must be in place, and, when it is in place, the circumstances where a defendant can appear remotely (subject to the judicial officer requiring the defendant be brought to court the same day).
20. Where the Police propose to introduce remote participation from the custody unit in a particular location we would expect the Police to consult with the local bar and courts on the introduction of the new processes and facilities.
21. This protocol does not require the Police to introduce or use remote participation, and the defendant can always be brought to the court in person following arrest.
22. Concerns have been expressed as to the consistency of the current processes, facilities and technology provided by Corrections with the standards set in this protocol, and the need to ensure that where Police invest in the use of remote participation these protective standards are met. The implementation of this protocol will be monitored by a group chaired by a judge and comprising of senior Police, Corrections, Ministry of Justice, and legal profession

representatives. Information on performance against standards will be gathered, and shortcomings identified and corrected. If performance by Corrections or Police in a particular area is consistently short of the protective standards described in this protocol then the judicial officers in that area will need to consider whether use of remote participation remains in the interests of justice.

23. The Judiciary will keep this protocol under active review. Some areas in particular are worth highlighting.
24. First, as noted above, more work needs to be done on the interests of vulnerable defendants in this area.
25. Second, the objective of Te Ao Mārama that the defendant in custody be seen, heard, and understood throughout the criminal justice process. Focusing on the quality of the defendant's participation, given the nature of the hearing in question and the defendant's individual characteristics, is consistent with that objective. There is also a need to consider how the court interacts with the defendant over AVL and other technology.
26. Third, the context for this protocol includes current constraints experienced by Corrections, Police and the courts. In the current environment there is a value in setting clear expectations and monitoring performance over time. The judiciary expects that processes, facilities and technology will improve over time and will work with agencies to achieve that.
27. This is an area that must continue to develop, and will do so. Throughout, judges will continue to exercise their judgment to ensure a fair hearing in each case.

## Key features of fair and effective remote participation by the defendant in custody

Processes – Police custody	
Objective	Specifications
Some people are unlikely to get a fair hearing by remote participation by virtue of their personal characteristics. They need to be identified and brought	The senior officer at the Police custody unit <sup>2</sup> meets the defendant face to face, and reviews their file. The officer also considers any concerns or preferences communicated by the defendant's lawyer. Where that officer identifies that the defendant falls into one of the

<sup>2</sup> This description of the key features of remote participation assumes that the defendant's lawyer is not present at the police facility, which reflects current realities in all but one location (Christchurch). This means it is the Police who screen for vulnerable defendants, and the defendant who remains at the police facility does not meet his or her lawyer face to face. The implications of this for the appropriate use of remote participation from Police custody are addressed in Part D.

<p>to court for an in-person hearing the same day.</p> <p>A basic part of fairness is the defendant understanding what is happening, even at the most procedural step of the process. Where there is something about the defendant which means we cannot be confident that this most basic element of fairness will be achieved over video link, an in person appearance is required.</p>	<p>following categories, the Police arrange for an in-person appearance the same day. From then on, all subsequent appearances are in person.</p> <p>The categories are:</p> <ul style="list-style-type: none"> <li>▪ youth</li> <li>▪ requires an interpreter or sign language assistant</li> <li>▪ may be in need of a communication assistant</li> <li>▪ may have other personal characteristics which mean there cannot be confidence the defendant will fairly and effectively participate remotely, such as (but not limited to) impaired hearing or sight, mental illness, intellectual disability, or neuro-disability</li> </ul>
<p>A key question for Police when identifying who should be transported to court and who can appear remotely is identifying which defendants are applying for bail over the opposition of Police (and therefore need to be taken to court).</p> <p>Before a defendant makes a decision on whether to apply for opposed bail immediately following arrest they need an opportunity to talk to a lawyer.</p>	<p>Where Police intend to oppose a defendant's bail, Police must facilitate access by the defendant to legal advice, including facilitating a private phone call with a lawyer and provision of any documents as requested by the defendant's lawyer, for the purpose of making an informed decision as to whether to apply for bail.</p> <p><i>(Note also below the requirements to facilitate access to a lawyer prior to, during, and after every hearing).</i></p>
<p>The nature of a hearing immediately following arrest can change in ways that were not predicted, and initial assessments of a defendant who has recently been arrested may change also. There may be situations where the interests of justice require that a defendant who was to appear from Police custody remotely needs to be brought to court in person, and if so fairness requires this happen the same day.</p>	<p>When requested by the judicial officer the Police must arrange for an in-person appearance the same day.</p>
<p>When a person is arrested and not released on Police bail, there are some basic needs such as communicating with family and potential bail addresses that are ordinarily facilitated by duty lawyers and court staff when the defendant is taken to the court building for an in person</p>	<p>Police to facilitate access by the defendant or defence lawyer to contact information on the defendant's phone, and phone calls from a room in private, as requested.</p>

