

Meaningful First Appearance Hearings

Key Elements

- **Timeliness**
- ***Meaningful* Representation**
- **Advisement of Rights**
- **Presumption of Release**
- **Least-Restrictive Conditions**
- **Individualization of Conditions**
- **State Bears the Burden**
- **Transparency**

Timeliness

- Due process requires: If someone is detained after arrest, they are provided with the opportunity to secure their freedom as soon as possible.
- Arrest → first appearance: Someone is being held without a finding of probable cause, and without the state carrying its burden to demonstrate the necessity of detention.
- The Supreme Court has held that probable cause hearings must be held within 48 hours of arrest.
 - ✓ This sets a standard for first appearance hearings as well.

Meaningful Representation

- Decisions at first appearance can infringe on—or deprive people of—physical freedom, so assistance from counsel is especially critical.
- This means that it is particularly important for counsel to know their clients—and their cases—before representing them in court.

Advisement of Rights

- Due process requires meaningful information about legal rights to be provided at *all* stages.
- This means providing advice of rights to each person individually—not a colloquy to many simultaneously.
 - ✓ Purpose and function of hearing: to review individual circumstances and determine what conditions to impose
 - ✓ *De novo* determination
 - ✓ Right to be heard either directly or through counsel
 - ✓ State bears burden of demonstrating that any condition is necessary—and any such must be the least restrictive necessary to assure court appearance and public safety

Presumption of Release

- For the vast majority of people who are legally entitled to pretrial release, how should a judicial officer set conditions?

Remember: Most people will succeed on pretrial release without any conditions other than a promise to return to court and stay out of legal trouble.

Least Restrictive Conditions

- Significant majority of people should be released before trial. And people facing charges are presumed innocent.
- So the presumption in favor of release on recognizance is written into many state court rules.
 - ✓ Any restrictive condition of release limits someone's freedom—something the state can rarely do.
 - ✓ If a court determines that conditions are necessary, it cannot jump immediately to a condition that could result in someone's detention (like money).

Burden Is Higher for Conditions That Could Result in Detention

- Appellate courts will no longer defer to lower courts' discretion in setting bond if it results in detention.
- Many courts are treating unaffordable bail as akin to a denial of bail altogether.
- This means state must clear a higher evidentiary standard before an unaffordable financial condition is imposed: ***clear and convincing*** evidence that the unaffordable condition is absolutely necessary to ensure court appearance or public safety.
- ✓ No less restrictive condition or combination of conditions suffice.

Individualization

- Financial conditions can only be imposed after determining what someone can afford.
- Courts: Bond schedules cannot be a default at first appearance.
- Must identify specific risk that the individual poses and be related to mitigating that risk.

State Bears the Burden

- Presumption of ROR—burden is on state to overcome that.
- Clear implication: prosecution makes argument first.
- Burden cannot be on defense to justify client's freedom; must be on prosecution to justify conditions or detention.

Transparency

- Transparency is key, given the stakes of these hearings.
- Decisions—and the reasons for them—should be on the record so that anyone needing to appeal has the ability to do so.