

# BUCHERT JACOB PETER

STRAFVERTEIDIGER UND OMBUDSPERSONEN

## PRE-TRIAL DETENTION (REMAND CUSTODY)

A guide for suspects/accused persons and their family members

by Buchert Jacob Peter Rechtsanwälte



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## Introduction

Pre-trial detention (remand custody) involves far-reaching interferences with a person's liberty and usually comes completely unexpectedly. Most of the time, you as the affected person and/or your family members and friends are suddenly confronted with a completely new situation. Being taken into pre-trial detention tears you out of your social environment. This can be overwhelming for everyone involved. Questions arise on both sides: Why am I in pre-trial detention? How do I contact legal counsel? What are my rights and obligations while in detention? How can I keep in touch with my family, and how can they contact me? What does daily life in pre-trial detention look like? What consequences can detention have?

This guide aims to answer these questions, explain the most important rules and legal framework, and provide practical tips. It does not claim to be exhaustive. For readability, the masculine form is used; the information applies to relatives of all genders.

Where special rules apply to prisons in the German federal state of Hesse, we refer to them separately.

Hesse has 13 prisons (Justizvollzugsanstalten, "JVA"). In addition to the central remand facility for men (JVA Frankfurt am Main I) and the women's facility (JVA Frankfurt am Main III), JVA Kassel I, Fulda, Gießen, Limburg, Weiterstadt as well as the youth facilities in Wiesbaden and Rockenberg are also designated for the execution of remand custody.

The procedure and the steps of pre-trial detention are regulated by law. Below we briefly explain the most important stages.

## The investigation / exigent circumstances / provisional arrest

The public prosecutor's office (Staatsanwaltschaft) initiates an investigation if it becomes aware of circumstances that justify suspicion of a criminal offence. The police can also

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initiate an investigation if it becomes aware of circumstances indicating an offence. The police have a “right of first access” (Recht des ersten Zugriffs), meaning they have both the right and the duty to clarify the facts and carry out necessary investigative measures. In principle, an investigation is the process of collecting evidence. If, after the investigation, the prosecution concludes that the requirements for a provisional arrest or for pre-trial detention are met, officers may approach the suspect and bring the person to the responsible police station.

Provisional arrest (regulated in section 127 of the German Code of Criminal Procedure – Strafprozessordnung, “StPO”) must be distinguished from pre-trial detention. A provisional arrest can occur if a suspect is caught in the act and is suspected of intending to flee. The police can also make a provisional arrest where there are exigent circumstances (“Gefahr im Verzug”). “Gefahr im Verzug” means, from the police perspective, that it is not sufficient to first apply for an arrest warrant and wait for it. However, the requirements for issuing an arrest warrant must still be met.

In the case of a provisional arrest, the person is usually taken to the nearest competent police station and may be held there until police measures are completed. A provisional arrest may never last longer than 24 hours. No later than after 24 hours, the suspect must be brought before a judge (Haftrichter). The judge then examines whether the requirements for a remand warrant (Untersuchungshaftbefehl) are met. If they are not, the suspect must be released.

### **Bringing the person before the judge (court presentation)**

If you or a relative has been arrested – whether provisionally or already on the basis of a remand warrant – you should observe two crucial rules first:

- Do not make any statement, no matter how difficult this feels.

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- Contact a criminal defence lawyer immediately. Insist on being allowed to make a phone call.

Ideally you already know a criminal defence lawyer or have the phone number.

Otherwise ask the officers to obtain the contact details of your chosen lawyer from the internet. You have the right to legal assistance.

In most larger cities there is an emergency defence service (Verteidigernotdienst), often organised by the local bar association. You can also ask for that number.

Again: at any time and in any situation, do not talk to anyone about the case except your lawyer.

Do not talk on the phone if you are allowed to call a family member, and do not talk to the police in the car if a conversation starts. Do not talk to anyone while waiting in any room.

### Procedure

When you are brought before the remand judge, the judge must examine whether the requirements for issuing a remand warrant are met. This is why it is all the more important not to provide information and to have an experienced defence lawyer at your side. In complex proceedings, a lawyer will not be able to make statements on the merits at that stage, because the lawyer has not yet had access to the file and the case cannot be assessed in such a short time. The lawyer can, however, usually address the ground for detention. The most common ground is risk of flight (Fluchtgefahr). In that context, the person's personal circumstances must be discussed.

