

## **Court of Trial Protocol Established by the Chief High Court Judge and the Chief District Court Judge for Category 2 and 3 Offences Pursuant to Section 66 of the Criminal Procedure Act 2011 as at 12 March 2018**

This protocol identifies cases and classes of cases which must always be considered for transfer to the High Court in accordance with section 66 of the Criminal Procedure Act 2011. It is the obligation of the prosecution to identify cases falling within the protocol.

The protocol has been developed following consultation between the Chief High Court Judge and the Chief District Court Judge. The provisions of this protocol may be revised from time to time.

This protocol comes into force on 12 March 2018, and replaces the previous protocol published in the [New Zealand Gazette, 11 May 2017, Issue No. 49, Notice No. 2017-go2244](#) and applied to proceedings that commenced on or after 29 May 2017. It applies to proceedings commenced on or after 12 March 2018.

### **Class 1: Cases involving the following offences**

#### **Crimes Act 1961**

<b>Section</b>	<b>Offence</b>
Section 69(3)	Aiding and abetting crime outside New Zealand
Sections 93, 94	Piratical acts
Section 97	Accessory after the fact to piracy
Section 98AA(1)	Dealing in people under 18 for sexual exploitation, removal of body parts or engagement in forced labour
Section 98A	Participation in organised criminal group
Section 98C	Smuggling migrants
Section 98D	Trafficking in people by means of coercion or deception
Section 104	Corruption and bribery of law enforcement officer
Section 105	Corruption and bribery of official
Section 105A	Corrupt use of official information
Section 105B	Use or disclosure of personal information in breach of section 105A
Section 105C	Bribery of foreign public official
Section 105D	Bribery outside New Zealand of foreign public official
Section 105E	Corruption of foreign public officials
Section 105F	Trading in influence
Sections 108, 109	Perjury, where charge relates to proceedings that were held in the High Court
Section 113	Fabricating evidence, where charge relates to proceedings that were held in the High Court
Section 115	Conspiring to bring false accusation, where charge relates to proceedings that were held in the High Court
Section 116	Conspiring to defeat justice, where charge relates to proceedings that were held in the High Court
Section 117	Corrupting juries and witnesses, where charge relates to proceedings that were held in the High Court
Section 179	Aiding and abetting suicide
Section 182	Killing unborn child
Section 183(1)	Procuring abortion
Section 208*	Abduction of woman or girl

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Section 208	Abduction for purposes of marriage or sexual connection
Section 209	Kidnapping
Section 235(a)	Aggravated robbery causing grievous bodily harm
Section 236(1)(a)	Causing grievous bodily harm with intent to rob
Section 238(1)†	Extortion by certain threats
Section 270	Endangering transport
Section 298A	Causing disease or sickness in animals
Section 298B	Contaminating food, crops, water or other products
Section 301†	Wrecking
Section 307A	Threats of harm to people or property

\* as it read before 20 May 2005

† as it read before 1 October 2003

### Companies Act 1993

<i>Section</i>	<i>Offence</i>
Section 377	False statements

### Customs and Excise Act 1996

<i>Section</i>	<i>Offence</i>
Section 209(1A)	Knowingly concerned in any importation or exportation or removal of an objectionable publication

### Financial Markets Conduct Act 2013

<i>Section</i>	<i>Offence</i>
Section 244	Criminal liability for insider conduct
Section 264	Criminal liability for false or misleading statement or information
Section 269	Criminal liability for false or misleading appearance of trading
Section 510	Knowingly or recklessly contravening prohibition in section 82 on offers where there has been defective disclosure in the PDS or register entry
Section 511	Knowingly or recklessly contravening any other provisions relating to defective disclosure
Section 512	General offending involving knowingly making false or misleading statements

### Films, Videos and Publications Classification Act 1993

<i>Section</i>	<i>Offence</i>
Section 124(1)	Offences involving knowledge relating to objectionable publications
Section 131A(1)	Possession of objectionable publication with knowledge

### Prostitution Reform Act 2003

<i>Section</i>	<i>Offence</i>
Section 16	Inducing or compelling persons to provide commercial sexual services or earnings from prostitution

### Secret Commissions Act 1910

<i>Section</i>	<i>Offence</i>
Section 3	Gifts to agent without consent of principal
Section 4	Acceptance of such gifts by an agent

