Justice Health and
Forensic Mental Health Network

Justice Health NSW Policy

Unfit to Attend Court – Health Related Reasons

Issue Date: 02 October 2025

Together for Healthier Tomorrows

Unfit to Attend Court – Health Related Reasons

Policy Number 1.423

Policy Function Continuum of Care

Issue Date 02 October 2025

Next Review Date 02 October 2030

Risk Rating Low

Summary The Federal and NSW Court systems require that persons charged with offences must attend court unless the court has given special approval for non-attendance. Justice Health and Forensic Mental Health Network (Justice Health NSW) may assess a patient as unfit to attend court for health reasons and is responsible for notifying the court.

This policy articulates the process that must be followed by health staff in advising the court whether a patient is either fit or unfit to attend their court appearance. This also includes appropriate Additional Precautions being implemented, as specified by the Clinical Nurse Consultant Infection Prevention and Communicable Diseases.

Responsible Officer General Manager, Primary Care

Applies to

☐ Administration Centres
☒ Community Sites and programs
☒ Health Centres - Adult Correctional Centres or Police Cells
☒ Health Centres - Youth Justice Centres
☒ Long Bay Hospital
☒ Forensic Hospital

CM Reference POLJH/1423

Change summary

- Changed ‘the Network’ to Justice Health NSW throughout policy
- Medical Certificate Updated
- Updated Roles and Responsibilities
- Policies and Procedures Updated (incl. hyperlinks)

Authorised by Chair, Policy Steering Committee

Revision History

#	Issue Date	Number and Name	Change Summary
6	October 2025	1.423 Unfit to Attend Court – Health Related Reasons	• Changed ‘the Network’ to Justice Health NSW throughout policy • Medical Certificate Updated • Updated Roles and Responsibilities

			• Policies and Procedures Updated (incl. hyperlinks)
5	February 2023	1.423 Unfit to Attend Court – Health Related Reasons	• Changed 'the Network' to Justice Health NSW throughout policy • Added Nurse Practitioner role and responsibility
4	December 2019	1.423 Unfit to Attend Court – Health Related Reasons	• Medical Certificate updated
3	April 2016	1.423 Unfit to Attend Court – Health Related Reasons	• Policy content section has been included • Medical Certificate updated
2	December 2012	1.423 Unfit to Attend Court – Health Related Reasons	• Policy content section has been included
1	May 2009	1.423 Unfit to Attend Court – Health Related Reasons	• Policy revised February 2006

PRINT WARNING

Printed copies of this document, or parts thereof, must not be relied on as a current reference document.

Always refer to the electronic copy for the latest version.

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1. Preface

The Federal and NSW Court system requires that persons charged with offences must attend Court unless the Court has given special approval for non-attendance. Justice Health and Forensic Mental Health Network (Justice Health NSW) may assess a patient as unfit to attend court for health reasons.

Justice Health NSW must advise the Governor or Manager of Security (MOS) or Centre Manager (CM) immediately if a patient is unable to attend their court appearance who will subsequently notify the relevant court personnel. The MOS/CM must be informed if the patient has any special requirements as this may have an impact on transport arrangements and will need to be communicated to the Court.

This policy articulates the process that must be followed by health staff in advising the Court about a patient's medical condition that makes them fit or unfit to attend Court.

2. Policy Content

Justice Health NSW staff will exercise clinical judgement to appropriately defer patients from attending court when they are unwell. This includes signs and symptoms of a communicable disease, a suspected illness or confirmed diagnosis. To certify non-attendance at Court on medical grounds, there must be substantial reason(s) and a medical certificate must be completed advising the Court that the patient is unfit.

2.1 Mandatory Requirements

The patient must have a clinical indication not to attend Court. The procedure content below outlines which staff members may complete a *Medical Certificate Non-Attendance at Court or Additional Precautions Required* in Appendix 1.

2.2 Implementation – Roles & Responsibilities

2.2.1 Chief Executive

- Must provide managers with the resources to support compliance with this policy and its associated procedures.

2.2.2 General Manager Forensic Mental Health and General Manager Primary Care

- Must review all reported incidents of non-compliance with this policy in accordance with NSW Ministry of Health PD2020_047 *Incident Management*.
- Responsible for ensuring Ministry of health reporting Key Performance Indicators (KPI) are met and reported on as required.

2.2.3 Clinical Nurse Consultant – Infection Prevention and Communicable Disease Control (Population and Preventive Health)

- Responsible for providing expert advice and active support to all Justice Health NSW staff for the implementation of this policy.

2.2.4 Director of Nursing – Clinical Support

- Responsible for providing advice and active support to all Justice Health NSW staff for the implementation of this policy.

2.2.5 Nursing Unit Manager (NUM) of Nurse in Charge (NIC)

- Must ensure compliance with this policy and its associated procedures.
- Responsible for providing a Medical Certificate for Non-Attendance at Court where a Medical Practitioner/Nurse practitioner who is familiar with the patient or under the Remote Offsite Afterhours Medical Services (ROAMS) Officer's direction and record on the certificate the advice given.
- Must consult with the CNC Infection Prevention and Communicable Diseases Control regarding the management of patients with suspected or confirmed communicable diseases.
- Where an adolescent patient is unfit for court, they must consult with the Staff Specialist, Medical Officer, General Practitioner or ROAMS Officer.

2.2.6 Medical Practitioner/Nurse Practitioner

- Responsible for providing a medical certificate for non-attendance at Court for Primary health conditions. For specific drug and alcohol related issues advice should be sought from the Addiction Medicine Specialist/Drug & Alcohol Nurse Practitioner.

