



# The Indiana Prosecutor

2nd Quarter, 2018

## Pretrial Release: Indiana Doing a Pretty Good Job Overall

As you all know, the pretrial release rule, Criminal Rule 26/Indiana Code 35-33-8-0.5, is scheduled to take effect on January 1, 2020. Eleven jurisdictions have been involved with pretrial pilots. Most pilots started more than two years ago. A few started last year. The 11 pilots receive technical assistance and some funding from the state. Technical assistance is also provided to Indiana by the National Institute of Corrections (NIC). Indiana is one of two states receiving assistance from NIC. The other state is Wisconsin. The 11 pilot counties and the prosecutors involved are:

### Pretrial Pilots in Operation

1. Porter, Brian Gensel
2. Starke, Nick Bourff
3. St. Joseph, Ken Cotter
4. Tipton, Jay Rich

## IPAC Among Agencies to Meet with DOJ Bureau of Justice Assistance

**By Richard J. Hertel, Ripley County, President Association of Indiana Prosecuting Attorneys, Inc.**

Indiana was one of six states represented March 19 and 20 in Washington, D.C., at a meeting convened by the U.S. Department of Justice, Bureau of Justice Assistance. IPAC Executive Director David Powell, Assistant Executive Director Chris Naylor and I were part of a prosecution focus group, along with prosecutor coordinators and prosecutors from Texas, Oklahoma, North Carolina, California and Washington. Also present was Tom Robertson, executive director of the National Association of Prosecutor Coordinators.

The day and a half of meetings explored the role of statewide prosecution associations, the types of resources provided and innovative programs offered. The BJA provided information about initiatives that engage prosecutors and we provided information on difficulties and best practices in prosecuting violent crime, gun crime, drug trafficking, and

## Some Thoughts...

**By  
David N. Powell  
IPAC Executive Director**



5. Hamilton, Lee Buckingham
6. Hendricks, Pat Baldwin, Prosecutor; Loren Delp, Deputy Prosecutor
7. Grant, Jim Luttrull
8. Bartholomew, Bill Nash
9. Jefferson, David Sutter

**See Powell, Page 3**



**Richard J. Hertel**

attacking the opioid epidemic. Among the familiar faces of the facilitators were Kristine Hamann who has presented at IPAC trainings and Jennifer Joyce, former circuit attorney (prosecutor) for the city of St. Louis, who participated in IPAC's public relations/media training.

One theme we as prosecutors tried to emphasize is the need for accurate criminal justice data from state to state and nationally. It also became readily apparent to the BJA staff that prosecution associations can be effective force multipliers for public safety initiatives.

On reflection of the event, it was clear to me that the services provided to Indiana prosecutors by IPAC is matched by very few states. Our training is second to none. We have subject matter experts that can advise on any type of case and that does not exist everywhere. The legislative efforts by Dave Powell, Chris Naylor and Lacey Berkshire have blunted many bills detrimental to public safety. Additionally, the manuals, research materials and trial advice, is a luxury that not all states have. Lastly, having three former elected prosecutors at our disposal is invaluable. Indiana prosecutors are fortunate to have the organization leadership, attorneys and staff we have in place.

We all look forward to a closer working relationship with our federal partners as a result of this Washington, D.C. meeting.

# Legislative Update

By **Lacey Berkshire**  
IPAC Legislative Counsel

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The 2018 legislative session came to a chaotic end at midnight on Wednesday, March 14. As many of you know, several important measures were left on the table, unable to pass by the statutory deadline. Governor Holcomb has called for a special session in May to address these unmet goals, one of which relates to prosecutors' child support administrations.

Of the 901 bills that were introduced this year, 212 did make it to the governor's desk, many of which relate to criminal law. An overview of some of IPAC's priority legislation is below. A thorough presentation of all new laws related to public safety and law enforcement will be delivered at the IPAC Spring Seminar on Friday, May 18, at the Indianapolis Marriott North.

