PRETRIAL PRACTICES MANUAL

PRETRIAL RELEASE COMMITTEE

November 17, 2023

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PURPOSE STATEMENT

The purpose of this document is to provide consistent, evidence-based policies and procedures for use by Indiana jurisdictions as they develop and implement pretrial programs.

The Pretrial Release Committee coordinates the oversight, education, development, and certification activities for pretrial agencies certified in accordance with the Pretrial Services Rules.

EVIDENCE-BASED PRETRIAL PRACTICES IN INDIANA

In 2010, the Judicial Conference Board of Directors adopted the Indiana Risk Assessment System (IRAS), a series of tools designed to assess an individual's risk and criminogenic needs to help guide decision- making and supervision within the criminal justice system.[1] IRAS includes the Pretrial Assessment Tool (PAT), designed to determine a defendant's risk for failure to appear at future court hearings and risk to reoffend while on pretrial release.

Under the leadership of Chief Justice Brent Dickson, the Indiana Supreme Court created the Committee to Study Evidence-Based Pretrial Release in December 2013. The Committee consisted of judges, prosecutors, public defenders, probation officers, and legislators, and was tasked with examining and evaluating pretrial risk assessment tools used by courts around the country. In December 2014, Chief Justice Loretta Rush extended the committee's charge to study and enable the implementation of a comprehensive evidence-based pretrial release program in Indiana and requested that the committee develop a pilot project to assess the feasibility of using a pretrial risk assessment system in pretrial release decisions.

Indiana joined the National Institute of Corrections' (NIC) Evidence-Based Decision Making (EBDM) Initiative in March 2015. As part of the EBDM process, the Indiana State Policy Team and the six local county teams identified pretrial release as a change target. The goal of the pretrial release change target is "to design and implement a system of legal and evidence-based pretrial practices." The EBDM State Team chose pretrial as a change target to reduce the negative effects of pretrial detention on recidivism, to reduce local jail costs associated with pretrial detention, and to support the work of the Supreme Court Committee to Study Evidence-Based Pretrial Release.

The parallel work of the EBDM State Policy Team and the Pretrial Release Committee merged as the pilot project was developed and technical assistance became available from NIC. The pretrial release pilot project provided Indiana policymakers with information on the effect of pretrial risk assessment on release decisions and the effect of supervision and notification systems on defendants' return to court and pretrial conduct.

The Indiana Supreme Court adopted Criminal Rule 26 (Ind. Crim. Rule 26)[3] in 2017, governing pretrial release.[2] Crim. R. 26 advises Indiana courts to "utilize the results of an evidence-based risk assessment" when "determining whether an arrestee presents a substantial risk of flight or danger to self or other persons or to the public." Courts are also encouraged to release arrestees who do not present a flight or public safety risk without monetary bail or surety "subject to such restrictions and conditions as determined by the court.

The Indiana EBDM Pretrial Pilot Project, making a concerted effort to implement evidence-based pretrial practices, began in 2016 in partnership with NIC. Eleven counties volunteered to participate in this pilot project: Allen, Bartholomew, Grant, Hamilton, Hendricks, Jefferson,

[1] For a summary of the adoption of IRAS and further detail on the PAT, consult Appendix C.

[2] For the text of Rule 26 of the Indiana Rules of Criminal Procedure, consult Appendix A.

Monroe, Porter, St. Joseph, Starke, and Tipton. Based on NIC's EBDM Framework and the elements of a high functioning pretrial system, the EBDM State Policy Team developed a detailed list of expectations for each pretrial services entity for the implementation of evidence-based pretrial practices:[3]

1. Guided by a collaborative team process, Indiana pretrial services teams should develop and implement pretrial entities within the context of the National Institute of Corrections Evidence Based Decision Making (EBDM) Framework.

2. The following stakeholders should be invited to become members of the local pretrial services collaborative team (an existing team may be used, i.e., Local JRAC or Community Corrections Advisory Board):

    a. Law Enforcement Officials
    b. Pretrial Officials
    c. Victim Service Providers
    d. Prosecutors
    e. Defense Attorneys
    f. Jail Administrators
    g. Court Administrators
    h. Judges (all criminal court judges are strongly encouraged to actively participate)
    i. Probation/Parole/Community Corrections Officials
    j. City/County Managers/Commissioners/County Councils
    k. Behavioral Health and Human Service Representatives
    l. Local teams are encouraged to invite faith-based organizations, and/or other key community stakeholders.

In selecting stakeholder representation and collaborative team members, each team should ensure the representation is also diverse in nature (e.g., minority representation, gender diversity, etc.)

3. The team will work together collaboratively on all aspects of the development and implementation of the pretrial services system.

4. The team is encouraged to discuss, agree upon, and document a set of principles to guide their pretrial work. The following guiding principles have been developed by the EBDM State Policy Team:

    a. Indiana's pretrial system should strive to achieve the "3 M's"
        i. Maximize public safety
        ii. Maximize court appearance
        iii. Maximize pretrial release
    b. Indiana's pretrial system should:
        i. Be fair; a pretrial system that is fair is not based on ability to pay (bond and supervision fees), but instead is based on the assessment of objective factors relevant to public safety and court appearance.

[3] For a glossary of Indiana pretrial terms, consult Appendix B.

ii. Reduce harm; a pretrial system that reduces harm protects the public from those who pose a danger to the community, while reducing the detention of those whose risk to public safety may actually be increased as a result of pretrial detention.
iii. Be informed; a pretrial system that is informed is guided by social science research along with comprehensive case-specific information.
iv. Be cost-effective; a pretrial system that is cost-effective reserves expensive jail resources for those who pose a danger to public safety and utilizes non-detention-based interventions (e.g., mental health/substance abuse services, pretrial supervision) for those who can be safely managed in the community.

5. The team must collect and analyze data in order to establish baseline information about its pretrial practices and their impact and the impact of the implementation of evidence-based pretrial services.

6. Pretrial services entities are encouraged to review their bond schedule(s) and agree upon a single bond schedule for use within the county. When developing a local bond schedule, the team should be mindful that the purpose of bond is to ensure appearance, not to collect fines, costs, and fees.

7. Pretrial services entities will operate a risk-informed pretrial system. All pretrial services entities must use the Indiana Risk Assessment System – Pretrial Assessment Tool (IRAS-PAT). Additional assessment tools and information may be used as the team determines appropriate (e.g., criminal history, supplemental tools to assess violence, substance abuse and mental health assessment information, a secondary risk assessment tool). The team must establish a policy and procedure that identifies when the assessment is administered and who or what agency administers the assessment.

8. The pretrial services entity will develop and implement processes to verify the accuracy of the information obtained to score the risk assessment (e.g., NCIC records check, collateral contacts, etc.), to document the verification sources, and to report whether data has been verified.

9. Assessors will be credentialed in the administration and scoring of the IRAS-PAT as well as any other tools used to assess pretrial risk. Assessors will also participate in periodic training and recertification activities pursuant to the Indiana Risk Assessment Policy.

10. The pretrial services entity will develop and implement a local quality assurance protocol to assure the integrity of the administration, scoring, and use of the risk assessment tool(s).

11. The pretrial services entities will create and utilize a pretrial assessment report form. Pretrial services entities will develop and implement a court reminder system. The method used (e.g., phone calls, robo-calls, etc.) will be locally determined. Odyssey courts can send text messages to remind defendants in criminal cases of upcoming hearings. [See https://www.in.gov/courts/admin/tech/odyssey-text-messaging/]

12. Pretrial services entities will develop and implement a “look-back” process to identify defendants who remain in detention past the point at which release was expected to have occurred.

13. Pretrial services entities will develop and implement a differential supervision approach for those defendants on pretrial release. The EBDM State Policy Team will develop a model that can be tailored to meet local needs and resource capacity.

14. Pretrial services entities will develop and implement a structured method to respond to pretrial misconduct (i.e., rule infractions, FTA, new arrests). Odyssey courts can track FTA warrants within the system.

15. For arrestees who remain in custody, each pretrial team will establish a speedy, meaningful first appearance during which all parties (court, prosecution, defense counsel) are present and the pretrial report is reviewed.

16. Pretrial teams will work collaboratively with their state partners to educate colleagues and the broader community on the goals and values of Indiana’s pretrial justice system.

17. Each of the pretrial teams will develop a written protocol to document adherence to these principles.

18. Each of the pretrial teams will establish a process for reviewing critical incidents (as defined by the pilot site) to determine any need to adjust local pretrial release policies and procedures.

To further provide Indiana courts with guidance on implementing evidence-based pretrial practices, the EBDM Pretrial Work Group developed a set of sample pretrial documents contained in this Manual. Each jurisdiction should review and revise these documents to meet local needs. These sample documents include:

- A Pretrial Interview Advisement form developed for pretrial staff conducting the IRAS-PAT to ensure that arrestees are aware of the purposes for which the assessment information will be used.
- A Pretrial Services Report form developed to guide pretrial officers summarize for the court and parties the relevant findings from the IRAS-PAT and collateral information check to guide release decision-making.
- A Pretrial Release Matrix developed as a starting point from which each court may begin to make evidence-based release decisions. The matrix factors in the arresting offense, use of a risk assessment tool and suggested supervision strategies based on risk.
- A Pretrial Response Violation Matrix developed to assist courts and pretrial officers respond appropriately to violations of pretrial supervision conditions.

PRETRIAL INTERVIEW ADVISEMENT

County: ______________________________

Case Number/TCN/Law Enforcement Number: ____________________________

Name: ____

I understand that all information gathered by [Pretrial Services] will be used to determine or modify the conditions of my release and for no other purpose. If I fail to appear in court, it may be used by law enforcement to facilitate my arrest. My attorney will be provided with all the information provided to the court. Otherwise, this information is confidential and will not be publicly released without my written consent or a court order. I am not required to provide any information, but by participating in this interview and providing answers to the questions asked, I am acknowledging I understand how this information will be used. I have the right to counsel.

I will not be asked anything about my charge(s), and I should not discuss my arrest and charge(s).

I have read the above form, or had it read to me, and consent to the pretrial interview and the release of the information as outlined above. I understand that this is not a waiver of my medical and mental health privacy rights. I understand that consenting to the pretrial interview does not waive my right to counsel or the right to remain silent as to the charges against me.

___Agreed to be interviewed after being advised: ___________________________________
Arrestee/Defendant Signature

___Declined to be interviewed after being advised: ___________________________________
Arrestee/Defendant Signature

___Refused to sign

___________________________________ ____________________ ________________________________
Pretrial Officer Signature **Date/Time** **Witness Signature**

PRETRIAL SERVICES REPORT

Name of Defendant: ______________________________
Date of Birth: ______________________________
Date of Arrest: ______________________________
Cause Number(s): ______________________________
Pending Charges (include levels) ______________________________

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In Custody: ☐ **Yes** ☐ **No** **Preliminary Bail Posted:** ______________________________
Current Supervision (Other): ☐ **No** ☐ **Yes** **Case(s):** ______________________________
Current Pretrial Supervision: ☐ **No** ☐ **Yes** **Case(s):** ______________________________
Current Holds: ☐ **No** ☐ **Yes** **Reason(s):** ______________________________
Past FTA Warrants: ☐ **No** ☐ **Yes** **When:** ______________________________

Current address and phone: ______________________________
Currently Employed: ☐ **No** ☐ **Yes** **Where:** ______________________________

Wage and Hours per Week: ______________________________

Attorney Representation Indicated: ☐ **Public Defender Needed** ☐ **Private Attorney** ☐ **Self-Representation**

Indiana Risk Assessment System – Pretrial Tool Rating: ☐**Low (0-2)** ☐ **Moderate (3-5)** ☐ **High (6+)**

Date of Assessment: ______________

☐ **Complementary Assessments Administered:** ______________________________
Pretrial Services Risk Findings Category: ☐ **Category 1 (Low)** ☐ **Category 2 (Moderate)** ☐ **Category 3 (High)**

Pretrial Services Risk Findings Category: ☐ **Category 1 (Low)** ☐ **Category 2 (Moderate)** ☐ **Category 3 (High)**

Pretrial Services Recommended, if released: ☐ **Court Reminder Calls Only**
☐ **Supervision Level** ________________
☐ **Defer to Court**

Special Considerations / Comments: ______________________________

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Pretrial Officer Signature:______________________________ **Date:** ______________________

PRETRIAL RELEASE AND SUPERVISION MATRIX TEMPLATE

Offense Level:

Risk Findings	Non-violent Misdemeanor*	Non-Violent Felony*	Violent Offense**	Murder, Treason***
Category 1	ROR	ROR and Supervision Level 1	Supervision Level 2	Not Bailable
Category 2	ROR	ROR and Supervision Level 2	Supervision Level 3	Not Bailable
Category 3	ROR and Supervision Level 1	ROR and Supervision Level 3	Supervision Level 3	Not Bailable

Release conditions should be the least restrictive to ensure court appearance and protect public safety. Every released pretrial defendant will receive court date reminders. Release on recognizance (ROR) means release without financial obligation. Factors relevant to risk of nonappearance considered by the court can be found at IC 35-33-8-4(b).

Supervision Levels

- Level 1—at least one contact every two weeks; monthly criminal record check
- Level 2—at least one contact and one face-to-face meeting every month; monthly criminal record check; other conditions pursuant to a court order
- Level 3—at least two contacts and two face-to-face meetings every month; monthly criminal record check; other conditions pursuant to a court order

*A person arrested for an alcohol-related offense should be detained for the minimum number of hours shown in the blood/breath alcohol level chart in IC 35-33-1-6.

**A court may not release a person arrested for an offense against a family or household member on bail until at least 24 hours from the time of the person's arrest. IC 35-33-8-6.5.

**A court may not admit a sexually violent predator defendant, a person charged with child molesting, or a person charged with child solicitation to bail until the court has conducted a bail hearing in open court. IC 35-33-8-3.5(c).

***Murder or treason shall not be bailable, when proof is evident, or the presumption is strong. Indiana Constitution, Article 1, Section 17. See: *Fry v. State*, 990 NE2d 429 (Ind. 2013).

Note: this matrix does not apply to arrestees with detainers (i.e., probation violators, parole violators, ICE holds, out-of-county warrants etc.)

PRETRIAL VIOLATION RESPONSE MATRIX TEMPLATE

Violation Severity Level

		Low	Medium	High
Risk Level	Category 1	Low Response	Low Response	Medium Response
Risk Level	Category 2	Low Response	Medium Response	High Response
Risk Level	Category 3	Medium Response	High Response	High Response

Low Violations: show a lapse in judgment and do not cause harm to self or others
Examples: late for appointments/call-ins, failure to report police contact, failure to report address change

Medium Violations: show disregard for court orders and pretrial supervision and do not cause harm to others
Examples: missed appointment, , repeated low severity violations

High Violations: show willful or repeated disregard for court orders and pretrial supervision, and/or cause a risk of harm to self or others
Examples: new criminal arrest/charge, missed court date, failure to comply with no contact order, absconding from home detention/EM, possession of a weapon in violation of a court order, failure to complete violations response, repeated moderate severity violations

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Low Response options (examples): verbal warning, review release conditions with defendant, increased reporting

Medium Response options (examples): meet with defendant in person, increase supervision level, , notice to defense counsel and prosecutor,

High Response options (examples): file violation notice with court

INDIANA PRETRIAL OUTCOME AND PERFORMANCE MEASURES

Pretrial Release Committee of the Indiana Judicial Conference

Approved June 10, 2022; Revised February 3, 2023

The following proposed outcome and performance measures were developed using Indiana's existing measures in the Pretrial Practices Manual in combination with Measuring What Matters – Outcome and Performance Measures for the Pretrial Services Field, 2nd Edition published by the National Institute of Corrections.

It is the intent of the Pretrial Committee of the Judicial Conference that each jurisdiction collect data and monitor key pretrial performance measures. The committee seeks to support evidence-based decision making among their local stakeholders and alignment with pretrial best practices as outlined in the Indiana Pretrial Services Rules. When reading through the manual, jurisdictions will notice that the scope of the population they are now collecting data on has expanded to include all arrestees assessed with the IRAS-PAT within an agency's target population. The goal of the expansion is to support jurisdictions in analyzing the effectiveness of their local practices by providing a comparison population for examination. The following measures and commentary will assist each pretrial agency in making meaningful pretrial policy decisions that maximize release, maximize court appearance, and maximize public safety. It is highly encouraged that each jurisdiction uses these measures to spur discussions within their local pretrial stakeholder teams and Local Justice Reinvestment Advisory Councils to assess whether high performance is being achieved and to identify where adjustments are necessary. It is goal of the Pretrial Committee and all those involved the project that these metrics will empower agencies to provide the best and most effective pretrial services in their communities.

Unless otherwise stated, each measure should be based on the assessed individuals within the jurisdiction's target population. Though each jurisdiction may have markedly different target populations, strategies will be implemented to indicate these differences when data is aggregated at the state-level. Exceptions may exist when case processing strays from traditional pathways. These anomalies may result in problems collecting certain data elements in the manner prescribed by this document. Jurisdictions should collect the information available, make note of missing data, and evaluate whether consistent issues collecting data need to be addressed.

Additionally, data elements should be collected so that each measure may be reported by pretrial risk as well as a combination of demographic characteristics, such as age, sex, race, and ethnicity.

Each outcome and performance measure are specifically defined and followed by multiple items listed below to provide information on calculating the measure correctly.

- Commentary – Used to describe the measure in greater detail.
- Type of measure – Indicates whether the item should be measured based on an individual, case, or supervision and at what point in the process the data should be collected.
- Example(s) – Provided to illustrate appropriate data collection in varied circumstances.
- Enhanced Data – Indicates data that jurisdictions should collect, if able. Recognizing that each jurisdiction's resources vary with regard to data collection, these items represent data elements not

required for a program to be certified. The definition of the measure and formula indicate the *minimum* required for program certification.

- Data elements – Listed to indicate the information essential to calculate the measurement as defined. Items with an asterisk (*) represent enhanced data elements. Full details on each element can be found at the end of the document.

- Formula – Shows the method to calculate the measure.

The minimum data to be collected for each outcome and performance measure is indicated in the definition and description of each measure. As stated above, those elements listed in the Enhanced Data section are not required, but jurisdictions are encouraged to collect. The following measures are also optional for a jurisdiction to collect:

- Statutorily eligible Population Assessed
- Pretrial Support Interventions Ordered
- Pretrial Support Interventions Referred
- Return to Incarceration Rate

Definitions

ADMINISTRATIVE SANCTION/RESPONSE – An action or requirement imposed by the pretrial services agency in reaction to a technical violation of supervision conditions.