In almost all cases you will not be able to say anything about the “strong suspicion” of the offence (dringender Tatverdacht) – i.e., the accusation itself – because neither you nor your lawyer has the case file. This is indeed paradoxical: the warrant contains an

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allegation and a reason why you should be detained, but you cannot directly defend yourself against it because there has been no file access.

The only aspect that can always be addressed immediately is the ground for detention, usually the alleged risk of flight. In the conversation with your lawyer before the hearing, tell the lawyer everything about your personal circumstances so they can present them to the judge.

In most cases, file access is granted within about one week. Once the lawyer has reviewed the file, they will usually visit you promptly and discuss the further strategy.

## Defence counsel

An experienced criminal defence lawyer knows the requirements and typical approaches of both the police and the remand judge. In this situation, the lawyer can advise and support you and carefully examine whether all requirements for issuing a remand warrant are truly met.

At the latest when you are brought before the judge and before the first interrogation, a defence counsel must be appointed. This can also be a lawyer of your choice. If your preferred lawyer is not available in time, insist on a lawyer who can appear on site and provide initial advice. You then have the option to change the court-appointed lawyer within three weeks in order to have your chosen lawyer formally appointed.

If you are already in pre-trial detention and want to speak to another lawyer (for example, to change counsel), the potential new lawyer may need to obtain a visitation permit (Sprechschein) from the prosecution to have an initial conversation with you. The easiest way is often to send the lawyer an “invitation card” (Einladungskarte) from the prison – ask for such a card, it is provided in detention. You can also ask the social worker in prison to contact your chosen lawyer or inform your family so that they can contact the lawyer.

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## The remand warrant

Pre-trial detention is ordered by a written remand warrant issued by a judge (section 114 StPO).

The warrant must specify the accused person, the offence of which they are strongly suspected, the time and place of the offence, the statutory elements and the applicable criminal provisions. It must also state the facts from which the strong suspicion and the ground for detention are derived. An exception exists only in cases where state security would be endangered.

## Suspension of detention / release under conditions

### (Haftverschonung)

If the requirements for a remand warrant are met and the warrant can no longer be avoided by the defence, there is still the possibility to apply for a suspension of detention (Außervollzugsetzung des Haftbefehls).

In practice, this is the most common way to prevent actual imprisonment.

Suspension means the warrant is issued, but the suspect does not have to enter a prison. Instead, the suspect can remain at home subject to conditions (for example, regular reporting duties or surrender of the passport). Defence counsel can raise this option at the hearing and negotiate it with the judge.

The usual sequence is: the warrant is issued or executed, the detainee does not make any statement, and the lawyer obtains the file. Then the file is discussed in detail, and an experienced lawyer can explain realistically what may happen next.

In a detention review hearing (Haftprüfung), it can then be argued, for example, whether there is truly a strong suspicion, whether a confession might be appropriate, or whether other measures can achieve at least a suspension of detention.

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A good lawyer will never make promises or say things like “I will definitely get you out.”

That is not serious. As much as you understandably want good news in this situation, a quick release is often difficult.

Most remand warrants are based on lengthy and detailed investigations – for example, months of telephone surveillance and many witnesses.

In such cases, a warrant is often hard to attack on the merits. Other paths must be considered, which your lawyer will explain.

A good lawyer knows the file and will tell you the truth, not slogans like “I know the prosecutor and the judge, we’ll handle it.”

## Requirements for pre-trial detention

The requirements are regulated in section 112 StPO. Pre-trial detention may be ordered by the remand judge if there is a strong suspicion (dringender Tatverdacht) and additionally a ground for detention. Typical grounds are risk of flight or risk of tampering with evidence; detention can also be ordered in cases of special seriousness of the suspicion. Furthermore, detention must be proportionate. In principle, detention is executed at the place where the offence was committed. For example, if the offence was committed in the Darmstadt area, detention is typically carried out in JVA Weiterstadt. If there are multiple accused persons, usually a maximum of two are held in Weiterstadt and the others in JVA Preungesheim (Frankfurt).

## Strong suspicion (dringender Tatverdacht)

Strong suspicion exists if, based on the results of the investigation so far, there is a high probability that the accused committed the offence as perpetrator or participant; an attempt is sufficient. At this stage, there is usually already so much evidence that little can be achieved on this point.

