PRETRIAL PRACTICES

Indiana EBDM Pretrial Work Group

NOVEMBER 7, 2017

November 7, 2017

Table of Contents

November 7, 2017

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.

Indiana is currently in the midst of a pilot project utilizing pretrial evidence-based practices and will continue to evolve pretrial practices in Indiana based on the data and outcome measures provided by the pilot jurisdictions.

November 7, 2017

BAIL IN INDIANA[1]

Excessive Bail: 8th 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."[2]

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 5th 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.[3]

The Court also rejected the substantive due process claims because the Act was regulatory, not penal. Therefore, it does not constitute punishment before trial. The Court stated that the Government's regulatory interest in community safety must be weighed against individual's

[1] 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.
[2] *Id.*, at 5.
[3] *Id.*, at 752.

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 government's interest. [4]

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. [5]

Excessive Bail: Indiana Constitution

Indiana Constitution, Article 1, § 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.

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

[4] *Id.,* at 754-755.
[5] *Id.,* at 750-751.

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."

Hobbs v. Lindsey, 240 Ind. 74, 162 N.E.2d 85, 89 (Ind. 1959) (bail is excessive where amount set represents figure set higher than reasonably calculated to assure defendant's presence at trial; where accused had no money or property of his own with which to provide bail, bail set at $171,400 was prima facie excessive, and burden was on State to show necessity or justification for unusual amount of bail).

Williams v. State, 275 Ind. 434, 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).

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).

Sherelis v. State, 452 N.E.2d 411 (Ind.Ct.App. 1983) (one million dollar bail on defendant with strong familial and community contacts and no prior record was unreasonable in narcotics case; the "gravity of offense" alone was not sufficient to support likelihood of flight).

Mott v. State, 490 N.E.2d 1125 (Ind.Ct.App. 1986) (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).

Perry v. State, 541 N.E.2d 913, 919 (Ind. 1989) (court rejected claim that $62,000 bond was excessive for three counts of dealing in a schedule II controlled substance, as Class B felonies, and an additional charge of habitual offender).

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

Samm v. State, 893 N.E.2d 761(Ind.Ct.App. 2008) ($100,000 cash only bail for multiple counts of dealing cocaine was not excessive).

Reeves v. State, 923 N.E.2d 418 (Ind.Ct.App. 2010) (in setting bail, court must state nexus between criteria for bail and amount set, including defendant's job status, family ties to community, and character and reputation).

Sneed v. State, 946 N.E.2d 1255 (Ind.Ct.App. 2011) (although $25,000 bond was not excessive given severity of charges, trial court abused its discretion by requiring a cash-only payment of bail and denying defendant's request for the option of a surety bond).

Right to Bail: Indiana Constitution

Indiana Constitution, Article 1, §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 borrowing their language from the Northwest Ordinance.[6] 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

[6] 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

Constitution. [7] The other ten states prohibit excessive bail but do not create a right to bail.[8] For example, the bail constitutional provisions of other two states receiving technical assistance from NIC are as follows:

[7] *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").

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 similar to 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.[9]

Indiana Right to Bail Cases

Hobbs v. Lindsey, 240 Ind. 74, 162 N.E.2d 85 (1959) (bail is to assure presence of accused at appropriate time and submission to authority of that court; defendant should not be detained prior to trial if some other less oppressive means of securing defendant's presence is practicable.)

Brown v. State, 262 Ind. 629, 636, 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.")

Sherelis v. State, 452 N.E.2d 411 (Ind.Ct.App. 1983) (because an accused is presumed innocent, pretrial incarceration should not serve punitive purposes; pretrial bail allows the accused the opportunity to properly prepare defense while insuring presence at trial).

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.)

Indiana Bail Statutes

[8] 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).

[9] 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).

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.[10]

IC 35-33-8 Bail and Bail Procedure

IC 35-33-8-1 "Bail bond" defined
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 1996, PL 221, SEC. 1

IC 35-33-8-3.2 Conditions to assure appearance; remittance of deposit; collection of fees
(a) 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.
(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.
As added by Acts 1996, PL 221, SEC. 1.

IC 35-33-8-3.3 Pretrial services fee[11]
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:

[10] P.L. 221-1996.
[11] The assessment of pretrial fees must follow an indigency determination. Community Corrections agencies have the authority to collect pretrial fees pursuant to IC 11-12-2-12.

(A) defendant's appearance in court; or
(B) physical safety of the community or of another person.

...

(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:

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

(4) 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

(5) 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).

...

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

IC 35-33-8-3.8

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 35-33-8-4 Amount of bail; order; indorsement; facts taken into account

(a) ...

(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 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 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 him 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 non-appearance;
(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 disdain for authority, which might indicate that the defendant might not recognize and adhere to the authority of the court to bring him to trial.

As added by Acts 1996, PL 221, SEC. 1.

November 7, 2017

EVIDENCE-BASED PRETRIAL PRACTICES[12]

Now that you have been introduced to pretrial law in Indiana, the next step on your journey to changing pretrial practices in your jurisdiction is an understanding of the available pretrial research and an introduction to evidence-based pretrial release and supervision practices.

The decision to detain or release pretrial has historically resulted from charge-based bond schedules in Indiana. Under current procedures, individuals are arrested and often released if able to meet the cash or surety requirements of the court-approved bond schedule. Individuals who are unable to meet bond requirements are held in custody until taken before the court for an initial hearing. Court-approved bond schedules vary from jurisdiction to jurisdiction with some jurisdictions utilizing multiple bond schedules. It has been argued that this method of pretrial release erroneously equates the seriousness of the charging offense with the individual's risk to public safety and for appearing at future court hearings. [Milgram, A., Holsinger, A. M., VanNostrand, M., & Alsdorf, M. (2015). Pretrial risk assessment: Improving public safety and fairness in pretrial decision making. *Federal Sentencing Reporter, 27,* 216–221. https://doi.org/10.1525/fsr.2015.27.4.216]

The goals of pretrial decision making have evolved over time and are to: (1) maximize the release of pretrial defendants (recognizing the presumption of innocence and the harmful effects of pretrial detention); (2) maximize public safety; and (3) maximize court appearance. [Schnacke, T. R. (2014). *Fundamentals of bail: A resource guide for pretrial practitioners and a framework for American pretrial reform.* Retrieved from National Institute of Corrections website: https://s3.amazonaws.com/static.nicic.gov/Library/028360.pdf]

The research on risk assessment provides guidance for achieving the goals of pretrial decision making. Research indicates that the use of actuarial assessments can improve the accuracy of pretrial decisions and thereby reduce harm to defendants and improve public safety. Risk research has demonstrated that detaining low and moderate risk defendants in jail for even short periods of time (2-3 days) can increase the risk for misconduct both short- and long-term. Furthermore, pretrial supervision of moderate- and high-risk defendants resulted in a significant increase in court appearances when compared with unsupervised defendants. [Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). *The hidden costs of pretrial detention.* Retrieved from Laura and John Arnold Foundation website: http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf]

