

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.

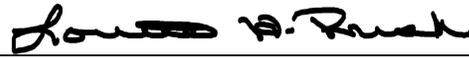
(3) No statements made for these purposes may be used in any other court except in a pretrial proceeding.

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 .



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Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.