

In the
Indiana Supreme Court

IN THE MATTER OF THE)
STUDY AND IMPLEMENTATION OF) Supreme Court Cause No.
EVIDENCE-BASED PRETRIAL RELEASE) 94S00-1412-MS- 157



ORDER ON PRETRIAL RELEASE

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

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

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

1. The methodology and determinations regarding release of arrested persons before trial is exclusively a judicial function.
2. Recognizing the presumption of innocence until proven guilty, the system used by Indiana courts should favor the immediate or prompt release of arrestees without monetary bail unless the arrestee poses a substantial risk of flight or harm to self, other people, or a member of the public. Such release from pretrial custody, however, would not apply (a) when the arrestee is charged with murder or treason, (b) when the arrestee is on pretrial release not related to the incident that is the basis for the present arrest, or (c) the arrestee is already on probation, parole, or other community supervision.

3. The system used by courts to determine whether to release arrestees and any conditions imposed upon such release, should be guided by an evidence-based risk assessment program.
4. Where monetary bail is required, the system should permit the judge to accept a full or partial cash deposit or to accept a surety bond.
5. The Supreme Court Committee to Study Evidence-Based Pretrial Release is requested (a) to develop and implement one or more pilot projects to assess the feasibility, efficacy, economics, and methodologies for consideration and/or use in such a system regarding pretrial release decisions and (b) to employ such findings to propose any Supreme Court rules or procedures to facilitate the implementation of such system. The Indiana Judicial Center shall provide staff support for this effort. The Committee shall promptly report its conclusions and recommendations based on said pilot project(s) to the Supreme Court.
6. Noting that, depending upon the type of risk assessment methodology recommended and used, the reliability and effectiveness of such methodology may be impacted by the admissibility of risk assessment statements by arrestees, the Committee shall advise whether admissibility limitations should be employed and, if so, to propose a rule defining and implementing such limitations.

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



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.