## Enrolled Acts of Note

**SEA 64** – Sentencing Modification: Requires a court to advise a defendant, before accepting a guilty plea, that the court will be bound by terms of a plea agreement both at the time of sentencing and with respect to sentence modification. Provides that a court may not, without the consent of the prosecutor, reduce the sentence of a person sentenced under a plea agreement if the reduction was not authorized by the plea agreement. Provides that the prohibition against including a waiver of the right to sentence modification in a plea agreement does not prohibit finding that a person has waived the right to have a court modify a sentence in a manner contrary to the plea agreement.

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**SEA 99** – Civil Forfeiture: Requires prosecutors to file an affidavit of probable cause with a court not later than seven days after property is seized, and provides for the return of the property to the owner if the court does not find probable cause. Establishes a procedure for an owner of real property or of a vehicle (if the owner was not operating the vehicle at the time of the seizure) to obtain provisional custody of the seized property pending a final forfeiture determination. Makes the time limit for filing a forfeiture action: (1) 21 days, if the owner has filed a written demand for return of the property; or (2) 90 days, if the owner has not filed a written demand for return of the property. Provides that an owner whose property is returned is not liable for the costs of storage, transportation, or maintenance. Specifies how the proceeds of a forfeiture action are to be distributed. Requires prosecutors to report certain information concerning forfeitures to IPAC. Imposes certain requirements on the use and compensation of outside counsel in forfeiture actions, and prohibits a prosecutor or deputy prosecutor from receiving a contingency fee for a forfeiture action.

**HEA 1057** - Pretrial Diversion: Provides that the initial user fee amount for a diversion agreement involving a misdemeanor is \$50. Provides that the initial user fee amount for a diversion agreement involving a felony is \$75. Increases monthly user fee from \$10 to \$20. Allows a court to impose on a person an additional program fee or cost that is reasonably related to the person's rehabilitation. Prohibits a monthly user fee from being collected beyond the maximum length of a possible sentence.

**HEA 1359** – Drug Dealing Resulting in Death: Makes manufacturing or dealing certain controlled substances resulting in the death of a user: (1) a Level 1 felony if the controlled substance is cocaine, methamphetamine, or a schedule I, II, or III controlled substance; (2) a Level 2 felony if the controlled substance is a schedule IV controlled substance; and (3) a Level 3 felony if the controlled substance is a schedule V controlled substance or a synthetic drug or synthetic drug lookalike substance.

**HEA 1250** – Battery Offenses: Adds battery as a Level 2-5 felony to the statutory definition of "crime of violence." Adds a bailiff of any court and a special deputy to the definition of "public safety official" for purposes of the battery statute.

**SEA 404** – Operating While Intoxicated: Removes the minimum age requirement for a person to be convicted of operating a vehicle while intoxicated causing death, and specifies that the defense to certain operating while intoxicated offenses involving the use of a controlled substance only applies if the defendant consumed the controlled substance "in accordance with" a valid prescription, instead of "under" a valid prescription.

**SEA 238** – Office of Judicial Administration: Removes the requirement that charging information be signed by both a prosecutor and another person. Requires that the information only be signed by either the prosecutor or his or her deputy.

See Legislative, Page 3

## Powell

Continued from Page 1

10. Allen, Karen Richards
11. Monroe, Chris Gaal

Initially, there was a good bit of consternation and concern that the project was intended to eliminate money bail and release violent offenders from jail. There was also a lot of communication inferring that low risk misdemeanants and folks with mental illness were being inappropriately held in our county jails. Local prosecutors and trial judges, by and large, disagreed with this notion.

There is solid research data that indicates somewhere between seven to 15 percent of the persons charged with crimes (misdemeanors/felonies) within a jurisdiction should be preventively detained. The average is 12 percent. Preliminary data from Indiana appears to be consistent with these percentages. The point being that Indiana was and is doing a pretty good job overall in determining who should be detained pretrial. If your local jail is crowded it is not likely crowded because of your pretrial population. If folks are saying that in your community, then take a day count of your pretrial population and compare it to total number of persons charged with crimes in your jurisdiction on that same day. Folks who have completed this calculation are, by and large, finding that their detained pretrial population is less than 15 percent of their charged population.

