

**EASTERN CARIBBEAN SUPREME COURT
CRIMINAL PROCEDURE RULES**

**PRACTICE DIRECTION
No. 1 of 2014**

PRISON VIDEO LINK

This Practice Direction is made pursuant to Rule 1.1 of the Criminal Procedure Rules 2008.

1. PURPOSE

1.1 The purpose of this Practice Direction is to establish the procedure for the use of the prison video link (PVL) in criminal proceedings conducted in **Saint Lucia**. PVL will use technology that allows one or more persons to participate remotely in Court proceedings from a prison. This will result in time saved transporting remand prisoners to Court and better access to justice.

1.2 This Practice Direction will apply to all appearances via PVL.

1.3 This Practice Direction requires that PVL will be used for administrative appearances, where facilities are available. PVL can also be used for hearings where evidence is heard if the Judge/Magistrate deems its use appropriate for the appearance (taking into account whether the parties consent).

2. CONTEXT

2.1 In this Practice Direction the reference to the “**Court**” is the Courtroom in which the hearing is listed.

2.2 The “**Instructions Suite**” where available, is located on site at each Courthouse and may be used to facilitate communication between attorneys and defendants in custody.

2.3 The “**Private Telephone Line**” will be available in each courtroom to allow private communications between attorneys and

defendants in custody.

2.4 The “**Court PVL Coordinator**” will be a court officer designated to facilitate the use of the PVL according to this practice direction.

2.5 The “**Prison PVL Coordinator**” will be a prison officer designated to facilitate the use of the PVL according to this practice direction.

2.6 “**Judge**” means a judge of the Supreme Court and a master of the Supreme Court and includes a person appointed to act in either office.

2.7 Proceedings conducted by way of PVL will proceed as a normal Court appearance with the use of normal protocols and procedures. There should not be any adverse view or conclusion drawn against a defendant appearing by PVL.

3. GENERAL CRITERIA FOR ALLOWING USE OF PRISON-VIDEO LINKS

3.1 A Judge/Magistrate must consider the following criteria when he or she is making a determination as to whether or not to allow the use of PVL for the appearance of any participant in a proceeding:

- (a) The nature of the proceeding;
- (b) The availability of the technology that is to be used;
- (c) The potential impact of the use of the technology on the defendant’s constitutional rights associated with the hearing, and, in particular the ability of the defence to:
 - (i) comprehend the proceedings;
 - (ii) to participate effectively in the conduct of his or her defence;
 - (iii) to consult and instruct an attorney privately;
 - (iv) to access relevant evidence; and
 - (v) to examine the witnesses for the prosecution when appropriate.

4. USE OF PRISON VIDEO LINKS

4.1 A Judge/Magistrate must determine whether a defendant will appear in Court using PVL if it is available.

4.2 PVL must not be used in any criminal substantive matter unless a Judge/Magistrate determines that it is appropriate to allow its use for an appearance:

- (a) In accordance with the criteria in **paragraph 3.1**;
and
- (b) Taking into account whether the parties to the proceeding consent to its use.

4.3 A Judge/Magistrate can consider of his or her own volition that a PVL is the most appropriate way to proceed, applying paragraphs 3.1 and 4.2. This decision will require notification to be sent to the prosecution, defence attorney and the Prison PVL Coordinator, no less than 3 working days before any such PVL hearing. When a notice is sent that a hearing will be by way of PVL, the Practice Form 1 in the Schedule to this Practice Direction will be sent confirming the Judge/Magistrate's reasons for using the PVL.

4.4 The prosecution or defence can also apply for a PVL hearing in the prescribed Practice Form 2 in the Schedule. Such application must be filed with the Court PVL Coordinator and the prosecution or defence, 5 working days before any current listing for a matter. A Judge/Magistrate will then consider the application and confirm his or her decision to both the defence and prosecution within 2 working days of receiving the application. If a PVL matter is to be listed, the Prison PVL Coordinator must also be notified at the same time as the defence attorney and the prosecution. Please note that any extant Order to Produce must then be cancelled.

4.5 An application can also be made at a hearing in Court for the next hearing to be by PVL. Any application must consider paragraphs 3.1 and 4.2. The Court PVL Coordinator must be contacted before any decision, to allow the matter to be listed for a suitable time and date.