Furthermore, pretrial detention has been linked to the imposition of longer sentences when compared with defendants who were released pretrial. [Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). *Investigating the impact of pretrial detention on sentencing outcomes.* Retrieved from Laura and John Arnold Foundation website:

[12] Evidence-based practices are based on social science research. Please see Appendix B for a list of definitions as used in this document.

http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_state-sentencing_FNL.pdf]

Pretrial research has resulted in the development of objective assessment tools designed to assist criminal justice system partners determine an individual's likelihood of engaging in pretrial misconduct defined as re-arrest during the pretrial release period and failure to appear for court. The use of validated, empirically-based pretrial risk assessment tools can enhance the pretrial decision-making process when utilized in conjunction with professional judgment. [Pretrial Justice Institute. (2015, May). *Pretrial risk assessment: Science provides guidance on assessing defendants.* Retrieved from http://www.pretrial.org/download/advocacy/Issue%20Brief---Pretrial%20Risk%20Assessment%20(May%202015).pdf]

With the use of risk assessment to assist with pretrial release decision-making, there is a move toward releasing more defendants without monetary bond. Research shows that more defendants could be released from detention with no money bond without negatively impacting court appearance or public safety rates. [Jones, M. R. (2013). *Unsecured bonds: The as effective and most efficient pretrial release option.* Retrieved from Pretrial Justice Institute website: http://www.pretrial.org/download/research/Unsecured+Bonds,+The+As+Effective+and+Most+Efficient+Pretrial+Release+Option+-+Jones+2013.pdf]

In conjunction with a determination to release pretrial with or without a financial obligation, the court must determine what pretrial supervision conditions, if any, to impose on each defendant. The goals of pretrial supervision are to increase the likelihood of appearance at future court hearings and public safety. The risk principle dictates that fewer or no resources should be utilized on lower risk defendants and more resources used on moderate- and high-risk defendants. [Milgram, A., Holsinger, A. M., VanNostrand, M., & Alsdorf, M. (2015). Pretrial risk assessment: Improving public safety and fairness in pretrial decision making. *Federal Sentencing Reporter, 27,* 216–221. https://doi.org/10.1525/fsr.2015.27.4.216]

Several studies show the effectiveness of court call reminders in significantly increasing appearance rates. [Crozier, T. L. (2000). *The Court Hearing Reminder Project: "If you call them, they will come."* Retrieved from http://www.ncsc.org/~/media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2000/Court%20Hearing%20Reminder.ashx; Herian, M. N., & Bornstein, B. H. (2010). Reducing failure to appear in Nebraska: A field study. *Publications of Affiliated Faculty: Nebraska Public Policy Center, Paper 9.* Retrieved from http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1008&context=publicpolicyfacpub; Schnacke, T., Jones, M. R., & Wilderman, D. (2012). Increasing court---appearance rates and other benefits of live---caller telephone court---date reminders: The Jefferson County, Colorado, FTA pilot project and resulting Court Date Notification Program. *Court Review, 48,* 86–95. Retrieved from http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1396&context=ajacourtreview; and Siddiqi, Q. (1999). *Assessing risk of pretrial failure to appear in New York City: A research*

summary and implications for developing release---recommendation schemes. New York, NY: New York City Criminal Justice Agency.]

Aside from the application of the risk principle in the pretrial context and court hearing reminders, there is little research on the effectiveness of specific pretrial supervision conditions. *See* National Institute of Corrections (February 2017). A *Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*. Retrieved from https://s3.amazonaws.com/static.nicic.gov/Library/032831.pdf; Lowenkamp, C. and VanNostrand, M. (November 2013). *Exploring the Impact of Supervision on Pretrial Outcomes*. Retrieved from: https://www.pretrial.org/download/research/Exploring%20the%20Impact%20of%20Supervision%20on%20Pretrial%20Outcomes%20-%20LJAF%202013.pdf; VanNostrand, M., Rose, K. and Weibrecht, K (June 2011). *State of the Science of Pretrial Release Recommendations and Supervision*. Retrieved from: http://www.pretrial.org/download/research/PJI%20State%20of%20the%20Science%20Pretrial%20Recommendations%20and%20Supervision%20(2011).pdf;

Once conditions of released have been determined then responses to pretrial violations must be established pursuant to policy and procedure. The risk principle is the barometer by which courts should determine how to respond to violations based on the severity of the violation and risk level of the defendant. Responses to violations should be proportional and designed to promote appearance at court hearings and public safety.

- Based on this research, the **National Institute of Corrections** has developed the **Essential Elements of an Effective Pretrial System and Agency** to assist courts implement evidence-based pretrial practices. [National Institute of Corrections (February 2017). A *Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*. Retrieved from https://s3.amazonaws.com/static.nicic.gov/Library/032831.pdf.] Indiana has developed a list of pretrial expectations adapted from NIC's Essential Elements of an Effective Pretrial System and Agency.

EVIDENCE-BASED PRETRIAL PRACTICES IN INDIANA

Indiana is well-positioned to implement systemic pretrial change. 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.[13] 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 to 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 the National Institute of Corrections. The pretrial release pilot project will provide 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.

Then the Indiana Supreme Court adopted Criminal Rule 26 in 2017, governing pretrial release.[14] The Supreme Court 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." The Supreme Court also encourages courts to release arrestees who did not present a flight or public safety risk without monetary bail or surety "subject to such restrictions and conditions as determined by the court."

[13] For a summary of the adoption of IRAS and further detail on the PAT, consult Appendix C.
[14] For the text of Rule 26 of the Indiana Rules of Criminal Procedure, consult Appendix A.

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, 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 pilot for the implementation of evidence-based pretrial practices:[15]

1. Guided by a collaborative team process, Indiana pretrial pilot sites will develop and implement pretrial pilot projects within the context of the National Institute of Corrections Evidence Based Decision Making (EBDM) Framework.
2. The following stakeholders will be invited to become members of the local collaborative team:
    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 pilot project.
4. The team will work collaboratively with their local counterparts, the EBDM State Policy Team, and their assigned technical assistance provider(s) in the development, implementation, and enhancement of their pretrial pilot projects.
5. 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":

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

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
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

6. The team will participate in the cross-site efforts to collect and analyze data in order to establish baseline information about pre-pilot pretrial practices and their impact and the impact of the pilot projects.

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

8. Pretrial pilot sites will operate a risk-informed pretrial system. All pilot sites will use the Indiana Risk Assessment System – Pretrial Assessment Tool (IRAS-PAT). Pilot sites may use additional assessment tools and information as they determine appropriate (e.g., criminal history, supplemental tools to assess violence, substance abuse and mental health assessment information, a secondary risk assessment tool). Sites must establish a policy and procedure that identifies when the assessment is administered and who or what agency administers the assessment.

9. Pretrial pilot sites 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.

10. 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.

11. Pretrial pilot sites 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).

12. Pretrial pilot sites will utilize a common pretrial assessment report form. This form will be developed by the EBDM State Policy Team, with input from representatives from the pilot sites. Initially the form will be developed in "paper and pencil" format. Ultimately the form will be developed in INcite to enable local and cross-site data collection and analysis.