ARREST – The taking of a person into custody, so that the person may be held to answer for a crime, see IC 35-33-1-5.

ARRESTEE – A person taken into custody and held to answer for the alleged commission of a crime.

ASSESS – A pretrial services staff completes an Indiana Risk Assessment System – Pretrial Assessment Tool (IRAS-PAT) and may include other supplementary assessments and information. All results are provided to the court prior to an initial hearing.

ASSESSED POPULATION – The target population of pretrial defendants who are assessed with the IRAS-PAT.

BAIL – A person's release from jail pending trial on criminal charges.

CHARGE – A person's alleged offense.

COURT APPEARANCE – Any court hearing or event where the pretrial defendant is required to be present.

COURT INTERVENTION – An action taken by a court in reaction to a technical violation of supervision conditions.

FAILURE TO APPEAR – Occurs when a court issues a warrant following an arrestee's or pretrial defendant's non-appearance for court. This definition includes recalled warrants.

FIRST COURT APPEARANCE – See Initial Hearing.

INDIANA RISK ASSESSMENT SYSTEM – PRETRIAL ASSESSMENT TOOL (IRAS-PAT) – The pretrial risk assessment system tool adopted by the Judicial Conference of Indiana designed to assess an arrestee's or pretrial defendant's risk for failure to appear for court and risk to be arrested for a new criminal offense during the pretrial stage.

INITIAL HEARING – A hearing in court held in compliance with IC 35-33-7-1 and IC 35-33-7-5.

NEW CRIMINAL OFFENSE – An arrest or charge for a crime that occurred after release and during the pretrial stage and is unrelated to the original charge from which the pretrial defendant was released.

PRETRIAL DEFENDANT – A person charged with a criminal offense not yet adjudicated.

PRETRIAL MISCONDUCT – When a person fails to appear for court or is arrested for a new criminal offense during the pretrial stage.

PRETRIAL SERVICES AGENCY – The court-approved entity that provides pretrial risk assessments, pretrial services reports, pretrial supervision, pretrial compliance monitoring, and performance measurement to arrestees and pretrial defendants pursuant to all applicable laws and rules.

PRETRIAL STAGE – The length of time after a person's arrest until charge disposition or sentencing, whichever is later. The pretrial stage could also end once the Prosecutor makes a determination to not file an information alleging an offense(s) that was the basis for an arrest.

RELEASE – The removal from jail after an initial arrest for the alleged commission of a crime.

RELEASE CONDITION – Requirement imposed by a court to assure the pretrial defendant's appearance at court proceedings and to assure the safety of the community and others during the pretrial stage. Release conditions may or may not include supervision conditions. See IC 35-33-8-3.2.

RELEASE PROTOCOL – A written policy and procedure developed by the court for release decision making.

REVOCATION OR REVOKED – A court intervention that requires a pretrial defendant to be incarcerated due to violating a release condition during the pretrial stage.

SUPERVISION – The period when a pretrial services agency monitors supervision conditions required by the court of a pretrial defendant.

SUPERVISION CONDITION – Requirement imposed by a court and facilitated by a pretrial services agency for a specified period designed to mitigate a person's risk of failing to appear for court proceedings and arrest for a new criminal offense during the pretrial stage.

TARGET POPULATION – The local policy team's defined group of pretrial defendants who are eligible for pretrial services.

TECHNICAL VIOLATION – Failing to comply with a release or supervision condition that does not involve failing to appear for a court proceeding or an arrest for a new criminal offense.

TREATMENT/SUPPORT SERVICE – Service provided by an entity other than the pretrial services agency to a pretrial defendant which may aid the person in adhering to release conditions.

Release Rate

The percentage of assessed pretrial defendants who secure release during the pretrial stage.

COMMENTARY: Release rate informs the jurisdiction on the percentage of the target population released during the pretrial stage. This allows each jurisdiction to evaluate whether policies and procedures point toward maximizing release for those individuals in the target population while simultaneously maximizing court appearance and maximizing public safety.

TYPE OF MEASURE: Case-related; measured at the end of the pretrial stage and based only on the initial release from incarceration in a case.

ENHANCED DATA

Jurisdictions may also wish to track release rates by release types, such as release on recognizance, release with financial conditions and type of financial conditions, or release with supervision conditions.

For those who are not releases, jurisdictions may also want to track reasons why a defendant may be ineligible for release, such as having a warrant in another jurisdiction, inability to pay financial conditions, or a hold due to community supervision violation in another case

EXAMPLE(S): Defendant is arrested for a new criminal offense in County A. The defendant has an active warrant in County B at the time of the arrest in County A, which triggers a hold in County A's jail. Defendant is released on recognizance in County A for the new criminal offense but remains in jail due to the hold in County B. County A should report Defendant as released as of the date of the court's order indicating such.

Defendant resolved the warrant in County B and is later arrested in County A for a second new criminal offense while the original case is still pending. Defendant is held to a financial bail requirement in the second case and bail is revoked in the original case in County A. Defendant fails to post the financial bail in the second case and is not released from jail during the pretrial stage. In the second case, County A should report Defendant as not released during the pretrial stage.

DATA ELEMENTS:

- Start date and time of jail stay following initial arrest
- End date and time of jail stay following initial arrest
- Release during pretrial stage
- Release type*
- Financial condition*
- Non-release reason*

FORMULA:

Number of assessed defendants who secure release during the pretrial stage multiplied by One Hundred
divided by the
Total number of assessed defendants

Court Appearance Rate

The percentage of released pretrial defendants who were assessed and who attend all scheduled pretrial court appearances.

COMMENTARY: Failure to appear for court shall only be counted for those where a warrant was issued by the court as a result of the defendant failing to appear for a scheduled pretrial hearing. This includes warrants later recalled by the court. Though there may be exceptions, this measure assumes a court by issuing a warrant is determining a willful failure to appear versus one that cannot be controlled by the defendant.

Our definition includes warrants that have later been recalled. It should be noted that this definition differs from instructions provided in training for the IRAS-PAT, which directs an assessor to ignore recalled warrants when determining failures to appear in the previous 24 months.

The Court Appearance Rate shows the percentage of assessed individuals who attend all court appearances where their attendance is required. Though an individual may have multiple pretrial court events, a defendant's failure to appear for a single event where a warrant was issued by the court impacts the Court Appearance Rate.

TYPE OF MEASURE: Case-related; measured at the end of the pretrial stage.

EXAMPLE(S): Defendant is released in Case #1 during the pretrial stage and failed to appear for a pretrial conference and a warrant is issued. The warrant is resolved, and the defendant is released again in Case #1. Defendant is later arrested for a new criminal offense initiating the filing of new Case #2. Defendant is released in both Case #1 and Case #2 during the pretrial stage and all pretrial hearings for both cases run concurrently. Defendant appears at all the remaining hearings through the end of the pretrial stage.

ENHANCED DATA

Jurisdictions may also wish to track when a court issues a summons rather than a warrant as this may provide insight to a defendant's willful actions to avoid court proceedings versus the difficultly in overcoming barriers to attending a hearing (e.g., employment, childcare, or incarceration in another jurisdiction) as the court is often presented with information to make an informed decision on the best course of action.

Tracking whether a court reminder was sent to a defendant prior to a hearing can also provide insight on the effectiveness of court reminders on appearance rates.
The jurisdiction would report the defendant as failing to appear – warrant in Case #1. The county would report the defendant has appearing for all pretrial hearings in Case #2.

DATA ELEMENTS:

- Failure to appear – warrant
- Failure to appear – summons*
- Failure to appear – other*
- Court reminders sent*

FORMULA:

Number of released defendants who were assessed and who attend all
scheduled pretrial court appearances without a warrant being issued multiplied by One Hundred
divided by the
Total number of released pretrial defendants who were assessed

Public Safety Rate

The percentage of released pretrial defendants who were assessed and who are not charged with a new criminal offense that occurred during the pretrial stage.

COMMENTARY: The public safety rate measures defendants who have not been arrested and charged OR summoned and charged with a new criminal offense (misdemeanor or felony). Thus, those who have been summoned to court for a new offense should also be included along with information learned about charges in other jurisdictions.

TYPE OF MEASURE: Case-related; measured at the end of the pretrial stage.

EXAMPLE(S): Defendant #1 is arrested for a new criminal offense and is released to pretrial supervision at an initial hearing. Defendant #1 is arrested for a new criminal offense while on pretrial supervision. The county would report Defendant #1 as being arrested for a new criminal offense during the pretrial stage.

Defendant #2 is arrested for a new criminal offense and is released on recognizance at an initial hearing. Pretrial services receives notice from the prosecutor that Defendant #2 was summoned to court for a new criminal case alleging an offense that occurred while Defendant #2's original pretrial case is still pending. The county would report Defendant #2 as arrested for a new criminal offense during the pretrial stage.

Defendant #3 is arrested for a new criminal offense and released to pretrial supervision at an initial hearing. Defendant #3 is then released from pretrial supervision before the case has been disposed and the pretrial stage continues. Defendant #3 is arrested for a new criminal offense during the pretrial stage; however, the prosecutor has elected not to file an information alleging a new criminal offense. The county would NOT report Defendant #3 as arrested for a new criminal offense during the pretrial stage.

ENHANCED DATA

While collecting information about the new criminal offense, it may also be helpful to a jurisdiction to learn the types of offenses defendants are being rearrested for or charged with during the pretrial stage. Thus, a jurisdiction may want to collect data on the highest new criminal offense code, title, and level of offense.

DATA ELEMENTS:

- New criminal offense charge
- New criminal offense date
- Highest new criminal offense code*
- Highest new criminal offense title*
- Highest new criminal offense level*

FORMULA:

Number of released defendants who were assessed and who are not
charged with a new offense that occurred during the pretrial stage multiplied by One Hundred
divided by the
Total number of released pretrial defendants who were assessed

Success Rate

The percentage of released pretrial defendants who were assessed and who attend all scheduled pretrial court appearances and are not arrested and charged or summoned and charged with a new criminal offense during the pretrial stage.

COMMENTARY: The success rate includes the combination of two measures: court appearance rate and public safety rate. Thus, successful defendants will have appeared for all pretrial court hearings and will have not been arrested and charged or summoned and charged with a new criminal offense that occurred during the pretrial stage.

TYPE OF MEASURE: Case-related; measured at the end of the pretrial stage.

EXAMPLE(S): See examples listed in the Court Appearance Rate and Public Safety Rate.

DATA ELEMENTS:

- Failure to appear – warrant
- New criminal offense charge
- New criminal offense date

FORMULA:

Number of released defendants who were assessed and who attend all scheduled court appearances and are not arrested and charged or summoned and charged with a new criminal offense during the pretrial stage multiplied by One Hundred
divided by the
Total number of released pretrial defendants who were assessed

Recommendation Rate

The percentage of a pretrial services agency's release recommendations that correspond with their assessed risk of pretrial misconduct and release protocol.

COMMENTARY: It is recommended that each jurisdiction develop a release protocol that incorporates the results of the pretrial risk assessment. The Recommendation Rate indicates the percentage of instances when the pretrial services officer does not override the assessed risk and release protocol when crafting recommendations for the court to consider at the initial hearing.

TYPE OF MEASURE: Case-related; measured after the initial hearing.

EXAMPLE(S): Defendant #1 is arrested for a new criminal offense and the pretrial services agency assesses the defendant prior to the initial hearing. Defendant #1's assessed risk level is low and the adopted release protocol indicates the defendant should be released on recognizance with no pretrial conditions. The pretrial services agency recommends release on recognizance with no pretrial conditions. The county would count this as a recommendation corresponding with the assessed risk of pretrial misconduct and release protocol.

Defendant #2 is arrested for a new criminal offense and the pretrial services agency assesses the defendant prior to the initial hearing. Defendant #2's assessed risk level is low and the adopted release protocol indicates the defendant should be released on recognizance with no pretrial conditions. The pretrial services agency recommends release on recognizance with pretrial supervision. The county would count this as a recommendation NOT corresponding with the assessed risk of pretrial misconduct and release protocol.

ENHANCED DATA

Collecting the release protocol result and the reason why a recommendation does not correspond may help the agency identify if changes are necessary to the adopted release protocol and why the agency may be making recommendations outside of the protocol.

DATA ELEMENTS:

- Recommendation / release protocol concurrence
- Recommendation override reason*

FORMULA:

Number of recommendations corresponding with the
assessed risk of pretrial misconduct and release protocol multiplied by One Hundred
divided by the
Total number of release recommendations made by the pretrial services agency

Concurrence Rate

The percentage of pretrial defendants whose court ordered release or detention status on the date of the initial hearing corresponds with their assessed risk of pretrial misconduct and release protocol.

COMMENTARY: This measure is like the Recommendation Rate by measuring the percentage of instances when the court overrides the assessed risk and release protocol.

It is recommended that each jurisdiction develop a standard pretrial services report, which includes information about the defendant's assessed risk and an indication if the recommendation from the pretrial services officer is an override from the determined release protocol.

TYPE OF MEASURE: Case-related; measured after the initial hearing.

EXAMPLE(S): Defendant 1 is arrested for a new criminal offense and the pretrial services agency assesses the defendant prior to the initial hearing. Defendant #1's assessed risk level is low and the adopted release protocol indicates the defendant should be released on recognizance with no pretrial conditions. The pretrial services agency recommends release on recognizance with no pretrial conditions and the court agrees at the initial hearing. The county would count this as a court order corresponding with the assessed risk of pretrial misconduct and release protocol.

Defendant #2 is arrested for a new criminal offense and the pretrial services agency assesses the defendant prior to the initial hearing. Defendant #2's assessed risk level is low and the adopted release protocol indicates the defendant should be released on recognizance with no pretrial conditions. The pretrial services agency recommends release on recognizance with pretrial supervision and the court agrees. The county would count this as a court order NOT corresponding with the assessed risk of pretrial misconduct and release protocol.

ENHANCED DATA

A jurisdiction may also want to track whether the order from the court matches the pretrial agency's release recommendation, especially if the release recommendation is an override from the assessed risk and release protocol.

Collecting the reason why the court's order does not correspond to the release protocol may help the jurisdiction identify if changes are necessary to the adopted release protocol and why court may be initiating orders outside of the protocol.

DATA ELEMENTS:

- Ordered release conditions/risk protocol concurrence
- Order concurrence with release recommendation*
- Ordered release conditions override reason*

FORMULA:

Number of court ordered release or detention decisions corresponding
with the assessed risk of pretrial misconduct and release protocol multiplied by One Hundred
divided by the
Total number of court ordered release or detention
decisions on the date of the initial hearing

Counsel at Initial Hearing

The percentage of assessed pretrial defendants who are in custody and represented by counsel at the initial hearing.

COMMENTARY: Counsel at Initial Hearing measures the rate at which defense counsel is present to represent an in-custody defendant at the initial hearing when a bail decision is made by the court.

TYPE OF MEASURE: Case-related; measured after the initial hearing.

EXAMPLE(S): Defendant is arrested for a new criminal offense and remains in jail until the initial hearing Defendant is represented by counsel and counsel is active and participating in the initial hearing. The county would count this as a pretrial defendant represented by counsel at the initial hearing.

ENHANCED DATA

Jurisdictions may wish to track whether counsel is present for all defendants, including those who are not in custody at the initial hearing.

DATA ELEMENTS:

- Counsel present at initial hearing

FORMULA:

Number of assessed pretrial defendants in custody and
represented by counsel at the initial hearing multiplied by One Hundred
divided by the
Total number of assessed pretrial defendants in custody at the initial hearing

Pretrial Detainee Length of Stay

The average length of stay in jail for assessed pretrial defendants after initial arrest.

COMMENTARY: Pretrial Detainee Length of Stay measures how quickly assessed pretrial defendants are afforded release while their case is pending. Only the length of time after initial arrest until the defendant's release (or until the end of the pretrial stage, if not released) should be counted.

Length of stay should be calculated in actual days served including the day of arrest and the day of release.

TYPE OF MEASURE: Case-related; measured at the end of the pretrial stage and based only on the initial release from incarceration in a case.

EXAMPLE(S): Defendant #1 is arrested for a new criminal offense and incarcerated on Monday. On Wednesday, the defendant is released after the initial hearing. The length of stay in jail after initial arrest for this defendant is three days (Monday, Tuesday, and Wednesday).

Defendant #2 is arrested for a new criminal offense and incarcerated on Saturday. Defendant #2 is also being held in jail due to a violation of community supervision in an unrelated case. On Monday, the defendant is released from incarceration after an initial hearing on the criminal offense but remains in custody due to the violation of community supervision in the unrelated case. The length of stay in jail after initial arrest for the new criminal offense is three days (Saturday, Sunday, and Monday).

ENHANCED DATA

A jurisdiction may want to calculate this measure based on the entire arrested pretrial population eligible for bail and not just those in a jurisdiction's target population and distinguish between the length of stay for the target population and those outside of the target population.

Though the length of stay is tracked in days, jurisdictions may want to track in the number of hours for those lengths of stay that are under 24 hours.

Jurisdictions may also want to report the length of stay for those who are released during the pretrial stage in comparison to those who are never released.

Additionally, a jurisdiction may wish to report the median length of stay in addition to the average to provide more detail and identify outliers which may move the average higher or lower than anticipated. The median is the middle of the range.

DATA ELEMENTS:

- Start date and time of jail stay following initial arrest
- End date and time of jail stay following initial arrest
- Non-release reason*

FORMULA:

Total number of days in jail after initial arrest for assessed pretrial defendants
divided by the
Total number of assessed pretrial defendants

Supervision Condition Rate Successfully

The percentage of assessed pretrial defendants who complete supervision conditions with no technical violations that result in an administrative sanction/response or court intervention.

COMMENTARY: The Supervision Condition Success Rate indicates the percentage of assessed defendants who have no technical violations that require an administrative response or court intervention during any pretrial supervision period for a case.

This is intended to measure technical violations of supervision and not violations due to a new offense arrest or charge or the defendant failing to appear for court.

TYPE OF MEASURE: Supervision-related; measured at the end of pretrial supervision.