4.6 If a Judge/Magistrate decides that the next hearing should proceed by PVL, and after consultation about listing with the Court PVL Coordinator, he or she will state the following in open Court:

“You are remanded in custody and directed to appear by prison video link at (time) on (date)”

4.7 The Court PVL Coordinator will then notify the Prison PVL Coordinator of the date and time of the PVL hearing.

4.8 If the next appearance is in a different Court, the Court PVL Coordinator (Court 1) must contact the appropriate Court PVL Coordinator for that other Court (Court 2), to confirm that the listing is convenient. This should take place in accordance with paragraph 4.6 to allow the Court 2 listing to be announced in Court 1. The Court PVL Coordinator for Court 1 must then contact the Court PVL Coordinator for Court 2 to confirm the listing for the next PVL hearing.

4.9 PVL must not be used for the appearance of the defendant in a trial that determines his or her guilt or innocence unless the defendant consents to its use.

5. JUDGE/MAGISTRATE MAY VARY OR REVOKE DETERMINATION

5.1 A Judge/Magistrate may at any time vary or revoke a determination to allow the use of PVL for the appearance of a defendant, if the Judge/Magistrate considers that for any reason, the determination with respect to PVL, applying the criteria in paragraph 3.1, are no longer satisfied.

6. JUDGE/MAGISTRATE MAY MAKE A DIRECTION

6.1 A Judge/Magistrate who makes a determination under this Practice Direction in relation to the use of PVL for the appearance of a defendant in a proceeding, may make a direction in accordance with that determination.

7. EMERGENCIES

7.1 In Court:

7.1.1 In the case of an emergency at the Court, either the presiding Judge/Magistrate or the Court PVL Coordinator will advise the Prison that the PVL will be terminated.

7.1.2 When the emergency is over the Court PVL Coordinator will contact the Prison PVL Coordinator by phone and arrange the continuation of the PVL, unless the presiding Judge/Magistrate issues a contrary direction.

7.2 In Prison:

7.2.1 If immediately prior to or during a PVL hearing there is a lock down or an emergency at the prison, a corrections officer will immediately inform the presiding Judge/Magistrate. As a result the PVL will be terminated by the Court. When the lock down or emergency is over the Prison PVL Coordinator will communicate this to the Court PVL Coordinator via telephone. The PVL may either be re-established and the hearing continued, or the presiding Judge/Magistrate may give other directions.

8. TECHNICAL FAILURE

8.1 In the event of a technical failure while preparing for, or during a hearing, the court staff will, in the first instance, contact the Court PVL Coordinator.

8.2 The hearing, if it has commenced, may be temporarily adjourned by the presiding Judge/Magistrate. If it is determined that the link cannot be restored within a reasonable period of time, the court staff will, after consultation with the presiding Judge/Magistrate, inform the prison that the hearing has been adjourned or re-scheduled. The Prison PVL Coordinator will then inform the defendant of the outcome in person.

8.3 If there is a technical issue prior to the appearance in Court,

the Private Telephone Line or the Instructions Suite, the Court PVL Coordinator will contact the Prison PVL Coordinator via telephone and any other parties to explain the situation. If the problem is unable to be fixed in time for the hearing, other arrangements are to be made for an alternative time and date (if necessary) and the defendant, the defendant's attorney and the prosecution, will be advised.

8.4 In all instances the technical register is to be completed (Practice Form 3) and the Court PVL Coordinator must notify the Supreme Court Headquarters IT Manager and the onsite IT Manager via email, where they are available, informing that there is a problem, the details of the problem, and when it is likely to be resolved.

9. APPEARANCE FROM PRISON

9.1 The Court PVL Coordinator will liaise with the defendant's attorney and the Prison PVL Coordinator regarding the appearances scheduled for the day to ensure the smooth running of the Court. This will also include liaison regarding the order of the appearances.

10. NOTIFICATION

10.1 Once it has been determined that an appearance will be made via PVL, the Court PVL Coordinator will e-mail both the defence and prosecution to confirm the date and time of the PVL hearing. This email will be followed by a fax from the Court PVL Coordinator to the prosecution and defence confirming the date and time of the PVL hearing.

