



## **NSW Police Force**

# **Guidelines for using AVL for First Appearance (Police) Bail Refused Custody Matters**

**Police Prosecutions Command**

## **Guidelines for using AVL for Police Bail Refused Custody Matters.**

These guidelines detail the requirements for using NSWPF Audio-Visual Link (AVL) equipment to place police bail refused custody matters before a court for a bail determination on their first mention date.

### **Essential Summary**

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The use of AVL for first appearance police bail refused custody matters is governed by the *Evidence (Audio and Audio-Visual Links) Act 1998 (NSW)*. Section 5BA (1) provides that an accused person must appear personally unless the court otherwise directs that they appear via AVL, however subsections (2) and (3) provide exclusions - where the accused consents or the appearance occurs during a weekend or a public holiday. These guidelines relate to instances where approval has been gained from the Court for the appearance to take place via AVL, consent has been given by the defence for it to occur, or for weekend or public holiday use.

The guidelines apply to adult accused persons and children, however Section 9 of the *Children (Detention Centres) Act 1987 (NSW)* takes precedence over these guidelines as AVL custody suites can only be used for children where such use is consistent with that Act and the interagency SOPs about taking children to Detention Centres (*Standard Operating Procedures for Weekend and Public Holiday Bail Courts at Parramatta (Juveniles – 2015)*)

Where available, all first appearance police bail refused custody matters, before the court via AVL for a bail determination, should take place from a 'purpose built AVL custody suite' (AVL custody suite) at the police station.

AVL custody suites have been designed to minimise security and safety risks to accused persons, police, justice agency employees and the community. Currently, Tweed Heads and Deniliquin police stations are the only two police locations that have AVL custody suites, but additional sites will come on line as new police stations are progressively built. Funding to retrofit AVL custody suites into approximately 40 existing police stations across the State is currently being sourced.

Whilst these measures are implemented, it is recognised that at times there may be circumstances where it is necessary at a local level to utilise alternate AVL equipment for first appearance police bail refused custody matters. For the purposes of these guidelines, alternate AVL equipment includes any equipment that has not been specifically designed and approved for use in a custodial context and located in a room that is not a purpose-built custody suite, including a room located outside the confines of the custody area within a Police Station. In the interim and as a temporary measure only, until AVL custody suites become operational at the relevant police station, alternate AVL custody suites may be used as detailed in these guidelines.

Commanders must ensure compliance with these guidelines prior to using alternate AVL custody suites in police stations under their command. Where these guidelines cannot be complied with and no AVL custody suite is available, first appearance police bail refused custody matters must occur in person at a Court. Should this conflict with the direction/order of a judicial officer, the command should liaise with Police Prosecutions Command (Director of Operations – Superintendent Ian Dickson) to resolve. (Contact details: [dick2ian@police.nsw.gov.au](mailto:dick2ian@police.nsw.gov.au), EN 26778).

## Document Control Sheet

### Document Properties

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### Modification History

<b>Version #</b>	<b>Version approval date</b>	<b>Author/Position</b>	<b>Summary of changes</b>
1.0	17 January 2018	Ch Insp Frank Reitano, Manager, Police Prosecutions Command	Draft
1.1	19 January 2018	Ch Insp Frank Reitano, Manager, Police Prosecutions Command	Second draft incorporating input from OGC, BTS, PPG, Workforce Safety Command, PPC and Office of Deputy Commissioner, Specialist Support
1.2	22 January 2018	Ch Insp Frank Reitano, Manager, Police Prosecutions Command	Third draft incorporating further input from OGC, BTS, PPG, Workforce Safety Command, PPC, Office of Deputy Commissioner, Specialist Support and Ch Insp Brendan Searson, Staff Officer to Region Commander, South West Metropolitan Region (Corporate Spokesperson Custody and Corrections)
1.3	12 February 2018	Ch Insp Frank Reitano, Manager, Police Prosecutions Command	Final version incorporating change of name of “non-custody” AVL suites to “alternate” AVL custody suites throughout the guidelines.

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## 1. Purpose and/or Scope

The following guidelines are for all police stations that do not have an approved AVL custody suite and apply in local circumstances when there is a necessity (for safety and/or legal reasons) to use non-custodial (alternate) AVL suites to put first appearance police bail refused custody matters before a court for a bail determination. Commanders will ensure that police stations within their command that need to use alternate AVL custody suites comply with these guidelines.

The guidelines apply to adult accused persons and children, however Section 9 of the *Children (Detention Centres) Act 1987 (NSW)* takes precedence over these guidelines as AVL custody suites can only be used for Children where such use is consistent with that Act and with the Standard Operating Procedures for Weekend and Public Holiday Bail Courts at Parramatta (Juveniles)

([http://intranet.police.nsw.gov.au/\\_\\_data/assets/file/0003/736194/Juvenile\\_SOPs\\_Amended\\_December\\_2015\\_final1.doc](http://intranet.police.nsw.gov.au/__data/assets/file/0003/736194/Juvenile_SOPs_Amended_December_2015_final1.doc))

### 9 Persons on remand and persons subject to control to be detained in detention centres

(1) Except as otherwise provided by this Act, persons on remand and persons subject to control shall be detained in detention centres.

(2) While a regulation referred to in section 5 is in force, a person shall, so far as is reasonably practicable, be detained in a detention centre that is appropriate to the class of person to which that person belongs.

