

**Initial Appearances:
Everything you
Need to Know**

When does an initial appearance happen?

- * As it sounds, it is the first appearance before the court in all misdemeanors, felonies and extradition matters.
- * Client may receive a summons ordering appearance or a case may be filed on warrant
- * Can sometimes happen unexpectedly
 - * New charges can arise during representation
 - * Lab test can come back
 - * Client could have a new arrest they didn't tell you about
 - * Old referrals may be brought to the forefront

What happens at an initial appearance?

- * Setting of a signature bond or cash bail and determining conditions of release - Wis. Stat. § 969.01
- * Challenging competency - Wis. Stat. § 971.13
- * Substitution of Judge - Wis. Stat. 971.20
- * Scheduling of an arraignment hearing or entry of plea if separate arraignment date not necessary
- * Challenge the complaint/Motion to dismiss

Release of the defendant - Wis. Stat. Chap. 969

- * The statutory purpose of cash bail is to encourage a defendant's return to court
- * Conditions of bail are to be set to ensure the protection of the community and to prevent intimidation or a witness or alleged victim
- * Conditions of bond are to be case and defendant specific
 - * Blanket bond conditions, such as compliance in a pretrial monitoring program without an individualized determination that the condition is appropriate, have been found to be improper. *State v. Wilcenski*, 2013 WI App 21, 346 Wis. 2d 145, 827 N.W.2d 642.
- * Bond can be set in all types of cases to secure release pre-conviction
 - * While all defendants are eligible to have bail set, the court can use its discretion to deny pretrial release entirely in certain types of serious offenses (See Wis. Stat. 969.035)

Types of bond/bail/release

- * Signature bond
- * Cosigned signature bond
- * Cash bail
- * Surety/Property bond
- * Huber bailee status

Conditions of Bond

- * Related to the offense (absolute sobriety, no contact/violent contact provisions, no use of a computer, no driving without a valid license, etc.)
- * Participation in a pretrial monitoring program
 - * Know these options
 - * Enhanced supervision could be a good alternative to cash bail
- * Restriction on travel
- * Restriction on possession of dangerous weapons



Waukesha County
Pretrial Services
Screening Report



Name _____
 Age 25 _____ DOB _____ Date of Interview 2015
 Needs Interpreter Yes No
 Private Attorney Yes No Name _____ Primary Language English
 Victim's Relationship Friend
 Alternate Address (if applicable) _____

Charge(s)	Case Number	Attorney	New	Capias	Warrant	OT
Strangulation and Suffocation			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Battery			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Disorderly Conduct			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other Pending Cases	Case Number	Attorney	Court Date/Time/Location
Reason For FTA's N/A			
VOP Hold Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Case _____			Verified Yes <input type="checkbox"/> No <input type="checkbox"/> Contradicts <input type="checkbox"/>
Hold Information _____			On Probation/Parole No _____ Since _____
Other Holds Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Reason _____			Length of Probation _____

Criminal History (CCAP) Past Five Years	Comments
# of Felony Convictions 0	Current as of 2015 7:10:26 AM.
# of Misdemeanor Convictions 2	RISK SCORE - MEDIUM (3)
# of OWI Convictions 0	Charge Type, Criminal History, Length At Current Residence.
# of OAR Convictions 0	*Please see back page for details.
# of Bail Jumping Convictions 0	
# of FTA's 1	

Name _____

Residence Homeless Yes No **Verified**
 Address _____ Yes No Contradicts
 City WAUKESHA State WI Zip 53186
 Length at Present Address 1 m(s) in Metro Area: Entire Life Yes No Contradicts
 Marital Status M S D W Sep Lives with Child Yes No Contradicts
 Dependents living with you 1 Yes No Contradicts
 Ages 8 Yes No Contradicts
 Mode of Transportation Bus

Employment Employed Yes No F/T P/T **Verified**
 Employer UNEMPLOYED Yes No Contradicts
 Months Employed in Past 2 Years 12 Wages \$0.00 Yes No Contradicts
 Monthly Income: \$367.00 From: SSI

AODA/Mental Health **Verified**
 Current Alcohol Issues None Yes No Contradicts
 Treatment Within Last 6 Mths. Yes No
 Current Drug Issues None Yes No Contradicts
 Treatment Within Last 6 Mths. Yes No
 Current MH Issues None Yes No Contradicts
 Treatment Within Last 6 Mths. Yes No

Physical Health **Verified**
 Are you pregnant Yes No N/A Yes No Contradicts
 Current Physical Health Issues None Yes No Contradicts

Education **Verified**
 GED Yes No HSED Yes No Highest Grade Completed 11th
 Current Student Yes No School Yes No Contradicts
 Read Yes No Write Yes No Yes No Contradicts

Comments



Waukesha County
Pretrial Services
Risk Report



Name _____

Risk Factors	Risk Assessment Description	Points
Charge Type:	Felony charge(s) for current intake	1
Pending Charge(s):	No other pending charges	0
Outstanding Warrant(s):	No outstanding warrants	0
Criminal History:	2 - Misdemeanor conviction(s)	1
FTA Convictions:	Failure to Appear	0
Violent Convictions:	No other violent conviction(s)	0
Length at Current Residence:	< 1 year	1
Employed / Primary Child Caregiver:	Employed or Primary CC or Other	0
History of Drug / Alcohol Abuse:	No substance abuse	0
Risk Score: <u>MEDIUM</u>		Total Points: <u>3</u>

What is important to the court when addressing bail?