In short, the new pretrial rules should not be relied upon to lower the detained pretrial population. The preliminary changes we are seeing in the pilots is in the nature of the population detained. For example, in some of the pilots more drug dealers are being detained even though they could make money bail because of risks assessed by the program. The point of all of this is that an effective pretrial program must focus on detaining the right people and not the numbers.

With 2020 approaching, a number of judges are reaching out to the Indiana Office of Court Services and asking for assistance to begin a local pretrial program. It would be

great if all waited until the work in the pilots were done. We know of three new jurisdictions that have started the ground work for a pretrial program. Hopefully, if your judges are taking these steps they are including you in the process. Prosecutor input and participation is important. I am confident the pilot prosecutors are willing to discuss their experiences and lessons learned with you. I encourage you to call one or more of them, if your jurisdiction starts a pretrial program. You can also contact me or Dan Miller at IPAC. We have been at the table from the beginning and I think we can help. My gut has told me from the beginning that we did not have a pretrial crisis in Indiana. We are discovering that is true for the most part. We do have too many crowded county jails, but that is not because of pretrial detention.

On the other hand, we can always do better and improve current processes. That includes pretrial and I encourage you to be engaged with your local pretrial program to make sure public safety concerns and interests are addressed.

## Legislative Update

Continued from Page 2

**HEA 1033** – Treatment of Out-of-State Convictions in Sentencing: Provides that, for purposes of law regarding sentences for habitual offenders, a Level 6 felony conviction includes a conviction in another jurisdiction for which the offender might have been imprisoned for more than one year but less than two and one-half years.

## Looking Forward

Interim study committee topics will be announced early this summer, and may include hate crimes, marijuana legalization, kratom legalization, DCS issues, human trafficking reform, and issues related to gun violence, among others. IPAC will be ready to contribute and participate, as many topics studied this summer will become introduced legislation in 2019.

The membership of the General Assembly has the potential to be vastly different next session, as 10% or more members leave office, including many in key leadership positions. We will make great efforts to continue building relationships with current legislators during the interim, and with newly elected members after the November election.

## Thank You

Prosecutor engagement in the legislative process is invaluable to the IPAC team and incredibly helpful when it comes to strengthening our relationships at the Statehouse. We are grateful to all prosecutors who helped analyze and advocate for legislation this session, and for those who attended legislative events. A special thank you to Boone County Prosecutor Todd Meyer, Delaware County Prosecutor Jeff Arnold, Hendricks County Chief Deputy Prosecutor Jim Bryan, Madison County Prosecutor Rodney Cummings, Marion County Prosecutor Terry Curry, St. Joseph County Prosecutor Ken Cotter, and Washington County Prosecutor Dustin Houchin for taking time to testify before the legislature on behalf of IPAC this year.