appearance. If the defendant is appearing remotely this needs to be replicated at the Police custody unit.	
<b>Process – Corrections custody</b>	
Objective	Specifications
<p>A defendant in relation to whom remote participation is being considered while in Corrections custody will have been through a screening assessment at earlier stages in the criminal process.</p> <p>There remains a need to check the condition of the defendant has not deteriorated while in custody such that they can no longer fairly participate by remote participation.</p>	<p>Where a defendant has previously been identified as being in one of the categories where remote participation is inappropriate (see above) then all appearances will be in person.</p> <p>Where a defendant has been assessed as capable of participating in hearings remotely, the Corrections officer is to alert the court if there is something about the defendant's presentation or behaviour to suggest they cannot fairly and effectively participate by remote participation.</p> <p>Defence counsel to meet the defendant in person or by remote participation prior to every appearance and bring any concerns to the attention of the court.</p>
<b>Process – Police custody and Corrections custody</b>	
Objective	Specifications
The defendant must have the ability to talk to a lawyer before a hearing.	<p>Where a duty lawyer is at the Police custody unit and the defendant does not have assigned counsel:</p> <ul style="list-style-type: none"> <li>Police to provide for a minimum of 15 minutes in private with the duty lawyer after all necessary documentation has been received and prior to the appearance</li> </ul> <p>In all other cases:</p> <ul style="list-style-type: none"> <li>Police to provide for a minimum of 15 minutes discussion by AVL or audio between defendant and lawyer after all necessary documentation has been received and prior to the appearance</li> <li>Where the defendant or their lawyer gives 3 days' notice, Corrections to provide for a minimum of 15 minutes discussion between defendant and lawyer after all necessary documentation has been received and prior to the appearance. This discussion can be by AVL or audio. Where less than 3 days' notice is given, Corrections to accommodate the request where possible.</li> </ul>



<p>The defendant must be able to look at documents when necessary and discuss them with their lawyer, as they would when appearing in person (for example, disclosure, bail material, evidence).</p>	<p>Police / Corrections to provide documents to the defendant and their lawyer at the same time of day as would occur for in-person appearances.</p> <p>Police / Corrections to facilitate defence counsel getting other documents to the defendant prior to the pre-hearing discussion with their lawyer.</p> <p>Police / Corrections to provide a process to confirm defendant and their lawyer have the same document, and the same version.</p> <p>Police / Corrections to provide a process for assessing that the defendant has the ability to read and understand documents (checking for dyslexia, literacy, vision disability etc).</p> <p>Police / Corrections to provide a process for the defendant to sign documents they would otherwise sign at the court.</p>
<p>The defendant must understand the nature of what is happening, and their rights during the hearing.</p>	<p>The defendant must be told before every appearance by them:</p> <ul style="list-style-type: none"> <li>▪ that they are entering the custody of the court</li> <li>▪ they will be visible in the courtroom</li> <li>▪ what to do if they experience technical difficulties</li> <li>▪ that they are able to talk to their lawyer in private during proceedings, and how they go about alerting their lawyer and the judge if they wish to do so.</li> </ul>
<p>The judge must have the ability to pause the hearing of a matter and “stand it down” for further discussions between the defendant, their lawyer, and where appropriate the prosecutor, and return to the hearing the same day.</p>	<p>The defendant must have the means to effectively alert their lawyer that they want to talk to them.</p> <p>Where the defendant wishes to talk to their lawyer, or their lawyer wishes to talk to them:</p> <ul style="list-style-type: none"> <li>▪ Police / Corrections provide for a minimum of 15 minutes discussion between defendant and lawyer by AVL or audio;</li> <li>▪ The appearance resumes later the same day.</li> </ul>
<p>The defendant must have the ability to talk to a lawyer after the hearing, the same day.</p>	<p>Where a duty lawyer is at the Police custody unit and the defendant does not have assigned counsel:</p> <ul style="list-style-type: none"> <li>▪ Police to arrange for a minimum of 15 minutes in private with the duty lawyer</li> </ul> <p>In all other cases:</p> <ul style="list-style-type: none"> <li>▪ Police to provide for a minimum of 15 minutes discussion by AVL or audio between defendant and lawyer</li> <li>▪ Where the defendant or their lawyer gives 3 days’ notice, Corrections to provide for a minimum of 15 minutes discussion between defendant and lawyer by AVL or audio. Where less than 3 days’ notice is given,</li> </ul>



