

**PRACTICE NOTE – REMOTE OUT OF CUSTODY APPLICATION
GUIDELINES**

Edmonton Law Courts

Effective date: April 30, 2020

Background:

1. As the Provincial Court of Alberta moves towards stage 5 of the Court Pandemic Plan and begins to contemplate a staged resumption of normal operations, the Court is developing Practice Notes to outline protocols to remotely hear Applications, including out of custody guilty pleas.

Application:

2. This Practice Note applies to those matters where defence counsel/duty counsel/agent* and the Crown have agreed that the matter should be addressed at this time and is expected to either lead to the conclusion of the matter or deal with an issue where there is a present need to address it. This will include but not necessarily be limited to guilty pleas, peace bonds and amendments to release conditions.
3. With respect to guilty pleas, this Practice Note only applies to matters where a joint submission will be presented to the Court for the Court's consideration that does not involve a (further) period of incarceration (with the exception of a joint submission to serve the sentence in the community under a Conditional Sentence Order), or, should counsel not be presenting a joint submission, the Crown will not be seeking a (further) period of incarceration.

* Agents are those persons permitted to appear before the Court pursuant to Section 802.1 of the *Criminal Code* including an agent as described under Alberta Order in Council 334/203.

4. With respect to Release Orders, Defence Counsel shall contact the Crown Prosecutor to determine whether the matter can be amended by consent. Where all parties agree to an amendment, a Draft Consent Order should be provided to Judge's Chambers. Only contested amendments should be scheduled in Remote Appearance Court.
5. This Practice Note applies during the period of reduced Court operations related to the COVID – 19 pandemic.

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Pre-Court

6. Prior to the court application being made,
 - a. for guilty pleas, defence counsel/duty counsel/agent and the assigned Crown Prosecutor will agree upon the charges to be addressed, the facts to be presented, and any supporting documents to be referenced, and
 - b. for other appearances, defence counsel/duty counsel/agent will contact the assigned Crown Prosecutor to request that the matter be heard in Remote Appearance Court.
7. Where there is no assigned Crown Prosecutor for the purpose of paragraphs 4 or 6, defence counsel/duty counsel/agent shall contact Duty Crown at:
 - EDMPPSCDISCTM@ppsc-sppc.gc.ca for federally-prosecuted matters
 - JSG-ACPS.Edm.268@gov.ab.ca for domestic court matters, or
 - JSG-ACPS.EdmontonProsecutions@gov.ab.ca for other provincially-prosecuted matters.
8. Defense counsel/duty counsel/agent will be required to obtain their client's consent to proceedings under this Practice Note.
9. Hearings shall be scheduled by calling the Case Management Office at (780) 422-1604 and will initially be available on Tuesdays and Thursdays in Courtroom 268. Cases will be

scheduled in 15-minute intervals. The Clerk of the Court will arrange for the matter to be brought forward to the scheduled date.

10. Defense counsel/duty counsel/agent and Crown Prosecutor are required to provide the information contained in the Remote Appearance Court Forms and provide the documents specified in the Forms, including the Agreed Statement of Facts and the acknowledgement and direction contemplated by s. 606(1.1) of the *Criminal Code*. The completed Forms and documents shall be delivered to edadult.crimcovid@albertacourts.ca by no later than 12:00 noon the day prior to the scheduled appearance. The subject line of the email must include the Courtroom number and date of the scheduled appearance. This email shall be copied to EDMP268@just.gov.ab.ca and JSG-ACPS.Edm-446@gov.ab.ca.

Court Proceedings

11. Proceedings, including telephone calls, will be conducted through the WebEx platform.
12. The Courtroom will not be accessible for personal attendance, without an Order of the Court. Each person appearing may do so remotely. Unless otherwise directed, defence counsel/duty counsel/agent will appear by video and the accused will appear by phone. Defence counsel/duty counsel/agent may apply to the court to proceed in the absence of the accused. The Clerk of the Court will call the accused at the number provided in the Remote Appearance Court Form.
13. Counsel relying on any document that will be referenced during the hearing shall ensure it is emailed to EDMP268@just.gov.ab.ca.
14. All parties scheduled to appear, including the accused, shall be available at 9:00 a.m.
15. Nothing in the Practice Note in any way fetters the discretion of the presiding Judge in determining a fit sentence or in directing the accused to appear in person. A Judge may decline to hear a matter if the Judge is of the opinion that it is inappropriate to proceed with the specific case in

the absence of personal attendance of the accused, or for any other reason. Matters requiring personal attendance of the accused will be adjourned until after the period of reduced Court operations related to the COVID – 19 pandemic.

Post-Court

- 16.In the event the presiding Judge imposes an order, the Judge will state the terms of the Order on the record and confirm with the offender that the Order is in effect and that the offender is bound by the terms of the Order. The Judge will communicate on the record how to request changes to the Order and the repercussions of failing to comply as described in ss 732.1, 734.2 or 742.3 of the Criminal Code as applicable to the offender. The Order will be prepared by the clerk and forwarded to counsel for the offender who will in turn forward it to the offender.
- 17.Where the accused does not appear in Remote Appearance Court, defence counsel/duty counsel will undertake to use best efforts to communicate the terms of any Orders, how to request changes and the repercussions of failing to comply, as described in ss. 732.1, 734.2 or 742.3 of the *Criminal Code*, as applicable, to the offender and will provide the court with written acknowledgement of same. If defence counsel/duty counsel is unable to communicate this information within one week, defence counsel/duty counsel shall arrange for the matter to be brought before the court remotely. If there is any concern regarding comprehension, defence counsel/duty counsel shall arrange for the offender to appear before the court remotely.
- 18.All parties must be prepared to waive procedural irregularities that may arise as a result of the use of this protocol.