ENHANCED DATA

A jurisdiction may want to track the type of violation and type of administrative response or court intervention as this may provide information on which interventions promote success in completing pretrial supervision without revocation.

EXAMPLE(S): Defendant #1 is placed on pretrial supervision after release and is ordered to report to the pretrial services agency weekly until further order of the court. Defendant #1 fails to appear for a scheduled appointment with the pretrial services officer during week three. The pretrial services officer contacts Defendant #1 by phone and addressed the missed appointment by providing a verbal warning. The county would report this as a defendant who failed to complete supervision conditions with no technical violations.

Defendant #2 is placed on pretrial supervision after release and is ordered by the court to reengage with their treatment provider and attend all treatment sessions as directed. The treatment provider sends a report to the pretrial services officer stating Defendant #2 failed to engage in treatment. The pretrial services officer files a notice of noncompliance with the court and attached the report from the treatment provider. At the next hearing, the court again orders Defendant #2 to engage in treatment and continues pretrial supervision. The county would report this as a defendant who failed to complete supervision conditions with no technical violations.

DATA ELEMENTS:

- Supervision end date
- Supervision end status
- Technical violation during pretrial supervision
- Technical violation(s) and response to violation*

FORMULA:

Number of assessed pretrial defendants who complete supervision conditions with no technical violations that result in an administrative sanction/response or court intervention multiplied by One Hundred
divided by the
Total number of assessed pretrial defendants who complete supervision conditions

Supervision Overall

The percentage of assessed and released pretrial defendants with supervision conditions who do not have any of the following:

(1) arrested and charged or summoned and charged with a new criminal offense that occurred during supervision,
(2) failed to appear in court where a warrant was issued during supervision, or
(3) revoked for a technical violation during supervision.

COMMENTARY: The Supervision Overall Success Rate measures the success of an assessed pretrial defendant during the pretrial supervision period only. This measure includes whether the defendant was arrested and charged or summoned and charged for a new offense during the supervision period, failed to appear for court where a warrant was issued during the supervision period, or revoked for a technical violation during the supervision period.

In other words, this measures pretrial defendants who complete supervision without being re-incarcerated in the original case during the pretrial supervision period.

Warrants for failure to appear, or new arrest or charges issued for events that did not occur while on pretrial supervision should not be counted.

TYPE OF MEASURE: Supervision-related; measured at the end of pretrial supervision.

EXAMPLE(S): Defendant is released in a new case and placed on pretrial supervision. During supervision, the defendant attended all court hearings and is not charged with a new criminal offense allegedly occurring during pretrial supervision. The defendant missed one supervision appointment and was given a verbal warning. The county would count this case as successfully completing pretrial supervision without having any of the events that resulted in incarceration.

DATA ELEMENTS:

- Failure to appear – warrant
- New criminal offense arrest
- New criminal offense charge without arrest
- Supervision end date
- Supervision end status
- Technical violation(s) resulting in revocation

FORMULA:

Number of assessed and released pretrial defendants with
supervision conditions who do not have any of the following:
(1) arrested and charged or summoned and charged with a new offense that occurred during supervision,
(2) failed to appear for court where a warrant was issued (including recalled warrants) during supervision, or (3)
revoked for a technical violation during supervision multiplied by One Hundred
divided by the
Total number of assessed and released pretrial defendants with supervision conditions

Supervision Completion Rate

The percentage of released pretrial defendants who were assessed and who complete supervision conditions and did not have a full revocation of their supervision.

COMMENTARY: The Supervision Completion Rate measures the overall rate of completion despite some defendants experiencing missteps along the way. The key to counting a defendant as completing supervision is the fact that they are not in jail and remain in the community at either the completion of supervision or at the end of the pretrial stage, whichever comes first.

Jurisdictions should track the type of issue that occurred during the pretrial supervision period, such as being arrested and charged or summoned and charged with a new criminal offense during supervision, failing to appear for court where a warrant was issued (including recalled warrants), or being revoked from supervision for a brief period of time due to a technical violation.

Sometimes after a short stint in jail due to a failure to appear or other misstep, a defendant is released and placed back on pretrial supervision while the case is pending, and the defendant eventually completes supervision despite the setback. The supervision was not successful, as measured in the Supervision Overall Success Rate, but it was completed, and the defendant was not in jail at end of pretrial supervision. Counties should determine by local policy how long a break in supervision, due to incarceration or other reasons, may occur before the defendant's original supervision is closed and a new supervision condition begins.

TYPE OF MEASURE: Supervision-related; measured at the end of pretrial supervision.

EXAMPLE(S): Defendant is released in a new case and placed on pretrial supervision. During pretrial supervision, the defendant is placed in jail due to an arrest and charge for a new criminal offense. The court released the defendant in both cases and ordered the defendant back on pretrial supervision in the original case. Two months later the original case is disposed, ending pretrial supervision. On the date of sentencing, the defendant remained in the community and completed pretrial supervision. The county would count this as a completed supervision without a full revocation of pretrial supervision.

DATA ELEMENTS:

- Supervision end date
- Supervision end status

FORMULA:

The percentage of released pretrial defendants who were assessed and who complete supervision conditions and did not have a full revocation of their supervision multiplied by One Hundred
divided by the
Total number of released pretrial defendants with supervision conditions

Statutorily Eligible Population Assessed

The percentage of arrested pretrial defendants eligible by statute for bail that the agency assesses for release.

COMMENTARY: Statutorily eligible population assessed measures the percentage of pretrial defendants assessed who are eligible for bail. Thus, this measure must be calculated based upon the entire arrested pretrial population eligible for bail and not just those in a jurisdiction's target population. The assessment occurs prior to the initial hearing.

A jurisdiction should also track reasons why a bail-eligible defendant was not assessed, such as defendant refused interview, defendant unavailable, defendant not in target population, holds due to community supervision violations, outstanding warrants in other jurisdictions, etc.

TYPE OF MEASURE: Case-related; measured after the initial hearing.

EXAMPLE(S): Defendant #1 is arrested for a new criminal offense. The pretrial services agency completes an assessment prior to the initial hearing. The county would count this as a pretrial defendant assessed by the agency.

Defendant #2 is arrested for a new criminal offense. The pretrial services agency does not complete an assessment because the pretrial defendant is not in the county's target population. The county would count this as an arrested pretrial defendant eligible by statute for bail, but not assessed.

DATA ELEMENTS:

- Start date and time of jail stay following initial arrest
- Assessment date and time

FORMULA:

Number of pretrial defendants assessed by the agency multiplied by One Hundred
divided by the
Total number of arrested pretrial defendants eligible by statute for bail

NOTE: This measure is not required to be collected by each jurisdiction and should be considered an enhancement a jurisdiction may wish to use as an additional performance measure.

Pretrial Support Interventions Ordered

The percentage of released pretrial defendants who were assessed and ordered by the court to participate in treatment/support services.

COMMENTARY: A jurisdiction should track the type of service being ordered and whether the assessed and released pretrial defendant engaged in the service at least once during the pretrial period.

Simply being ordered to participate in services does not necessarily result in engagement by the defendant. It is also important to measure the engagement to determine if the intervention promotes successful outcomes.

TYPE OF MEASURE: Case-related; measured at the end of the pretrial stage.

EXAMPLE(S): Defendant is released in a new case during the pretrial stage and ordered to attend and engage in treatment before the next court hearing. After the hearing, the pretrial services officer provides information about several treatment providers in the area and discusses ideas on how the defendant can engage in treatment. Before the next hearing, a treatment provider sends a report to the court stating the defendant attended two sessions since their initial contact and is scheduled to attend additional sessions. The county would count this as a pretrial defendant ordered by the court to participate in treatment/support services.

DATA ELEMENTS:

- Treatment/support services – ordered
- Treatment/support services – engaged

FORMULA:

Number of pretrial defendants who were assessed and ordered by the court to
participate in treatment/support services multiplied by One Hundred
divided by the
Total number of released pretrial defendants who were assessed

NOTE: This measure is not required to be collected by each jurisdiction and should be considered an enhancement a jurisdiction may wish to use as an additional performance measure.

Pretrial Support Interventions Referred

The percentage of pretrial defendants who were assessed and referred to treatment/support services absent a court order.

COMMENTARY: A jurisdiction should track the type of service the assessed pretrial defendant is being referred for and whether the defendant engaged in the service at least once during the pretrial period.

Simply being referred to participate in services does not necessarily result in engagement by the defendant. It is also important to measure the engagement to determine if the intervention promotes successful outcomes.

TYPE OF MEASURE: Supervision-related; measured at the end of pretrial supervision.

EXAMPLE(S): Defendant is released in a new case during the pretrial stage and placed on pretrial supervision. During the course of supervision, the pretrial services officer refers the defendant to services related to employment and discusses ideas on how the defendant can engage in employment services. At the next appointment, the defendant reports attending several appointments with the employment service provider and brings documentation indicating such. The county would count this as a pretrial defendant to treatment/support services.

DATA ELEMENTS:

- Treatment/support services – referred
- Treatment/support services – engaged

FORMULA:

Number of assessed pretrial defendants referred to treatment/support services multiplied by One Hundred
divided by the
Total number of pretrial supervision defendants who were assessed

NOTE: This measure is not required to be collected by each jurisdiction and should be considered an enhancement a jurisdiction may wish to use as an additional performance measure.

Return to Incarceration Rate

The percentage of pretrial defendants who were assessed and released and subsequently returned to incarceration during the pretrial stage.

COMMENTARY: To measure the return to incarceration rate, a jurisdiction should focus on the assessed population who were released at some point during the pretrial stage. The return to incarceration must have also occurred during the pretrial stage. The defendant could be incarcerated due to being arrested for a new offense, failure to appear, or for a technical violation of supervision conditions.

It is important to note that the return to incarceration should be counted if it is related to the local jurisdiction's case and should not be counted if the defendant is incarcerated in another jurisdiction for a technical violation of pretrial or post-sentence community supervision.

TYPE OF MEASURE: Case-related; measured at the end of pretrial supervision.

EXAMPLE(S): Defendant #1 is arrested for a new criminal offense and assessed by the pretrial services agency. Defendant #1 is released to pretrial supervision conditions after the initial hearing. Defendant #1 is arrested due to a failure to appear warrant being issued in the case. The local jurisdiction would count Defendant #1 as a return to incarceration.

Defendant #2 is arrested for a new criminal offense and assessed by the pretrial services agency. Defendant #2 is released on recognizance after the initial hearing. Defendant #2 is on post-sentence community supervision in another jurisdiction. After the other jurisdiction learns of the new criminal offense, Defendant #2 is arrested for a community supervision violation and incarcerated in the other jurisdiction. Defendant #2 should not be counted as a return to incarceration.

DATA ELEMENTS:

- Return to incarceration

FORMULA:

The number of pretrial defendants who were assessed and released
and subsequently returned to incarceration during the pretrial stage multiplied by One Hundred
divided by the
Total number of pretrial supervision defendants who were assessed and released

NOTE: This measure is not required to be collected by each jurisdiction and should be considered an enhancement a jurisdiction may wish to use as an additional performance measure.

DATA ELEMENT	DESCRIPTION	CHOICES (IF APPLICABLE)	FORMAT	NOTES
County	County from which the record comes		Text	
Defendant Identification Number	Unique identification number used by the jurisdiction's case management system		Number	
First Name	First name of the arrestee or pretrial defendant		Text	
Middle Name	Middle name of the arrestee or pretrial defendant		Text	
Last Name	Last name of the arrestee or pretrial defendant		Text	
DEMOGRAPHIC INFORMATION				
Date of Birth	Arrestee or pretrial defendant's date of birth		Date (mm/dd/yyyy)	
Sex	Arrestee or pretrial defendant's biological sex assigned at birth	• Female • Male	Text	
Gender	Arrestee or pretrial defendant's gender identity	• Female • Male • Non-binary • Transgender • Other	Text	
Race	Arrestee or pretrial defendant's race	• American Indian or Alaskan Native • Asian • Black or African American • Native Hawaiian or Pacific Islander • White • Mixed Race • Other	Text	
Ethnicity	Whether the arrestee or pretrial defendant is of Hispanic descent	• Hispanic • Non-Hispanic	Text	
Education	Highest level of education completed at time	• Less than high school/primary school • High school equivalent	Text	

DATA ELEMENT	DESCRIPTION	CHOICES (IF APPLICABLE)	FORMAT	NOTES
	of pretrial assessment for the arrestee or pretrial defendant	• High school diploma/secondary school • Trade/technical/vocational school • Some college • College graduate/post-secondary		
Marital Status	Marital status at time of pretrial assessment for the arrestee or pretrial defendant	• Divorced • Married • Separated • Single • Widowed	Text	
Employment Status	Employment status at time of pretrial assessment for the arrestee or pretrial defendant	• Part-time • Full-time • Unemployed • Disabled • Student • Retired • Medical Restriction	Text	
ASSESSMENT DATA				
Assessment Date	Date the assessment was administered		Date (mm/dd/yyyy)	User driven date of the interview.
Assessment Identification Number	Identification number associated with the IRAS-PAT tool		Number	
Assessment Collector	Name of pretrial services staff who completed the assessment		Text	
Assessment Item #1	Scored result for assessment item #1 on the IRAS-PAT	0, 1	Number	
Assessment Item #2	Scored result for assessment item #2 on the IRAS-PAT	0, 1, 2	Number	
Assessment Item #3	Scored result for assessment item #3 on the IRAS-PAT	0, 1	Number	
Assessment Item #4	Scored result for assessment item #4 on the IRAS-PAT	0, 1, 2	Number	
Assessment Item #5	Scored result for assessment item	0, 1	Number	

DATA ELEMENT	DESCRIPTION	CHOICES (IF APPLICABLE)	FORMAT	NOTES
	#5 on the IRAS-PAT			
Assessment Item #6	Scored result for assessment item #6 on the IRAS-PAT	0, 1	Number	
Assessment Item #7	Scored result for assessment item #7 on the IRAS-PAT	0, 1	Number	
Assessment Score	Total score for the IRAS-PAT	0, 1, 2, 3, 4, 5, 6, 7, 8, 9	Number	
Risk Level	Risk classification based on the total score for the IRAS-PAT	• Low • Moderate • High	Text	
Override Risk Level	Risk level for the arrestee or pretrial defendant that has been overridden by the assessment collector	• Low • Moderate • High	Text	
Override Reason	Description describing rationale for overriding the assessment risk level	• Sex offense • Seriousness of offense • Mental illness • Departmental policy • Other	Text	
CASE DETAILS				
Case Number	Case number associated with the charged offense(s)		xxxxx-xxxx-xx-xxxxxx (Leading zeros required)	
Highest Charged Offense Code	Indiana Code for the highest charged offense		xx-xxx-xxx-xxxx (Leading zeros unnecessary)	Highest charged offense should be ordered as follows: MR (Murder), FA, F1, F2, FB, F3, F4, FC, F5, FD, F6, AM, BM, CM. For multiple charges at the same level, use the following ranking to choose the highest level:

DATA ELEMENT	DESCRIPTION	CHOICES (IF APPLICABLE)	FORMAT	NOTES
				• Person related offenses under IC 35-42 • Property related offense under IC 35-43 • Offense involving controlled substances under IC 35-38 • Offenses related to weapons under IC 35-47 • Offenses involving a motor vehicle under IC 9 • Offenses related to public health under IC 35-45 • Offenses related to public administration under IC 35-44.1 • Miscellaneous offenses under IC 35-46 • Any not listed above
Highest Charged Offense Title	Title of the highest charged offense as listed in the Indiana Code		Text	Highest charged offense should be ordered as follows: MR (Murder), FA, F1, F2, FB, F3, F4, FC, F5, FD, F6, AM, BM, CM.