10.2 For ease of reference, the email from the Court PVL Coordinator should contain a direct URL link to this Practice Direction on the Court's website.

10.3 Where the defendant is unrepresented, the Prison PVL Coordinator will ensure the defendant is informed of the date and time of his appearance via PVL. He or she will also be offered a copy of this Practice Direction.

11. COURT LISTS

11.1 Court lists will be displayed as normal at each Court. For information on any future PVL appearances the Court PVL Coordinator should be contacted.

12. PRIOR TO PVL APPEARANCE: FILING SUBMISSIONS

12.1 If a case has been set down for a hearing via PVL any submissions must be filed with the Court 24 hours prior to the hearing. If this is not done it may result in the case being adjourned.

13. DISPLAY SCREENS

13.1 At Court the presiding Judge/Magistrate will have a view of the room used for the PVL to confirm whether the defendant is alone and is not being coerced.

13.2 At the prison the monitor will be set up so the defendant can view whoever is addressing the Court at any given time.

14. ATTIRE

14.1 Court officials, Judge/Magistrates and attorneys must wear normal Court attire.

14.2 The defendant will have the option to appear in his or her own clothing or in prison issued clothing.

15. TESTING AND SET UP

15.1 Testing of both the equipment and the link must take place at the Court and the prison prior to the scheduled time for the PVL hearing.

15.2 Testing of the Private Telephone Line and Instructions Suite will also occur on the days it is being used. This testing will be

completed by the Court and Prison PVL coordinators in the morning before Court is due to start (approximately 30 minutes prior) and then again 5 minutes before Court starts when the link is established with the prison.

15.3 The link must be established before the presiding Judge/Magistrate enters the Court.

15.4 Normal Court etiquette and procedures will apply.

16. COMMENCEMENT OF HEARING

16.1 Upon entering the courtroom the Judge/Magistrate should then:

- (a) Introduce himself or herself to the defendant;
- (b) Satisfy himself or herself that the defendant appearing by PVL is the person directed to appear;
- (c) Inquire from the defendant whether there is anyone else present other than the necessary prison officers;
- (d) Satisfy himself or herself that the defendant can hear and see the:
 - o Judge/Magistrate; and
 - o Prosecutor; and
 - o Defence Attorney
- (e) State the purpose of the hearing (for example bail application);
- (f) State that the defendant if necessary may speak with his or her attorney using the Private Telephone Line.

17. CONCLUSION OF HEARING

17.1 At the conclusion of the hearing, the presiding Judge/Magistrate should ensure that the defendant has understood what has occurred and will then exit the courtroom while the transmission remains active.

18. COURT OUTCOME

18.1 Where possible, at the end of the hearing, the Court PVL Coordinator will either scan and e-mail or fax the Prison PVL

Coordinator correspondence indicating the result of the hearing.

18.2 The subject line of the correspondence must include: the defendant's name; remand status (using the relevant abbreviation); and the next hearing date.

EXAMPLE:

Joe Bloggs - Remanded In Custody - 21st August 2013

This email is to notify prison PVL staff for internal management purposes only. The prisoner's status should not be acted on until the official documentation has been received from the Court.

19. DEFENDANT'S FAILURE TO COMPLY

19.1 If the defendant fails to comply with any direction or acts inappropriately, the Judge/Magistrate may direct the Court PVL Coordinator to disconnect the link.

19.2 The Court PVL Coordinator will then contact the Prison PVL Coordinator directly in the first instance or update and advise them of the outcome.

20. RECORDING

20.1 The audio component of the hearings in the Court will be recorded for the purpose of standard evidential transcription. Video recording of the hearings will not be mandatory.

20.2 Any private communications between the defendant and his or her attorney via the Private Telephone Line will not be recorded or form part of the evidential transcript.

21. OATHS AND AFFIRMATIONS

21.1 If required, an oath or affirmation will be administered from the Court by the court clerk.

22. INTERPRETERS

22.1 If a PVL participant requires an interpreter, the interpreter

will be located in the courtroom. Depending on the availability of the camera the interpreter will either stand next to the defence attorney or in the witness box. The court clerk will administer the oath or affirmation to the interpreter, as per normal Court protocol.