13. Pretrial pilot sites will develop and implement a court reminder system. The method used (e.g., phone calls, robo-calls, etc.) will be locally determined.

14. Pretrial pilot sites 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.

15. Pretrial pilot sites 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 pilot sites' needs and resource capacity.

16. Pretrial pilot sites will develop and implement a structured method to respond to pretrial misconduct (i.e., rule infractions, FTA, new arrests). The EBDM State Policy Team will develop a model that can be tailored to meet local pilot sites' needs and resource capacity.

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

18. Pretrial pilot sites 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.

19. Each of the pilot sites will develop a written protocol to document adherence to these principles.

20. Each of the pilot sites 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 the pilot sites and other Indiana courts with guidance on implementing evidence-based pretrial practices, the EBDM Pretrial Work Group developed a set of sample pretrial documents. 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 and sample violent offense list 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.

November 7, 2017

PRETRIAL INTERVIEW ADVISEMENT

Commented [MD1]: I have notes on adding CR 26 language to this form but no further details. Dave or Larry do you want to add to the form as needed?

County: _____

Case Number/TCN/Law Enforcement Number: _____

Name: _____

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

You will not be asked anything about your charge(s) nor should you discuss your 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**

November 7, 2017

PRETRIAL SERVICES REPORT

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

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**

RECOMMENDATION:
Indiana Risk Assessment System – Pretrial Tool Rating: ☐ **Category 1 (Low)** ☐ **Category 2 (Moderate)** ☐ **Category 3 (High)**

Date of Assessment: _____

☐ **Complementary Assessments Administered:** _____

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

Special Considerations / Comments:

_____

_____

_____

Pretrial Officer Signature: _____ **Date:** _____

Indiana Pretrial Release and Supervision Matrix Template

Risk Level	Offense Level			
	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 a crime of domestic violence on bail until at least 8 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.)

Indiana Pretrial Violation Response Matrix Template

Risk Level	Violation Severity Level		
	Low	Medium	High
Category 1	Low Response	Low Response	Medium Response
Category 2	Low Response	Medium Response	High Response
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, insufficient UA sample, 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, missed drug test, positive drug test, 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, increase services, notice to defense counsel and prosecutor, increase drug screens, treatment referral

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

November 7, 2017

PRETRIAL PRACTICES IN PILOT JURISDICTIONS

November 7, 2017

ALLEN COUNTY

Contacts	Judge John Surbeck Allen Superior Court Telephone: 260-449-7947	Jeff Yoder, Executive Director, Allen Superior Court, Criminal Division Services Telephone: 260-449-7134
Pilot Project	Start date: March 15, 2016	
Target Population	Non-violent F5/F6 warrantless arrestees with a prior felony conviction and Felony Habitual Traffic Violators. Arrestees currently under pretrial supervision or on probation are not eligible for the pilot.	
Risk Assessment and Collateral Information	IRAS-PAT is the primary tool administered by Criminal Division Services Pretrial Services Officers at the Allen County Jail for release and supervision decision-making. A generic supplemental no-interview criminal history/prior FTA's tool that the court finds relevant is used as ancillary information. Administered pre-initial hearing on pilot population within 24 hours of arrest unless arrest occurs on the weekend. Currently not assessing on weekends. Administered post-initial hearing on non-pilot population who post bond. Note: IRAS-PAT has been used for pretrial *supervision* purposes since October 2011. Non-pilot defendants who satisfy their bond per the bond schedule continue to be assessed for supervision purposes.	
Release and Bond Schedules	If low or moderate risk on IRAS-PAT, release ROR. If high risk, hold with bond and adhere to the bond schedule. Single county bond schedule (surety or cash) used based on charge and offense level. *Note: first-time Level 3/4/5/6 felony arrestees are already released ROR per the bond schedule.*	
Initial Hearing	Hearings held on weekdays at 1:30 pm. Hearings held within 24 hours of arrest unless arrest occurs on the weekend. The Public Defender has an opportunity to consult with defendants prior to the hearing and is assigned to represent defendants only for the initial hearing. Deputy Prosecutors are assigned to all initial hearings. The judge and parties receive a copy of the completed IRAS-PAT (with supplemental criminal history/FTA info attached) prior to the hearing.	
Supervision	Criminal Division Services pretrial staff supervise defendants based on risk level. Minimum standards remain applicable to all released individuals. However, the magnitude of supervision and monitoring as it relates to special conditions, frequency of reporting and case management is tailored around a defendant's assessed risk.	
Court Notification System	Court uses a robo-call reminder system that makes a call twice a week to anyone under pretrial supervision (regardless of risk) who has an upcoming scheduled court date within 2-3 business days reminding them of their court date and time.	

Violations Response	Matrix under development.

November 7, 2017

BARTHOLOMEW COUNTY

Contacts	Magistrate Joseph Meek Bartholomew Superior Court Telephone: 812-379-1610	Kimberly Maus, Assistant Chief Probation Officer, Bartholomew Court Services Telephone: 812-379-1640 ext 5
Pilot Project	Start Date: July 1, 2016	
Target Population	All pretrial arrestees except for Department of Correction holds, probation violators, parole violators, out-of-county warrants, and ICE holds.	
Risk Assessment and Collateral Information	• PROXY Tool is administered following arrest, during or shortly after book-in by jail staff, when charges are not yet on file. *Notes: Law enforcement does utilize cite and release process. If no charges are filed within 48 hours of arrest or a hold is not instituted, arrestee is ROR regardless of PROXY score.* • IRAS-PAT is administered on individuals arrested on a warrant or after charges are filed following arrest within 18-24 hours by a pretrial probation officer. LMHC does screen/resource sharing with those brought in for heroin or syringe. Other information used with the assessment is recent FTAs and current community supervision status.	
Release and Bond Schedules	Arrestees may be ROR per release matrix following administration of the Proxy. Arrestees may be released per the release matrix with or without conditions following the administration of the IRAS-PAT. Defendants may bond out after hearing with or without supervision conditions. Bartholomew County has a single cash bond schedule.	
Initial Hearing	Held within 48 hours of arrest. Anyone not ROR will have a report completed by a pretrial officer. This report contains risk information, criminal history/FTA history and a recommendation for release. Copies are provided to the court, prosecutor and defense attorney of record, if applicable. First appearance court began in July 2017 on limited basis.	
Supervision	Standard conditions with or without electronic monitoring. Additional conditions may be imposed. Pretrial probation officers supervise pretrial releases with conditions.	
Court Notification System	Currently limited in scope. Calls, emails or text made only to those placed on pretrial supervision.	
Violations Response	Matrix under development. New offenses committed while on pretrial supervision result in violation being filed with court. Significant technical violations result in a memo to Court.	