	Corrections to accommodate the request where possible.
Where a defendant has been taken by Police to a central facility to participate in a hearing remotely, rather than an in-person hearing in their local court, if granted bail they should not be left stranded.	Police to provide or facilitate transport back to the local court / transport hub closest to the local court. Where Police facilitate the use of public transport this must be done in a way that respects the dignity of the defendant.
<b>Facilities</b>	
Objective	Specifications
The room used by the defendant to participate remotely is part of the courtroom, and when the defendant appears remotely they are in the custody of the court. This needs to be clear to the defendant.	The design of the room used for remote participation 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.  Remote appearance rooms located within Police custody units and prisons should include design cues of the courtroom, including for example a sign on the door as they come in.
The hearing can be conducted free of distraction, and the judge has control over who is able to hear the proceedings.	The room must be soundproof.
<b>Technology</b>	
The defendant must be able to see everything in the courtroom clearly.	The hardware and the connection are of high quality and the defendant can clearly see the judge, the prosecutor, their lawyer (if not with them), any co-accused, the body of the court, and the public gallery.
The defendant must be able to hear everything in the court clearly.	The hardware and the connection are of high quality and the defendant can clearly hear the judge, the prosecutor, and their lawyer (if not with them).
The judge must be able to see the defendant clearly.	The camera should be placed so that it gives a fair impression of the defendant, at a face on angle with the defendant being the focal point of the image.  The combination of the installations in the courtroom and the remote participation site should substantially replicate eye contact between the judicial officer and the defendant.
The judge must be able to pick up on body language and non-verbal communication.	Camera angles should frame the head to mid torso of the defendant to enable non-verbal gestures to be visible from the courtroom.

The judge must be able to confirm whether the defendant is alone or not.	If another person is in the room with the defendant (e.g. an interpreter) that person must be situated in the line of sight of the camera.
All hearings are recorded.	The technology used must connect to the court's audio recording system, or to another high quality audio recording system acceptable to the court.

## Default settings for remote participation by the defendant in custody

### 1. Police custody

#### *Default settings*

28. The default settings for remote participation by a defendant in police custody, where remote participation as described in Part D is available, which (other things being equal) can be expected to be consistent with the interests of justice, are:
- all contentious hearings are in person (in particular, opposed bail applications);
  - if their bail is unopposed, or they are not applying for bail, the defendant appears remotely.
29. As provided in Part D this is subject to:
- screening of defendants to identify vulnerable defendants who cannot participate fairly in any kind of remote appearance and must always appear in person; and
  - Police commitment that a defendant scheduled for a remote appearance can be brought to court on request the same day.

#### *Commentary*

30. These default settings reflect:
- the context of appearances from Police custody, where it is common that information and evidence relevant to a bail hearing is imperfect and evolving in the period after arrest, and
  - the assumption made in the key features of remote participation described in Part C that the lawyer is not present at the police facility and so the defendant who remains at the police facility does not meet their lawyer face to face.
31. These factors mean the defendant is unlikely to be able to participate fairly and effectively in a contested bail hearing remotely, given the probable (fluid and evolving) nature of the hearing.
32. Where arrangements differ, in particular in relation to full and early provision of information relevant to bail and face to face contact between defendant and lawyer, then a greater use of

remote participation may be consistent with the interests of justice and therefore appropriate.<sup>3</sup>