(3) Notwithstanding subsection (1), a person on remand may be detained in a police station, during the period between the person's being charged with an offence and the person's first appearing before a court in or in connection with proceedings for the offence, but only if it is impracticable for the person to be detained in a detention centre during that period.

(4) A child who is detained in a police station under subsection (3) shall, so far as is reasonably practicable, be detained separately from any adults detained there.

(5) This section does not limit the operation of sections 28A, 28B and 28BA of this Act and the [Crimes \(Sentencing Procedure\) Act 1999](#).

## 2. Procedures

### 2.1. Context

Refer to Essential Summary.

### 2.2. Details

Using alternate AVL custody suites may introduce a new set of hazards for police officers, accused persons and others. The key factor enabling temporary use of alternate AVL custody suites (pending the introduction of approved AVL custody suites) is that they must deliver an improvement to safety. If they do not, alternate AVL custody suites must not be used.

By way of example, hazards that may be introduced as part of the use of alternate AVL custody suites include:

- Loose items of furniture or equipment located within the room that could be used as a weapon or for self-harm,
- Exposed or loose cables that a prisoner could access and use for self-harm or as a weapon,
- Unsecured or accessible electrical outlets within the room, and
- Items located on walls, such as pins, posters, flyers etc that need to be removed.

### Health Risk and Safety Assessments

Prior to using an alternate AVL custody suite for such matters, commanders must ensure that two Health and Safety Risk Assessments (HSRAs) are completed (with relevant photographs of the proposed alternate AVL custody suite). HSRA (1) should be on current practices, with HSRA (2) on the proposed use of an alternate AVL custody suite.

Alternate AVL custody may only be used if it is assessed that the safety risk of physically conveying an accused person to court (how things are presently being done and HSRA (1)) is greater than the safety risk associated with utilising an alternate AVL custody suite (how it is proposed to do things and HSRA (2)).

Risks to be considered in the two HSRAs must include as a minimum:

- Risk of injury to police officers, from either the accused person or the environment,
- Risk of injury/self-harm to accused persons, from either themselves or the environment,
- Risk of injury to justice agency employees, from either the accused person or the environment,
- Risk of injury to legal practitioners representing the accused person, from either the accused person or the environment,
- Risk of injury to members of the community,
- Risk related to transporting or escorting accused persons, including with respect to weather, fatigue, typical road conditions, distance and transport vehicle,
- Risk relating to security at the court premises where the accused person will physically appear at,
- Risk to the community of police officers being diverted to perform court escort duties, and
- Risk of escape by the accused person,
- Location of any AVL custody suites in proximity to Command.

To address some of the above risks, as a minimum, the following risk controls must be put in place when using an alternate AVL custody suite:

- The alternate AVL custody suite must be located within the confines of the custody area of the police station,
- Furniture such as chairs and the AVL monitor must be bolted down,
- Telephones must be secured to the table or wall,
- Legal practitioners must conduct private conferences with accused person face to face, or by telephone in the Legal Aid suite at the Police Station - not via the non- custody AVL suite,
- An accused person must never be left alone in an alternate AVL custody suite,
- Two police officers must remain with the accused person always whilst they are in the alternate AVL custody suite, and
- Accused persons are to be handcuffed when taken in and out of the alternate AVL custody suite and while in the alternate AVL custody suite.

In preparing HSRAs, commanders can obtain expert assistance from WH&S Safety Strategy Unit, Workforce Safety Command by contacting the General Manager (WH&S Safety Strategy Unit). The command seeking to use an alternate AVL custody suite must complete and sign off on the HSRAs prior to sending to the General Manager, WH&S Safety Strategy Unit. Final approval for use of an alternate AVL custody suite must be obtained from the Region Commander or delegate.

Completed HSRA's should be stored locally and a copy forwarded to the General Manager, WH&S Safety Strategy Unit. HSRA's must be regularly reviewed by the Command when circumstances change, but as a minimum at least annually.

Technical constraints:

In addition to the minimum safety requirements outlined, commands should note technical requirements that also need to be fulfilled before alternate AVL custody suites can be used.

These include:

- a minimum 10Mb network access,
- dedicated power and data point, and
- Voice Over Internet Protocol (VOIP) connectivity from the site.

Should the minimum requirements not be met - then the alternate AVL custody suite cannot be used.

### **3. Compliance Requirements and Internal Controls**

Commanders must ensure compliance with these guidelines prior to using alternate AVL custody suites in police stations under their command and must sign off on any HSRAs (after consultation with WH&S Safety Strategy Unit as appropriate).

Final approval for use of an alternate AVL custody suite must be obtained from the Region Commander or delegate.

The use of alternate AVL custody suites is based on the risk to the participants' and the community's safety. Under no circumstance will use be based on cost benefits such as police resource savings or as a means of convenience. The use of alternate AVL custody suites is temporary, pending 'purpose built' AVL custody suites becoming available.

Prior to using AVL for first appearance custody matters, local arrangements must be established with the Local Court in the first instance. The Police Prosecutions Command is available to assist in this regard. Contact the Director of Operations – Superintendent Ian Dickson to assist. (Contact details: [dick2ian@police.nsw.gov.au](mailto:dick2ian@police.nsw.gov.au), EN 26778)