November 7, 2017

GRANT COUNTY

Contacts	Judge Mark Spitzer Grant Circuit Court Telephone: 765-664-5527	Lakisha Fisher, Pretrial Coordinator Telephone: 765-662-9861 #4161
Pilot Project	Start Date: August 2017	
Target Population	Felony arrestees booked into the Grant County Jail.	
Risk Assessment and Collateral Information	IRAS-PAT administered within 24 hours of arrest, including weekends. ODARA and other collateral assessments as needed.	
Release and Bond Schedules	Grant County will utilize a release matrix that affords low risk arrestees the opportunity for release on recognize, release with conditions, or release with money bail.	
Initial Hearing	Hearings are under development.	
Supervision	Conditions for supervision are established at release.	
Court Notification System	Text or email messaging system used.	
Violations Response	Follows a violations matrix that ranges from verbal reprimand to notice filed with the court for a warrant, bond review or bail revocation based on the severity of misconduct.	

HAMILTON COUNTY

Contacts	Judge Gail Bardach Hamilton Superior Court #6 Telephone: 317-770-4450	Stephanie Ruggles, Director Hamilton County Pretrial Services Telephone: 317-776-6427
Pilot Project	Start Date: June 1, 2016	
Target Population	All warrantless arrestees and those with warrants and an order from the court to assess for pretrial.	
Risk Assessment and Collateral Information	Hawaii Proxy is administered by jail staff within 8 hours of arrest on all new warrantless arrests and those with a warrant and order to assess. This information is not used in the determination of release. A person is eligible for screening upon being booked-in to the Hamilton County Jail unless the person is booked in for an alcohol related offense, or lacks the capacity to provide a valid risk assessment due to the effects of drugs, chemical withdrawal, or a mental or emotional condition. A person booked-in for an alcohol related offense becomes eligible for screening pursuant to the chart established for release eligibility in I.C. 35-33-1-6. A person that lacks the capacity to provide a valid risk assessment becomes eligible for screening when he/she regains that capacity. The screening analyst shall assess those persons detained within eight hours of their arrest or within eight hours of being eligible for screening under paragraph two of IC 35-33-1-6. If a person is not screened within eight hours of being eligible for screening, that person shall be released/detained in accordance with the Hamilton County Bond Schedule already in effect. The screening analyst shall use at least one State approved pretrial risk assessment instrument and such other risk assessment instrument(s) that may be approved and required by the judges of the Circuit and Superior Courts of Hamilton County.	
Release and Bond Schedules	Hamilton County has one bond schedule utilizing both surety and cash and is utilized when pretrial staff are not available to assess individuals. A Pretrial Release Matrix is used to determine the level of supervision while on pretrial release. This matrix incorporates the IRAS-PAT score and level of offense.	
Initial Hearing	The hearing is held the next business day following arrest. Defendants are provided an opportunity to consult with defense counsel prior to the hearing. Both the prosecutor and defense counsel participate in the hearing. A summary report with IRAS-PAT information is sent to the court and the parties via email prior to the hearing and this information is considered during the hearing.	

Supervision	Probation officers and/or pretrial staff supervise defendants on pretrial release utilizing a supervision matrix based on the assessed risk of the defendant.
Court Notification System	Utilizes the Anytrax system that pulls information from Odyssey. An initial email is sent, a phone call is made 7 days prior to the hearing date and a text message is sent 2 days prior to the hearing date.
Violations Response	A Pretrial Violations Matrix is utilized to determine the severity of the violation and the response.

November 7, 2017

HENDRICKS COUNTY

Contacts	Judge Stephenie LeMay-Luken Hendricks Superior Court #5 Telephone: 317-718-6169	Catherine Haines, Court Administrator, Hendricks County Courts Telephone: 317-718-6185 Susan Bentley, Chief Probation Officer, Hendricks County Probation Department Telephone: 317-745-9264
Pilot Project	Start Date: October 16, 2017	
Target Population	Low and moderate risk arrestees.	
Risk Assessment and Collateral Information	Hendricks County has used the IRAS-PAT since January 2014. Since October 16, 2017, the IRAS-PAT is administered by pretrial officers on all in-custody arrestees, Monday – Friday, 6:30 am – 2:30 pm. A supplemental tool is also administered.	
Release and Bond Schedules	Hendricks County has a single bond schedule utilizing both surety and cash deposits. Since October 16, 2017, the courts have adopted a single pretrial release schedule allowing for certain low and moderate risk arrestees to be ROR pretrial.	
Initial Hearing	Hearings are held Monday – Friday at 1:00 pm. The prosecutor and chief public defender are present. Pretrial offices distribute pretrial assessment reports to the court and parties in advance of the initial hearing.	
Supervision	Pretrial supervision matrix has been approved by the local EBDM policy team. The matrix is scheduled to be heard at the November 2017 judge's meeting for final approval. No pretrial supervision is currently in place.	
Court Notification System	Currently in negotiations with a new court reminder service provider.	
Violations Response	Pretrial violations response matrix has been approved by the local EBDM policy team. The matrix is scheduled to be heard at the November 2017 judge's meeting for final approval. No pretrial supervision or violation responses are currently in use.	

November 7, 2017

JEFFERSON COUNTY

Contacts	Judge Mike Hensley Jefferson Superior Court Telephone: 812-265-8914 Judge Darrell Auxier Jefferson Circuit Court Telephone: 812-265-8930	Amber Finnegan, Executive Director Jefferson County Court Services Telephone: 812-265-8911 Shelby Bear, Pretrial Director Jefferson County Court Services Telephone: 812-265-8921
Pilot Project	Start Date: January 1, 2017	
Target Population	Low risk and moderate risk arrestees identified after assessment.	
Risk Assessment and Collateral Information	IRAS-PAT administered within 24 hours of arrest, including weekends. Pretrial services officers administer the assessments. ODARA and the Danger Assessment in domestic violence cases.	
Release and Bond Schedules	Jefferson County has a single bond schedule utilizing cash deposits. Release decisions incorporate risk level and severity of offense.	
Initial Hearing	Hearings are held on Mondays and Fridays in Superior Court, and on Wednesdays in Circuit Court each week. Defendants are brought over from the jail a half an hour before their hearing and at that time talk with the defense counsel. If they are released from jail they are to come into court an hour early for assessment and to meet with defense counsel. Both the defense attorney and the prosecution participate in the hearing. The court and parties receive a copy of the pretrial assessment prior to the hearing.	
Supervision	Follows a supervision matrix that incorporates risk level and security level. Supervision overseen by designated pretrial services officers.	
Court Notification System	Text messaging system used. All released defendants receive text message reminders of court dates three days and one day prior to the hearing.	
Violations Response	Follows a violations matrix that ranges from verbal reprimand to notice filed with the court for a warrant, bond review or bail revocation based on the severity of misconduct.	