DATA ELEMENT	DESCRIPTION	CHOICES (IF APPLICABLE)	FORMAT	NOTES
				For multiple charges at the same level, use the following ranking to choose the highest level: • Person related offenses under IC 35-42 • Property related offense under IC 35-43 • Offense involving controlled substances under IC 35-38 • Offenses related to weapons under IC 35-47 • Offenses involving a motor vehicle under IC 9 • Offenses related to public health under IC 35-45 • Offenses related to public administration under IC 35-44.1 • Miscellaneous offenses under IC 35-46 Any not listed above
Highest Charged Offense Level	Level of offense as listed in the Indiana Code	MR, F1, F2, F3, F4, F5, F6, FA, FB, FC, FD, AM, BM, CM	Text	Highest charged offense should be ordered as

DATA ELEMENT	DESCRIPTION	CHOICES (IF APPLICABLE)	FORMAT	NOTES
				follows: MR (Murder), FA, F1, F2, FB, F3, F4, FC, F5, FD, F6, AM, BM, CM. For multiple charges at the same level, use the following ranking to choose the highest level: • Person related offenses under IC 35-42 • Property related offense under IC 35-43 • Offense involving controlled substances under IC 35-38 • Offenses related to weapons under IC 35-47 • Offenses involving a motor vehicle under IC 9 • Offenses related to public health under IC 35-45 • Offenses related to public administration under IC 35-44.1 • Miscellaneous offenses under IC 35-46

DATA ELEMENT	DESCRIPTION	CHOICES (IF APPLICABLE)	FORMAT	NOTES
				Any not listed above
Disposition of Charge(s)	Guilty finding on at least one charge	Yes, No	Text	Guilty means a charge disposition containing: Admission Conviction Finding of guilty Guilty verdict Plea by agreement Plead guilty
Failure to Appear – Warrant	Pretrial defendant had at least one failure to appear where a warrant was issued by the court (including recalled warrants) during the pretrial stage.	Yes, No	Text	
Failure to Appear – Summons	Pretrial defendant had at least one failure to appear where a summons was issued by the court during the pretrial stage.	Yes, No	Text	
Failure to Appear – Other	Pretrial defendant had at least one failure to appear and neither a warrant or summons was issued or indicated by the court during the pretrial stage.	Yes, No	Text	
Court Reminders Sent	Court reminders (text message, emails, telephone calls, etc.) are sent to the pretrial defendant reminding of the next scheduled court appearance	Yes, No	Text	
Counsel Present at Initial Hearing	Defense counsel present at initial hearing	Yes, In custody No, In custody Yes, Not in custody	Text	

DATA ELEMENT	DESCRIPTION	CHOICES (IF APPLICABLE)	FORMAT	NOTES
		No, Not in custody Unknown		
Date of Initial Hearing	Date of initial hearing or first court appearance		Date (mm/dd/yyyy)	
Return to Incarceration	Pretrial defendant was incarcerated due to an issue related to the case in which the defendant was released	Yes, No	Text	
PRETRIAL SERVICES DETAILS				
Recommendation / Release Protocol Concurrence	Recommendation from the pretrial services agency matched the release protocol	Yes, No	Text	
Recommendation Override Reason	Description describing rationale for overriding the release protocol	• Has unresolved pretrial case(s) • Currently on post-sentence supervision conditions • Other (Free text if possible)	Text	
Order Concurrence with Release Recommendation	Court ordered release conditions matched the recommendation from the pretrial services agency	Yes, No	Text	
Ordered Release Conditions / Release Protocol Concurrence	Court ordered release conditions matched the release protocol	Yes, No	Text	
Ordered Release Conditions Override Reason	Description describing rationale for overriding the release protocol	• Seriousness of offense • Criminal history • Risk of failure to appear • Risk to public safety • Other	Text	
New Criminal Offense Charge	Pretrial defendant, after release and during the pretrial stage, is arrested and charged or summoned and charged for allegedly committing a new criminal offense	Yes, No	Text	

DATA ELEMENT	DESCRIPTION	CHOICES (IF APPLICABLE)	FORMAT	NOTES
	that occurred during the pretrial stage.			
New Criminal Offense Date	The date the new criminal offense is alleged to have occurred during the pretrial stage.		Date (mm/dd/yyyy)	
Highest New Criminal Offense Code	Indiana Code for the highest new criminal offense		xx-xxx-xxx-xxxx (Leading zeros unnecessary)	Highest charged offense should be ordered as follows: MR (Murder), FA, F1, F2, FB, F3, F4, FC, F5, FD, F6, AM, BM, CM. For multiple charges at the same level, person related offenses should be ranked highest, then property-based offenses, then substance related offenses, then all other offenses. If arrested and not charged, use the highest arresting offense.
Highest New Criminal Offense Title	Title of the highest new criminal offense as listed in the Indiana Code		Text	Highest charged offense should be ordered as follows: MR (Murder), FA, F1, F2, FB, F3, F4, FC, F5, FD, F6, AM, BM, CM. For multiple charges at the same level, person related

DATA ELEMENT	DESCRIPTION	CHOICES (IF APPLICABLE)	FORMAT	NOTES
				offenses should be ranked highest, then property-based offenses, then substance related offenses, then all other offenses. If arrested and not charged, use the highest arresting offense.
Highest New Criminal Offense Level	New criminal offense level as listed in the Indiana Code	MR, F1, F2, F3, F4, F5, F6, FA, FB, FC, FD, AM, BM, CM	Text	Highest charged offense should be ordered as follows: MR (Murder), FA, F1, F2, FB, F3, F4, FC, F5, FD, F6, AM, BM, CM. For multiple charges at the same level, person related offenses should be ranked highest, then property-based offenses, then substance related offenses, then all other offenses. If arrested and not charged, use the highest arresting offense.
JAIL STAY DETAILS				
Start Date and Time of Jail Stay following Initial Arrest	Start date and time of jail stay following initial arrest		Date/Time (mm/dd/yyyy hh:mm)	

DATA ELEMENT	DESCRIPTION	CHOICES (IF APPLICABLE)	FORMAT	NOTES
End Date and Time of Jail Stay following Initial Arrest	End date and time of jail stay following initial arrest		Date/Time (mm/dd/yyyy hh:mm)	
Released during Pretrial Stage	Whether or not the defendant was released during the pretrial stage	Yes, No	Text	
Release Type	Way the pretrial defendant is released from the initial jail stay following arrest	• Recognizance release • Financial conditions imposed • Not released during pretrial stage	Text	
Financial Condition	Type of financial condition(s) imposed prior to release if any	• None • Cash • Surety • Cash and surety • Property • Other	Text	
Non-release Reason	Reason the pretrial defendant was not released during the pretrial stage	• Financial condition not met • Hold due to pending case in original county • Hold due to pending case in another jurisdiction • Other	Text	Non-release reason should be indicated in the following order if more than one reason may apply: 1. Hold due to pending case in original county 2. Hold due to pending case in another jurisdiction 3. Financial condition not met 4. Other
Bail Amount	Amount of cash or surety required as a financial condition greater than $1,000	Yes, No	Text	
SUPERVISION DETAILS				
Supervision Start Date	Date when the first supervision condition begins		Date (mm/dd/yyyy)	
Supervision End Date	Date when the final supervision condition ends		Date (mm/dd/yyyy)	

DATA ELEMENT	DESCRIPTION	CHOICES (IF APPLICABLE)	FORMAT	NOTES
Case Management / Pretrial Monitoring	Pretrial defendant is subject to pretrial case management	Yes, No	Text	
Treatment / Support Services – Referred	Pretrial defendant is referred to treatment or support services by the pretrial services agency	Yes, No	Text	
Treatment / Support Services – Ordered	Pretrial defendant is ordered to treatment or support services by the court	Yes, No	Text	
Treatment / Support Services – Engaged	Pretrial defendant engages with treatment or support services at least once after being referred by the pretrial services agency or ordered by the court	Yes, No	Text	
Technical Violation during Pretrial Supervision	Pretrial defendant had at least one technical violation of a supervision condition	Yes, No	Text	
Technical Violation(s) with Response	Pretrial defendant had at least one technical violation of a supervision condition that resulted in an administrative sanction/response	Administrative Sanction Court Intervention Dismisses/Not Guilty	Text	
Supervision End Status	Description of how the final supervision condition ended.	• Completed • Completed with technical violation(s) • Completed with new offense • Completed with at least one FTA warrant • Completed with new offense and technical violation(s) • Completed with new offense and at least one FTA	Text	

DATA ELEMENT	DESCRIPTION	CHOICES (IF APPLICABLE)	FORMAT	NOTES
		• Completed with technical violation(s) and at least one FTA • Terminated with technical violation(s) • Terminated with new offense • Terminated with at least one FTA warrant • Terminated with new offense and technical violation(s) • Terminated with new offense and at least one FTA • Terminated with technical violation(s) and at least one FTA		

APPENDIX A

BAIL IN INDIANA[d]

Excessive Bail: Eighth Amendment to the U.S. Constitution

The Eighth Amendment provides, in part: "Excessive bail shall not be imposed."

In *Stack v. Boyle*, 342 U.S. 1 (1951), the United States Supreme Court reversed a trial court's setting of high bail for defendants accused of violating the Smith Act on grounds that four other individuals charged with the same offense under the Smith Act had forfeited bail and fled. The Court stated that the purpose of bail is to assure "the presence of an accused, and bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is excessive under the Eighth Amendment."[e]

Thirty-six years later, in *United States v. Salerno*, 481 U.S. 739 (1987), the Court declared *Stack v. Boyle's* discussion of the right to bail and its limited purpose to guarantee the accused's presence at trial to be dicta – unnecessary to the Court's finding that the bail set for the accused was excessive and in violation of the Eighth Amendment's protection against excessive bail. The Court in *Salerno* upheld application of the preventive detention provisions of the Bail Reform Act of 1984 against a facial challenge under the Eighth Amendment and the Due Process Clause of the Fifth Amendment.

The Court stated that the pretrial detention provisions of the Bail Reform Act did not, on their face, violate the excessive bail clause of the Eighth Amendment because, (1) even if the bail clause - which says nothing about whether bail shall be available at all - imposes substantive limitations on Congress' power to define the classes of criminal arrestees to be admitted to bail, the clause does not categorically prohibit the government from pursuing compelling interests other than the risk of flight through the regulation of pretrial release; (2) in the Bail Reform Act, Congress has mandated pretrial detention on the basis of a legitimate and compelling interest in the prevention of crime by arrestees who have been shown to be dangerous to any other person and to the community; and (3) the government's Bail Reform Act response of pretrial detention is not excessive in light of the interest asserted.[f]

The Court also rejected the substantive due process claims because the Act was regulatory, not a penalty. Therefore, it does not constitute punishment before trial. The Court stated that the Government's regulatory interest in community safety must be weighed against the individual's liberty interest and that the Government's interest in preventing crime by arrestees is legitimate and compelling. Although the Court recognized the significant liberty interest of an individual, it found it insufficient to outweigh the government's interest. [g]

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[d] Select statutory and case law references. Consult Appendix A for all current bail statutes and additional case law. Constitutional provisions, statutes and case law referenced in this document are the law as of the date of this publication and subject to change.
[e] *Id.*, at 5.
[f] *Id.*, at 752.
[g] *Id.,* at 754-755.

The Court also rejected the claim that the detention provisions of the Bail Reform Act of 1984 violated procedural due process under the Fifth Amendment because the procedures under the Act by which a judicial officer evaluates the likelihood of future dangerousness are specifically designed to further the accuracy of that determination, where:

(1) there is nothing inherently unattainable about a prediction of future criminal conduct;

(2) detainees have a right to counsel at a detention hearing;

(3) detainees may testify on their own behalf;

(4) detainees may present information by proffer or otherwise;

(5) detainees may cross-examine witnesses who appear at such a hearing;

(6) the judicial officer charged with the responsibility of determining the appropriateness of detention is guided by statutorily enumerated factors, which include

(a) the nature and circumstances of the charges,

(b) the weight of the evidence,

(c) the history and characteristics of the putative offender, and

(d) the danger to the community;

(7) the government must prove its case by clear and convincing evidence;

(8) the judicial officer must include written findings of fact and a written statement of reasons for the decision to detain; and

(9) the Act provides for immediate appellate review of the detention decision. [h]

<u>Indiana Constitution</u>

Article 1, Sections 16 and 17

Section 16. Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishments shall not be inflicted. All penalties shall be proportioned to the nature of the offense.

Section 17. Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable, when the proof is evident, or the presumption strong.

Unlike the Eighth Amendment that only prohibits excessive bail, Indiana's constitution provides that "[o]ffenses … shall be bailable." This language resembles the bail provision in the Northwest Ordinance of 1787, which provides:

> "all persons shall be bailable, unless for capital offenses, where the proof shall be evident or the presumption great."

Prior to the decision of the U.S. Supreme Court in *United States v. Salerno*, 481 U.S. 739 (1987), forty-one states had state constitutional bail provisions with similar language, often directly

[h] *Id.,* at 750-751.

borrowing their language from the Northwest Ordinance.[i] In *Fry v. State*, 990 N.E.2d 429, 438 (Ind. 2013), the Indiana Supreme Court noted the states that have a qualified right to bail in their constitutions, most using language similar to that found in Article 1, Section 17, of the Indiana Constitution.[j] The other ten states prohibit excessive bail but do not create a right to bail.[k]

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[i] Metzmeier, *Preventive Detention: A Comparison of Bail Refusal Practices in the United States, England, Canada, and Other Common Law Nations*, 8 Pace Int'l L. Rev. 399 (1996) Available at: http://digitalcommons.pace.edu/pilr/vol8/iss2/4

[j] *Fry v. State*, 990 N.E.2d 429, 438 n.10 (Ind. 2013). Ala. Const. Art. I, § 16 (excepting capital crimes when "proof is evident or the presumption great"); Ariz. Const. Art. 1, § 11 (excepting capital crimes when "proof is evident or the presumption great"); Ariz. Const. Art. 2, § 22 (excepting capital offenses, sexual assault, sex crimes where victim is less than fifteen years of age, felonies committed when on bail for a separate felony, felonies where offender poses a substantial risk to community, and certain serious felonies committed by illegal aliens, when "proof is evident or the presumption great"); Ark. Const. Art. 2, § 8 (excepting capital offenses when "proof is evident or the presumption great"); Calif. Const. Art. 1, § 12 (excepting capital crimes when "the facts are evident or the presumption great," and violent felonies, sexual assaults, and felonies where offender poses a threat to others when "the facts are evident or the presumption great" and court finds "based on clear and convincing evidence" that there is a "substantial likelihood" that harm would result); Colo. Const. Art. 2, § 19 (excepting capital offenses and felonies placing public in significant peril "when proof is evident or presumption is great"); Conn. Const. Art. 1, § 8 (excepting capital offenses when "proof is evident or the presumption great"); Del. Const. Art. 1, § 12 (excepting capital offenses when "proof is positive or the presumption great"); Fla. Const. Art. 1, § 14 (excepting capital offenses or offenses punishable by life imprisonment when "proof of guilt is evident or the presumption is great"); Idaho Const. Art. I, § 6 (excepting capital offenses when "the proof is evident or the presumption great"); Ill. Const. Art. 1, § 9 (excepting capital offenses, offenses or offenses punishable by life imprisonment, and felonies in which release poses threat to community, when "proof is evident or the presumption great"); Iowa Const. Art. 1, § 12 (excepting capital offenses when "the proof is evident, or the presumption great"); Kan. Const. Bill of Rights, § 9 (excepting capital offenses when "the proof is evident or the presumption great"); Ky. Const. § 16 (excepting capital offenses when "proof is evident or the presumption great"); La. Const. Art. 1, § 18 (excepting capital offenses when "proof is evident and the presumption of guilt is great"); Me. Const. Art. 1, § 10 (excepting capital offenses "when the proof is evident or the presumption great"); Mich. Const. Art. I, § 15 (excepting certain habitual offenders, murder, treason, certain sexual offenses, and felonies committed while on bail for prior felony, when "proof is evident or the presumption great"); Minn. Const. Art. 1, § 7 (excepting capital offenses when "proof is evident or the presumption great"); Miss. Const. Art. 3, § 29 (excepting capital offenses when "proof is evident or presumption great" or when defendant has prior conviction for capital offense); Mo. Const. Art. 1, § 20 (excepting capital offenses when "proof is evident or the presumption great"); Mont. Const. Art. 2, § 21 (excepting capital offenses when "proof is evident or the presumption great"); Neb. Const. Art. I, § 9 (excepting treason, violent sexual offenses, and murder when "proof is evident or the presumption great"); Nev. Const. Art. 1, § 7 (exception capital offenses or murders punishable by life imprisonment when "proof is evident or the presumption great"); N.J. Const. Art. 1, § 11 (excepting capital offenses when "proof is evident or presumption great"); N.M. Const. Art. 2, § 13 (excepting capital offenses when "proof is evident or the presumption great," and in particular enumerated circumstances); N.D. Const. Art. 1, § 11 (excepting capital offenses when "proof is evident or the presumption great"); Ohio Const. Art. I, § 9 (excepting capital offenses and felonies where defendant poses risk to community when "proof is evident or the presumption great"); Ark. Const. Art. 2, § 8 (excepting capital offenses and other particular enumerated circumstances when "proof of guilt is evident, or the presumption thereof is great"); Or. Const. Art. I, § 14 (excepting murder and treason when "proof is evident, or the presumption strong"); Penn. Const. Art. 1, § 14 (excepting capital offenses when "proof is evident or presumption great"); R.I. Const. Art. 1, § 9 (excepting offenses punishable by life imprisonment and certain habitual offenders when "proof of guilt is evident or the presumption great"); S.C. Const. Art. I, § 15 (excepting capital offenses, offenses punishable by life imprisonment, or certain violent offenses "giving due weight to the evidence and to the nature and circumstances of the event"); S.D. Const. Art. 6, § 8 (excepting capital offenses when "proof is evident or presumption great"); Tenn. Const. Art. 1, § 15 (excepting capital offenses when "proof is evident, or the presumption great"); Tex. Const. Art. 1, § 11 (excepting capital offenses when "proof is evident"); Utah Const. Art. 1, § 8 (excepting capital offenses and felonies committed while on probation or bail for a previous felony when "there is substantial evidence to support the charge"); Vt. Const. Ch. II, § 40 (excepting offenses punishable by death or life imprisonment when "evidence of guilt is great"); Wash. Const. Art. 1, § 20 (excepting capital offenses when "proof is evident, or the presumption great"); Wy. Const. Art. 1, § 14 (excepting capital offenses when "proof is evident or the presumption great").

[k] These states include: Georgia, Hawaii, Maryland, Massachusetts, Michigan, New Hampshire, New York, North Carolina, Virginia, and West Virginia. Lindermayer, *What the Right Hand Gives: Prohibitive Interpretations of the State Constitutional Right to Bail,* 78 Fordham L. Rev. 267, 283 (2009).

For example, the bail constitutional provisions of other two states receiving technical assistance from NIC are as follows:

Wisconsin Constitution, Art. 1, Section 6.

Excessive bail shall not be required, nor shall excessive fines be imposed, nor cruel and unusual punishments inflicted.

Constitution of Virginia, Article 1, Section 9

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted;

Some of these ten states once had a constitutional provision guaranteeing the right to bail that was amended out or their constitution after the *Salerno* decision in 1987, thereby allowing for preventive detention. *See, e.g.,* Wisconsin.

Courts in Alaska, Arkansas, California, Texas, and Vermont, all with constitutional provisions like Indiana's, have held that the state constitutional right to bail except for certain murder offenses precluded the denial of bail before trial under the doctrine of preventive detention.[l]

[l]Annotation, Pretrial Preventive Detention by State Court, 75 A.L.R.3d 956. Martin v. State, 517 P.2d 1389 (Alaska 1974); Henley v. Taylor, 324 Ar. 114, 918 S.W.2d 713 (1996); In re Underwood, 508 P.2d 721 (Cal. 1973); Gutierrez v. State, 927 S.W.2d 783 (Tex. App. 1996); State v. Mecier, 388 A.2d 435 (Vt. 1978).

Indiana Code

Until 1996, there was never an issue about whether a court in Indiana could consider anything other than risk of non-appearance in setting the amount of bail. In P.L. 221-1996, the General Assembly enacted IC 35-33-8-1 and 4 to allow "another person's physical safety or the safety of the community" to be taken into consideration in setting the amount and other conditions of bail.

IC 35-31.5-2-121.5

"Evidence based risk assessment"

Sec. 121.5. "Evidence based risk assessment", for purposes of IC 35-33-8, has the meaning set forth in IC 35-33-8-0.5.

IC 35-31.5-2-168.9

"Indiana pretrial risk assessment system"

Sec. 168.9. "Indiana pretrial risk assessment system", for purposes of IC 35-33-8, has the meaning set forth in IC 35-33-8-0.5.

