



Bail Application Scheduling Framework

Chief District Court Judge – 23 September 2024

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

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

Applications

Bail applications generally fall into one of five categories:

1. Bail sought on arrest.
2. Bail sought on arrest for breach of bail conditions.
3. Bail not sought on first appearance but sought once counsel is able to advance an application.
4. Electronically monitored (EM) bail.
5. Bail condition variation.

Paramount principle

That those in custody have their bail application heard as soon as possible.

Purposes

1. To maximise the efficient use of judicial, courtroom and stakeholder resources by ensuring that when bail applications are heard all necessary information, including address availability and views of the complainant/victim on bail, are before the court.
2. To ensure defendants are not needlessly before the court where a bail application is not ready or able to be pursued.



Guidelines

1. In only exceptional cases would a non-custodial matter take priority over a bail application where the defendant has not previously sought bail, or the defendant has been arrested for a breach of a bail condition, and the application is ready to proceed.
2. In a court where there is not a list court operating, but a judicial officer is rostered for other criminal cases, the work of the day is to be adjusted/organised, so a defendant who has not previously been denied bail or has previously been remanded in custody by consent pending a bail application, will have the bail application heard as a matter of priority. The application must be ready to proceed. That means all information necessary for the judicial officer to decide the application (including complainant/victim views on bail) is available. An application for bail is ready to be set down by the registrar for hearing when counsel certifies that the application is ready to proceed. A challenge to the address suitability does not preclude the application from being scheduled. It is for counsel to assess whether to proceed and advance the application or to withdraw the application in the face of opposition to the suitability of a particular address. It is for the judicial officer to decide if the application is granted but it must be set down once counsel advises it is ready from counsel's point of view to be pursued.
3. If a defendant elects not to make a bail application on arrest, or the defendant accepts there is no available address, the remand should be to the next substantive date (for example for plea or case review hearing), unless the court is satisfied that in the particular circumstances of the case it is appropriate that an earlier date be listed for a bail application. If the defendant can advance an application before that next substantive date, that is to be scheduled on notice at the earliest opportunity upon counsel certifying the application is ready to proceed. The expectation is the application is to be heard on the next sitting day of the court.
4. Wherever possible, an EM bail application and the next substantive step should occur at the same time. Agreement on that date is to be reached in the first instance with counsel, and the assigned prosecutor (if any). Where agreement can't be reached, the matter is to be referred to a judicial officer for direction. When allocating an EM bail application date, the registry should consider any existing appearance dates to ensure fewer hearings and appearances for defendants. The intent of this paragraph is not to delay the EM bail application. The EM bail application will only proceed to hearing if counsel has certified before the hearing date that counsel is ready to advance the EM bail application.
5. Where the principal impediment to bail is the suitability of the defendant, consideration is to be given to the application being determined, rather than being remanded for information that will make no difference to bail being declined or granted, for example information solely related to address. If the defendant is considered suitable, subject to an

appropriate address, the application can be heard and granted, subject to confirming the address is appropriate and those circumstances adjourned to an early date. If the defendant is considered unsuitable regardless of an address, the application should be declined, and the defendant remanded to the next substantive date.

6. This paragraph applies where a judicial officer has ruled that the defendant is suitable to be admitted to bail subject to an appropriate address being confirmed. In setting the early date for the matter to be recalled, and after hearing from both counsel and the prosecutor, the judicial officer is to assess how much time is allowed for appropriate enquiries to be made. The expectation is that Police would make best endeavours to complete those address enquiries within 48 hours and will advise the court if they cannot complete the check within that timeframe.
7. Where a defendant, including a self-represented defendant, has previously applied for and been refused EM bail due to the unsuitability of the defendant, any subsequent EM bail application is effectively a review of another judicial officer's decision. In those circumstances and in the absence of any material change in circumstances, the judicial officer asked to hear the renewed application should decline to hear the application. A material change in circumstances could include that there is some characteristic of the address that would meet the personal risks posed by the defendant, such as a residential rehabilitation facility. In the absence of a material change, the new application should be called in open court and the applicant advised the remedy is to appeal the first decision.
8. If a personal communication is received from a self-represented defendant to whom paragraph 7 does not apply, the application should be listed for hearing. Ideally this should be in person, so that a duty lawyer can talk with them prior to the appearance.
9. Where a variation of a condition is sought, the defendant is to first consult with the prosecutor about whether the variation is opposed. If the variation is not opposed, it must be dealt with by a judicial officer if it relates to a family violence offence, or by a registrar in any other case. Where the application is opposed, or where a judicial officer in chambers declines to grant the variation that is not opposed, such applications will be scheduled in accordance with their level of urgency and complexity. Such applications might appropriately be heard by remote participation, including by audio participation only.
10. These guidelines will of necessity be subject to local variation as approved by the Chief District Court Judge and must be consistent with the fundamental principle of timely access to justice.

Implementation

1. This Framework commences on 26 September 2024.

2. From time to time, this Framework may be varied by the Chief District Court Judge to ensure it remains relevant and fit for purpose.

Heemi Taumaunu

Chief District Court Judge

Date	23 September 2024
Signed by	Chief District Court Judge Heemi Taumaunu
Review date	23 September 2025