


Growing backlog of judge-alone trials causing concern among lawyers and frustrated defendants

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The long list of judge-alone trials continues to grow as defendants wait either in custody or on bail. Photo: 123RF

A lack of judges, court time and space is said to be contributing to a growing backlog of judge-alone trials, with experts saying new proposals by the government will only worsen the strain on a struggling system. Open Justice reporter Shannon Pitman takes a look into the judge-alone process.

The backlog in judge-alone trials is beginning to reveal a system struggling under its own weight with some lawyers fearing people are pleading guilty because their cases are dragging on too long.

Judge-alone trials, introduced under the Criminal Procedure Act in 2011 (formerly known as defended hearings) are typically reserved for offences with a maximum sentence of two years' jail, except for cases requiring specialised knowledge or where a jury trial risks unfairness.

When a not-guilty plea is entered, the case is scheduled for a case review hearing four to six weeks later - a process intended to cut out court churn and allow defendants to plead guilty earlier.

However, data obtained under the Official Information Act suggests otherwise.

The option to select a judge-alone trial over a jury trial was once assumed to resolve cases more quickly but recent statistics obtained by NZME show more than 50 percent of cases continue to be adjourned with no end in sight.

Between October 2023 and September last year, 11,148 judge-alone trials were scheduled nationwide, but only 4175 were resolved, through guilty pleas, withdrawals, or dismissals, leaving 6973 cases still in the system.

Judge-alone trials		
Judge-alone trial that were scheduled.		
October 1, 2023 - September 30, 2024		
	Whangārei District Court	Total all District Courts
Trials scheduled	134	11,148
Cases that were resolved at or through a judge alone trial		
October 1, 2023 - September 30, 2024		
Outcome type	Whangārei District Court	Total all District Courts
Dismissed S147	5	492
Diversion completed	0	8
Guilty plea	38	2386
Heard: found guilty	8	795
Heard: found not guilty	1	172
Withdrawn	7	310
Other	0	12
Total	59	4175



- A judge-alone trial is where a single judge presides over the trial and determines whether the defendant is guilty or not guilty. Where a defendant has a jury trial the jury determines whether the defendant is guilty or not guilty.
- A judge-alone trial is considered to have gone ahead if the trial is recorded as as being complete or adjourned (from the beginning or a later point in the trial).
- District Court data includes the Youth Court.
- Total in all District Court sites covers all judge alone trials that were scheduled and went ahead.
- 'Dismissed S147' refers to being dismissed under section 147 in the Criminal Proceedings Act 2011.

Herald Network graphic

Photo: Supplied / Open Justice / NZME

In Whangārei alone, only nine of 134 elected judge-alone trials resulted in a full hearing that concluded with a guilty or not guilty verdict, leaving 75 cases being adjourned, and more being added to the queue daily.

So is the judge-alone process working?

The government is proposing to raise the threshold to elect a jury trial to a maximum sentence of three years in the hopes it will clear jury trial backlogs but Auckland criminal lawyer Samira Taghavi says the proposal is going to make matters worse.

"One of the issues we raised with the Justice Minister is increasing the jury trial threshold, it's not going to make any difference. It's probably going to make it worse because you still don't have judges to deal with judge-alone trials. It's faster to get a jury trial date," Taghavi told NZME.

"You have to wait longer to get a judge-alone trial than a jury trial.

"I asked for a five-day judge-alone trial date [in 2023] and it would have been faster to go to a jury trial but I didn't want a jury trial."

She said the trial was scheduled for April this year.

Taghavi said the Defence Lawyer Association and the Law Association were in discussions with the ministry about the backlog of judge-alone trials and how the lack of judges was a growing concern.

"We're going to do some research in trying to find out: would this problem be resolved if there were more judges?"

"One of the things we are trying to achieve is to uplift the cap under legislation on the number of judges they can appoint."

The cap is currently 183 judges nationwide.



Auckland barrister Samira Taghavi is looking into what can help speed up the judge-alone process. Photo: NZME / Dean Purcell

'There is not enough space'

Chief District Court Judge Hemi Taumaunu set a benchmark in June last year, aiming for 90% of category three judge-alone trials to be heard within nine months.