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Section 5	Duty of agent to disclose pecuniary interest in contract
Section 6	Giving false receipt, invoice etc, to an agent
Section 7	Delivery of false receipt, etc, to principal
Section 8	Receiving secret reward for procuring contracts
Section 9	Aiding and abetting offences

**Takeovers Act 1993**

<b>Section</b>	<b>Offence</b>
Section 44C	False or misleading statement or information

**Class 2: Cases involving offences with the following features**

**Crimes Act 1961**

<b>Section</b>	<b>Offence</b>
Sections 128 to 129	Sexual violation where: <ol style="list-style-type: none"> <li>a. there are two or more complainants; or</li> <li>b. there are two or more defendants; or</li> <li>c. the complainant is under 16 at the time of the offending; or</li> <li>d. the complainant is otherwise vulnerable; or</li> <li>e. the alleged offending occurred in the course of a home invasion; or</li> <li>f. the alleged offending involved significant violence over and above that inherent in the act of sexual violation; or</li> <li>g. if found guilty, the defendant would face a likelihood of preventive detention.</li> </ol>
Section 188(1)	Causing grievous bodily harm where: <ol style="list-style-type: none"> <li>a. there are two or more complainants; or</li> <li>b. there are two or more defendants; or</li> <li>c. the complainant is vulnerable by reason of age or disability or otherwise; or</li> <li>d. the injury was grave; or</li> <li>e. there was a serious risk to life.</li> </ol>
Section 235(c)	Aggravated robbery where: <ol style="list-style-type: none"> <li>a. the proceeds or potential proceeds of the robbery are substantial (for example a bank robbery); or</li> <li>b. the offending creates serious risk to life including where it involves the use of a loaded firearm; or</li> <li>c. it is part of a pattern of offending.</li> </ol>
Section 236(1)(b)	Assault with intent to rob where: <ol style="list-style-type: none"> <li>a. the proceeds or potential proceeds of the robbery are substantial; or</li> <li>b. the offending creates serious risk to life; or</li> <li>c. it is part of a pattern of offending.</li> </ol>

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Sections 237, 238	Blackmail where: <ul style="list-style-type: none"> <li>a. there are multiple complainants; or</li> <li>b. the complainant is a public official; or</li> <li>c. a threat of serious risk to life is involved.</li> </ul>
Section 267	Arson where: <ul style="list-style-type: none"> <li>a. multiple instances of arson are charged; or</li> <li>b. there was a serious risk to life; or</li> <li>c. the resulting damage is of significant value; or</li> <li>d. a building of national significance was damaged.</li> </ul>

**Misuse of Drugs Act 1975**

<b>Section</b>	<b>Offence</b>
Section 6	Dealing with controlled drugs where the charge relates to a Class A controlled drug and either: <ul style="list-style-type: none"> <li>a. the quantity of drug alleged to be involved exceeds 200 times the supply threshold; or</li> <li>b. the evidence includes evidence obtained pursuant to a surveillance device warrant issued by a High Court Judge.</li> </ul>
Section 10	Aiding offences against corresponding law of another country where the charge relates to dealing in a Class A controlled drug and either: <ul style="list-style-type: none"> <li>a. the quantity of drug alleged to be involved exceeds 200 times the supply threshold; or</li> <li>b. the evidence includes evidence obtained pursuant to a surveillance device warrant issued by a High Court Judge.</li> </ul>
Section 12C	Commission of offences outside New Zealand where the charge relates to dealing in a Class A controlled drug and either: <ul style="list-style-type: none"> <li>a. the quantity of drug alleged to be involved exceeds 200 times the supply threshold; or</li> <li>b. the evidence includes evidence obtained pursuant to a surveillance device warrant issued by a High Court Judge.</li> </ul>

**Class 3: Cases (involving category 2 or 3 offences) with any of the following features**

- a. Offences of dishonesty involving more than \$1,000,000.
- b. A difficult issue of law is likely to be involved, or a prosecution for the offence is rare or novel.
- c. Public concern about the alleged offending.
- d. Conviction would lead to a likelihood of preventive detention being imposed.
- e. The offence charged is a repealed offence similar in nature to those offences in Class 1.
- f. The offence charged is a repealed offence similar in nature to those offences in Class 2 and the offending features one of the relevant aggravating factors highlighted there.
- g. The offence charged is a category 2 offence which, because of the complexity of the issues involved or the public concern connected with the offending, should be considered for transfer to the High Court.

