

**Standard 10-4.2. Investigation prior to first appearance: development of background information to support release or detention determination**

(a) In all cases in which the defendant is in custody and charged with a criminal offense, an investigation to provide information relating to pretrial release should be conducted by pretrial services or the judicial officer prior to or contemporaneous with a defendant's first appearance.

(b) Pretrial services should advise the defendant that:

(i) the pretrial services interview is voluntary;

(ii) the pretrial services interview is intended solely to assist in determining an appropriate pretrial release option for the defendant;

(iii) any responsive information provided by the defendant during the pretrial services interview will not be used in the current or a substantially-related case either to adjudicate guilt or to arrive at a sentencing decision; but

(iv) the voluntary information provided by the defendant during the pretrial services interview may be used in prosecution for perjury or for purposes of impeachment.

(c) Release may not be denied solely because the defendant has refused the pretrial services interview.

(d) The pretrial services interview should include advising the defendant that penalties may be imposed for providing false information.

(e) The pretrial services interview of the defendant should carefully exclude questions relating to the events or the details of the current charge.

(f) The pretrial services investigation should include factors related to assessing the defendant's risk of flight or of threat to the safety of the community or any person, or to the integrity of the judicial process. Information relating to these factors and the defendant's suitability for release under conditions should be gathered systematically and considered by the judicial officer in making the pretrial release decision at first appearance and at subsequent stages when pretrial release is considered.

(g) The pretrial services investigation should focus on assembling reliable and objective information relevant to determining pretrial release and should be organized according to an explicit, objective and consistent policy for evaluating risk and identifying appropriate release options. The information gathered in the pre-first appearance investigation should be

demonstrably related to the purposes of the pretrial release decision and should include factors shown to be related to risk of flight or of threat to the safety of any person or the community and to selection of appropriate release conditions, and may include such factors as:

(i) the nature and circumstances of the charge when relevant to determining release conditions, consistent with subsection (e) above;

(ii) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

- (iii) whether at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense;
- (iv) the availability of persons who agree to assist the defendant in attending court at the proper time and other information relevant to successful supervision in the community;
- (v) any facts justifying a concern that a defendant will fail to attend court or pose a threat to the safety of any person or the community; and
- (vi) factors that may make the defendant eligible and an appropriate subject for conditional release and supervision options, including participation in medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(h) The presentation of the pretrial services information to the judicial officer should link assessments of risk of flight and of public safety threat during pretrial release to appropriate release options designed to respond to the specific risk and supervision needs identified. The identification of release options by pretrial services for the consideration of the judicial officer should be based on detailed agency guidelines developed in consultation with the judiciary to assist in pretrial release decisions. Suggested release options should be supported by objective, consistently applied criteria contained in the guidelines. The results of the pretrial services investigation and recommendation of release options should be promptly transmitted to relevant first-appearance participants before the hearing, including information relevant to alternative release options, conditional release treatment and supervision programs, or eligibility for pretrial detention, so that appropriate actions may be taken in a timely fashion.