

NEW ZEALAND COURT PROCESS FOR MURDER CHARGES

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The rule of law means that all persons, institutions, and entities, whether private or public and including the state, are accountable to, and entitled to, the protection of the laws of New Zealand, and that the law is enforced by an independent judiciary.

The laws of New Zealand set out rules for how court cases must run. Judges control court proceedings and are responsible for ensuring criminal trials are fair. It is a fundamental principle of our system that judges operate completely independently. Court proceedings must take place without interference from politicians or government officials.

Before Trial

The procedure for criminal cases is set out in the [Criminal Procedure Act 2011](#) (the Act). Under the Act, serious crimes such as murder are category 4 offences and must follow a particular process. This means that, after the defendant's first appearance in the District Court, the case goes to the High Court.

A jury trial will take place if the defendant pleads not guilty. A defendant can plead guilty, or change their plea to guilty, at any time before or during the trial (but before the verdict by the jury).

The trial date may be set at the first appearance in the High Court. The timing of the trial date depends on the issues involved in the trial.

Normally there are a number of standard appearances in the High Court before the trial. These events are known as 'second appearance', 'case review hearing', and 'trial call-over'.

There may be applications heard before the trial to make sure that the case is ready to proceed. Some pre-trial decisions can be appealed to the [Court of Appeal](#).

Issues of fitness to plead and whether a defence of insanity is available may also be determined prior to trial.

The Trial

- Under New Zealand law, in almost all circumstances, murder charges have a jury trial.
- All defendants have the right to represent themselves in court.
- The Court must be satisfied that the defendant understands their right to a lawyer and to legal aid and has a chance to exercise those rights.

- If a defendant decides to represent him or herself, the Court can appoint a lawyer ('stand by counsel') to assist the defendant with their defence and to ensure a fair trial.
- The defendant, whether represented or unrepresented, will generally be present at all hearings before the trial, either in person or by audio-visual link.
- The defendant must be present in person at the trial.
- The judge can remove the defendant from the court for interrupting a hearing or trial if it is not practical to continue with the defendant present.
- The judge may rule that a self-represented defendant cannot cross-examine a witness personally for a number of reasons (such as age of witness or the nature of proceeding).
- The judge can, in certain limited circumstances, exclude the public from the courtroom.
- Media can only be excluded from the courtroom if there is a risk to New Zealand's security or defence.

Sentencing

If the defendant is found guilty, the court will usually adjourn the proceeding to receive further submissions as to what the sentence should be. The defendant will be remanded to a sentencing date. This is also the case if the defendant pleads guilty before or during the proceeding.

Appeal

If a defendant is found guilty, they have a right of appeal against conviction and/or sentence. The first appeal court for a murder conviction is the Court of Appeal.

For more detail

Standby counsel – see [Fahey v The Queen \[2017\] NZCA 596](#)

Guide to [Representing yourself in the High Court criminal proceedings](#)

Power to order that a self-represented defendant cannot cross-examine a witness personally – see [section 95\(2\)](#) Evidence Act 2006

Circumstances where a judge may exclude various people or groups from the courtroom

Defendant: [sections 117\(2\)](#) and [118\(2\)\(b\)](#) Criminal Procedure Act 2011

Public: [sections 196](#) and [197](#) Criminal Procedure Act 2011

Media: [section 198](#) Criminal Procedure Act 2011

A judge-alone trial can be ordered in cases involving intimidation of juror or jurors – see [section 103](#) Criminal Procedure Act 2011.