

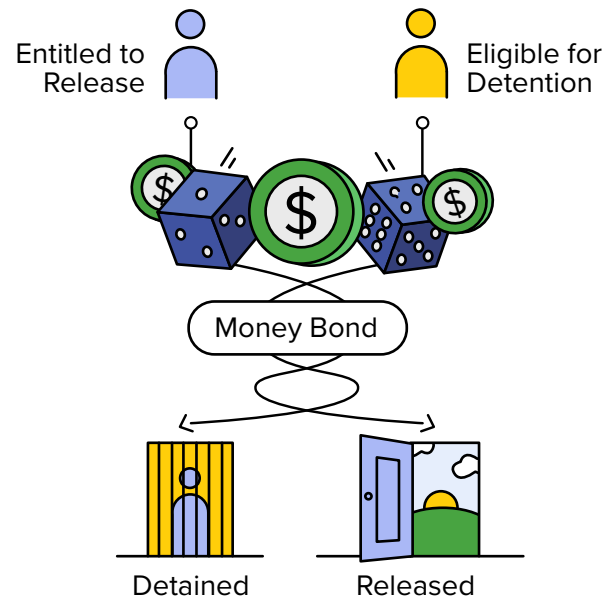
# What Is a Pretrial Detention Hearing?

In most jurisdictions right now, whether an arrested person is released or detained before trial is determined at a **first appearance hearing**. However, these decisions are rarely made explicitly or transparently. Instead, release is ordered contingent upon a person's ability to pay a money bond. If a person can post the bond, they are released, even if they are likely to flee or pose a threat to community safety; if not, they are detained, even if they are unlikely to flee or engage in future criminal behavior. We are rolling the dice with community safety and failing to uphold the basic constitutional rights of people who have been arrested and are presumed innocent under the law.

There is a better way to make these decisions: holding a **separate detention hearing** within a few days of the first appearance.

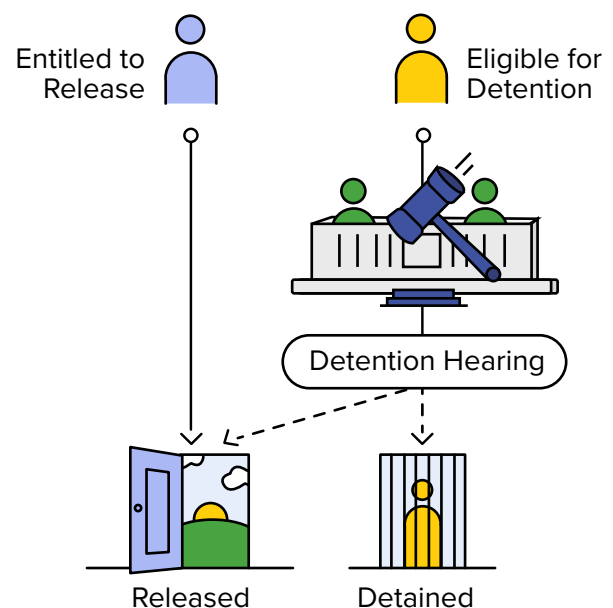
Detention hearings should be held only for those people eligible to be detained under state law, and only when a prosecutor has requested—and the court has ordered—such a hearing. Everyone else should be released at first appearance. At a detention hearing, a judge affirmatively decides if a person is released or detained until their case is adjudicated. Rather than gambling on a person's ability to pay money bond, intentional decisions regarding pretrial release and detention advance community safety and well-being and protect the constitutional rights of people accused of crimes.

## Current System



✗ Puts community safety and well-being at risk. Is unfair and not transparent.

## Detention Hearing System



✓ Enhances community safety and well-being. Is fair and transparent.

# The Pretrial Detention Hearing

## When does a detention hearing occur?

A detention hearing is held only if state law deems the person eligible for detention, *and* the prosecution requests such a hearing, *and* the judge determines that a detention hearing is warranted. It should occur within several days of the first appearance hearing.

## What happens at a detention hearing?

The court hears evidence from the prosecution, the person who has been accused, and their defense counsel arguing for detention or release. A judge explicitly decides whether to release or detain. This decision is immediately appealable.

## Why do we need a separate hearing?

The U.S. Constitution establishes that the State shall not “deprive any person of life, liberty, or property, without due process of law.” Yet pretrial liberty is regularly denied through hurried and cursory decisions made at first appearance, usually through the use of money bond. A separate detention hearing guarantees that people are deprived of their liberty only after a meaningful, fair process, and only when it is absolutely necessary to protect the community or prevent flight.

Pretrial detention hearings are incorporated into court procedures in Arizona, New Jersey, New Mexico, the District of Columbia, and Illinois, but are not routine elsewhere. These jurisdictions serve as models for other states.

**An adversarial detention hearing, following meaningful first appearance hearings, enables courts to meet their dual responsibility of protecting the community while ensuring pretrial “liberty is the norm” and detention prior to trial the “carefully limited exception.”**

*United States v. Salerno*, 481 U. S. 39 (1987)

## Features of an Effective Detention Hearing:

### Timeliness

The hearing occurs within the time frame specified by state law, typically within a week.

### Representation

The person is represented by defense counsel to advocate for and protect their rights to liberty and due process.

### Advisement

The person is advised of their rights\* and informed of the charges they are facing.

### Presumption of Release

Detention is ordered only when:

- the person is eligible for detention under state law, *and*
- the prosecutor has met all legal requirements, *and*
- the judge has found that detention is necessary to prevent significant risk of harm to another person or flight from prosecution.

### Intentionality

The person’s release or detention is purposefully decided, and any release condition (including money) does not override that intent.

### Transparency

The judge makes all findings on the record.

### Appealability

The detention decision is immediately appealable and should be reassessed at specified intervals to account for any change in circumstances.

\* People may be granted more rights than state law explicitly provides. When state law is silent or underdeveloped, the elements from the U.S. Supreme Court in *Salerno* can be useful.