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## **Absconding (Flucht)**

The ground of absconding exists if the accused is a fugitive or is hiding.

## **Risk of flight (Fluchtgefahr)**

Risk of flight exists if, when assessing the circumstances of the case, specific facts make it more likely that the accused will evade the proceedings (at least for some time) than that they will participate.

This is the most common reason for pre-trial detention. According to case law, even foreign contacts and speaking a foreign language can sometimes be sufficient.

Courts usually first look at the expected sentence. Then additional factors must exist that make flight possible. The higher the expected sentence, the fewer additional factors are needed.

Example: the client expects a one-year prison sentence and is homeless. That may already be sufficient, because there is no fixed residence.

If the client is from abroad but has a fixed residence here, that would usually not be sufficient for risk of flight.

If the client expects a sentence of more than 3–4 years in a larger economic crime case, is from abroad and still has family abroad, a warrant will often be issued. This may be the case even if the client has a fixed residence and family in Germany.

In murder and manslaughter cases, a warrant will virtually always be issued regardless of personal circumstances.

## **Risk of tampering with evidence (Verdunkelungsgefahr)**

Risk of tampering with evidence exists if, based on specific facts, the accused's conduct gives rise to the strong suspicion that they will take steps aimed at obstructing evidence, creating a danger that establishing the truth will be hindered.

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## **Risk of reoffending (Wiederholungsgefahr)**

The concept of risk of reoffending is defined as the danger of committing further significant offences of the same kind or continuing the offence.

## **Principle of proportionality**

Detention must be proportionate. In this context, proportionality means detention is only permissible if the clarification of the alleged offence and the swift conduct of the proceedings cannot be secured by other means. Detention must not be disproportionate to the importance of the matter and the expected sentence, taking into account the accused person's current life circumstances.

## **Notifying relatives**

Detainees must be given the opportunity, without delay, to notify a relative or a person of trust about their admission to the facility, unless a procedural security order prevents it. You should insist, already before the judge, on being allowed to make a call to a relative. People involved will remain in the room and the conversation must be conducted in German. Often, detainees do not have their phone and do not remember numbers. In that case, you can only ask your lawyer to contact the family as quickly as possible.

## **Practical aspects of pre-trial detention – general**

### **Admission to the prison (intake)**

An intake interview is conducted without delay, with no other detainees present unless the detainee consents. The current life situation is discussed and detainees are informed about their rights and obligations. The house rules and a copy of the Hessian Remand Detention Act (HUVollzG) must be made accessible. Detainees must provide the personal information required for execution of detention. They are examined by a doctor as soon as possible.

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## Single cell

In principle, remand detainees are accommodated in a single cell. With consent, joint accommodation is possible. Even without consent, joint accommodation may be permissible if the detainee needs assistance or if there is a danger to life or health. Accommodation of more than three detainees in one cell is not permitted. Exceptionally, short-term deviations may be permissible under extraordinary circumstances if absolutely necessary.

## Clothing and food

Detainees may wear their own clothing provided they ensure cleaning, maintenance and regular changes. The prison management may order that cleaning/maintenance is only allowed through the facility. If required to implement procedural security orders or to ensure safety and order, the right to wear one's own clothing may be restricted or excluded.

Some prisons are very strict and bureaucratic. For example, in JVA Frankfurt am Main I the detainee may first have to submit an internal application for specific clothing to be issued. At the same time, permission may have to be requested from the prosecution authority. Only when both approvals exist can relatives bring the precisely specified clothing items to the gate or send them by parcel.

In detention, almost everything must be applied for formally. Social workers and sometimes fellow detainees can help with applications.

Food is provided by the facility. Special diets may be granted on medical order. Detainees must be enabled to follow dietary rules of their religion.

## Personal funds (Eigengeld)

Detainees can purchase items (canteen) to a reasonable extent using their own money via the facility's offer. Relatives can transfer money to the prison account. The websites of

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many prisons provide bank details, in particular JVA Frankfurt am Main I, JVA Weiterstadt and JVA Darmstadt.

<https://justizvollzug.hessen.de/justizvollzug/jva-frankfurt-m-i/bankverbindung>

<https://justizvollzug.hessen.de/justizvollzug/jva-weiterstadt/bankverbindung>

<https://justizvollzug.hessen.de/justizvollzug/jva-darmstadt/bankverbindung>

Transfers take time and can sometimes take up to a week or longer. At the beginning, money is often the most important thing for the detainee, because almost everything in prison costs money (entertainment, “extra food”, as well as coffee and cigarettes).