## Calendar of Events

**IV-D West Central Regional Meeting**

**Covington - April 17**

**IV-D Southwest Regional Meeting**

**Montgomery - April 19**

**IV-D Northeast Regional Meeting**

**Wabash - April 24**

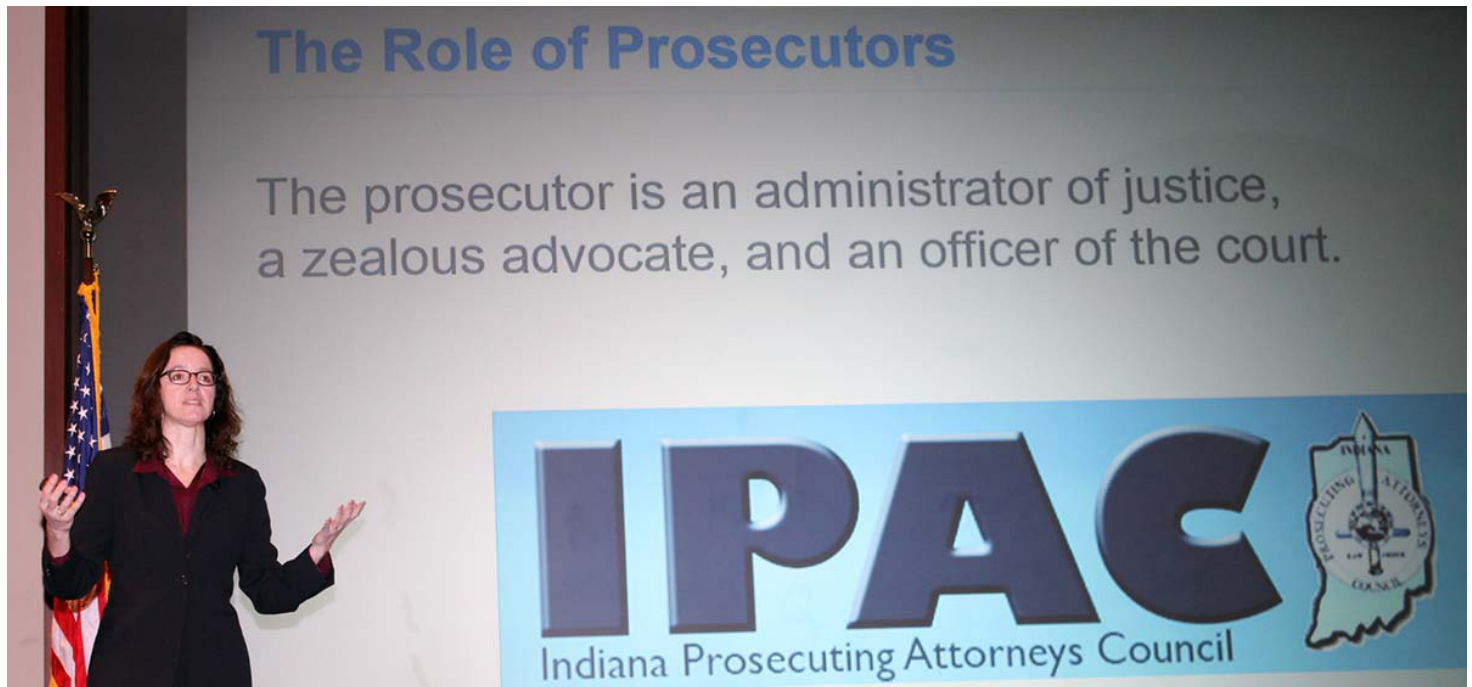
**IV-D Northwest Regional Meeting**

**Michigan City - April 26**

**Spring Seminar**

**Indianapolis - May 18**





Rachel Godsil, co-founder of the Perception Institute and Professor of Law & Chancellor's Scholar at Rutgers Law School, discusses how everyone harbors bias, but awareness may avoid unfairness in the criminal justice system.

## Indiana Prosecutors Learn to Avoid Bias in the Judicial Process



Marshall County Deputy Prosecutor Matt Sarber catches up on duties at home during a break in Implicit Bias Training.

More than 200 Indiana prosecutors in February 2 how to avoid bias to include racial prejudices and stereotypes in the courtroom and elsewhere.

"Implicit Bias - Fairness in the Criminal Justice System", was sponsored by the Indiana Prosecuting Attorneys Council (IPAC) and presented by Rachel D. Godsil, co-founder of the Perception Institute and Professor of Law & Chancellor's Scholar at Rutgers Law School.

"We all tend to be mistrustful of ways and attitudes that we don't understand and that can, however unintended, affect the judicial process," said IPAC Executive Director David Powell. "Making prosecutors aware that biases can be an issue of fairness is important. The Prosecuting Attorneys Council agrees that this training fulfills a vital role in the judicial process."

The prosecutors learned ways to avoid biases that individuals may possess, but are unaware of, by:

- Understanding how our brains process racial paradoxes and polarization.
- Considering research evidence of the impact of core conception interactions, evaluations, and decision-making, with particular emphasis on criminal justice work.
- Examining customized criminal justice scenarios to identify the role each phenomena plays in their own sphere of influence and to recognize the intervention that would lead to more positive outcomes.
- Assessing strategies for intervening in the workplace and communications at both the interpersonal and institutional level.



Elkhart County Prosecutor Vicki Becker is welcomed to the state's Evidence Based Management Decision Making Team, replacing former Jefferson County Prosecutor Chad Lewis. With Prosecutor Becker are team co-chairmen, IPAC Executive Director David Powell (left) and Supreme Court Justice Steven David.



