

*This is your new*

# Federal Bail and Detention Handbook 2013

**Hon. John L. Weinberg**  
**United States Magistrate Judge**

*Federal Bail and Detention Handbook 2013*, which replaces your 2012 edition of the handbook, provides all the latest significant developments under the Federal Bail Reform Act, as reported by the Honorable John Weinberg, including his invaluable table of U.S. Supreme Court and Circuit decisions. *Federal Bail and Detention Handbook 2013*'s coverage of the most significant developments under the Federal Bail Reform Act of 1984 includes the following:

The Second Circuit continues to provide leadership to all federal courts on the issue of **whether and when extended pretrial detention violates due process rights**. In two cases decided in 2012, the court ruled that detention for twenty-six months, considered along with all other factors, was not a violation, as yet. But in both cases, the court set a four-month deadline for the district court to start the trial or to release defendant on conditions. Failing that, defendant could seek further relief in the circuit. § 6:12.4.

The Sixth Circuit, faced with its first case on **the constitutionality of extended pretrial detention**, found the Second Circuit's case law "particularly instructive." Applying the Second Circuit's formulations of the applicable standards, the Sixth Circuit found detention for two years did not violate due process. § 6:12.7.

If the court grants a motion to suppress some of the evidence against him, a defendant who has been detained is not necessarily entitled to an **order reopening the detention hearing**. § 6:9.

**Crime victims** are entitled, under 2004 legislation, to extensive rights of notice, of presence, and to be heard at public proceedings in the case, particularly in proceedings relating to the proposed release of defendant. A summary of these rights has been included in the text. § 6:8.10.

*(continued on reverse)*

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If the court orders a **mental competence examination** for defendant, the court must weigh carefully whether defendant is to be detained for that purpose or whether it is to be performed while he remains released on conditions. *New* § 14:10.

Defendant is subject to the **special statutory penalties for a crime committed while on release**, even if the new crime is a repetition or a continuation of the crime forming the basis for the original charges. § 10:1.

A 2010 amendment to the criminal rules cleared up what seemed to be the source of some confusion. If a defendant is charged with **violation of supervised release or detention**, his detention or release is governed by 18 U.S.C. § 3143(a)(1). He bears the burden of establishing by clear and convincing evidence that he will not flee or pose a danger to any other person or to the community. § 12:7.

A person who **aids or abets defendant's violation of conditions of release** can be convicted of contempt. § 11:4.

Nothing requires the government to show that a violation of conditions of release is "willful." § 11:3.

*New* **Appendix III, Forms**, contains several official, nationally recommended forms relating to release and detention. These have been collected in one appendix and organized by area for your easy reference. The Administrative Office of the U.S. Courts has revised several of the forms. *New* Appendix III reflects the current version of each.