However, Sumudu Thode, principal of Thode Utting and Co. barristers and solicitors, expressed doubt that target would be met.

She said of the 59 trials that were resolved in Whangārei, only 8 percent resulted in a guilty or not guilty verdict.

"In terms of matters actually going to a judge-alone trial, if people are getting sick of waiting and pleading earlier, I guess you're meeting those timelines but actually going to a hearing and getting a decision? In terms of those statistics that's only nine files out of 59 in that timeframe."

Thode said the issue, especially in the regions, was resource availability from police prosecutors through to courtrooms.

"Whangārei has around five to six judges. If two are in jury trials, one is on the Northland circuit covering Kaikohe and Kaitāia, one is doing a list and one is doing a sentencing - and they need their reserve dates, or one could be on leave - there are not enough judges to go around.

"Also courtroom availability, too. If you have a high court trial running, you have four courts. If you have two jury trials, you've only got two courts for regis [registrar's list], CM [community magistrate] sentencing, pre-trial all of that so there is not enough space to even fit in a judge-alone trial court."

An example was the 12-week judge-alone trial held in Whangārei last year for the Enchanter tragedy, presided over by Judge Philip Rzepecky.

Thode said although many people pleaded guilty on the day - around 20 percent - there were a range of reasons cases continued to be adjourned, which were often out of the hands of the defendant.

For example, Thode Utting accepted a client onto its books in June who was already assigned for a judge-alone trial but at that court hearing, his case was adjourned to July due to no time being available.

In July, the matter was adjourned to a callover in August, once again because there was no court time.

At the callover in August another date was set down for September but when the September hearing came around, the matter was adjourned again to a callover because the prosecutor was unwell.

It was adjourned again in September to another judge-alone trial date in October and, once again, was about to be adjourned when the defendant had enough.

'It just kept dragging on'

"There was a resolution put forward that was accepted but for the most part, he had enough because he couldn't have contact with his whānau, he was on curfew, he just didn't want it going to another callover to another judge-alone trial to another callover.

"We had two child witnesses for the defendant and we had to do mode of evidence application for those children, we had them on standby, they had to be taken out of school and it just kept dragging on and this was not because of anything to do with him.

"There's no wonder we're only getting through 8 percent of cases."

Thode believed it was quicker to get to a jury trial because they were prioritised and had more certainty about going ahead.

"What most people think is a judge-alone trial will be much sooner. So obviously if you are in custody, that is a huge consideration in terms of election and they would ordinarily ask for a judge-alone trial as it would mean less time in custody. But that may not necessarily be the case anymore just because of these delays."

Director of police prosecutions Sarah McKenzie told NZME an early guilty plea was always encouraged and a new workstream - the prosecution uplift programme - was under way to help address timeliness in case progression.

McKenzie said the work focused on improving file quality at the early stages of prosecution and encouraging early engagement between prosecution and defence lawyers.

"Where these improvements, many of which have been trialled in the Auckland Metro area, are delivering good results, police are looking to progressively deploy them across the country," she said.

"These initiatives are having a positive impact on the early disclosure of prosecution documents to defence counsel and are reducing the number of unnecessary case adjournments."

Group manager for the Ministry of Justice Jacquelyn Shannon said several initiatives were in place around the country to reduce wait times for judge-alone trials under the District Court Timeliness Programme (DCTP).

"As at November 2024, 32 percent of cases took 4 months or more to enter the trial stage, 9 percent of cases took 3-4 months, and 40 percent of cases entered the trial stage within 3 months," Shannon said.

"One of the initiatives is the JAT readiness protocol, to address the barriers and delays preventing JAT matters from being heard on the day. Court registrars hold a teleconference with parties prior to a JAT to ensure matters are either ready to proceed or if JAT time is no longer required. Then on the JAT day, the judge will call through all scheduled matters earlier to ensure more matters are able to be heard on the day."

The DCTP is also establishing a practice where prosecutors will need to indicate how they will prove the case at a case review hearing.

However, the initiatives are currently not available in all courts.

* *This story first appeared in the [New Zealand Herald](#).*