- * Seriousness of the offense
- * Compliance with investigation as discussed in the criminal complaint
- * Prior conviction history of the defendant
 - * Look for prior escape, resisting or bail jumping convictions
- * Ties to the community
- * Employment/School status
- * History of compliance with court orders
- * Probation/Extended Supervision Status
- * Prior missed court appearances
- * Recommendations of jail/pretrial screening reports
 - * Important to know if these exist in your county
 - * May only be done in cases where client is coming from custody

Arraignment

- * Formal entry of a plea
- * Almost always “not guilty”
 - * If in front of a court commissioner, only plea option is “not guilty” as a court commissioner cannot preside over the resolution of a criminal case
- * Can occur at initial appearance or can be set for another date
 - * Why ask for more time?
 - * To discuss substitution options
 - * To look for deficiencies in the criminal complaint
 - * Challenge to sufficiency in the complaint must be made before the arraignment under most circumstances
 - * Probable cause section may not support the charge
 - * Charge itself may be incorrect or improperly vague
 - * The complaint may have left out exculpatory information (*Franks/Mann* Motion)

Substitution of Judge

- * Controlled by Wis. Stat. § 971.20
- * Must be entered in writing, prior to the entry of a plea at an arraignment
- * Only one substitution allowed in a criminal action at the trial level
- * Things to think about before filing a substitution request
 - * Who will be your new judge?
 - * In less populated jurisdictions, you may be able to guess
 - * You may get a less favorable judge
 - * Judicial rotations
 - * Will you want to substitute in the future?

Raising Competency

- * Wis. Stat. § 971.13: You must raise competency if you have reason to doubt your client's ability to proceed
- * Can be raised orally at anytime during a criminal proceeding
- * A defendant is not competent if he/she "lacks substantial mental capacity to understand the proceedings or assist in his/her defense
- * Court is required to order a competency assessment
 - * Exam can be inpatient or outpatient
 - * Inpatient Examination: Doctor report to be returned in 15 days
 - * Outpatient Examination: Doctor report to be returned in 30 days
- * Can supplement the doctor's evaluation if you have relevant information with the permission of your client
- * Client will likely be required to discuss the facts of the case and you should prepare your client for this

How to prepare for an initial appearance in a perfect world:

- * Meet with your client well ahead of the court hearing
- * Obtain a copy of the criminal complaint, a pretrial offer and discovery and review this information with client, getting their version
- * Discuss and verify client's prior criminal record
- * Figure out what the state intends to request regarding bail and conditions of release
- * Alert your client to bail/bond options and discuss financial resources
- * Recommend early enrollment in treatment program if appropriate

Preparing for an initial appearance in reality:

- * If your client is in custody, you may have limited time to meet with your new client or prepare for the hearing
- * Even if your client is out of custody, he or she may not have a working telephone or may not return your calls
- * You may not have a copy of the complaint prior to the hearing and may not know the official charges until you are on the record
- * Get as much information as you can that will assist you at the bail hearing
- * Do what you can to verify your client's prior record and history of missing court

What to focus on when in a time crunch:

- * If your time with your client is limited, use your time wisely
- * Review the criminal charges or allegations against them if known
- * Explain the process to your client
 - * Even if he/she has a prior record, explain what he/she can expect
 - * The process may have changed since he/she was last in court
 - * Each jurisdiction does things a little bit differently
 - * Advise your client that you will not need to get into all of the facts of the case
 - * You don't want them to speak and address the allegations on the record - These hearings are being recorded, either with a live court reporter or through audio recording, and anything your client says can be used against them in the future

What to focus on, continued:

- * Know your client's ties to the community. This is perhaps the most important information you will need to obtain for the purpose of bail.
 - * Length at current address
 - * Marital status/whether he/she has children
 - * Who he/she resides with
 - * Place of birth/length of time in the community
 - * Availability of transportation
 - * Current employment/school status and length at current job
 - * Military history
 - * Particular physical/mental health concerns
 - * Status of treatment
 - * Financial resources/ability to post cash bail
- * Know his/her supervision status
- * Did the client turn him/herself into police? Make a voluntary statement?

Fact Patterns:

What would you do?

What do you say?