## 2. Corrections custody

### *Default settings*

33. Where remote participation as described in Part D is available, the following hearings can be planned on the basis that by default the defendant in Corrections custody will appear remotely as this is likely (other things being equal) to be consistent with the interests of justice:
- a. Appeal from CM or JP bail decision
  - b. Name suppression hearing
  - c. Entry of not guilty plea
  - d. Entry of guilty plea, unless defence counsel has given 3 days' notice requiring an in-person appearance
  - e. List hearing of a case management or non-substantive nature
  - f. Bail hearing
  - g. Case review hearing
  - h. Pretrial hearing where no evidence from the defendant is to be called
  - i. Disclosure conference
  - j. Jury trial callover
  - k. Pre-sentence monitoring
  - l. Post-sentence monitoring
  - m. Sentence review
  - n. Application for ISO
  - o. CP(MIP) fitness hearing, not disputed
34. The following hearings can be planned on the basis that by default the defendant in Corrections custody will appear in person as this is likely (other things being equal) to be consistent with the interests of justice:
- a. The first appearance while in Corrections custody, regardless of the type of appearance, where the defendant has not met a lawyer in person since their arrest.<sup>4</sup> This will most commonly occur where a defendant appeared remotely while in Police custody and did not or could not apply for bail.
  - b. Pretrial hearing where evidence from the defendant is to be called
  - c. Any hearing at which the allegation of guilt or involvement is determined
  - d. Disputed facts hearing
  - e. Sentence indication<sup>5</sup>
  - f. Sentence
  - g. Application for ESO

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<sup>3</sup> An example is the arrangements in Christchurch

<sup>4</sup> This reflects the value of face to face contact between lawyer and defendant, and the role the lawyer plays in alerting the court to any concerns about, or raised by, the defendant in custody.

<sup>5</sup> This reflects the reality that at a sentence indication hearing a good proportion of the sentence is explained to the defendant, and often the defendant wishes to discuss the indication with their lawyer immediately after it is given.

- h. CP(MIP) disputed fitness hearing
  - i. CP(MIP) pretrial hearing on availability of insanity defence
  - j. CP(MIP) disposition hearing
35. Where a hearing is for multiple purposes, if one of those purposes is in person by default, then the default for that hearing is in person.


### **Commentary**

36. It is relevant to note there is already a system of defaults in place for when the defendant in Corrections custody would appear remotely, and as a result current AVL usage is significant. The defaults specified above expand on the current settings.
37. These defaults reflect the fact that even with a fully healthy defendant and a well-designed, well-functioning remote participation system, there will be some kinds of hearings where it is inappropriate for the defendant to participate remotely. Reasons for this include:
- a. constitutional / public interest considerations: it is important that some things are done face to face, in public, and there is a value in justice being seen to be done in the community, at the local level
  - b. dignity: for the purposes of individual dignity – the dignity of the complainant, the complainant’s family, and the dignity of the defendant – there will be times when it is important that the defendant be in the courtroom
  - c. limitations on the ability to engage remotely
  - d. the importance of the court setting in conveying gravity, for example when the court is hearing evidence or imposing a sentence
  - e. the present reality that there is reduced scope for engagement when the defendant is appearing remotely
  - f. the desirability in some instances of connecting the defendant to others at the courtroom
38. The opportunities and limits of remote participation more broadly are discussed in *Objectives, principles and protocols on the use of remote participation in court proceedings*.
39. The defaults specified in this protocol depend on Corrections delivering the key features of remote participation, including facilitating access to the defendant by their lawyer so that the lawyer can be fully briefed ahead of any hearing. This is particularly critical for contested matters such as bail and name suppression.

## Appendix: default settings

Police custody	
In-person	Remote
Vulnerable defendants	Unopposed bail applications
Youth	Remand without applying for bail
Contentious hearings, including opposed bail applications	
Corrections custody	
In-person	Remote
Vulnerable defendants	Appeal from CM or JP bail decision
Where the defendant has not yet met their lawyer in person	Name suppression hearing
Pretrial hearing where evidence from the defendant is to be called	Entry of not guilty plea
Any hearing at which the allegation of guilt or involvement is determined	Entry of guilty plea, unless defence counsel has given 3 days' notice requiring an in-person appearance
Disputed facts hearing	List hearing of a case management or non-substantive nature
Sentence indication	Bail hearing
	Case review hearing
Sentencing	Pretrial hearing where no evidence from the defendant is to be called
Application for ESO	Disclosure conference
CP(MIP) disputed fitness hearing	Jury trial callover
CP(MIP) pretrial hearing on the availability of insanity defence	Pre-sentence monitoring
CP(MIP) disposition hearing	Post-sentence monitoring
	Sentence review
	Application for ISO
	CP(MIP) fitness hearing not disputed

**Heemi Taumaunu**  
**Chief District Court Judge**

Date	18 July 2025
Signed by	
Review date	18 July 2026