IC 35-33-8-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

The addition of section 8 of this chapter by P.L.36-1990 does not apply to any bail deposit made under section 3(a)(1) of this chapter (before its repeal) or section 3.1(a)(1) of this chapter (before its repeal) that is made before March 20, 1990.

The amendments made to section 3.1(d) of this chapter (before its repeal) by P.L.156-1994 applies only to the retention or collection of a fee for a bond executed or deposit made after March 11, 1994.

As added by P.L.220-2011, SEC.585.

IC 35-33-8-0.5

Pretrial risk assessment system; rules; system

Sec. 0.5. (a) The following definitions apply throughout this chapter:

(1) "Evidence based risk assessment" means an assessment:

(A) that identifies factors relevant to determine whether an arrestee is likely to:

(i) commit a new criminal offense; or

(ii) fail to appear;

if released on bail or pretrial supervision; and

(B) that is based on empirical data derived through validated criminal justice scientific research.

(2) "Indiana pretrial risk assessment system" means the statewide evidence based risk assessment system described in subsection (b).

(b) Before January 1, 2020, the supreme court should adopt rules to establish a statewide evidence based risk assessment system to assist courts in selecting the appropriate level of bail or other pretrial supervision for arrestees eligible for pretrial release. The system shall consist of:

(1) an evidence based risk assessment tool; and

(2) the rules as adopted by the supreme court.

(c) The system shall be designed to assist the courts in assessing an arrestee's likelihood of:

(1) committing a new criminal offense; or

(2) failing to appear.
As added by P.L.187-2017, SEC.4.

IC 35-33-8-1
"Bail bond" defined
Sec. 1. As used in this chapter, "bail bond" means a bond executed by a person who has been arrested for the commission of an offense, for the purpose of ensuring:
(1) the person's appearance at the appropriate legal proceeding;
(2) another person's physical safety; or
(3) the safety of the community.
As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.221-1996, SEC.1.

IC 35-33-8-1.5
"Publicly paid costs of representation" defined
Sec. 1.5. As used in this chapter, "publicly paid costs of representation" means the portion of all attorney's fees, expenses, or wages incurred by the county that are:
(1) directly attributable to the defendant's defense; and
(2) not overhead expenditures made in connection with the maintenance or operation of a governmental agency.
As added by P.L.167-1987, SEC.8.

IC 35-33-8-2
Murder; other offenses
Sec. 2. (a) Murder is not bailable when the proof is evident or the presumption strong. In all other cases, offenses are bailable.
(b) A person charged with murder has the burden of proof that he should be admitted to bail.
As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-8-3
Repealed by P.L.1-1990, SEC.341.

IC 35-33-8-3.1
Repealed by P.L.107-1998, SEC.6.

IC 35-33-8-3.2
Pretrial risk assessment; conditions to assure appearance; remittance of deposit; collection of fees
Sec. 3.2. (a) After considering the results of the Indiana pretrial risk assessment system (if available), other relevant factors, and bail guidelines described in section 3.8 of this chapter, a court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:
(1) Require the defendant to:
(A) execute a bail bond with sufficient solvent sureties;
(B) deposit cash or securities in an amount equal to the bail;

(C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;
(D) post a real estate bond; or
(E) perform any combination of the requirements described in clauses (A) through (D).

If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. The defendant must also pay the fee required by subsection (d).

(2) Require the defendant to execute:
(A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and
(B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars ($50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection (b), and the fee required by subsection (d). In the event of the posting of a real estate bond, the bond shall be used only to ensure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution. The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Except as provided in section 3.6 of this chapter, require the defendant to refrain from any direct or indirect contact with an individual and, if the defendant has been charged with an offense under IC 35-46-3, any animal belonging to the individual, including if the defendant has not been released from lawful detention.

(5) Place the defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate public official. If the court places the defendant under the supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under section 3.3 of this chapter.

(6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance unless:
(A) the state presents evidence relevant to a risk by the defendant:
(i) of nonappearance; or
(ii) to the physical safety of the public; and
(B) the court finds by a preponderance of the evidence that the risk exists.

(8) Require a defendant charged with an offense under IC 35-46-3 to refrain from owning, harboring, or training an animal.

(9) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed, or the defendant is acquitted or convicted of the charges.

(d) Except as provided in subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars ($5) from each bond or deposit required under subsection (a)(1); and

(2) retain a fee of five dollars ($5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit the fees collected under this subsection to the board of trustees of the Indiana public retirement system for deposit in the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2).

(e) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar ($5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection (a)(4):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

As added by P.L.107-1998, SEC.2. Amended by P.L.1-2001, SEC.36; P.L.1-2003, SEC.91; P.L.98-2004, SEC.140; P.L.10-2005, SEC.4; P.L.1-2006, SEC.528; P.L.97-2006, SEC.1; P.L.173-2006, SEC.42; P.L.1-2007, SEC.226; P.L.104-2008, SEC.6; P.L.111-2009, SEC.7; P.L.94-2010, SEC.9; P.L.35-2012, SEC.107; P.L.187-2017, SEC.5.

IC 35-33-8-3.3

Pretrial services fee[m]

Sec. 3.3. (a) This section does not apply to a defendant charged in a city or town court.

(b) If a defendant who has a prior unrelated conviction for any offense is charged with a new offense and placed under the supervision of a probation officer or pretrial services agency, the court may order the defendant to pay the pretrial services fee prescribed under subsection (e) if:

(1) the defendant has the financial ability to pay the fee; and

(2) the court finds by clear and convincing evidence that supervision by a probation officer or pretrial services agency is necessary to ensure the:

(A) defendant's appearance in court; or

(B) physical safety of the community or of another person.

[m] The assessment of pretrial fees must follow an indigency determination. Community Corrections agencies have the authority to collect pretrial fees under IC 11-12-2-12.

(c) If a clerk of a court collects a pretrial services fee, the clerk may retain not more than three percent (3%) of the fee to defray the administrative costs of collecting the fee. The clerk shall deposit amounts retained under this subsection in the clerk's record perpetuation fund established under IC 33-37-5-2.

(d) If a clerk of a court collects a pretrial services fee from a defendant, upon request of the county auditor, the clerk shall transfer not more than three percent (3%) of the fee to the county auditor for deposit in the county general fund.

(e) The court may order a defendant who is supervised by a probation officer or pretrial services agency and charged with an offense to pay:

(1) an initial pretrial services fee of at least twenty-five dollars ($25) and not more than one hundred dollars ($100);

(2) a monthly pretrial services fee of at least fifteen dollars ($15) and not more than thirty dollars ($30) for each month the defendant remains on bail and under the supervision of a probation officer or pretrial services agency; and

(3) an administrative fee of one hundred dollars ($100);

to the probation department, pretrial services agency, or clerk of the court if the defendant meets the conditions set forth in subsection (b).

(f) The probation department, pretrial services agency, or clerk of the court shall collect the administrative fee under subsection (e)(3) before collecting any other fee under subsection (e). Except for the money described in subsections (c) and (d), all money collected by the probation department, pretrial services agency, or clerk of the court under this section shall be transferred to the county treasurer, who shall deposit fifty percent (50%) of the money into the county supplemental adult probation services fund and fifty percent (50%) of the money into the county supplemental public defender services fund (IC 33-40-3-1). The fiscal body of the county shall appropriate money from the county supplemental adult probation services fund:

(1) to the county, superior, or circuit court of the county that provides probation services or pretrial services to adults to supplement adult probation services or pretrial services; and

(2) to supplement the salary of:

(A) an employee of a pretrial services agency; or

(B) a probation officer in accordance with the schedule adopted by the county fiscal body under IC 36-2-16.5.

(g) The county supplemental adult probation services fund may be used only to supplement adult probation services or pretrial services and to supplement salaries for probation officers or employees of a pretrial services agency. A supplemental probation services fund may not be used to replace other probation services or pretrial services funding. Any money remaining in the fund at the end of a fiscal year does not revert to any other fund but continues in the county supplemental adult probation services fund.

(h) A defendant who is charged with more than one (1) offense and who is supervised by the probation department or pretrial services agency as a condition of bail may not be required to pay more than:

(1) one (1) initial pretrial services fee; and

(2) one (1) monthly pretrial services fee per month.

(i) A probation department or pretrial services agency may petition a court to:

(1) impose a pretrial services fee on a defendant; or

(2) increase a defendant's pretrial services fee;

if the financial ability of the defendant to pay a pretrial services fee changes while the defendant is on bail and supervised by a probation officer or pretrial services agency.

(j) An order to pay a pretrial services fee under this section:

(1) is a judgment lien that, upon the defendant's conviction:

(A) attaches to the property of the defendant;

(B) may be perfected;

(C) may be enforced to satisfy any payment that is delinquent under this section; and

(D) expires;

in the same manner as a judgment lien created in a civil proceeding;

(2) is not discharged by the disposition of charges against the defendant or by the completion of a sentence, if any, imposed on the defendant;

(3) is not discharged by the liquidation of a defendant's estate by a receiver under IC 32-30- 5; and

(4) is immediately terminated if a defendant is acquitted or if charges against the defendant are dropped.

(k) If a court orders a defendant to pay a pretrial services fee, the court may, upon the defendant's conviction, enforce the order by garnishing the wages, salary, and other income earned by the defendant.

(l) In addition to other methods of payment allowed by law, a probation department or pretrial services agency may accept payment of a pretrial services fee by credit card (as defined in IC 14-11-1-7(a)). The liability for payment is not discharged until the probation department or pretrial services agency receives payment or credit from the institution responsible for making the payment or credit.

(m) The probation department or pretrial services agency may contract with a bank or credit card vendor for acceptance of a bank or credit card. However, if there is a vendor transaction charge or discount fee, whether billed to the probation department or pretrial services agency, or charged directly to the account of the probation department or pretrial services agency, the probation department or pretrial services agency may collect a credit card service fee from the person using the bank or credit card. The fee collected under this subsection is a permitted additional charge to the fee or fees the defendant may be required to pay under subsection (e).

(n) The probation department or pretrial services agency shall forward a credit card service fee collected under subsection (m) to the county treasurer in accordance with subsection (f). These funds may be used without appropriation to pay the transaction charge or discount fee charged by the bank or credit card vendor.

As added by P.L.173-2006, SEC.43. Amended by P.L.217-2014, SEC.189.

IC 35-33-8-3.5

Bail procedures for a sexually violent predator defendant

Sec. 3.5. (a) This section applies only to a sexually violent predator defendant.

(b) As used in this section, "sexually violent predator defendant" means a person who:

(1) is a sexually violent predator under IC 35-38-1-7.5; and

(2) is arrested for or charged with the commission of an offense that would classify the person as a sex or violent offender (as defined in IC 11-8-8-5).

(c) A court may not admit a:

(1) sexually violent predator defendant;

(2) person charged with child molesting (IC 35-42-4-3); or

(3) person charged with child solicitation (IC 35-42-4-6);

to bail until the court has conducted a bail hearing in open court. Except as provided in section 6 of this chapter, the court shall conduct a bail hearing not later than forty-eight (48) hours after the person has been arrested, unless exigent circumstances prevent holding the hearing within forty-eight (48) hours.
(d) At the conclusion of the hearing described in subsection (c) and after consideration of the bail guidelines described in section 3.8 of this chapter, the court shall consider whether the factors described in section 4 of this chapter warrant the imposition of a bail amount that exceeds court or county guidelines, if applicable.
As added by P.L.74-2008, SEC.1. Amended by P.L.187-2017, SEC.6.

IC 35-33-8-3.6
Automatic no contact order for certain defendants placed on bail; time limits; modification
Sec. 3.6. (a) This section applies only to a defendant who is charged with committing a violent crime (as defined in IC 5-2-6.1-8) that results in bodily injury to a person.
(b) If a court releases a defendant described in subsection (a) to bail without holding a bail hearing in open court, the court shall include as a condition of bail the requirement that the defendant refrain from any direct or indirect contact with the victim:
(1) for ten (10) days after release; or
(2) until the initial hearing; whichever occurs first.
(c) At the initial hearing, the court may reinstate or modify the condition that the defendant refrain from direct or indirect contact with the victim.
As added by P.L.94-2010, SEC.10.

IC 35-33-8-3.8
Bail following pretrial risk assessment
Sec. 3.8. (a) A court shall consider the results of the Indiana pretrial risk assessment system (if available) before setting or modifying bail for an arrestee.
(b) If the court finds, based on the results of the Indiana pretrial risk assessment system (if available) and other relevant factors, that an arrestee does not present a substantial risk of flight or danger to the arrestee or others, the court shall consider releasing the arrestee without money bail or surety, subject to restrictions and conditions as determined by the court, unless one (1) or more of the following apply:
(1) The arrestee is charged with murder or treason.
(2) The arrestee is on pretrial release not related to the incident that is the basis for the present arrest.
(3) The arrestee is on probation, parole, or other community supervision.
The court is not required to administer an assessment before releasing an arrestee if administering the assessment will delay the arrestee's release.
As added by P.L.187-2017, SEC.7.

IC 35-33-8-3.9
Money bail; conditions; agreement
Sec. 3.9. (a) If the court determines that an arrestee is to be held subject to money bail, the court is authorized to determine the amount of bail and whether the bail may be satisfied by surety bond or cash deposit.
(b) The court may set and accept a partial cash payment of the bail upon conditions set by the court, including the arrestee's agreement (and the agreement of a person who makes a cash

payment on behalf of an arrestee, if applicable) that all court costs, fees, and expenses associated with the proceeding shall be paid from the partial payment.
(c) If the court authorizes the acceptance of a cash partial payment to satisfy bail, the court shall first secure the arrestee's agreement (and the agreement of a person who makes a cash payment on behalf of an arrestee, if applicable) that, in the event of failure to appear as scheduled, the deposit shall be forfeited and the arrestee must also pay any additional amounts needed to satisfy the full amount of bail plus associated court costs, fees, and expenses.
As added by P.L.187-2017, SEC.8.

IC 35-33-8-4
Amount of bail; order; indorsement; facts taken into account
Sec. 4. (a) The court shall order the amount in which a person charged by an indictment or information is to be held to bail, and the clerk shall enter the order on the order book and indorse the amount on each warrant when issued. If no order
fixing the amount of bail has been made, the sheriff shall present the warrant to the judge of an appropriate court of criminal jurisdiction, and the judge shall indorse on the warrant the amount of bail.
(b) Bail may not be set higher than that amount reasonably required to assure the defendant's appearance in court or to assure the physical safety of another person or the community if the court finds by clear and convincing evidence that the defendant poses a risk to the physical safety of another person or the community. In setting and accepting an amount of bail, the judicial officer shall consider the bail guidelines described in section 3.8 of this chapter and take into account all facts relevant to the risk of nonappearance, including:
(1) the length and character of the defendant's residence in the community;
(2) the defendant's employment status and history and the defendant’s ability to give bail;
(3) the defendant's family ties and relationships;
(4) the defendant's character, reputation, habits, and mental condition;
(5) the defendant's criminal or juvenile record, insofar as it demonstrates instability and a disdain for the court's authority to bring the defendant to trial;
(6) the defendant's previous record in not responding to court appearances when required or with respect to flight to avoid criminal prosecution;
(7) the nature and gravity of the offense and the potential penalty faced, insofar as these factors are relevant to the risk of nonappearance;
(8) the source of funds or property to be used to post bail or to pay a premium, insofar as it affects the risk of nonappearance;
(9) that the defendant is a foreign national who is unlawfully present in the United States under federal immigration law; and
(10) any other factors, including any evidence of instability and a disdain for authority, which might indicate that the defendant might not recognize and adhere to the authority of the court to bring the defendant to trial.
As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.221-1996, SEC.3; P.L.171-2011, SEC.21; P.L.187-2017, SEC.9.

IC 35-33-8-4.5

Foreign national unlawfully present; bail; insurer released from liability

Sec. 4.5. (a) If bail is set for a defendant who is a foreign national who is unlawfully present in the United States under federal immigration law, after considering the results of the Indiana pretrial risk assessment system (if available) and other relevant factors, and the bail guidelines described in section 3.8 of this chapter, the court shall consider requiring as bail a:

(1) cash bond in an amount equal to the bail;

(2) real estate bond in which the net equity in the real estate is at least two (2) times the amount of the bail; or

(3) surety bond in the full amount of the bail that is written by a licensed and appointed agent of an insurer (as defined in IC 27-10-1-7).

(b) If the defendant for whom bail has been posted under this section does not appear before the court as ordered because the defendant has been:

(1) taken into custody or deported by a federal agency; or

(2) arrested and incarcerated for another offense;

the bond posted under this section may not be declared forfeited by the court and the insurer (as defined in IC 27-10-1-7) that issued the bond is released from any liability regarding the defendant's failure to appear.

As added by P.L.171-2011, SEC.22. Amended by P.L.187-2017, SEC.10.

IC 35-33-8-5

Alteration or revocation of bail

Sec. 5. (a) Upon a showing of good cause, the state or the defendant may be granted an alteration or revocation of bail by application to the court before which the proceeding is pending. In reviewing a motion for alteration or revocation of bail, credible hearsay evidence is admissible to establish good cause.

(b) When the state presents additional:

(1) evidence relevant to a high risk of nonappearance, based on the factors set forth in section 4(b) of this chapter; or

(2) clear and convincing evidence:

(A) of the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B); or

(B) that the defendant otherwise poses a risk to the physical safety of another person or the community;

the court may increase bail.

(c) When the defendant presents additional evidence of substantial mitigating factors, based on the factors set forth in section 4(b) of this chapter, which reasonably suggests that the defendant recognizes the court's authority to bring the defendant to trial, the court may reduce bail. However, the court may not reduce bail if the court finds by clear and convincing evidence that the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B) exist or that the defendant otherwise poses a risk to the physical safety of another person or the community.

(d) The court may revoke bail or an order for release on personal recognizance upon clear and convincing proof by the state that:

(1) while admitted to bail the defendant:

(A) or the defendant's agent threatened or intimidated a victim, prospective witnesses, or jurors concerning the pending criminal proceeding or any other matter;

(B) or the defendant's agent attempted to conceal or destroy evidence relating to the pending criminal proceeding;

(C) violated any condition of the defendant's current release order;
(D) failed to appear before the court as ordered at any critical stage of the proceedings; or
(E) committed a felony or a Class A misdemeanor that demonstrates instability and a disdain for the court's authority to bring the defendant to trial;
(2) the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B) exist or that the defendant otherwise poses a risk to the physical safety of another person or the community; or
(3) a combination of the factors described in subdivisions (1) and (2) exists.
As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.36-1990, SEC.6; P.L.107-1998, SEC.3; P.L.98-2004, SEC.141; P.L.111-2017, SEC.8.

