

Standard 10-5.10. Procedures governing pretrial detention hearings: judicial orders for detention and appellate review

- (a) At any pretrial detention hearing, defendants should have the right to:
- (i) be present and be represented by counsel and, if financially unable to obtain counsel, to have counsel appointed;
 - (ii) testify and present witnesses on his or her own behalf;
 - (iii) confront and cross-examine prosecution witnesses; and,
 - (iv) present information by proffer or otherwise.
- (b) The defendant may be detained pending completion of the pretrial detention hearing.
- (c) The duty of the prosecution to release to the defense exculpatory evidence reasonably within its custody or control should apply at the pretrial detention hearing.
- (d) At any pretrial detention hearing, the rules governing admissibility of evidence in criminal trials should not apply. The court should receive all relevant evidence. All evidence should be recorded. The testimony of a defendant should not be admissible in any other criminal proceedings against the defendant in the case in chief, other than a prosecution for perjury based upon that testimony or for the purpose of impeachment in any subsequent proceedings.
- (e) In pretrial detention proceedings under Standard 10-5.8 or 10-5.9, where there is no indictment, the prosecutor should establish probable cause to believe that the defendant committed the predicate offense.
- (f) In pretrial detention proceedings, the prosecutor should bear the burden of establishing by clear and convincing evidence that no condition or combination of conditions of release will reasonably ensure the defendant's appearance in court and protect the safety of the community or any person.
- (g) A judicial order for pretrial detention should be subject to the following limitations and requirements.
- (i) Unless the defendant consents, no order for pretrial detention should be entered by the court except on the conclusion of a full pretrial detention hearing as provided for within these Standards.
 - (ii) If, on conclusion of a pretrial detention hearing, the court determines by clear and convincing evidence that no condition or combination of conditions will reasonably ensure the appearance of the person as required, and the safety of any other person and the community pursuant to the criteria established within these Standards, the judicial officer should state the reasons for pretrial detention on the record at the conclusion of the hearing or in written findings of fact within [three days]. The order should be based solely upon evidence provided for the pretrial detention hearing. The court's statement on the record or in written findings of fact should include the reasons for concluding that the safety of the community or of any person, the integrity of the judicial process, and the presence of the defendant cannot be reasonably ensured by setting any conditions of release or by accelerating the date of trial.
 - (iii) The court's order for pretrial detention should include the date by which the detention must be considered de novo, in most cases not exceeding [90 days]. A defendant may not be detained after that date without a pretrial

detention hearing to consider extending pretrial detention an additional [90 days] following procedures under Standards 10-5.8, 10-5.9 and this Standard.

If a pretrial detention hearing to consider extending detention of the defendant

is not held on or before that date, the defendant who is held beyond the time of the detention order should be released immediately under reasonable

conditions that best minimize the risk of flight and danger to the community.

(iv) Nothing in these Standards should be construed as modifying or limiting the presumption of innocence.

(h) A pretrial detention order should be immediately appealable by either the prosecution or the defense and should receive expedited appellate review. If the detention decision is made by a judicial officer other than a trial court judge, the appeals should be de novo. Appeals from decisions of trial court judges to appellate judges should be reviewed under an abuse of discretion standard.