If the detainee is in a single cell, they often have nothing to do in the first days. This is extremely difficult for many detainees; books or a television may provide some relief.

## Work opportunities

Remand detainees are not obliged to work. Where possible, work or other occupation should be offered that takes into account abilities and skills. If work is taken up, the work conditions set by the facility apply. Where possible, suitable detainees should be given opportunities to acquire or improve school and vocational skills, insofar as the special conditions of remand detention allow.

Anyone who works receives remuneration. Detainees who participate in training during work time may receive a training allowance if there is no entitlement to other benefits.

The most popular job is being a “house orderly” (Hausarbeiter). This often allows you to leave your cell more frequently and gain a little more freedom.

## Radio, television, PC

Generally, it is usually possible to buy or rent a TV set in prison. Permitted sizes and models must be clarified in advance. All devices are security-checked and secured (e.g., sealing, disabling certain ports). In JVA Frankfurt am Main I, for example, the security

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check is arranged via JVA Weiterstadt and carried out by an external specialist. The detainee bears the costs.

As a rule of thumb, standard radios and televisions are usually unproblematic. As soon as internet connectivity is involved (for example in game consoles), it becomes problematic or impossible.

For JVA Frankfurt am Main, the following applies by way of example:

TV set (CRT) with permitted dimensions 40 cm width × 40 cm height × 42 cm depth, incl. remote control; flat screen TV sets up to max. 22 inches, incl. remote control; radio recorder/CD player/DVD player with permitted dimensions max. 60 cm × 30 cm × 30 cm; radios may only be operated without separate speakers; microphones and USB ports are removed/disabled or sealed; game consoles (PlayStation I and II) incl. accessories; alarm clock (not radio-controlled); Walkman/Discman; headphones (not wireless; cable length max. 1.5 m); electric shaver/electric hair clipper (without power supply); kettle (with boil-dry protection; no exposed heating coil; no double bottom in the lid); chess computer (without removable storage); calculator (without removable storage); antenna cables and other cables including HDMI (up to 1.5 m length); typewriter (without removable storage) incl. 3 ink ribbons.

Microphones and USB ports are not permitted; they are removed or rendered unusable at the detainee's expense. If a TV set includes an integrated DVD player, no additional DVD player will be issued. If a game console that plays DVDs is brought in, no further DVD player will be issued. Devices with recording functions or copying functions are not permitted; such functions may be disabled.

## **Correspondence by mail**

Letters to and from remand detainees may be subject to control by the competent court or prosecution authority. Lawyer-client correspondence is excluded from such control. That means: most letters are read by the court or prosecution. These authorities are familiar

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with “code words” and seemingly clever formulations. Detainees and relatives should therefore write only neutral letters. Any letter that is of interest to the authorities may be placed in the case file and trigger consequences.

For example, an angry letter from a fiancée ending the engagement and claiming “he will never change” could lead to the fiancée no longer being allowed to visit, could be interpreted as suspicion of wrongdoing, and could even affect assessments such as risk of flight if the detainee no longer has stable living circumstances.

Correspondence with defence counsel must not be read. For that purpose, the envelope must clearly be marked “Verteidigerpost” (defence counsel mail). However, neither the lawyer may forward “third-party letters” to the detainee, nor may the detainee misuse lawyer mail for such purposes. Violations can have extremely negative consequences and must be avoided.

## Telephone calls

Remand detainees may be permitted to make telephone calls. For contact with defence counsel, the lawyer usually sends a fax to the prison permitting the detainee to call the office number. The detainee often has to file an internal request to have the number enabled.

For calls with relatives, an application must usually be filed with the prosecution/court, including the phone number and personal details of the relatives; ideally a copy of the ID card is attached.

Often there is a limited phone account (similar to a phone card system). In JVA Frankfurt am Main I, phones are located in a separate corridor. The times for using the phones must be coordinated and a permit can take several weeks. If restrictions apply (which is often the case), calls are monitored.

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Typically, calls are only permitted if they are monitored and, if the conversation is not in German, with an interpreter present.