IC 35-33-8-6
Probationers and parolees; detention; notice to appropriate authority; revocation proceedings
Sec. 6. The court may detain, for a maximum period of fifteen calendar days, a person charged with any offense who comes before it for a bail determination, if the person is on probation or parole. During the fifteen (15) day period, the prosecuting attorney shall notify the appropriate parole or probation authority. If that authority fails to initiate probation or parole revocation proceedings during the fifteen (15) day period, the person shall be treated in accordance with the other sections of this chapter.
As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-8-6.5
Eight hour holding period before person arrested for domestic violence may be released on bail
Sec. 6.5. The court may not release a person arrested for a crime of domestic violence (as described in IC 35-31.5-2-78) on bail until at least eight (8) hours from the time of the person's arrest.
As added by P.L.44-2008, SEC.2. Amended by P.L.114-2012, SEC.70.

IC 35-33-8-7
Failure to appear; pending civil action or unsatisfied judgment; same transaction or occurrence; forfeiture; order for payment; judgment; transfer of funds
Sec. 7. (a) If a defendant:
(1) was admitted to bail under section 3.2(a)(2) of this chapter; and
(2) has failed to appear before the court as ordered;
the court shall, except as provided in subsection (b) or section 8(b) of this chapter, declare the bond forfeited not earlier than one hundred twenty (120) days or more than three hundred sixty-five (365) days after the defendant's failure to appear and issue a warrant for the defendant's arrest.
(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section 3.2(a)(2) of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit and the bond are subject to forfeiture, the criminal court shall order payment of all or any part

of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, and the bond forfeited.

(c) Any proceedings concerning the bond, or its forfeiture, judgment, or execution of judgment, shall be held in the court that admitted the defendant to bail.

(d) After a bond has been forfeited under subsection (a) or (b), the clerk shall mail notice of forfeiture to the defendant. In addition, unless the court finds that there was justification for the defendant's failure to appear, the court shall immediately enter judgment, without pleadings and without change of judge or change of venue, against the defendant for the amount of the bail bond, and the clerk shall record the judgment.

(e) If a bond is forfeited and the court has entered a judgment under subsection (d), the clerk shall transfer to the state common school fund:

(1) any amount remaining on deposit with the court (less the fees retained by the clerk); and

(2) any amount collected in satisfaction of the judgment.

(f) The clerk shall return a deposit, less the administrative fee, made under section 3.2(a)(2) of this chapter to the defendant, if the defendant appeared at trial and the other critical stages of the legal proceedings.

As added by Acts 1982, P.L.204, SEC.17. Amended by P.L.167-1987, SEC.10; P.L.44-1988, SEC.3; P.L.1- 1990, SEC.343; P.L.36-1990, SEC.7; P.L.107-1998, SEC.4; P.L.105-2010, SEC.9; P.L.187-2017, SEC.11.

IC 35-33-8-8

Failure to appear; pending civil action or unsatisfied judgment; same transaction or occurrence; forfeiture; order for payment

Sec. 8. (a) If a defendant was admitted to bail under section 3.2(a) of this chapter and the defendant has knowingly and intentionally failed to appear before the court as ordered, the court:

(1) shall issue a warrant for the defendant's arrest;

(2) may not release the defendant on personal recognizance; and

(3) may not set bail for the rearrest of the defendant on the warrant at an amount that is less than the greater of:

(A) the amount of the original bail; or

(B) two thousand five hundred dollars ($2,500);

in the form of a bond issued by an entity defined in IC 27-10-1-7 or the full amount of the bond in cash.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section 3.2(a)(2) of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit is subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, forfeited. *As added by P.L.36-1990, SEC.8. Amended by P.L.224-1993, SEC.31; P.L.107-1998, SEC.5.*

IC 35-33-8-9

Repealed by P.L.65-2004, SEC.23.

IC 35-33-8-10

Credit card service fee

Sec. 10. In addition to any other condition of bail imposed under this chapter, a defendant who posts bail by means of a credit card shall pay the credit card service fee under IC 33-37-6.
As added by P.L.65-2004, SEC.11.

IC 35-33-8-11

Authority to require that persons charged with a crime of domestic violence to wear a GPS device; liability for costs

Sec. 11. (a) A court may require a person who has been charged with a crime of domestic violence (as described in IC 35-31.5-2-78) to wear a GPS tracking device as a condition of bail.
(b) A court may order a person who is required to wear a GPS tracking device under subsection (a) to pay any costs associated with the GPS tracking device.
As added by P.L.94-2010, SEC.11. Amended by P.L.114-2012, SEC.71.

See also:

- **IC 27-10 Indiana Bail Law**
- **IC 35-33-8.5 Bail and Recognizance**
- **IC 35-33-9 Bail Upon Appeal**
- **Indiana Evidence Rule 101(d)(2) -** Rules of Evidence, other than those with respect to privilege, do not apply in bail hearings.

Indiana Case Law (select cases)

DeWees v. State, 180 N.E.3d 261 (Ind. 2022). "The General Assembly's recent codification of Criminal Rule 26 and the adoption of evidence-based practices in the administration of bail aim to strike the proper balance between preserving a defendant's pretrial liberty interests and ensuring public safety…. Today, we hold that these statutory reforms enhance, rather than restrict, the broad discretion entrusted to our trial courts when executing bail. What's more, a trial court can and should exercise that discretion to protect against the risk of flight or potential danger to the community." A new theory of detention emerged following decades of growth in the number of incarcerated persons nationwide. That theory is "one that relies on actuarial models of prediction and evidence-based practices to determine offender risk. Criminal Rule 26 … is emblematic of this new approach. At its core, the Rule aims to reduce pretrial-detention expenses for local jails (and taxpayers generally), enable defendants awaiting trial to return to their jobs and support their families, and enhance the benefits of reduced recidivism and improved public safety." The Rule is designed to "separate the people we're mad at from the people we're afraid of." "To be sure, Criminal Rule 26 strongly encourages pretrial release for many accused individuals awaiting trial. This is especially true for persons charged with only non-violent and low-level offenses. And if a defendant presents no 'substantial risk of flight or danger' to others, the court must consider releasing the defendant 'without money bail or surety,' subject to any reasonable conditions deemed appropriate by the court…. Releasing this category of defendants under suitable nonfinancial conditions – such as electronic monitoring, community supervision, no-contact orders, and restrictions on activities or places of residence – will often prove sufficient to ensure the defendant's appearance at trial and to ensure community safety. But when a person poses a risk of flight or a risk to public safety, Criminal Rule 26 in no way hinders a trial court's ability to set bond in an amount sufficient to curtail such risks."

Jones v. State, 189 N.E.3d 227 (Ind. Ct. App. 2022). "The Indiana Constitution prohibits excessive bail. Ind. Const. art. 1, sec. 16. Bail is excessive if it is set at an amount higher than that which is reasonably calculated to ensure the accused party's presence in court…. The inability of the accused to procure the amount necessary is not a factor that, on its own, renders the amount unreasonable." A defendant may be granted a reduction of bail, but "the defendant must present 'additional evidence of substantial mitigating factors, based on the factors set forth in I.C. 35-33-8-14(b)" to assure the court the defendant recognizes the court's authority. "The accrual of new charges during pretrial release in another matter supports a finding that [a defendant] has shown a 'disdain for authority, which might indicate that [he] might not recognize and adhere to the authority of the court to bring him to trial.'"

Medina v. State, 188 N.E.3d 897 (Ind. Ct. App. 2022). The denial of a motion to reduce bail is a final judgment appealable as of right. "Criminal Rule 26 specifically encourages trial courts to consider IRAS assessments in making its bail decisions: 'In determining whether an arrestee presents a substantial risk of flight or danger to self or other persons or to the public, the court should utilize the results of an evidence-based risk assessment approved by the Indiana Office of Court Services'… Thus, although a trial court is not required to rely on the results of an IRAS assessment, it is encouraged."

Beachey v. State, 177 N.E.3d 850 (Ind. Ct. App. 2021). "Beginning on January 1, 2020, the court should utilize the results of an evidence-based risk assessment approved by the Indiana Office of Court Services, and such other information as the court finds relevant." A trial court cannot "avoid the requirement of Criminal Rule 26 by simply not ordering preparation of an evidence-based risk assessment." Criminal Rule 26 functions "as a statutory safeguard against needlessly restraining an arrestee, and thus allows a trial court to forgo a risk assessment in favor of release. Indeed, the Rule explicitly states that an arrestee must be released without money bail or surety if no risk of non-appearance is evidenced. In no logical sense does Criminal Rule 26 explicitly or implicitly provide a loophole allowing a trial court, or the State, to ignore the requirements imposed by the Indiana Supreme Court."

Yeager v. State, 168 N.E.3d 277 (Ind. 2021). Chief Justice Rush dissented from the granting of transfer and dismissal of the appeal. "Yeager presented evidence of substantial mitigating factors showing he recognized the court's authority to bring him to trial; and there was no evidence he posed a risk to the physical safety of either victim or the community.... Additionally, the pretrial assessment report gave Yeager an Indiana Risk Assessment Score of '0' or 'low' and recommended that he 'be released to pretrial supervision with the added condition of electronic monitoring....' [T]he possible penalty alone could not support the trial court's decision here… Decades ago, this Court was clear that 'the object of bail prior to trial is to ensure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect.'"

Riley v. State, 129 N.E.3d 218 (Ind. Ct. App. 2019). "[B]ail may not be set higher than that amount reasonably required to assure the defendant's appearance in court. The amount of bail is within the sound discretion of the trial court and will be reversed only for an abuse of discretion. Indiana Code 35-33-8-5(a) allows the court to alter bail upon a showing of good cause. However, to increase bail, the State must move for such alteration and present certain evidence.... In trying to craft a solution to the jail's failure to transport Riley, the trial court should have observed the principle of Occam's Razor: the simplest answer is often correct. In this case, the simplest answer to the problem of the jail failing to transport Rile for his pre-trial conference would have been to order the jail to transport him for the next hearing" not to increase his bail.

Gregory v. State ex rel. Gudgel, 94 Ind. 384 (1884). "Our Constitution provides that excessive bail shall not be exacted . . . What would be deemed excessive in one case might be entirely reasonable in another. Bail is to be fixed according to the circumstances of each case, and no general sum can be fixed for all cases. Crimes of the same class often differ greatly in their character, and . . . . require that different provisions as to bail shall be made in different cases. . . . The object of requiring bail is to relieve from imprisonment until conviction and yet secure the appearance of the accused for trial . . . . That bail is reasonable which, in view of the nature of the offence, the penalty which the law attaches to it, and the probabilities that guilt will be established on the trial, seems no more than sufficient to secure the party's attendance. In determining this, some regard should be had to the prisoner's pecuniary circumstances; that which is reasonable bail to a man of wealth being equivalent to a denial of right if exacted of a poor man charged with a like offence."

State ex rel. Bartley v. Marion Circuit Court, 132 N.E.2d 703, 706 (Ind. 1956). "[A] defendant always has the right to ask for a discriminatory judgment or reconsideration of the amount of bond."

Hobbs v. Lindsey, 162 N.E.2d 85, 88 (Ind. 1959). "The object of bail prior to trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect. . . The right to freedom by bail pending trial is an adjunct to that revered Anglo-Saxon aphorism which holds an accused to be innocent until his guilt is proven beyond a reasonable doubt. . . Mindful that the principal purpose of bail is the assurance of the accused party's presence in court, it has been correctly stated that bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is 'excessive' . . . ."Having made a prima facie case of excessiveness, the burden then shifted to the state to show the necessity or justification for the unusual amount of bail." *Id*. at 89. The court suggested this might be done by evidence of an imminent threat of flight, the absence of family ties, etc., to the community or that the accused may have concealed large sums of money which might provide a peculiar inducement to flight. *Id*.

State ex rel. Peak v. Marion Criminal Court, Division One, 203 N.E. 2d 301 (Ind. 1965). The denial of a motion to reduce bail is a final judgment and within the scope of the defendant's statutory right to appeal "any judgment in a criminal action."

Vacendak v. State, 302 N.E.2d 779 (Ind. 1973). It is the prerogative of the trial court to increase bond, however, the court may only do so after a hearing is held and a proper showing for the increase in bond is made.

Brown v. State, 322 N.E.2d 708, 712 (Ind. 1975). "The law confines the use of pretrial detention to only one end: namely, that the criminal defendant be present for trial. This limitation is implicit in the concept of bail."

Board of County Commissioners of Vanderburgh Co. v. Farris, 342 N.E.2d 642, 644 (Ind. Ct. App. 1976). The power to establish bail is exclusively judicial and may not be delegated to non-judicial officers." This includes "the power to determine the manner of making bail and any administrative fees incurred thereby."

Hughes v. Sheriff of Vigo County, 373 N.E.2d 144, 145 (Ind. 1978). In order to comply with due process, alterations in bail requires notice to the defendant and a hearing at which the defendant is given an opportunity to present rebuttal evidence. "One of the primary considerations in fixing a bond is the reliability of the defendant and the likelihood of his recognition of the court's authority to bring him to trial at a particular time."

Williams v. State, 417 N.E.2d 328 (Ind. 1981). Where the amount is considered on its merits and set in accordance with bail schedule, it is not excessive.

Sherelis v. State, 452 N.E.2d 411 (Ind. Ct. App. 1983). The concept of "the right to freedom by bail pending trial is interrelated to the Anglo-Saxon doctrine that one accused is presumed innocent *until* his guilt is proven beyond a reasonable doubt." *Id.*, 452 N.E.2d 411, 413 (emphasis in opinion). "Bail is *excessive* where the amount set represents a figure higher than that reasonably calculated to assure the accused party's presence at trial." *Id.,* (emphasis in opinion).

In *Sherelis*, the defendant was charged with four (4) counts of class A felony and one (1) count of class B felony, all involving delivery of a controlled narcotic substance. *Sherelis*, *Id.* The trial court set bail at $1,000,000, citing the gravity of the offenses and the potential penalty upon conviction. *Id.* The trial court denied the defendant's motion to reduce bail. *Id.* The record revealed that defendant was a long-established resident with strong family and community contacts. *Id.* at 414. He had a substantial amount of capital invested in a closely held corporation, but this interest could not be readily reduced to cash. *Id.* The defendant had a fine reputation in the community and was without a previous criminal record. *Id.* In the appellate court's view, there was little evidence to indicate that the defendant would not recognize and adhere to the authority of the court to bring him to trial, other than the nature and gravity of the offenses. *Id.* Therefore, the court held that the trial court abused its discretion by setting an excessive amount for bail and committed error by overruling defendant's motion for reduction of bail. *Id.*

Shanholt v. State, 448 N.E.2d 308 (Ind. Ct. App. 1983). $25,000 bail not unreasonable where defendant had no permanent residence, no present income or job in the community and had removed her two minor children, of whom her ex-husband had custody, from Indiana to Arizona.

Mott v. State, 490 N.E.2d 1125 (Ind. Ct. App. 1986). "[T]he inability to procure the amount necessary to make bond does not in and of itself render the amount unreasonable." *Id.* At 1128. As a general rule, a criminal bail schedule adopted pursuant to court rule is "presumed to set a reasonable amount to assure the presence in court of the accused." *Id.* at 1127. "However, such a schedule must also be flexible in that if bail is fixed in an amount higher than that usually required, a hearing must be provided in which evidence of the reason for the higher amount is presented." *Id.* at 1127-28. "Differences in classification of offenses for purposes of bail are not constitutionally prohibited." *Id.* at 1130.

State ex rel. Williams v. Ryan, 490 N.E.2d 1113, 1113-1114 (Ind. 1986). In admitting a defendant to bail, a court may impose any reasonable condition on bail to assure the defendant's appearance.

Tinsley v. State, 496 N.E.2d 1306, 1307 (Ind. Ct. App. 1986). All the facts considered by the court in setting bail "must be relevant to the basic purpose of bail, that is, the risk of the accused's nonappearance."

Estate of Payne v. Grant County Court, 508 N.E.2d 1331 (Ind. Ct. App. 1987). Court has implicit authority in bail statutes to employ a bail schedule.

Perry v. State, 541 N.E.2d 913, 919 (Ind. 1989). "The amount of bail is within the sound discretion of the trial court and will be reversed only for an abuse of discretion." Bail may be fixed in an amount higher than that usually required by a fixed bail schedule if justified by evidence presented at an evidentiary hearing; $40,000 bail not excessive in light of lack of personal community ties, extensive criminal record and fact it was set in accordance with bail schedule.

Phillips v. State, 550 N.E.2d 1290, 1294 (Ind. 1990). "The purpose of bail is to ensure the presence of the accused at trial, and the factors to be considered in setting the amount of bail are the nature of the offense, the possible penalty that could attach, the likelihood of the accused appearing at trial, and the financial position of the accused."

Custard v. State, 629 N.E.2d 1289 (Ind. Ct. App. 1994). The trial court did not abuse discretion in refusing to reduce the defendant's $275,000 bond. The defendant was charged with a class A felony, was unemployed, had a prior criminal history, and had lived in the state for only six months.

Haynes v. State, 656 N.E.2d 505, 508 (Ind. Ct. App. 1995). The trial judge could, under I.C. § 35-33-8-4(b)(9), reasonably consider in setting bail the defendant's obscene outburst in court "as evidence of instability and disdain for authority which indicated he might not recognize and adhere to the authority of the court to bring him to trial."

Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App. 1997). Indiana Constitution affords greater right to bail than that provided by United States Constitution.

Obregon v. State, 703 N.E.2d 695, 696 (Ind. Ct. App. 1998). Notwithstanding I.C. § 35-33-7- 6(c)(1), a trial court has authority under I.C. § 35-33-8-3.2 (formerly I.C. § 35-33-8-3.1) to deduct for costs of a public defender from a defendant's cash bond prior to remittance. However, this statute authorizes a court to order those fines, costs, fees, and restitution be retained from a bond deposit only if the defendant has been convicted. *Zanders v. State*, 800 N.E.2d 942, 946 (Ind. Ct. App. 2003).