23. CORRESPONDENCE

23.1 If a defendant wants to give a letter or correspondence to the Judge/Magistrate, this should be provided to the prison staff either on the day before or on the morning of his or her court appearance.

23.2 The Prison PVL Coordinator will then fax or scan and email the letter or correspondence to the Court PVL Coordinator. This should be done by no later than 8:00am on the morning of the hearing.

23.3 The Court PVL Coordinator will then pass the letter or correspondence on to the defendant's attorney who, if appropriate, will advise the prosecutor and give to the Judge/Magistrate.

24. PUBLIC ACCESS

24.1 Unless the presiding Judge/Magistrate directs otherwise, members of the public may be present in the courtroom during the PVL appearance. Members of the public, family members or partners etc are **not** permitted in the Instructions Suite or to communicate with the defendant via the Private Telephone Line.

25. INSTRUCTIONS SUITE

25.1 Communication with Attorney

25.1.1 A means of communication between the defence attorney and defendant at the prison will be made possible with the PVL Instructions Suite where available. If not available, communication will be via the Private Telephone Line. The Instructions Suite, or if unavailable the Private Telephone Line, will be booked in 15 minute slots through the Court PVL Coordinator.

25.1.2 The key requirement for these communications is privacy

with both ends of the conversation being secure and private. As noted above these communications will not be recorded.

25.1.3 On the occasions that paper work is required to be seen by the defendant in the prison, the defence attorney must give this to the Court PVL Coordinator as soon as possible. This will be scanned and emailed to the Prison PVL Coordinator and handed to the defendant.

25.1.4 If any last minute instructions are required the Private Telephone Line may be used. The Private Telephone Line is only to be used for unforeseen or incidental requests from the defendant during the hearing and only after permission is given by the Judge/Magistrate. Once the handset to the Private Telephone Line is lifted, the audio and visual feed to the AVL should be disabled to allow privileged communications between the defendant and his or her attorney. These communications will not be recorded or form part of any evidential transcription.

25.2 Other Authorized Parties

25.2.1 To assist with the progression of a case there may be a requirement for other authorized parties to use the Instruction Suite, or if unavailable the Private Telephone Line, to communicate with a defendant.

25.2.2 Authorized parties would include Police officers, Probation Officers and other court representatives for the purpose of completing reports, assessments etc. Priority will be given to cases with dates of hearing within 24 hours of booking. All such bookings must be made with the Court PVL Coordinator.

25.3 Restrictions

25.3.1 At no time is the PVL Instructions Suite or Private Telephone Line to be used for personal links. The only persons allowed in the Instructions Suite or to use the Private Telephone Line are defence attorneys with bookings through the Court PVL Coordinator and other authorized persons. No family members or associates are permitted.

25.3.2 Due to time restraints, all parties who are authorized to use the PVL are expected to keep to the timeslot allocated to them. There will be no leeway to extend links.

25.4 Obligations of Attorneys

25.4.1 Should an attorney wish to cancel a pre-arranged timeslot in the Instructions Suite or Private Telephone Line, it is the duty of the attorney to notify the Court PVL Coordinator. If possible 24 hours notice of this cancellation is preferred. An attorney should also notify the Court PVL Coordinator if their conference is concluded before the allotted time.

25.4.2 If there is a technical issue with the Instructions Suite or Private Telephone Line, the attorney is required to complete the PVL Technical Error Register (Practice Form 3) and advise the Court PVL Coordinator.

25.5 Training

25.5.1 The Court PVL Coordinator will provide training for attorneys who wish to use the Instructions Suite or Private Telephone Line. The training will cover the technological aspects of the process as well as this Practice Direction. The Court PVL Coordinator is also able to run refresher training, if required.

26 PRISON CONTACT

26.1 In relation to the PVL all liaising with the prison will be done through the Court and Prison PVL Coordinators. This will include notification of problems or issues and movement of prisoners.

26.2 Bookings

26.2.1 The Court PVL Coordinator will ensure that the prison receives a draft cause list 48 hours prior to the hearing and a confirmed list 12 hours prior.