## Visit permit (Besuchserlaubnis)

Until an indictment is filed, visitation permission is usually granted by the responsible prosecutor; afterwards by the presiding judge. The authority checks whether the requested visit is compatible with the purpose of remand detention.

If so, a visitation authorisation is issued. It must be presented at the prison before the visit and then an appointment can be arranged. Issuing a visitation authorisation typically takes about one week.

In JVA Weiterstadt, it is now even possible to submit the visit application online:

<https://justizvollzug.hessen.de/justizvollzug/jva-weiterstadt/infos-f%C3%BCr-angeh%C3%B6rige-besucher/online-besuchsantrag-nur-f%C3%BCr-gefangene>

Visits are only possible on the days and times set by the prison, and only after prior telephone appointment booking. Depending on availability, it may take up to five weeks until a free visit slot exists.

For close family members, a long-term visitation authorisation should be applied for (see sample below). The lawyer can file the application or the relatives can do so themselves. The application should include the case reference number and a copy of the ID document. The detainee must additionally file an internal application.

Depending on the prison/federal state, the total permitted visiting time is typically between 2 and 4 hours per month (usually 30 minutes per visit). Visits are monitored visually and acoustically and must be conducted in German; in another language only with an interpreter.

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Defence counsel may visit immediately and without time limits. In the first weeks of remand detention, the detainee therefore often has contact mainly or exclusively with counsel.

Within the prison, social workers assist with applications and practical questions.

## **Practical aspects – Hesse (visit times by facility)**

### **Visit times and requirements of the individual prisons**

Each prison has its own requirements for visits. We summarise the most important points below. Please check the prison website again or call the prison before visiting, as times can change.

General rules for visitors: please register at the outer gate in good time before each visit with a valid ID card, passport or residence permit; for children, a child ID card or, for newborns, a birth certificate.

A maximum of three persons (including children) are permitted. Children up to 16 years are only admitted when accompanied by an adult.

Without the visit permit and valid ID documents, the visit will not take place. To avoid missing the visit, you should arrive at least 30 minutes before the visit time. Late arrival can result in denial of the visit.

Only persons named when the appointment is booked will be admitted. A later “swap” is not possible.

Visitors must allow pat-down and searches. Bags, containers and items may not be brought in.

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Drinks and sweets can often be purchased from vending machines in the visiting area (not, for example, in JVA Frankfurt am Main I). Items purchased must be consumed during the visit and must not be handed over after the visit. Bring coins for the machines.

## **Butzbach**

In JVA Butzbach, visits are possible on Fridays from 07:30 to 11:30; last entry is 11:00. For remand detainees, a visit authorisation is always required and must be applied for with the competent judge or prosecutor. We can assist with this.

## **Frankfurt am Main**

JVA I (for male remand detainees)

Visiting hours for remand detainees: Monday to Friday from 08:30 to 14:45.

Most rules can be found in sections 33 et seq. of the Hessian Prison Act (HStVollzG).

Prisoners in JVA Frankfurt/M. IV may receive visits on two days per month for 60 minutes each. If there is free capacity in the visiting room, additional visits may be granted in justified individual cases upon application. Appointments are only issued after prior telephone booking. Telephone: 069 1367-1717 (Mon–Fri 08:30–11:00, and Mon–Thu 13:00–14:00).

JVA III (for juvenile and female remand detainees)

Visiting hours for remand detainees: Monday and Thursday 08:30–11:00 and 13:00–15:30. Adult remand detainees can receive 30 minutes every two weeks or 60 minutes once per month. Juvenile remand detainees can receive two hours every two weeks. Deviations are possible if a court orders otherwise under section 119 StPO. Appointments are issued after telephone booking.

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## Fulda

A visit authorisation from the competent judge or prosecution is required. After admission of visitors, prisoners must request an appointment from the visiting department and send the visit slip to visitors by post. In principle, each detainee is enabled to receive at least two visits per month of 30 minutes each. Visiting hours are Tuesday and Wednesday 09:00–11:30. Entry times are 08:50–11:20 and 12:50–16:20.

## Gießen

JVA Gießen is divided into two departments. Department 20 is, among other things, responsible for remand detention. Visiting hours with acoustic monitoring are Monday to Wednesday 08:00–11:45. Visiting hours with visual monitoring are Monday and Tuesday 12:15–16:45. The visit authorisation is issued by the responsible judge or prosecutor; ID card or passport must be presented.