Harvey v. State, 751 N.E.2d 254 (Ind. Ct. App. 2001). Imposition of random drug testing as a condition of bond upheld because defendant did not object to the condition thereby waiving any later objections and failed to prove the judge was biased in imposing this condition.

Grabarczyk v. State, 772 N.E.2d 428 (Ind. Ct. App. 2002). Defendant charged with escape for failing to return to his home while under pretrial home detention following work release. Defendant argued double jeopardy because the same facts were used to support both the revocation of his pretrial bond and the escape prosecution. The Court Appeals concluded that Defendant's bond had never been revoked, and thus he was not subject to multiple punishments for the same offense. Additionally, the Court of Appeals held that bond revocation is a civil sanction and could not be used to support a double jeopardy violation.

Maroney v. State, 849 N.E.2d 745, 749 (Ind. Ct. App. 2006). Extradition costs to obtain a defendant can be deducted by a trial court from the Defendant's bond.

Samm v. State, 893 N.E.2d 761 (Ind. Ct. App. 2008). The trial court was also found to have disregarded uncontroverted evidence under I.C. 35-38-8-4. However, the court of appeals upheld the trial court's decision, in that although the court did abuse its discretion, the amount of bail was not excessive. *Id*. at 769. "Paramount considerations convince us that bail should be tailored to the individual in each circumstance. Bond schedules should serve only as a starting point for such considerations." *Id*. at 766.

Reeves v. State, 923 N.E.2d 418, 421-422 (Ind. Ct. App. 2010). When bail is set at an amount well beyond what the local rules provide, it is essential the trial court make specific findings in the records supporting it. In *Reeves*, the court of appeals held that although the record contained the factors the judge considered, the record was absent an "articulated rationale" for imposing such a high amount of bail. *Id*.

Sneed v. State, 946 N.E.2d 1255, 1258 (Ind. Ct. App. 2011). Except for the accused's financial position, the primary factor in determining bail, is the potential penalty the accused faces from a possible conviction. "Sneed's $25,000 bail is not unusual or prima facie excessive, and the severity of the charges against her sufficiently counterbalances her ties in the community and history of appearing in court, such that the trial court did not abuse its discretion in failing to reduce the amount of her bail." Id. at 1258. A finding in the record that the defendant is without funds to post a cash bond will trigger an inquiry into the type of bail required by the trial court. Although the bail was not excessive, the trial court erred by denying the defendant a surety bond, in lieu of the defendant's inability to pay a cash bond. *Id*. at 1260.

Winn v. State, 973 N.E.2d 653, 656 (Ind. Ct. App. 2012). Subsection I.C. § 35-33-8-4(b)(7) alone is sufficient to support a trial court's decision to deny bail.

Fry v. State, 990 N.E.2d 429 (Ind. 2013) (murder is a bailable offense. State has the burden of proving by a preponderance of the evidence that defendant committed the crime to deny bail.

State v. Taylor, 49 N.E.3d 1019 (Ind. 2016). Right to counsel is guaranteed by both the Sixth Amendment to the United States Constitution, and Indiana Constitution, Article 1, Section 13. Indiana's Constitution provides even greater protection because it attaches earlier, upon arrest, rather than only when formal proceedings have been initiated as with the federal right

In the

Indiana Supreme Court

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Court of Appeals and
Tax Court

Cause No. 94S00-1602-MS-86

Order Adopting Criminal Rule 26

On December 20, 2013, the Indiana Supreme Court created a committee "to study evidence-based pre-trial release assessments and to make recommendations to the Court, including proposed new or amended rules and procedures to facilitate the implementation of such recommendations." The resulting committee consisted of five trial judges, two legislators, four probation officers, a county prosecutor, the Chair of the Indiana State Bar Association Criminal Justice Section, and representatives of the Indiana Prosecuting Attorneys Council and the Indiana Public Defender Council. Based on its evaluation of the resulting impact on public safety, reduced recidivism, reduced taxpayer costs, enhanced reliability and fairness of criminal justice results, the Committee recommended this Court adopt a new rule to urge Indiana trial courts to use evidence-based risk assessments to inform pretrial release decisions.

The primary purpose of monetary bail and other conditions of release from pretrial detention are to maximize the likelihood of an accused person's presence at trial while striving for both public safety and protection of the presumption of innocence. The prompt release of arrestees who do not pose a risk to public safety is associated with reduced recidivism and eliminates unnecessary expenses resulting from the overutilization of local jail resources. The improvement of Indiana's pretrial release practices will (a) encourage and empower trial judges to release arrestees earlier; (b) reduce pretrial detention expenses for local jails and enable many arrestees to return to their jobs and provide support for their families; (c) eliminate the unfair and often protracted incarceration of poor people who don't have the resources to purchase a bail bond or pay a bail deposit; (d) enhance the reliability of guilty pleas; and (e) realize the benefits of reduced recidivism and enhanced public safety that flow from the use of evidence-based risk assessment tools for pretrial release decisions.

Informed by the work and recommendations of the Supreme Court Committee to Study Evidence Based Pretrial Release and the counties volunteering to serve as pilot projects in this effort, this Court hereby adopts the following Rule of Criminal Procedure

Rule 26. Pretrial Release

(A) If an arrestee does not present a substantial risk of flight or danger to themselves or others, the court should release the arrestee without money bail or surety subject to such restrictions and conditions as determined by the court except when:

(1) The arrestee is charged with murder or treason.

(2) The arrestee is on pre-trial release not related to the incident that is the basis for the present arrest.

(3) The arrestee is on probation, parole or other community supervision.

(B) In determining whether an arrestee presents a substantial risk of flight or danger to self or other persons or to the public, the court should utilize the results of an evidence-based risk assessment approved by the Indiana Office of Court Services, and such other information as the court finds relevant. The court is not required to administer an assessment prior to releasing an arrestee if administering the assessment will delay the arrestee's release

(C) If the court determines that an arrestee is to be held subject to money bail, the court is authorized to determine the amount of such bail and whether such bail may be satisfied by surety bond and/or cash deposit. The court may set and accept a partial cash payment of the bail upon such conditions as the court may establish including the arrestee's agreement that all court costs, fees, and expenses associated with the proceeding shall be paid from said partial payment. If the court authorizes the acceptance of a cash partial payment to satisfy bail, the court shall first secure the arrestee's agreement that, in the event of failure to appear as scheduled, the arrestee shall forfeit the deposit and must also pay such additional amounts as to satisfy the full amount of bail plus associated court costs, fees, and expenses.

(D) Statements by Arrestee

(1) Prohibited Uses: Evidence of an arrestee's statements and evidence derived from those statements made for use in preparing an authorized evidence-based risk assessment tool is not admissible against the arrestee, in any civil or criminal proceeding.

(2) Exceptions: The court may admit such statements:

(a) in a pretrial proceeding involving the arrestee; or

(b) in any proceeding in which another statement made in preparing an authorized evidence-based risk assessment tool has been introduced, if in fairness the statements ought to be considered together.

(3) No statements made for these purposes may be used in any other court except in a pretrial proceeding.

This rule in its entirety is effective immediately in the pretrial pilot courts and courts using an approved evidence based risk assessment under Section B.

Sections C. and D. are effective immediately in all courts. Sections A.

and B. will be effective in all courts January 1, 2018.

Done at Indianapolis, Indiana, on 9/7/2016.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

In the

Indiana Supreme Court

FILED
Sep 05 2017 4:04 pm
CLERK
Indiana Supreme Court
Court of Appeals and
Tax Court

Cause No. 94S00-1701-MS-5

Order Amending Criminal Rule 26

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, and in light of legislative changes made to I.C. 35-33-8.5 et. seq. by HEA 1137, the Indiana Rule of Criminal Procedure 26 is amended as follows (deletions shown by ~~striking~~ and new text shown by underlining):

Rule 26. Pretrial Release

(A) If an arrestee does not present a substantial risk of flight or danger to self or others, the court should release the arrestee without money bail or surety subject to such restrictions and conditions as determined by the court except when:

(1) The arrestee is charged with murder or treason.

(2) The arrestee is on pre-trial release not related to the incident that is the basis for the present arrest.

(3) The arrestee is on probation, parole or other community supervision.

(B) In determining whether an arrestee presents a substantial risk of flight or danger to self or other persons or to the public, the court should utilize the results of an evidence-based risk assessment approved by the Indiana Office of Court Services, and such other information as the court finds relevant. The court is not required to administer an assessment prior to releasing an arrestee if administering the assessment will delay the arrestee's release.

(C) If the court determines that an arrestee is to be held subject to money bail, the court is authorized to determine the amount of such bail and whether such bail may be satisfied by surety bond and/or cash deposit. The court may set and accept a partial cash payment of the bail upon such conditions as the court may establish including the arrestee's agreement that all court costs, fees, and expenses associated with the proceeding shall be paid from said partial payment. If the court authorizes the acceptance of a cash partial payment to satisfy bail, the court shall first secure the arrestee's agreement that, in the event of failure to appear as scheduled, the arrestee shall forfeit the deposit and must also pay such additional amounts as to satisfy the full amount of bail plus associated court costs, fees, and expenses.

(D) Statements by Arrestee

(1) Prohibited Uses: Evidence of an arrestee's statements and evidence derived from those statements made for use in preparing an authorized evidence-based risk assessment tool are not admissible against the arrestee, in any civil or criminal proceeding.

(2) Exceptions: The court may admit such statements:

(a) in a pretrial proceeding involving the arrestee; or

(b) in any proceeding in which another statement made in preparing an authorized evidence-based risk assessment tool has been introduced, if in fairness the statements ought to be considered together.

(3) No statements made for these purposes may be used in any other court except in a pretrial proceeding.

This rule, in its entirety, became effective September 7, 2016 in the pretrial pilot courts and in courts using an approved evidence based risk assessment under Section B.

Sections C. and D. became effective September 7, 2016, in all courts. Sections A. and B. will be effective in all courts January 1, 2020.

Done at Indianapolis, Indiana, on 9/5/2017.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

FREQUENTLY ASKED QUESTIONS

CRIMINAL RULE 26

1. **What is the primary purpose of Criminal Rule 26 (CR 26)?**

The Rule is intended to improve pretrial practices in Indiana by encouraging trial judges to engage in evidence-based decision making at the pretrial stage.

2. **Does CR 26 require trial courts to release arrestees from jail without bail and/or pretrial supervision conditions?**

No. The Rule encourages trial courts to use risk assessment results and other relevant information about an arrestee to determine if the individual presents a substantial risk of flight or danger to self or others in the community; thereby, informing release decisions and release conditions.

3. **What is a pretrial evidence-based risk assessment?**

An evidence-based risk assessment is the use of empirical data derived through criminal justice system scientific research that identifies factors about an individual's likelihood to reoffend while on pretrial supervision.

4. **What evidence-based risk assessment tools have been approved by the Indiana Office of Court Services (IOCS)?**

The IOCS has approved the Indiana Risk Assessment System – Pretrial Assessment Tool (IRAS-PAT) for use to assess risk at the pretrial stage pursuant to the Policy adopted by the Board of Directors of the Judicial Conference.

5. **What is the IRAS-PAT designed to predict?**

The IRAS-PAT is designed to be predictive of both an arrestee's failure-to-appear and risk of violating pretrial supervision by committing a new offense.

6. **Is the court required to administer a risk assessment prior to releasing an arrestee from jail?**

No. The court is not required to delay an arrestee's release from jail to administer the IRAS-PAT. Each court has the flexibility to develop its pretrial release practices within the guidelines of CR 26.

7. **Does CR 26 require staff to be available on a 24-hour basis to administer risk assessments to arrestees?**

No. The Rule encourages the use of risk assessments to assist in release decision making at the earliest possible time following arrest. However, each court must assess its own resources and practices to ensure that arrestees are not unnecessarily held in jail. Courts are encouraged to explore funding options available at the state and local levels to fund enhancements to current practices.

8. Are statements made by an arrestee in the course of the administration of the IRAS-PAT admissible in court?

Statements by arrestees made during the administration of the IRAS-PAT are not admissible against the arrestee in any civil or other criminal proceeding with one limited exception detailed in CR 26(D)(2)(b).

9. May the court utilize collateral information to assist with release decision-making?

Yes. Courts are also encouraged to use other relevant and collateral information such as the probable cause affidavit, victim statement(s), domestic violence screeners, substance abuse screeners, mental health screeners and criminal history to assist in making release decisions.

10. If your court is using a risk assessment tool that has not been approved by the IOCS, is the court required to cease using this tool under CR 26?

No. The Rule does not require a court to cease using other assessment tools. However, any statements made by an arrestee in the course of the administration of a non-approved risk assessment tool is fully admissible in any court proceeding.

11. Is the court required to eliminate its bond schedule under CR 26?

No. The court may continue to utilize its bond schedule when warranted to maximize the likelihood of the arrestee's appearance at trial and for the protection of the public.

12. Is the court prohibited from using cash bail under CR 26?

No. The court may continue to utilize cash bonds when warranted to maximize the likelihood of the arrestee's appearance at trial and the protection of public safety.

13. I thought cash bonds helped pay for court services and programs. Will CR 26 impact this practice?

The purpose of bail is to ensure appearance at trial. There is a misconception that cash bonds fund services and programs, but many cash bonds are exhausted after the payment of the Clerk's fee, Court costs, public defender fees, and fines before any cash bond amount is available for services and programs.

The court may continue to assess authorized fees for programs and services provided, and the collection of authorized fees may be pursued as authorized under Indiana law.

In the

Indiana Supreme Court

FILED
DEC 22 2014
CLERK OF THE
INDIANA SUPREME COURT
COURT OF APPEALS
AND TAX COURT

IN THE MATTER OF THE STUDY AND IMPLEMENTATION OF EVIDENCE-BASED PRETRIAL RELEASE	))	Supreme Court Cause No. 94S00-1412-MS-757

ORDER ON PRETRIAL RELEASE

New evidence-based pretrial risk assessment practices in place in other jurisdictions offer significant advantages in the way decisions are made about the release of arrested persons pending trial, especially those charged with lower-level crimes, misdemeanors, and infractions. These new practices protect public safety, save significant taxpayer expenses for jail operations, assure a strong arrestee show-up rate at trial, minimize wealth-based disparity of access to pretrial release, enable arrestees to more quickly return to work and family pending trial, minimize unreliable guilty pleas, and may provide people with access to life-changing restoration programs.

At least six states, the District of Columbia, and the entire Federal system have adopted procedures under which the release of arrestees is guided by the use of empirically-derived risk assessment tools. In addition, such tools are used in at least 34 individual counties in at least 15 other states. Express policy statements generally supporting the use of evidence-based pretrial practices have been issued by: the Conference of Chief Justices, the Conference of State Court Administrators, the National Association of Counties, the International Association of Chiefs of Police, the Association of Prosecuting Attorneys, the American Council of Chief Defenders, the National Association of Criminal Defense Lawyers, the American Jail Association, the American Bar Association, the National Judicial College, the National Sheriffs' Association, the American Probation and Parole Association, and the National Association of Pretrial Services Agencies.

To further study and enable the implementation of a comprehensive evidence-based pre• trial release program in Indiana, it is therefore ORDERED as follows:

1. The methodology and determinations regarding release of arrested persons before trial is exclusively a judicial function.

2. Recognizing the presumption of innocence until proven guilty, the system used by

Indiana courts should favor the immediate or prompt release of arrestees without monetary bail unless the arrestee poses a substantial risk of flight or harm to self, other people, or a member of the public. Such release from pretrial custody, however, would not apply (a) when the arrestee is charged with murder or treason,

(b) when the arrestee is on pretrial release not related to the incident that is the basis for the present arrest, or (c) the arrestee is already on probation, parole, or other community supervision.

3. The system used by courts to determine whether to release arrestees and any conditions imposed upon such release, should be guided by an evidence-based risk assessment program.

4. Where monetary bail is required, the system should permit the judge to accept a full or partial cash deposit or to accept a surety bond.

5. The Supreme Court Committee to Study Evidence-Based Pretrial Release is requested (a) to develop and implement one or more pilot projects to assess the feasibility, efficacy, economics, and methodologies for consideration and/or use in such a system regarding pretrial release decisions and (b) to employ such findings to propose any Supreme Court rules or procedures to facilitate the implementation of such system. The Indiana Judicial Center shall provide staff support for this effort. The Committee shall promptly report its conclusions and recommendations based on said pilot project(s) to the Supreme Court.

6. Noting that, depending upon the type of risk assessment methodology recommended and used, the reliability and effectiveness of such methodology may be impacted by the admissibility of risk assessment statements by arrestees, the Committee shall advise whether admissibility limitations should be employed and, if so, to propose a rule defining and implementing such limitations.

