

# **SB 10 PRETRIAL PROCESS: ARRAIGNMENT TO TRIAL**

**INCLUDING PREVENTIVE DETENTION HEARING**

## **ARRAIGNMENT**

**RELEASE ON OWN  
RECOGNIZANCE (OR) OR ON  
SUPERVISED OR**

**PROSECUTION REQUEST  
FOR PREVENTIVE  
DETENTION HEARING  
(IF MEETS REQUIREMENTS)**

**PREVENTIVE  
DETENTION  
HEARING**

**RELEASE  
UNTIL TRIAL**

**DETAIN  
UNTIL TRIAL**

# SB 10 PRETRIAL PROCESS: ARRAIGNMENT TO TRIAL

## INCLUDING PREVENTIVE DETENTION HEARING

### ARRAIGNMENT

#### IS THE COURT REQUIRED TO RELEASE EVERY DEFENDANT AT ARRAIGNMENT?

Yes, unless the prosecutor files a motion for a preventive detention hearing.

### REQUEST FOR PREVENTIVE DETENTION

#### CAN THE PROSECUTOR REQUEST TO DETAIN ANY DEFENDANT?

**No, the prosecutor can file a motion for preventive detention only if:**

- The crime was committed with violence or threatened violence, or use of a deadly weapon, or inflicted great bodily injury; or
- The defendant is on postconviction supervision when arrested; or
- The defendant is pending trial or sentencing in a felony matter when arrested; or
- The defendant intimidated or threatened a witness or victim of the current crime; or
- There is substantial reason to believe that no supervision conditions will reasonably assure public safety or return to court.

#### IS THERE A PRESUMPTION THAT CERTAIN CRIMINAL CHARGES OR FACTORS ARE MORE LIKELY TO BE THE BASIS FOR PRETRIAL DETENTION?

**Yes, there is a presumption for pretrial detention for these criminal charges or factors:**

- The current crime is a violent felony or a felony committed with violence or threatened violence, or use of a deadly weapon, or inflicted great bodily injury; or
- The defendant is assessed as "high risk" AND
  - The defendant was convicted of a serious or violent felony in past 5 years;
  - The defendant committed the current crime while pending sentencing for a serious or violent felony;
  - The defendant intimidated or threatened a witness or victim of the current crime; or
  - The defendant was on postconviction supervision at time of arrest.

**BUT, a defendant can overcome the presumption at the hearing.**

### PREVENTIVE DETENTION HEARING

#### WHAT RIGHTS DOES THE DEFENDANT HAVE AT A PREVENTIVE DETENTION HEARING?

The right to be represented by counsel at the hearing.

The right to appointed counsel if the defendant cannot afford an attorney.

The right to testify at the hearing (make statements in court).

#### WHAT RIGHTS DOES THE VICTIM HAVE AT A PREVENTIVE DETENTION HEARING?

The right to be notified of the hearing.

The right to have comments submitted to the court by the prosecution.

The right to be heard at the hearing, upon request.

#### WHAT IS THE STANDARD FOR DETAINING A DEFENDANT IN CUSTODY UNTIL TRIAL?

The court must release the defendant on his or her own recognizance (OR) or on supervised OR with the least restrictive conditions, unless:

- **Detention is permitted under the US and CA constitutions, AND**
- **The court determines by clear and convincing evidence that NO conditions of pretrial supervision will reasonably assure public safety or the appearance of the defendant in court.**

The court must state the reasons for its detention decision on the record.