

New Zealand's Criminal Justice System

If you are reading this pamphlet, chances are you are going through a difficult time in your life. We hope that this pamphlet will shed light on the basic structure of New Zealand's criminal justice system, as well as what the U.S. Consulate General can and cannot do for you.

In reading this pamphlet, please remember that while the U.S. Government will monitor your case, it will be processed under New Zealand laws and regulations, which may not be the same as the United States. You will not receive special treatment or benefits because you are an U.S. citizen, nor does the U.S. Consulate General have the authority to assist in your legal defense or provide legal advice.

What Rights Do I Have If Arrested?

- You have the right to remain silent, though you do have to tell the police your name, address, occupation, and date and place of birth.
- You have the right to be told why you are being arrested.
- You have the right to speak to a lawyer. If you cannot afford a lawyer you may be able to get your legal fees paid through New Zealand's legal aid system.
- You may speak to the U.S. Consulate General

What Happens After I Am Arrested?

You will be brought to court as soon as possible. Normally, bail will be granted unless there is reason to believe that you will be a danger to the community, may flee the country, or you have been charged with a serious offense. If you cannot be brought before a court within a reasonable period of time (for example if the arrest was on a weekend) you may not be released on bail. Your U.S. passport will probably be held by the police.

What Will Happen In My First Court Appearance?

You will likely appear before a registrar (a court official) who will ask you for your plea. You may enter a plea of guilty or not guilty. You may also enter no plea and ask that the case be remanded (delayed) to seek legal advice.

If you have not done so already, you may wish to speak to an attorney. Depending on the alleged crime, a judge may not accept your guilty plea if you have not yet spoken with an attorney. If you have not selected an attorney, you may speak with the Duty Lawyer (also known as Duty Solicitor) at the court who will:

- Explain what you have been charged with and the possible sentence.
- Explain what defenses you may have to the charges.
- Apply for bail for you if you are in custody.
- Request that your bail conditions be modified.
- Ask for your case to be remanded (delayed so you can get more advice or information)
- Advise you on the process of obtaining legal aid if you cannot afford an attorney.

The Duty Lawyer will generally be found outside the first call court room. Please keep in mind that the Duty Lawyers are very busy and go over cases on a “first come, first served” basis. As such, if you wish to speak with a Duty Lawyer before your case is called, it is best to arrive at the court early.

What Happens After My First Court Appearance?

The progress of your case after your first court appearance will depend in part on the classification of your charge. New Zealand classifies charges into two categories.

- **Summary Offences:** These are minor crimes that carry a maximum penalty of three months in prison.
- **Indictable Offences:** These are serious crimes that can result in imprisonment for several years.

What Happens If I Plead Guilty?

- **Summary Offence:** Generally, the registrar will transfer your case to a judge who will deliver your sentence on the spot. You or your attorney will be able to present any mitigating information.
- **Indictable Offence:** The court will set a date for sentencing, as well as order a pre-sentence report. The judge will hear submissions from your lawyer, and from the prosecution about what sentence you should be given, and then pass the sentence.

What Happens If I Plead Not Guilty?

- **Summary Offences:** Your case will likely be moved to a status hearing where the judge, prosecutor and your attorney will discuss the case. You will have the opportunity to examine the prosecution case. The judge may point out flaws with your defense strategy, as well as problems with the prosecution’s case. You will have the opportunity to change your plea if you find it necessary. If you choose to continue to plead not guilty plea, then a date will be set for a trial (also known as a Defended Hearing).
- **Indictable Offences:** The court will hold a Committal Hearing to determine if there is sufficient evidence for your case to go forward to trial.
- **Trial:** If your case goes to trial, the prosecution must prove “beyond a reasonable doubt” that you are guilty of the crimes charged. The prosecution will present its evidence. You will have your opportunity to challenge the prosecution’s evidence, as well as present your own defense. You will not be required to take the stand if you do not wish. The judge can ask questions of any party at any time. Once all of the evidence has been laid out, the case will go to the judge or jury for a verdict.

Where Will My Case Be Tried?

Your case will most likely be tried by at a District Court, a lower level trial court. However, if you are charged with a serious offense, such as murder, your case may be sent to the High Court, a higher level court with responsibility for ensuring the proper administration of justice throughout New Zealand.

Who Will Decide My Case?

- **Summary Offences:** You will be tried by a justice of the peace, magistrate or judge.
- **Indictable Offences:** You can choose to be tried by a jury or by judge alone. However, if your maximum possible sentence exceeds ten years imprisonment, your only option will be a jury trial.

What Happens If I Am Found Guilty?

You will be sentenced. A sentencing hearing will be set. At the sentencing hearing the judge will collect information about you, what impact your alleged crime has had on the victim, as well as any additional information in mitigation. The judge will then deliver your sentence, which can range from fines to imprisonment.

What Role Do Consular Officers Have in Arrest Cases?

A consular officer may do the following:

- Visit you in jail after being notified of your arrest, to check on your treatment by law enforcement authorities and to monitor your health and well-being.
- On your request, notify family and friends regarding the situation, and relay requests for financial or other aid.
- Provide information about judicial procedures in New Zealand.
- Provide a list of local attorneys. (Note: The consular officer cannot select an attorney from the list, nor provide legal advice.)
- Work to facilitate communications with family, friends, and legal counsel, subject to local law and regulations.
- Work to ensure that your basic rights under local law are protected and that you are treated humanely in accordance with internationally accepted standards.
- Follow the progress of your case in the judicial system.
- Visit you regularly and report on those visits to the Department of State.

- Provide you with dietary supplements (vitamins/minerals), if necessary.
- Arrange for medical and dental care, if not provided by prison, to be paid for from prisoner's funds; funds provided by family; or, if applicable and subject to conditions, funds loaned to the prisoner by the U.S. government under the Emergency Medical/Dietary Assistance (EMDA) program for destitute Americans incarcerated abroad.
- With concurrence from the State Department in Washington DC, protest any mistreatment by local officials while incarcerated.
- Facilitate any goods (holiday meals, reading materials, etc.) donated from the local community to prisoners, subject to local laws and regulations.

A consular officer cannot:

- Demand your immediate release.
- Represent you at trial, give legal advice or pay your legal fees and/or fines.
- Intervene in the New Zealand judicial system.
- Identify and/or contract an attorney to represent the individual before the court.

Resources

1. <http://www.communitylaw.org.nz> (contains numerous useful pamphlets about NZ's legal system).
2. <http://www.lsa.govt.nz> (for more information on Legal Aid)
3. http://courtsfnz.govt.nz/district/district/role/District_Courts_of_NZ_web.pdf (for a discussion of New Zealand's District Courts.)
4. <http://www.courtsfnz.govt.nz/about/high/history> (for information on New Zealand's High Courts).