MONROE COUNTY

Contacts	Judge Mary Ellen Diekhoff Telephone: 812-349-2635 Judge Teresa Harper Telephone: 812-349-7401 Judge Marc Kellams Telephone: 812-349-2625 Monroe Circuit Court	Linda Brady, Chief Probation Officer Telephone: 812-349-2648 Troy Hatfield, Deputy Chief Probation Officer Telephone: 812-349-2008 Becca Streit, Probation Officer Telephone: 812-349-2656 Monroe County Probation Department
Pilot Project	Start Date: October 1, 2016	
Target Population	All felony and misdemeanor arrestees. Exclusions: probationers, parolees, arrestees under other types of community supervision, and individuals arrested on writ of attachment.	
Risk Assessment and Collateral Information	Initially screened by jail staff to determine monetary bond eligibility. If arrestee is released pursuant to bond schedule, the arrestee signs a promise to appear for pretrial intake and assessment on the next business day. Those arrestees who are ineligible or unable to post bond are assessed within one business day of arrest (if arrested over the weekend, arrestee is assessed on Monday) using the IRAS-PAT by pretrial probation officers. Collateral information reported includes: criminal history, employment, residence, current supervision status, current charges and victim involvement.	
Release and Bond Schedules	Monroe County has a single bond schedule utilizing both surety and cash deposits.	
Initial Hearing	Hearings held weekdays at 1:30 pm. Pretrial staff provide a pretrial report to the court and the parties prior to the hearing. A prosecutor, public defender and pretrial staff are present at every initial hearing.	
Supervision	Supervision level is based on a defendant's IRAS risk and type of charged offense. All defendants who receive monitored pretrial conditions receive telephone and text notifications of required in-person meetings with a pretrial officer. The court may also include additional conditions of supervision such as day reporting or electronic monitoring.	
Court Notification System	All released defendants receive telephone and text notifications of court hearings.	
Violations Response	Pretrial supervision violations are divided into minor, moderate and severe violations with suggested responses for each category of violation.	

November 7, 2017

PORTER COUNTY

Contacts	Judge Julia Jent Porter Superior Court #3 Telephone: 219-759-8232	Tammy O'Neill, Executive Director Porter County PACT Telephone: 219-462-1127 Jennifer York, Probation Officer Porter County Probation Department Telephone: 219-465-3850
Pilot Project	Start Date: March 1, 2017	
Target Population	All felony arrestees assigned to Superior Court #2, Superior Court #3, or Superior Court #4. Misdemeanor arrestees if the person has not bonded out or upon the request of a judicial officer.	
Risk Assessment and Collateral Information	IRAS-PAT conducted following jail book-in within 24 hours of arrest weekdays and within 72 hours if the person is arrested on the weekend by community corrections staff. A domestic violence assessment is also administered on DV cases.	
Release and Bond Schedules	Porter County has multiple bond schedules utilizing cash or surety deposits. A release matrix incorporating risk level and the arresting offense is used.	
Initial Hearing	Hearings are held within 24-48 hours of arrest as scheduled by each court. Defendants are provided with the opportunity to consult with counsel prior to the hearing. Defense counsel and prosecutor both present at the hearings. Assessment results provided prior to the hearing.	
Supervision	Currently under development and incorporates risk level and arresting offense. Designated probation officers supervise defendants.	
Court Notification System	No, currently the court verbally notifies defendants of the next hearing date.	
Violations Response	Currently under development and incorporates risk level and pretrial release violation severity.	

November 7, 2017

ST. JOSEPH COUNTY

Contacts	Judge Elizabeth Hurley Telephone: 574-235-9051 Judge Jeffrey Sanford Telephone: 574-235-6696 St. Joseph Superior Court	Jesse Carlton, Chief Probation Officer St. Joseph County Probation Department Telephone: 574-235-5158 Sharon McBride, Program Director, DuComb Center Telephone: 574-236-2121 Kate Williams, Executive Administrator St. Joseph County Community Corrections Advisory Board Telephone: 574-245-6584
Pilot Project	Start Date: July 1, 2016	
Target Population	All arrestees- current priority is felony arrestees, will expand to include misdemeanants who are not released under current misdemeanor bond schedule which includes a presumptive ROR for most misdemeanor offenses.	
Risk Assessment and Collateral Information	Community Corrections staff completes an in-person interview guide with defendants in custody while Pretrial Services Probation Officers gather additional information and score IRAS-PAT to produce a report. Collateral information provided at the initial hearing includes: criminal history (NCIC), existence of No Contact/Protective Orders, any outstanding CHINS cases and probation records. Probation administers a DV-specific risk assessment (the ODARA) when requested by the Court.	
Release and Bond Schedules	Misdemeanor Bond Schedule provides presumptive ROR for most misdemeanor arrestees. Felony Bond Schedule includes 10% cash deposit option.	
Initial Hearing	Initial hearing takes place within 48 hours of arrest (unless the state requests an extension to file Probable Cause). Dedicated pretrial Public Defenders consult with defendant prior to hearing. Prosecution and Public Defender are present at initial hearings. Pretrial report distributed to parties prior to hearing.	
Supervision	Matrix under development. Probation Officers within the Pretrial Division provide supervision. When GPS is ordered, Community Corrections officers provide monitoring services.	
Court Notification System	In progress- plan to begin utilizing the system before the end of 2017.	
Violations Response	Supervision Matrix and Violations Response protocol have been developed, with graduated supervision options and sanctions based on the severity of the violation. Working to finalize procedure for reporting violations to the Court.	

STARKE COUNTY

Contacts	Judge Kim Hall Starke Circuit Court Telephone: 574-772-9146	John Thorstad, Chief Probation Officer Starke County Probation Department Telephone: 574-772-9151 option #1 Charles Phillips, Pretrial Services Officer Starke County Probation Department Telephone: 574-772-9151
Pilot Project	Start Date: January 1, 2016	
Target Population	Felony arrestees	
Risk Assessment and Collateral Information	IRAS-PAT administered following completion of the booking process by the pretrial officer reporting to the Chief Probation Officer. Collateral information considered includes: criminal history check, FTA check, warrant check and questionnaire developed by the probation department.	
Release and Bond Schedules	Two bond schedules (county and city) used with surety and cash deposits accepted. Release matrix is under development.	
Initial Hearing	Hearings are held no later than 5 calendar days following arrest on Wednesdays and Fridays. IRAS-PAT information provided to the court and parties prior to the hearing. Prosecution and defense counsel participate in the hearings.	
Supervision	Matrix under development. Supervision provided by the probation department or community corrections.	
Court Notification System	No. Currently, paper notification is provided at the initial hearing.	
Violations Response	Matrix under development.	

November 7, 2017

TIPTON COUNTY

Contacts	Judge Thomas Lett Tipton Circuit Court Telephone: 765-675-2791	Tracy Regnier, Executive Director Tipton County Community Corrections Telephone: 765-675-3565
Pilot Project	Start Date: October 1, 2016	
Target Population	All arrestees	
Risk Assessment and Collateral Information	A PROXY assessment is conducted by jail staff during the booking process. An IRAS-PAT is conducted by the community corrections screening officer within 72 hours of arrest. Arrestees not released pursuant to the PROXY or IRAS-PAT are held until the initial hearing. Collateral information considered: criminal history and contact information.	
Release and Bond Schedules	Bond not routinely imposed, only in exceptional cases utilizing a bond schedule. Surety and cash deposits accepted. PROXY risk level determines release or detention for a hearing. Low-risk defendants released ROR, sign a promise to appear and are instructed to report to community corrections within 24 hours to provide contact information. IRAS-PAT risk level determines the supervision conditions upon release. Release matrix considers the defendant's IRAS-PAT risk level and arresting offense.	
Initial Hearing	Hearing held 30 days after release. IRAS-PAT results and collateral information provided to the court, prosecution and defense. Those defendants held in jail have the opportunity to consult with the public defender prior to the hearing. The pretrial officer will provide the court with supervision reports on defendants released.	
Supervision	Supervision provided by community corrections staff. Supervision matrix considers the defendant's risk level and arresting offense. Three supervision levels are used: Level 1 – call in every two weeks and monthly criminal history check; Level 2 – call in and 1 in-person meeting every month and monthly background check; and Level 3 – 2 call ins and 2 in-person meetings every month and a monthly criminal history check. Standard release conditions: appear for all court hearings, do not leave the state without court permission, do not commit or be arrested for a new crime, and notify court and attorney of address changes within 24 hours of change. Additional conditions may be imposed.	