DONE at Indianapolis, Indiana, on this December 22, 2014.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

APPENDIX B

GLOSSARY

Term	Definition	References
Arrest	Arrest is the taking of a person into custody, that he may be held to answer for a crime.	IC 35-33-1-5
	The accused person shall be delivered to the sheriff of the county in which the indictment or information was filed, and the sheriff shall commit the accused person to jail or hold the accused person to bail as provided in this article.	IC 35-33-2-3(c)
	Arrests by law enforcement officers and persons authorized to act as law enforcement officers. (a) A law enforcement officer may arrest a person when the officer has: (1) a warrant commanding that the person be arrested; (2) probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, a felony; (3) probable cause to believe the person has violated the provisions of IC 9-26-1-1.1 or IC 9-30-5; (4) probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer's presence; (5) probable cause to believe the person has committed a: (A) battery resulting in bodily injury under IC 35-42-2-1; or (B) domestic battery under IC 35-42-2-1.3. The officer may use an affidavit executed by an individual alleged to have direct knowledge of the incident alleging the elements of the offense of battery to establish probable cause; (6) probable cause to believe that the person violated IC 35-46-1-15.1 (invasion of privacy) or IC 35-46-1-15.3; (7) probable cause to believe that the person violated IC 35-47-2-1.5 (unlawful carrying of a handgun) or IC 35-47-2-22 (counterfeit handgun license); (8) probable cause to believe that the person is violating or has violated an order issued under IC 35-50-7;	IC 35-33-1-1

Term	Definition	References
	(9) probable cause to believe that the person is violating or has violated IC 35-47-6-1.1 (undisclosed transport of a dangerous device); (10) probable cause to believe that the person is: (A) violating or has violated IC 35-45-2-5 (interference with the reporting of a crime); and (B) interfering with or preventing the reporting of a crime involving domestic or family violence (as defined in IC 34-6-2-34.5); (11) probable cause to believe that the person has committed theft (IC 35-43-4-2); (12) a removal order issued for the person by an immigration court; (13) a detainer or notice of action for the person issued by the United States Department of Homeland Security; or (14) probable cause to believe that the person has been indicted for or convicted of one (1) or more aggravated felonies (as defined in 8 U.S.C. 1101(a)(43)).	
Bail	Release from jail pending criminal proceedings. Bail may include the imposition of conditions to assure appearance at future legal proceedings or to minimize risk of physical danger to another person or the community or assure public safety.	IC 35-33-8-3.2(a)
Bail Bond	A bond (cash, surety, or secured by real estate) executed by a person who has been arrested for the commission of an offense, for the purpose of ensuring: (1) the person's appearance at the appropriate legal proceeding; (2) another person's physical safety; or the safety of the community.	IC 35-33-8-1
Booking	Arrestee is asked to give his name, address, social security number, date of birth, and other identification information, photographed and fingerprinted of persons taken into custody for felonies or misdemeanors. Personal property is inventoried and secured for safekeeping. Money is put into an account managed by the correctional facility. A medical screening is completed, and medical staff follow up if the individual is not released. Arrestees are thoroughly searched and attired in jail clothing.	IC 36-2-13-5(a)(8)

Term	Definition	References
Cite/Citation	A ticket for an ordinance or traffic violation, requiring payment of a fine. Also called an information and summons, directing an individual to appear in court.	IC 9-30-3-6
Complementary Assessments	Complementary assessment tools are used in conjunction with the IRAS to assist in developing individualized release conditions when specific risk, need, or responsivity factors (i.e., substance abuse, mental health, domestic violence, sex offense, etc.) are identified.	
Evidence-Based Practices (EBP)	Evidence-based practice (EBP) is the objective, balanced, and responsible use of current research and the best available data to guide policy and practice decisions, such that outcomes for consumers are improved. Used originally in the health care and social science fields, evidence-based practice focuses on approaches demonstrated to be effective through empirical research rather than through anecdote or professional experience alone. An evidence-based approach involves an ongoing, critical review of research literature to determine what information is credible, and what policies and practices would be most effective given the best available evidence. It also involves rigorous quality assurance and evaluation to ensure that evidence-based practices are replicated with fidelity, and that new practices are evaluated to determine their effectiveness. In contrast to the terms "best practices" and "what works," evidence-based practice implies that 1) there is a definable outcome(s); 2) it is measurable; and 3) it is defined according to practical realities (recidivism, victim satisfaction, etc.). Thus, while these three terms are often used interchangeably, EBP is more appropriate for outcome-focused human service disciplines.	Promoting Success on Community Supervision; Crime and Justice Institute (July 2022). https://www.cjinstitute.org/publication/promoting-success-on-community-supervision-strategies-for-improving-outcomes-and-reducing-revocations/ A Framework for Evidence-Based Decision Making in State and Local Criminal Justice Systems; National Institute of Corrections https://nicic.gov/projects/evidence-based-practices-ebp
Evidence-Based Pretrial Risk Assessment	An assessment: (A) that identifies factors relevant to determine whether an arrestee is likely to: (i) commit a new criminal offense; or (ii) fail to appear; if released on bail or pretrial supervision; and (B) that is based on empirical data derived through validated criminal justice scientific research.	IC 35-33-8-0.5(a)(1)

Term	Definition	References
Indiana Risk Assessment System (IRAS)	The Indiana Risk Assessment System (IRAS) is made up of six separate instruments to be used at specific points in the criminal justice process to identify an offender's risk of reoffending and criminogenic needs. These instruments are used at distinct points in the criminal justice system to promote and assist with developing individualized case plans. By appropriately targeting the identified criminogenic needs through individualized case plans, it is anticipated recidivism will be reduced.	Policy for Indiana Risk Assessment System, https://www.in.gov/courts/iocs/files/prob-risk-iras-2012.pdf IC 35-33-8-0.5
Initial Hearing	(a) A person arrested without a warrant for a crime shall be taken promptly before a judicial officer: (1) In the county in which the arrest is made; or (2) Of any county believed to have venue over the offense committed; for an initial hearing in court. (b) Except as provided in subsection (c), if the person arrested makes bail before the person's initial hearing before a judicial officer, the initial hearing shall occur at any time within twenty calendar days after the person's arrest. (c) If a person arrested under IC 9-30-5 makes bail before the person's initial hearing before a judicial officer, the initial hearing must occur within ten calendar days after the person's arrest.	IC 35-33-7-1
	At the initial hearing of a person, the judicial officer shall inform him orally or in writing: (1) That he has a right to retain counsel and if he intends to retain counsel he must do so within: (A) Twenty (20) days if the person is charged with a felony; or (B) Ten (10) days if the person is charged only with one (1) or more misdemeanors; after this initial hearing because there are deadlines for filing motions and raising defenses, and if those deadlines are missed, the legal issues and defenses that could have been raised will be waived; (2) That he has a right to assigned counsel at no expense to him if he is indigent; (3) That he has a right to a speedy trial; (4) Of the amount and conditions of bail; (5) Of his privilege against self-incrimination; (6) Of the nature of the charge against him; and	IC 35-33-7-5

Term	Definition	References
	(7) That a preliminary plea of not guilty is being entered for the person and the preliminary plea of not guilty will become a formal plea of not guilty: (A) Twenty (20) days after the completion of the initial hearing; or (B) Ten (10) days after the completion of the initial hearing if the person is charged only with one (1) or more misdemeanors; unless the defendant enters a different plea. In addition, the judge shall direct the prosecuting attorney to give the defendant or the defendant's attorney a copy of any formal felony charges filed or ready to be filed. The judge shall, upon request of the defendant, direct the prosecuting attorney to give the defendant or the defendant's attorney a copy of any formal misdemeanor charges filed or ready to be filed.	
Level of Supervision	When an individual is watched or directed in various levels of monitoring from most restrictive to a least restrictive environment. Examples: Work Release, Electronic Monitoring, Day Reporting, etc.	Public Safety Risk Assessment Clearinghouse; Bureau of Justice Assistance https://bja.ojp.gov/program/psrac/implementation/structured-decision-making/pretrial
Pretrial Services	A program that provides supervision for individuals alleged to have committed a criminal offense and who are pending further court hearings. Participants in the program have been screened for community release. Supervision is provided using a variety of methods based upon the individual needs of the participant. **or** Generally, any organization or entity created ideally to perform three primary pretrial agency or program functions of: (1) collecting and analyzing defendant information for use by the court in assessing risk; (2) making recommendations to the court concerning bail bond conditions of release to address risk; and (3) monitoring and supervising defendants who are released from secure custody during the pretrial phase of their cases in order to manage their risk.	Pretrial Justice Institute https://www.pretrial.org/
Pretrial Violation	A pretrial violation is an activity that results in a notice of violation being filed with the court and thereby requires court action via a warrant or summons.	IC 35-33-8-5(d)

Term	Definition	References
Release on Recognizance	A court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety: ...(7) Release the defendant on personal recognizance unless: (A) the state presents evidence relevant to a risk by the defendant: (i) of nonappearance; or (ii) to the physical safety of the public; and (B) the court finds by a preponderance of the evidence that the risk exists. Release from jail during the pendency of criminal proceedings upon defendant's unsecured written promise to appear at future hearings and amendable to the orders and processes of the court.	IC 35-33-8-3.2(a)(7)
Revocation	Termination of bail due to one or more violations of release supervision conditions.	IC 35-33-8-5
Risk Assessment	Risk assessment can be defined as the process of estimating the likelihood of future offending to identify those at higher risk and in greater need of intervention. Conducting risk assessments also may assist in the identification of treatment targets and the development of risk management and treatment plans.	Offender Risk & Needs Assessment Instruments: A Primer for Courts P. Casey, J. Elek, R. Warren, F. Cheesman, M. Kleiman, & B. Ostrom (2014) https://www.ncsc.org/__data/assets/pdf_file/0018/26226/bja-rna-final-report_combined-files-8-22-14.pdf
Risk Principle	Match the level of service to the offender's risk to re-offend based on static factors and dynamic factors. Offender recidivism can be reduced if the level of treatment services provided to the offender are proportional to the offender's risk to re-offend. The risk principle indicates "who" should be treated in a corrections program. Higher-risk offenders should receive more intensive intervention.	The Risk-Need-Responsivity Model for Assessment and Rehabilitation; National Institute of Corrections https://info.nicic.gov/tjc/module-5-section-2-risk-need-responsivity-model-assessment-and-rehabilitation

Term	Definition	References
Summons	A ticket or "information and summons" issued by a police officer at the time of offense with an order to appear in court at a specified time and place. When an indictment or information is filed against a person charging him with a misdemeanor, the court may, in lieu of issuing an arrest warrant under IC 35-33-2, issue a summons. The summons must set forth substantially the nature of the offense, and command the accused person to appear before the court at a stated time and place. However, the date set by the court must be at least 7 days after the issuance of the summons. The summons may be served in the same manner as the summons in a civil action.	IC 35-33-4-1
Warrant	(a) Except as provided in chapter 4 of this article, whenever an indictment is filed and the defendant has not been arrested or otherwise brought within the custody of the court, the court, without making a determination of probable cause, shall issue a warrant for the arrest of the defendant. (b) Whenever an information is filed and the defendant has not been arrested or otherwise brought within the custody of the court, the court shall issue a warrant for the arrest of the defendant after first determining that probable cause exists for the arrest. (c) No warrant for arrest of a person may be issued until: (1) an indictment has been found charging him with the commission of an offense; or (2) a judge has determined that probable cause exists that the person committed a crime and an information has been filed charging him with a crime.	IC 35-33-2-1

APPENDIX C

INDIANA RISK ASSESSMENT SYSTEM

The Indiana Risk Assessment System (IRAS) is designed to provide Indiana's courts with information about an offender's potential risks and needs, allowing trial courts to provide appropriate release decisions, sentences, supervision, and treatment services at key stages in the criminal justice process. This information helps guide decisions, ascertain the appropriate allocation of resources and programs, measure changes in an offender's risk and need factors during supervision, and follow evidence-based research. The IRAS system contains the following instruments: Pre-trial Assessment Tool (PAT), Community Supervision and Screener (CSST) and Tool (CST), Prison Intake Tool (PIT), Supplemental Reentry Tool (SRT), and Static Tool (ST).

In 2006, key stakeholders formed the Risk Assessment Task Force, staffed by the Indiana Judicial Center (now Indiana Office of Court Services), to promote a uniform and consistent risk assessment process across the relevant supervising agencies as a part of the continuing effort to implement evidence-based practices in Indiana. This task force included representatives from the various supervising agencies (probation, community corrections, problem-solving courts, Court Alcohol and Drug Programs, Department of Correction, and parole), a member of the judiciary, and staff of the Judicial Automation and Technology Committee (JTAC) (now Trial Court Technology) with the Indiana Supreme Court Division of State Court Administration (now Indiana Office of Court Services). The Task Force received technical assistance from the National Institute of Corrections to assist with researching various assessment instruments and develop a plan for a uniform risk assessment process in Indiana. Upon completion of the technical assistance phase, the Task Force recommended to the Judicial Conference of Indiana and the Department of Correction that the Ohio Risk Assessment System (ORAS) be adopted in Indiana. In 2008, Indiana moved ahead with plans to test, validate, and implement the ORAS in Indiana. The benefits of adopting the ORAS include the ability to assess offenders at various stages of the criminal justice system and build future assessments upon prior assessment information. The ORAS instruments are public domain[14] and were developed on a Midwest population using a prospective data collection[15] methodology.

The IRAS was researched and developed by the University of Cincinnati. The original research and development were performed in Ohio to produce the Ohio Risk Assessment System (ORAS).

[14] Public domain refers to the fact the IRAS is not a proprietary instrument. There are no per assessment expenses and the scoring rubric is accessible.

[15] Prospective study involves collecting and gathering the necessary information to conduct the assessment and then studying recidivism after a set period of time has elapsed after the assessment was completed. This is compared to retrospective studies that rely on commonalities gathered from file reviews and recidivism research. Both research methodologies have pros and cons, but a prospective study allow for researchers to gather information through file reviews and interviews to evaluate additional factors related to recidivism that cannot be gleaned from a review of historical file information.

The University's methodology included a review of the items that have been proven to be related to recidivism in addition to identifying additional items for research, and developing the interview questions, self-report questions, and protocols for conducting the assessment (including file reviews, etc.). For the more in-depth instruments, the University looked at 113 questions related to criminal history, substance use, criminal peers, criminal thinking, employment and education, mental health, emotional control, personality, and residential stability. For the pre-trial instruments, the University looked at 35 items related to criminal

thinking, drug use, medical and mental health, pro-criminal peers and family, residential stability, and employment. The University also looked at the results from the ORAS as compared to other assessment instruments commonly used (LSIR and Wisconsin Model). This step measured concurrent validity among the instruments, and the results showed the ORAS performed as well as or better than the other instruments examined. Ultimately, the items found to be predictive of re-offense were then included on the final Ohio Risk Assessment Instruments. The Ohio study had data from 1,834 cases from twenty-nine locations with an average of a one-year follow-up period to measure recidivism (new arrest).

Indiana contracted with University of Cincinnati to test and validate[16] the ORAS for Indiana's population and for training needed to implement these instruments. The University conducted the assessments with current Indiana offenders to gather all the relevant information for scoring the assessment instruments, and later gathered the necessary recidivism data to complete the validation study to determine the predictive value of the assessment instruments. The final Community Supervision Instruments and Prison Reentry Tool were used by the University of Cincinnati research assistants to gather the data needed for the Indiana validation project. The Indiana study had data from 988 cases from twenty-eight locations with an average follow-up period of

23.6 months for recidivism (new arrest). The University looked at the Indiana assessment results alongside the results from the Ohio data set and also combined the data sets to understand the predictive value of the instruments. The University found that Indiana and Ohio results were similar.

Indiana, in following evidence-based practice literature, is currently conducting a revalidation study on all IRAS instruments. The results of the validation study will be used to make any necessary adjustments to the instruments and the validation report will be added the Indiana's Risk Assessment web page.

Indiana has established criteria for the training and certification of all users and adopted system-wide policies for administering the IRAS instruments.[17] Those staff administering the full complement of IRAS instruments are required to attend a two-day, in-person training and pass a

[16] The purpose of a validation study is to determine if the items on the tool are predictive of future criminal behavior. As with any evidence-based practice or procedure, re-examination is also important. Hence, instruments like these need to be revalidated from time to time to insure they remain predictive.

[17] Indiana Risk Assessment System information can be found at: http://www.in.gov/judiciary/probation/2762.htm.

certification exam. Staff who administer only the IRAS-PAT must attend a training session that is approximately two hours and complete an in-class assessment exercise prior to being credentialed to conduct this instrument. All certified and credentialed individuals are required to be recertified every three years. In addition to these requirements, certified and credentialed staff are also provided opportunities for booster sessions to maintain their skills.

The IRAS policies outline when the IRAS instruments are used, include the purpose of the tool, and recommend best practices, requirements for case planning, and reassessment policies. These policies make it mandatory for all supervising entities to use the IRAS and record assessment information in the state's web-based application. The Risk Assessment Application is part of the Indiana Supreme Court's INcite framework. The main objectives behind the development of the automated Risk Assessment Application were to improve communication between criminal justice agencies, to provide continuity of services for offenders, and store statewide aggregate data needed for revalidation of the instruments.

In addition to the IRAS polices, each agency that conducts IRAS assessments, in conformity with evidence-based practices, has established policies to monitor implementation of the instruments and review the quality of staff skills. Conducting assessments with fidelity (consistent with the proper processes and procedures provided in training) is key to maintaining the instrument's validity.

Pretrial Tool (IRAS-PAT) Overview

The IRAS-PAT is designed to assess an offender's risk for failure to appear and risk to reoffend while on pre-trial supervision. This tool provides information on the offender's risk to aid in making pre-trial release and supervision decisions. The tool contains seven items for evaluating the likelihood someone will fail to appear or reoffend while on pre-trial supervision. The areas the assessment measures include criminal history, employment, residential stability, and drug use. The assessment results provide three risk categories (low, moderate, and high). The higher the score, the more likely the offender is at risk for failing to appear or reoffending while on pre-trial supervision.

State policies set forth the training requirement and the entering of IRAS-PAT results in INcite Risk Assessment Application.[18] Staff who are authorized to conduct this assessment tool are required to attend the training described above. This training is designed to ensure that staff have a proper understanding of the assessment process and the scoring guide information. The scoring guide information is standard throughout the state and is based on research that demonstrates differences among the group regarding the risk factors on the tool.

To properly conduct the assessment, staff review the offender's file information and official records, interview the offender using the interview guide and necessary follow-up

[18] State policies on staff training for IRAS can be found at: http://www.in.gov/judiciary/probation/files/prob-risk-iyas-iras-user-certification-2011.pdf

questions, and gather additional information from appropriate collateral sources. The assessment interview generally takes 10-15 minutes. Staff should also verify information gathered during the assessment process whenever possible. Staff score the assessment tool using the information gathered about the offender according to the scoring guide. Each agency is responsible for reviewing the quality of the assessment results and assessment process under the agency's case audit and quality assurance policies and procedures.

The predictive value of the IRAS-PAT has been confirmed in the following jurisdictions:

- Allen County (March 2020)
- Bartholomew County (October 2020)
- Grant County (June 2021)
- Hamilton County (September 2019)
- Hendricks County (June 2020)
- Jefferson County (April 2020)
- Monroe County (December 2019)
- Porter County (May 2021)
- Starke County (June 2022)
- St. Joseph County (February 2022)
- Tipton County (January 2022)
- Vigo County (June 2022)

For additional information on these validation studies, go to:
https://www.in.gov/courts/iocs/pretrial/resources/.

APPENDIX D

PRETRIAL RESOURCES AND RESEARCH

Advancing Pretrial Policy and Research

American Probation and Parole Association

National Association of Pretrial Services Agencies

National Institute of Corrections

National Institute of Justice

Pretrial Justice Center for Courts, National Center for State Courts

Pretrial Justice Institute

Vera Institute of Justice