## Kassel

JVA Kassel: the prosecution authority issues the visit authorisation and it must be applied for there. Visiting hours are Tuesday 12:10–16:05, Sunday 12:15–12:40, and on public holidays 08:30–10:20. Entry is allowed up to 30 minutes before the end of the visiting hours. Visits are only possible after telephone appointment booking (Mon, Wed, Fri 09:00–13:00; Tue and Thu 10:00–13:00) at 0561 9286-299, at the latest 4 days before the desired visit day.

Branch facility Kaufungen: visiting hours are Tuesday and Thursday 08:00–11:30. Visits are only possible after telephone appointment booking (Mon–Fri 09:00–13:00) at 05605 9492-70, at the latest four days before the desired visit day. Entry is possible up to 30 minutes before the end of visiting hours; visitors must register 15 minutes before the visit begins.

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## **Limburg an der Lahn**

Remand detainees apply for visits either with the JVA or with the court/prosecution. For remand detainees whose visits are approved by JVA Limburg, the same rules apply as for sentenced prisoners. Where the court/prosecution approves the visits, the visit slips are issued as before. Visiting hours are Monday 09:00–11:15 and Wednesday 09:00–19:00. Telephone appointment booking is required at 06431/9172-33. Please register at the outer gate at least 10 minutes before the visit; otherwise entry may be refused.

## **Weiterstadt**

Remand detainees may receive visits up to three times per calendar month for a total of three hours, unless a court order provides otherwise. Visiting hours for relatives and other contacts are: Monday and Thursday 08:00–17:00, Tuesday 12:00–21:00, Friday 08:00–15:45. To ensure proper entry controls, visitors should register 30 minutes before the visit begins. Late registration can lead to refusal of entry. Visits are conditional on the visitor allowing a search.

## **Wiesbaden (young prisoners aged 14 to 24)**

Visitors need written approval from the responsible department head. Where a procedural security order exists for remand detainees, the competent court issues written approval including the visit modalities. Young persons aged 14 to 18 may be admitted without their legal guardian if they present written consent; children under 14 only with a guardian. Appointments must be agreed with the visiting coordination unit. Reservations are possible up to five weeks in advance but must be made no later than one day before the intended visit. Bookings are accepted only Monday and Friday 08:30–15:30 and Tuesday to Thursday 10:30–17:30 at 0611 414-3451. Visitors must register at the outer gate at least 30 minutes before the visit. Monthly visit allowance: 4 × 60 minutes.

## **Rockenberg (juveniles aged 14–17 only)**

Visits for remand detainees require permission from the competent court or prosecutor; the visitor must bring this authorisation. The visit application is filed by the juvenile via

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the social service. Monthly visit allowance: 4 × 60 minutes. Visits take place every Wednesday and Saturday; no visits on public holidays. Visiting times: Wednesdays 08:30–09:30; 10:00–11:00; 11:30–12:30; 13:30–14:30; 15:00–16:00. Saturdays 13:10–14:10. To ensure an even distribution, early telephone pre-booking is requested (no later than the preceding booking day). Please note that visiting times and rules can change; special rules may apply on public holidays.

## **Special rules for mothers in pre-trial detention**

Children who are not yet of compulsory school age may, with the consent of the person holding custody rights, be accommodated together with the detainee in a prison if this is in the child's best interests. Before accommodation, the youth welfare office must be heard. Accommodation costs are borne by the persons responsible for child support. Cost recovery may be waived if it would endanger the joint accommodation.

## **Legal remedies against pre-trial detention**

If you are in pre-trial detention, there are several ways to challenge detention in order to achieve release as quickly as possible.

### **Detention review (Haftprüfung)**

Your defence lawyer can apply for a detention review hearing before the competent remand judge. The court then reviews whether the requirements for detention still exist. Our long-standing experience shows that the most common ground is risk of flight. Counsel can attempt to rebut this by demonstrating strong ties, for example a fixed residence and stable social anchoring. If a higher sentence is expected, these factors alone often do not suffice.

Detention review is conducted as an oral hearing, with counsel present. However, keep in mind that the hearing often takes place before the same judge who issued or executed the warrant only days or weeks earlier. Therefore, detention review often only makes sense if

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counsel has already spoken with the prosecutor and the judge and negotiated realistic prospects. For that, counsel needs file access and a detailed discussion with you. There are many tactical considerations for and against such a hearing, which must be discussed in the individual case.