Court Notification System	All defendants provided with 48 hours advance notice of the hearing date via the defendant's preferred contact method: text, email, or voicemail. Information provided to defendant is: defendant's name, case number, court, day and time of hearing and a contact number for questions.
Violations Response	Violations response matrix utilized. Major violations are absconding, positive drug screens, or new arrest. These violations will be reported to the court for further response. Minor violations include missed calls or missed office visits. The response to these violations will be handled administratively.

DATA COLLECTION AND PERFORMANCE MEASURES

Field	Description	Source	Notes
Offender ID	Any available offender identification number; may not need to ask for because we already have it and use it for the data pull	SRS/OMS Odyssey	OMS Offender ID or Odyssey Party ID; connections already in place between Odyssey and OMS
First Name	First name of the offender	SRS/OMS Odyssey	
Last Name	Last name of the offender	SRS/OMS Odyssey	
Middle Name	Middle name of the offender	SRS/OMS Odyssey	
Demographic Information			
Date of Birth	Offender's date of birth	SRS/OMS Odyssey	
Sex	Offender's biological sex	SRS/OMS Odyssey	Male or Female
Race	Offender's race	SRS/OMS Odyssey	American Indian or Alaska Native Asian Black or African American Native Hawaiian or Other Pacific Islander White Other Mixed Race
Ethnicity	Whether the offender is of Hispanic descent or not	SRS/OMS Odyssey	Hispanic Non-Hispanic Unknown
County	County from which the record comes from; could be derived from the submission of the data and not necessary on every record	SRS/OMS Odyssey	

Education	Highest level of education completed at time of intake into pretrial release; may need more explanation on the different levels	SRS/OMS Odyssey	Primary School (Kindergarten through 6th grade) Secondary School (7th grade through 12th grade, includes HSE) Vocational School Post-Secondary (Bachelors, Masters, etc.)
Marital Status	Marital status at time of intake into pretrial release	SRS/OMS Odyssey	Divorced Married Single Separated Widowed
Employment Status at Intake	Employment status at time of intake into pretrial release	SRS/OMS Odyssey	Part-Time Full-Time Unemployed Disabled Student Retired
Employment Status Upon Completion	Employment status at completion of pretrial release	SRS/OMS Odyssey	Part-Time Full-Time Unemployed Disabled Student Retired
Assessment Data			
Assessment Date	Date the assessment was administered	RA System	Data already connected to SRS
Assessment ID	Identification number associated with the specific IRAS tool	RA System	Data already connected to SRS
Assessment Collector	Name of person who conducted the assessment	RA System	Data already connected to SRS
Assessment Items	Scores for each item on the assessment	RA System	Data already connected to SRS
Assessment Score	Total IRAS score	RA System	Data already connected to SRS

Risk Level	Risk classification - low, moderate, moderate/high/ or high risk	RA System	Data already connected to SRS
Override Risk Level	Risk level for an offender that has been overridden	RA System	Data already connected to SRS
Override Reason	Description describing rationale for override	RA System	Data already connected to SRS
Highest Level of Offense	Highest level of offense recorded on the assessment	RA System	Data already connected to SRS
Court Case Details			
Case Number	Case number associated with the offense	SRS/OMS Odyssey	
Each Charged Offense Code(s) and Description		SRS/OMS Odyssey	
Each Charged Offense Level	Whether offense(s) is a felony or misdemeanor	SRS/OMS Odyssey	
Date of Arrest		SRS/OMS Odyssey	Not a required field in OMS
Date Counsel Appointed			
File Date	Date the case was filed in the Clerk's office	SRS/OMS Odyssey	
Release Type (optional)	Bail Type or Release on Own Recognizance	Odyssey	Data already connected to SRS
Bail Amount (optional)		Odyssey	Data already connected to SRS
Date of First Court Appearance		Odyssey	Data already connected to SRS
Failed to Appear	Y/N - Did the person fail to appear at least once while under supervision, and result in a warrant being issued?	Odyssey	Data already connected to SRS

Disposition Type		Odyssey	Data already connected to SRS Defined as: Admission Dismissed Dismissed With Prejudice Dismissed Without Prejudice Finding of Guilty Finding of Guilty buy Mentally Ill Finding of Guilty Lesser Included Finding of Not Guilty Plea By Agreement Plea Guilty Plea Guilty Lesser Included Plea By Agreement but Mentally Ill Plea Guilty buy Mentally Ill Conviction Merged Not Responsible By Reason of Insanity Plea Guilty Lesser Included but Mentally Ill Vacated Guilty Verdict Accepted, Counts Merged Pending
Each Disposition Offense Code and Description		Odyssey	Data already connected to SRS
Each Disposition Offense Level	Whether offense(s) is a felony or misdemeanor	Odyssey	Data already connected to SRS
Supervision Case Details			
Supervision Start Date		SRS/OMS Odyssey	
Supervision End Date		SRS/OMS Odyssey	

Case Manager Name	Name of staff person supervising the case	SRS/OMS Odyssey	
Supervision Level	Not risk level	SRS/OMS Odyssey	High, Medium, Low, Administrative; Have the ability to track changes in Supervision Level over time
Violation Filed	Y/N - Was a violation filed while under supervision?	SRS/OMS Odyssey	Formal filing with the court resulting in either a summons or a warrant
New Offense	Y/N - Did the offender commit a new offense while under supervision	SRS/OMS Odyssey	Question could be asked when closing out a case

Supervision Status	Use "highest" or most severe category that resulted in closing supervision	SRS/OMS Odyssey	Active Completed = No disruptions/violations while under supervision and remained under supervision until disposition or until released by the court Completed With Technical Violation = Remained under supervision until disposition or until release by the court, but committed at least one technical violation Completed With New Offense/Felony = Remained under supervision until disposition or until release by the court, but committed a new offense while under supervision Completed With New Offense/Misdemeanor = Remained under supervision until disposition or until release by the court, but committed a new offense while under supervision Completed With At Least One FTA = Remained under supervision until disposition or until release by the court, but had at least one failure to appear Terminated Due to Technical Violation = Terminated from pretrial supervision prior to disposition due to at least one technical violation Terminated Due to New Offense/Felony = Terminated from pretrial supervision prior to disposition due to the commission of a new arrest Terminated Due to New Offense/Misdemeanor = Terminated from pretrial supervision prior to disposition due to the commission of a new arrest Terminated Due to FTA = Terminated from pretrial supervision prior to disposition due to failure to appear for a court hearing Other Closure (i.e. Death)
Measurable Outcomes			
Appearance Rate: The percentage of supervised defendants who make all pretrial scheduled court appearances. Failure to appear is only counted for those where a warrant was issued by the court for failure to appear.			
Safety Rate: The percentage of supervised defendants who are not charged with a new offense during the pretrial stage.			
Concurrence Rate: The ratio of defendants whose supervision level or detention status corresponds with their assessed risk of pretrial misconduct.			
Completion Rate: The percentage of released defendants who remained under pretrial release supervision until disposition.			