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## OH-KY-IN Border meeting

Ohio, Kentucky and Indiana child support workers gathered at Paul Brown Stadium in Cincinnati, February 28. Above, Beth Anne Schorr of Ohio addresses participants. Below, is Phyllis Schwegman of Franklin County. At right, IPAC IV-D staff member Amy Burgher listens while an Ohio child support worker asks a question. At bottom left is Danetta Dorsett of Brown County.



## Mediation Skills Training

Steven Spence, at right, served on the faculty of Mediation Skills Training for IV-D staff, March 21-23 in Indianapolis. Spence is a registered civil and family law mediator. Also participating as staff were Paulette Carson, LCSW/mediator and Amy Applegate, Maurer School of Law clinical professor.



# Media Quotes of Note

## Williamsport man guilty of murder, arson

"I'd also like to recognize and thank Rusty Hart of the Warren County Sheriff's Office, as well as the many other officers with the Warren County Sheriff's Office and the Indiana State Police, who spent countless hours working on this case. We are all relieved to be able to bring closure to this case. Heather's family deserves that."

**John Larson**  
Warren County  
Lafayette Courier and Journal  
January 13, 2018

## Medical marijuana 'come get it' post on Facebook nets 5 arrests

"If you put something on social media, it's going to be seen by somebody somewhere, so if you're going to sell marijuana on social media, you're probably going to get a knock on your door and your residence searched. Found the actual bag that was pictured on Facebook as for sale. Didn't get it sold yet, no."

**Bradley Cooper**  
Johnson County  
WISHTV  
January 18, 2018

## Tearful Indiana sheriff vows justice in deputy's fatal shooting

"Deputy Pickett was a good man, a wonderful police officer, he was liked by all, he was a pleasure to work with, and he's going to be deeply missed."

**Todd Meyer**  
Boone County  
CBS News  
March 6, 2018

## Tippecanoe County High Tech Crime Unit Helps with Murder Conviction

"We've obtained guilty pleas from drug dealing cases to child molesting cases to battery. We have the only high tech crime unit in the state of Indiana that's embedded with a prosecutor's office and a major university and we are one of three in the country."

**Patrick Harrington**  
Tippecanoe County  
WLFI  
January 15, 2018

## Prosecutors receive training

"The laws, cases, policies and procedures are constantly changing, and I believe that deputy prosecutors have to constantly receive up-to-date training. It equips them with the necessary knowledge and skills to become better trial attorneys. The deputies currently working for me are young and aggressive. They are eager to learn and improve their skill set. The community certainly deserves that. This current group is the best trained and the most talented group I've seen in a long time."

**Ric Hertel**  
Ripley County  
Batesville Herald Tribune  
January 31, 2018

## Facebook page helps parents protect kids

"I am so excited about this initiative, and it couldn't come at a better time. Education and information is the key to preventing these cases from ever happening."

**John Espar**  
LaPorte County  
NWI Times  
March 6, 2018

## Southern Indiana prosecutor to testify before the U.S. Senate about the opioid epidemic

"When we have an individual that's struggling to keep the lights on, that's struggling to keep food in the refrigerator, and they're given a 90 count bottle of hydrocodone, and those are going to \$15 a piece on the street. What do we think they're going to do with those? It would be naive to think people are not going to see the street value of those."

**Otto Schalk**  
Harrison County  
WDRB  
January 16, 2018

## Clark County's child support division most improved in Indiana

"I think many times, child support offices don't get the resources they need. They're [sometimes] kind of an afterthought. It's people who, many times, just don't have the resources to provide for their children. And in the absence of that, the taxpayers are going to end up doing that through public assistance programs."

**Jeremy Mull**  
Clark County  
Jeffersonville News and Tribune  
March 21, 2018

## Former drug dealer partners with prosecutor to educate community about bringing cases to trial

"I think there's a great misunderstanding in how cases work their way through the system, where do they go, what happens next, how the police department interplays with the prosecutor's office, and what it takes to prove and file a case, and then how it works its way through the courtroom."

**Karen Richards**  
Allen County  
TA 21  
February 23, 2018



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