## **Detention appeal (Haftbeschwerde)**

In addition to detention review, counsel can file a detention appeal. Unlike detention review, the appeal is decided in writing, not as an oral hearing. The tactically best approach depends on the case and is decided together with counsel. One advantage may be that the appeal can reach the Regional Court and then the Higher Regional Court, so you do not necessarily return to the same remand judge. Those courts, however, do not obtain a personal impression of you.

## **Ex officio review (Haftprüfung von Amts wegen)**

As a rule of thumb, pre-trial detention should not last longer than six months. If that period is reached, the Higher Regional Court (Oberlandesgericht) reviews ex officio (without application) whether detention may continue. In almost every larger or complex case, detention exceeds six months. A larger economic crime case often leads to about 12–16 months of pre-trial detention. It is rare for the court to lift detention solely because the prosecution has not progressed the case sufficiently.

## **Main proceedings and trial**

Once the investigation is complete and an indictment is filed, competence for decisions regarding detention passes to the trial court/chamber. Further applications and discussions regarding detention can then be made there.

It is disputed whether lifting or suspending detention due to risk of flight can also be agreed in “deal discussions”. In Frankfurt am Main and Darmstadt, this is now widely

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recognised. Otherwise, the possibility of the remedies described above remains unchanged.

During the trial, conversations with relatives are generally not permitted. The presiding judge may, however, allow conversations during breaks in the courtroom.

## Judgment and end of pre-trial detention

The judgment also decides on detention. Detention is either maintained or lifted depending on the circumstances. At the latest when the judgment becomes final – either immediately by waiver of appeal, or after one week if no appeal is filed – the remand warrant automatically ceases and remand detention converts into prison sentence enforcement. The detainee is then usually transferred from the remand facility to a regular prison, which can take several weeks.

It is possible to suspend detention in the judgment. In that case, if an unconditional prison sentence is imposed, the person reports to the prison as a “self-surrender” (Selbststeller). Self-surrender brings many advantages and can allow faster access to open prison conditions. In some federal states (e.g., NRW), open conditions are the standard for self-surrender.

It can take 2–6 months until you receive a summons to start serving the sentence. During this time, you may have time to organise a fixed residence in another federal state. From inside prison, re-registration is not possible.

## Quick checklist for relatives

Key points summarised once again:

- Stay calm and accept that it can take some time before you can have personal contact with the detainee.

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- Maintain contact through letters and (where permitted) calls. This gives the detainee strength and shows the authorities that the detainee is not alone and has a stable social environment.
- Take care of the detainee's personal and business affairs as far as possible. Be extremely careful not to commit offences yourself (for example, moving or withdrawing funds that may be considered incriminated). Do not contact witnesses so as not to create the impression of influencing witnesses. This could lead to criminal proceedings against you and can also revoke contact rights.
- Follow the prison's and prosecution's instructions exactly so as not to jeopardise visit rights or telephone permissions. Remember: the people supervising you and the detainee are professionals and are difficult to mislead.
- Try to transfer money to the prison account as early as possible. Many permissions and applications take weeks, but money can usually be transferred immediately.
- Keep in touch through letters, but avoid any content that could be problematic. Such letters can harm the defence and also jeopardise your visiting rights.

### Quick checklist for the detainee

Key points summarised once again:

- Do not talk to anyone about your case at the time of arrest.
- Trust your lawyer. If you do not trust them, change within the three-week period.
- Form your own view of your lawyer. Do not rely on what other detainees say about who is "the best". Speak to your lawyer yourself.
- Be patient as far as possible. Keep in touch with your family. Read the file and form your own understanding.
- Try to become a house orderly (Hausarbeiter).

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- Question tips from fellow detainees or other lawyers. Discuss everything with your lawyer of trust. If the lawyer knows the file and has experience (especially in economic crime), they can provide the best advice.

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Buchert Jacob Peter is a law firm in Frankfurt am Main specialising in economic criminal law / tax criminal law and criminal compliance.

Buchert Jacob Peter Rechtsanwälte Partnerschaftsgesellschaft mbB

Kaiserstraße 22, 60311 Frankfurt am Main

Tel. +49 69 710 33 330

