

Criminal Procedure Act 2011

Criminal Procedure Act 2011 – offence categories and types of trial

THIS INFORMATION SHEET PROVIDES AN OVERVIEW OF THE CATEGORIES OF OFFENCE AND TYPES OF TRIAL FOR PROCEEDINGS UNDER THE CRIMINAL PROCEDURE ACT 2011.

The [Criminal Procedure Act 2011](#) (“the Act”), which fully commences on 1 July 2013, introduces offence categories and changes to types of trial. Offences in proceedings under the Act are categorised on the basis of maximum penalty with the exception of category 4 offences, which are listed in Schedule 1 to the Act. Category 4 offences are treated differently because of their significant seriousness, complexity or public symbolism.

Each category of offence has a default type of trial, being either a Judge-alone trial or a jury trial. If there is appropriate jurisdiction, a Judge-alone trial may be presided over by Justices of the Peace or Community Magistrates.

Defendants charged with offences that have maximum penalties at, or above the jury threshold have the right to a jury trial. The jury threshold for proceedings under the Act is two or more years’ imprisonment: see [section 4](#) of the New Zealand Bill of Rights Amendment Act 2011.

Offence categories

(See [section 6](#))

Category 1 offence

- An offence punishable with a maximum penalty of a fine only.
- An infringement offence (as defined in section 2 of the Summary Proceedings Act 1957), which is commenced by filing a charging document under the Criminal Procedure Act 2011 rather than by issuing an infringement notice.

Category 2 offence

- An offence punishable by a term of imprisonment of less than two years; or
- an offence not punishable by a term of imprisonment but punishable by a community based sentence (for example, an offence under section 11B of the Summary Offences Act 1981 which is punishable by a sentence of community work or a fine of \$500 or both).

Category 3 offence

- An offence that is punishable by imprisonment for life or by imprisonment for 2 years or more, except those offences listed in Schedule 1 to the Act.

Category 4 offence

- An offence listed in [Schedule 1](#) to the Act (for example, murder and manslaughter).

Offences punishable by a fine only because committed by a body corporate

An offence that would be punishable by a term of imprisonment if alleged to have been committed by an individual, but is punishable by a fine only because it was alleged to have been committed by a body corporate, is not a category 1 offence, but is included in the category of offence relating to the term of imprisonment for the individual.

Conspiring, attempting, being an accessory after the fact

As set out in [section 6\(2\)](#), if an offence is in a given category, then a charge of conspiring or attempting to commit that offence will be in the same category. This includes inciting, procuring, or attempting to procure

an offence of that type, or of being an accessory after the fact to that offence. However, this does not apply where the conspiracy to commit the offence, for example, is an offence of itself (such as conspiracy to murder under section 189 of the Crimes Act 1961).

Offences with varying penalties based on previous convictions

If an offence is punishable by a greater penalty because the defendant has previously been convicted of that offence or of some other offence, the offence is an offence in the category that applies to offences punishable by that greater penalty **only** if the charge alleges that the defendant has such a previous conviction: [section 6\(3\)](#).

Types of trial for each category of offence¹

Proceeding for a category 1 offence

- Judge-alone trial in a District Court.

Proceeding for a category 2 offence

- Judge-alone trial in a District Court (default).
- The High Court may make an order that the proceeding be transferred to that court, in which case the type of trial will be a Judge-alone trial in the High Court.

Proceeding for a category 3 offence

- Judge-alone trial in a District Court (default).
- The defendant may elect a jury trial, in which case the type of trial will be a jury trial in the District Court.
- The High Court may make an order that the proceeding be transferred to that court, in which case the type of trial will be either a Judge-alone trial or a jury trial in the High Court (depending on whether the defendant had elected a jury trial or not).
- In some instances, despite a defendant electing a jury trial, the court may order that the trial be conducted by a judge without a

jury: see section [101](#) or [102](#) (long and complex cases or juror intimidation).

Proceeding for a category 4 offence

- Jury trial in the High Court.
- In some circumstances the court could order that the trial be conducted by a judge without a jury (long and complex or juror intimidation).

Proceedings involving more than one category of offence

If a proceeding involves a defendant charged with more than one category of offence, the proceeding is conducted as a proceeding for the highest category of offence.

For example, a defendant is charged with a category 2 offence and two category 3 offences, and elects jury trial on one of the category 3 offences. When filing the charging document, the prosecutor notifies the court that the charges are to be heard together. The proceeding against the defendant is treated as a proceeding for a category 3 offence, and because of the election, a jury will determine the verdict for all charges if the proceeding continues to trial: see section [139\(1\)\(a\)](#).

Proceedings involving more than one defendant

If a proceeding involves more than one defendant, the proceeding is generally to be conducted in accordance with the highest category of offence across both defendants.

For example, one defendant is charged with a category 2 offence and another with a category 3 offence, and that defendant elects a jury trial. The prosecutor notifies the court that the charges are to be heard together. The proceeding will be conducted as if for a category 3 offence, and all charges must be determined by a jury unless there are exceptional circumstances warranting separate trials: see section [139\(2\)\(a\)](#).

¹ There are some exceptions for proceedings in the Youth Court – please see information sheet #13 for more information.