Pretrial Detainee Length of Stay: The average length of stay in jail for pretrial detainees who are eligible by statute for pretrial release. This can only calculated for those screened for pretrial release, and excludes those who bond out prior to screening. Only applicable to agencies using SRS.
Time on Pretrial Supervision: Time between the pretrial agency's assumption of supervision and the end of program supervision.
Caseload Ratio: The number of supervised defendants divided by the number of case managers.
Release Rate (Recommendation Rate): The percentage of pretrial defendants who are eligible for release and who secure release. This can only calculated for those screened for pretrial release, and excludes those who bond out prior to screening.

November 7, 2017

PRETRIAL PERFORMANCE MEASURES*

OUTCOME MEASURES

A. ***Appearance:*** The number of supervised defendants who make all pretrial scheduled court appearances.

- Track the number of cases with a verified supervised pretrial release placement and the subset of this population that have no bench warrants issued for missed scheduled court appearances, including instances when defendants subsequently return to court voluntarily and are not revoked.

- Track the appearance rate of:
  - Defendants released conditionally (may include a financial obligation),
  - Defendants released with only a financial obligation, and
  - Defendants released on personal recognizance.

B. ***Safety:*** The number of supervised defendants who are not charged with a new offense during the pretrial period.

- *New offense* is defined as one with the following characteristics:
  - The offense date occurs during the defendant's period of pretrial release,
  - The offense includes a prosecutorial decision to charge (recorded local and national arrests), and
  - The offense carries the potential of incarceration or community supervision upon conviction.

- Track separate rates by charge level: felony or misdemeanor.

- Track the new offense charges of:
  - Defendants released conditionally (may include a financial obligation),
  - Defendants released with only a financial obligation, and
  - Defendants released on personal recognizance.

C. ***Concurrence:*** The ratio of defendants whose supervision level or detention status corresponds with their assessed risk of pretrial misconduct.

D. ***Success:*** The number of released defendants who (1) are not revoked for technical violations of the conditions of their release, (2) appear for all scheduled court appearances, and (3) are not charged with a new offense during pretrial supervision. This number excludes defendants who are detained following a guilty verdict and those revoked due to non-pretrial-related holds.

**Measuring What Matters: Outcome and Performance Measures for the Pretrial Field*, National Institute of Corrections, 2011.

E. ***Pretrial Detainee Length of Stay:*** The average length of stay in jail for pretrial detainees.

- Track admission and release dates for all pretrial-related jail detentions.
- *Release* is defined as the defendant's full discharge from custody pretrial.

F. ***Release:*** The number of pretrial defendants who are eligible for release and who secure release.

- Track release dates for all pretrial-related jail detentions.
- *Eligible for release* is defined by the defendant's risk assessment score and the jurisdiction's bond schedule.
- *Release* is defined as the defendant's full release from custody pretrial.

Performance Measures

Recommendation Rate: Reflects how frequently the court follows the risk assessment results when determining pretrial release or detention. There are two potential data sources for this performance measure:

1) The total number of risk assessments conducted during a specific time frame and the number of these recommendations that conform to the release or detention level identified by the risk assessment.

2) The percentage of judicial overrides or deviations from the assessed risk score.

Mission Critical Data

Pretrial Detention Rate: The proportion of pretrial defendants who are detained throughout pretrial case processing.

APPENDIX A

Indiana Bail Law

Indiana Constitution

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.

Indiana Code

IC 35-31.5-2-121.5
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
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:

(1) 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.
(2) The amendments made to section 3.1(d) of this chapter (before its repeal) by P.L.156-1994 apply 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
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) other 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."

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
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 insure 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 in order 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.

IC 35-33-8-3.3

Pretrial services fee

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.

(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.

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

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.

IC 35-33-8-3.9

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.

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.

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.

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.

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.

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

(As added by P.L.173-2003, SEC.16; added by P.L.277-2003, SEC.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)

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 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.)

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."

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 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 very 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.*

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."

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."

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 that 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.

Steiner v. State, 763 N.E.2d 1024 (Ind. Ct. App. 2002). Defendant was charged with possession of marijuana and ordered to submit to pretrial random drug screens at her initial hearing. Defendant filed a motion to terminate the drug screens that was denied. The Court of Appeals held that a trial court must make an individualized determination that the accused was likely to use drugs while on bail before it was reasonable to impose random drug screens. The Court of Appeals further held that the trial court did not determine if the facts and circumstances in this case justified pretrial random drug screens.

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.

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

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.

November 7, 2017

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 arrestees 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. *Does CR 26 apply to my court now?*

The entire rule currently applies only to the pilot counties and courts using an approved risk assessment tool. If a court incorporates risk assessment into its pretrial release decision making, the arrestee's statements and evidence derived from those statements made in preparing an IRAS assessment generally cannot be used against the arrestee.

7. 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 the Rule.

8. 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.

9. 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 Criminal Rule 26(D)(2)(b).

10. 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.

11. 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.

12. Is the court required to eliminate its bond schedule under this Rule?

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.

13. Is the court prohibited from using cash bail under this Rule?

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.

14. 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 currently provided under Indiana law.

15. Is Indiana the only state looking at new pre-trial practices?

No. Indiana is part of a national movement undertaking pre-trial reform including Kentucky, Arizona, Illinois, New Jersey, New Mexico, Texas and Colorado and numerous other states.

If you have any questions, please contact Mary Willis, Chief Administrative Officer at the Office of Judicial Administration, (317) 233-8696 or mary.willis@courts.in.gov. For additional information on risk assessments of evidence-based practices, contact Mary Kay Hudson, Deputy Director at the Indiana Office of Court Services, (317) 234-0106 or mk.hudson@courts.in.gov.

November 7, 2017

In the

Indiana Supreme 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 least15 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.