2.2.7 Psychiatrist, Psychiatry Registrar and/or Nurse Practitioner

- Responsible for providing a medical certificate for non-attendance at Court if the condition is mental health related.

3. Definitions

Must

Indicates a mandatory action to be complied with.

Should

Indicates a recommended action to be complied with unless there are sound reasons for taking a different course of action.

4. Procedure Content

Where a patient is deemed to be unfit to attend Court due to health concerns, a medical certificate must be completed by the relevant staff member as per policy 1.262 *Medical and Nursing Certificate (Adults)*.

Staff need to ensure the patient gives consent for the Network to advise the Court that they are unfit to attend where they have capacity to consent. Staff should refer to NSW Ministry of Health IB2020_010 *Consent to Medical and Healthcare Manual*.

The reason for the patient being unfit to attend court must be made in the patient's health record including a copy of the medical certificate. The likely duration of being unfit for court must be stated so that an alternative time and court appearance date can be arranged.

4.1 Issue of Certificate

A Medical Certificate Non-Attendance at Court or Additional Precautions Required Appendix 1 may be completed for a number of reasons including:

- Acute mental health condition where the patient is visibly distressed or at risk of becoming violent. An exception must be made where the attendance is likely to result in a diversion to a local public hospital. A Psychiatrist must be consulted in all cases;

- Medical illness where the patient is acutely unwell to attend Court;
- A communicable disease, as agreed with the CNC Infection Prevention and Communicable Diseases Control;
- In cases where the patient has a communicable disease but would be fit for Court if appropriate additional precautions, as specified by the CNC Infection Prevention and Communicable Diseases Control, are implemented;
- If the patient has an urgent medical appointment;
- If the patient is currently admitted to a local public hospital.

Each case must be considered on the patient's clinical presentation. Relevant factors include:

- The degree of unacceptable health risk to the patient or others;
- The distance of the journey to Court;
- The effect on the patient of transport to Court;
- The likely time away from the medical or psychiatric care.

To certify attendance at Court but with the provision that specific appropriate Additional Precautions are implemented, *the Medical Certificate Non-Attendance at Court or Additional Precautions Required* in Appendix 1 must be completed advising the Court.

4.2 Procedure for Advising the Court

It is essential that the MOS/CM or delegate is advised immediately upon a patient being found unfit to attend court. This will ensure that the appropriate court personnel are advised and, an alternative court date and transport are arranged. For patients in the Forensic Hospital procedure 6.156 *SCALE, Internal Ground Access and Outside Leave* must be followed.

The patient may not be fit to attend Court in person but may be fit to attend via Audio-Visual Link (AVL), this should be noted on the Medical Certificate. A copy of the certificate must be emailed to the Court Registrar by CSNSW who will in turn inform the presiding Magistrate. The NUM or NIC must ensure that a follow up telephone call to the Court occurs to confirm the certificate has been received.

The medical certificate should contain sufficient personal identification and medical information necessary to justify the non-attendance whilst considering patient confidentiality.

To certify attendance at Court but with the provision that specific additional precautions are implemented, the medical certificate must be completed advising the Court of the specific additional precautions to be used. The diagnosis or communicable disease must not be written on the certificate, however 'respiratory-type illness' or a similar phrase should be used.

If CNC Infection Prevention and Communicable Diseases advises of "Fit For Court if appropriate Additional Precautions are implemented," then the type of Additional Precautions (i.e. airborne, droplet or contact) and the type of personal protective equipment (PPE) to be worn by staff and/or patient must also be documented on the certificate. In these cases, and if the patient cannot attend Court via AVL, the Network must provide sufficient and appropriate PPE including masks, gloves, gowns and eye wear to CSNSW and the Court staff.

4.3 Other Considerations

It is important to consider that a delay in attendance at Court may potentially increase the time a patient is incarcerated/detained.

It is also important to note that diversion from Court to a community based psychiatric facility can occur at any time up until a person is sentenced. If a medical practitioner makes the clinical

decision not to send the person to court then the person may miss the opportunity to be diverted from the judicial system into the community.

There are times when a patient with physical or mental illness may be well enough to attend Court. In the case that the patient is released directly from Court, it will be necessary to ensure that follow up arrangements are made for them with the appropriate community health service provider(s).

5. Related Documents

Legislations	
Justice Health NSW Policies, Guidelines and Procedures	9.041 *Infection Prevention and Control*
Justice Health NSW Forms	
NSW Health Policy Directives and Guidelines	PD2020_047 *Incident Management* IB2020_010 *Consent to Medical and Healthcare Manual*
Other documents and resources	

Appendix 1

Medical Certificate Non-Attendance at Court or Additional Precautions Required

I have examined: _____ MIN/CIM: _____ who is currently at _____ facility.

I certify that his/her medical condition is such that he/she is unable to attend court or requires the special precautions listed below on _____ at _____

However, the patient is suitable to attend court if via Video Link today? ☐ Yes ☐ No

I am of this opinion because

Describe in lay terms (without disclosing the diagnosis) the clinical reasons why attendance is immediately contraindicated. Specify if the patient is in hospital.

_____

_____

Specify below which Additional Precautions and the personal protective equipment (PPE) that are required. Justice Health NSW staff to contact CNC Infection Prevention & Communicable Diseases to assist in completing this section.

_____

_____

_____

Further medical details or reports ☐ are attached ☐ are not attached

I have discussed this certificate with the patient and advise that he/she:

☐ agrees with the necessity of this certificate;

☐ has expressed disagreement with the issue of this certificate on the following grounds:

_____

_____

He/she should be fit to attend court after _____

Signed: _____ Name: _____

Position: _____ Date: _____ *For further information, please contact the signatory or the local NUM.*

Telephone: _____ Fax: _____