26.3 Authority to hold

26.3.1 The defendant will be held at the prison under the usual authority. Once the appearance via PVL has been completed the Court PVL Coordinator will either forward a new warrant, order to produce, or a bail notice, depending on the outcome of the appearance.

26.3.2 It is the expectation that all paper work will be sent by fax or email to the prison within two hours of each prisoner's appearance.

26.3.3 When a defendant is granted bail the Prison PVL Coordinator must:

- (a) Give the bail notice to the defendant;
- (b) Inquire from the defendant whether he or she understands the conditions of bail; and
- (c) Ensure that the defendant signs the bail notice.

26.3.4 The bail process is not complete until the defendant signs the bail notice containing the bail conditions. Should the defendant refuse to sign the notice, or for some other reason the process is not completed the Court PVL Coordinator should be notified and a message sent to the presiding Judge/Magistrate who will determine the appropriate course of action.

26.3.5 Once the bail notice has been signed a copy is to be scanned and emailed or faxed to the Court PVL Coordinator and the original posted to the originating Court within 24 hours. When received, the Court PVL Coordinator will then place the original document on the Court file or send pass it on to the appropriate stakeholder e.g. DPP, police.

27. LISTING

27.1 The following can be listed for PVL when a defendant is remanded in custody:

- (a) Bail Applications;
- (b) Further remands; and
- (c) Any other hearing as directed by a

Judge/Magistrate

27.2 PVL hearings will be listed for fixed appearances by the Court PVL Coordinator. Defence attorneys are required to be present 15 minutes earlier to speak to the defendant in the Instructions Suite or on the Private Telephone Line.

27.3 The Prison PVL Coordinator will ensure that the defendant is produced and ready to speak to his or her attorney 15 minutes before they are due to appear in Court on the PVL.

28. PRACTICE FORMS

28.1 The Practice Forms are contained in the Schedule to this Practice Direction.

29. EFFECTIVE DATE

29.1 This Practice Direction shall come into effect on the 1st day of March 2014.

Made this 23rd day of January 2014



**Dame Janice M. Pereira
Chief Justice**

**SCHEDULE
PRACTICE FORMS**

Prison Video Link

Practice Direction No. 1 of 2014

Form 1: Order for a Prison Video Link Hearing [sub-paragraph 4.3]

IN THE

[NAME OF COURT]

[name]

Applicant

v

[name]

Defendant

Whereas I am satisfied by an application by (*name of prosecutor or defendant*), or on the Court's own motion, that considering the nature of the proceeding; the availability of the prison video link; and having regard to all the circumstances, the hearing by way of prison video link would be consistent with the defendant receiving a fair hearing;

It is hereby ordered that the hearing listed for [time] on [date]

is by way of prison video link

Dated this day of , 20

[Signed]

Judge/Magistrate.

Prison Video Link

Practice Direction No. 1 of 2014

Form 2: Application for a Prison Video Link Hearing [Sub-paragraph 4.4]

Application for a Prison Video Link Hearing

IN THE

[NAME OF COURT]

[name]

Applicant

v

[name]

Defendant

Application is made that a hearing be by prison video link.

The next hearing date is:

The purpose of the next hearing is:

This application is made 5 working days before that hearing.

We confirm the Prosecution/Defence have no objection to this application
[delete as appropriate]

The use of the Prison Video Link, having regard to all the circumstances,
would be consistent with the defendant receiving a fair hearing

Dated this day of , 20

[Signed by Applicant]

Prosecutor/

defendant's [attorney-at-law]

Prison Video Link

Practice Direction No. 1 of 2014

Form 3: Prison Video Link Technical Error Register [Sub-paragraphs 8.4 and 25.4.2]

Date:

Time:

Court:

What happened?

(Circle one)

No Sound in Instructions Suite

No Sound on Private Telephone Line

No Sound from Prison

No Picture in Instructions Suite

No Picture from Prison

Defendant did not attend

Attorney did not attend

Emergency at Court

Emergency at Prison

Unable to link in/out

Other (please describe)

Completed By: _____

NOTE: *Once completed please email/provide copy to Court PVL Coordinator.*