November 7, 2017

Insert Indiana Supreme Court Order

IN THE MATTER OF THE CREATION OF THE COMMITTEE TO STUDY EVIDENCE-BASED PRE-TRIAL RELEASE

Cause No. 94S00-1312-MS-909

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 35-33-2-3(c)] 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 35-33-1-1] 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); (7) probable cause to believe that the person violated IC 35-47-2-1 (carrying a handgun without a license) 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 35-33-1-5 IC 35-33-2-3 IC 35-33-1

	(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 (3) 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 safe keeping. 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)

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.	
Completion Rate	Completion rate is calculated solely based on whether an individual successfully completes pretrial supervision.	EBDM Pretrial Work Group
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.	Source: Crime and Justice Institute at Community Resources for Justice (2009). Implementing Evidence-Based Policy and Practice in Community Corrections, 2nd ed. Washington, DC: National Institute of Corrections.) (From NIC: http://nicic.gov/library/package/ebppackage (last visited Nov. 5, 2015)
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)
Failure to Appear (FTA)	A FTA occurs when a court issues a warrant following an individual's failure to appear for court. This definition includes recalled warrants.	EBDM Pretrial Work Group

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 to reoffend 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.	Source: IRAS state policy, http://www.in.gov/judiciary/probation/files/prob-risk-iras-2012.pdf (last visited Nov. 5, 2015) IC 35-33-8-0.5
Initial Hearing	[IC 35-33-7-1] (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 20 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 10 calendar days after the person's arrest. [IC 35-33-7-5] 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 (7) That a preliminary plea of not guilty is being entered for him and the preliminary plea of not guilty will become a formal plea of not guilty:	IC 35-33-7-1 IC 35-33-7-5

	(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 his 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 his 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.	CCGA Program, Procedural Manual Glossary, Section 25.4 - November 2015
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
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.	EBDM Pretrial Work Group
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:	IC 35-33-8-3.2

	...(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.	
Revocation	Termination of bail due to one or more violations of release supervision conditions.	
Risk	The possibility of something; the degree of probability of a loss or certainty of an action or inaction.	
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.	Risk Assessment Instruments Validated and Implemented in Correctional Settings in the United States. Desmarais & Singh, March 27, 2013; https://csgjusticecenter.org/wp-content/uploads/2014/07/Risk-Assessment-Instruments-Validated-and-Implemented-in-Correctional-Settings-in-the-United-States.pdf (last visited Nov. 5, 2015)
Risk Principle	Match the level of service to the offender's risk to re-offend. Offender recidivism can be reduced if the level of treatment services provided to the offender is proportional to the offender's risk to re-offend. The risk principle indicates "who" should be treated in a corrections program.	Andrews, D.A., Bonta, J., and Hoge, R. (1990). Classification for effective rehabilitation: Rediscovering psychology. *Criminal Justice and Behaviour*, 17, 19-52. Andrews, D.A. and Bonta, J. (2006). Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation. Ottowa, Ontario: Public Safety Canada.
Summons	(1) 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.	IC 35-33-4-1

	(2) 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.	
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-base practice research. The IRAS system contains the following instruments: Pre-trial 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[16] and were developed on a Midwest population using a prospective data collection[17] methodology.

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

[16] 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.

[17] 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 29 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[18] 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 28 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 very 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.[19] Those staff administering the full complement of IRAS instruments are required to attend a two-day, in-person training and pass a

[18] 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.
[19] 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: 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 7 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 to INcite Risk Assessment Application.[20] 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 would review the offender's file information and official records, interview the offender using the interview guide and necessary follow-up

[20] 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 would score the assessment tool using the information gathered about the offender according to the scoring guide. Each agency would be responsible for reviewing the quality of the assessment results and assessment process under the agency's case audit and quality assurance policies and procedures.

APPENDIX D

VIOLENT OFFENSE LIST

For the purposes of creating and implementing a pretrial release matrix, each local jurisdiction should collaboratively define the offenses to be characterized as "violent offenses" for the purposes of pretrial release and supervision. The following is a list of offenses that are variously characterized as "violent" in the Indiana Code, and is provided to assist the local teams as a starting point for the creation of an appropriate violent offenses listing for their local jurisdiction. This list is provided merely for informational purposes and is in no way mandatory. Local needs, capacities, and interests will, of course, inform the creation of a list of violent offenses in each jurisdiction, which may or may not include some or all of the following offenses, and may add some additional offenses. The Pretrial Work Group expresses no opinion as to any specific violent offense listing, and has not endeavored to create a statewide listing of violent offenses to be used in every jurisdiction.

Code number	**Offense**	**Other citation**	**Other citation**
35-42-1-1	Murder	*35-50-1-2	**35-38-2.5-4.7
35-42-1-3	Voluntary Manslaughter	35-50-1-2	35-38-2.5-4.7
35-43-1-4	Involuntary Manslaughter	35-50-1-2	35-38-2.5-4.7
35-42-1-5	Reckless Homicide	35-50-1-2	35-38-2.5-4.7
35-42-2-1.5	Aggravated Battery	35-50-1-2	35-38-2.5-4.7
35-42-3-2	Kidnapping	35-50-1-2	35-38-2.5-4.7
35-42-4-1	Rape	35-50-1-2	35-38-2.5-4.7
35-42-4-2(before repeal)	Criminal Deviate Conduct	35-50-1-2	35-38-2.5-4.7
35-42-4-3	Child Molesting	35-50-1-2	35-38-2.5-4.7
35-42-4-9(a)(2) and (b)(2)	Sexual Misconduct w/Minor	35-50-1-2	35-38-2.5-4.7
35-42-5-1	Robbery	35-50-1-2	35-38-2.5-4.7
35-43-2-1	Burglary Level 1,2,3,4	35-50-1-2	35-38-2.5-4.7
9-30-5-5	OWI Death	35-50-1-2	35-38-2.5-4.7
9-30-5-4	OWI Serious Bodily Injury	35-50-1-2	35-38-2.5-4.7
35-42-4-4(b) and (c	Child Exploitation L4 & L5	35-50-1-2	35-38-2.5-4.7
35-44.1-3-1	Felony Resisting L.E.	35-50-1-2	35-38-2.5-4.7
35-47-4-5	Possession Firearm SVF	35-50-1-2	35-38-2.5-4.7
35-42-2-1	Battery	35-38-2.5-4.7	

35-42-2-1.3	Domestic Battery	35-38-2.5-4.7	
35-43-1-1	Arson	35-38-2.5-4.7	
35-44.1-3-4	Escape/Failure to Return	35-38-2.5-4.7	
35-45-10-5	Stalking	35-38-2.5-4.7	
35-46-1-3	Incest	35-38-2.5-4.7	
35-47.5-5-2 through 8	Explosive Devices	35-38-2.5-4.7	
35-41-5-1	Attempts of Above Offenses	35-38-2.5-4.7	
35-41-5-2	Conspiracy/ Above Offenses		
35-44.1-2-5(a)(2)	Assisting a criminal, level 5	***35-47-4-5	
35-46-1-15.1	Invasion of Privacy		
35-50-2-13/35-48-4-1 to 4	Use of Firearm to deal drugs	35-47-4-5	
35-45-2-1(b)(1) and (b)(2)	Intimidation - felony		
*35-50-1-2 is a list of violent offenses for the purpose of consecutive sentences			
**35-38-2.5-4.7 is the definition of violent offender			
***35-47-4-5 is the list of predicate offenses for a serious violent offender			