

Indiana Rules of Criminal Procedure

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I. General Rules

Rule 1.1. Scope of the Rules

The Indiana Rules of Court, as well as all statutes governing procedure and practice in trial courts, apply to all criminal proceedings unless they conflict with these rules.

Rule 1.2. Public Access and Confidentiality of Records

(A) Court records are accessible to the public, except as provided in the Rules on Access to Court Records.

(B) Any court record excluded from public access must be filed in accordance with the Rules on Access to Court Records.

Rule 1.3. Appearance

(A) State of Indiana

(1) In General.

At the time a criminal proceeding is commenced, the clerk enters the appearance of the elected prosecuting attorney for the jurisdiction where the action is pending. The prosecuting attorney is responsible for providing the following information to the clerk:

(a) the name, address, attorney number, telephone number, and electronic mail address of the prosecuting attorney;

(b) the case type of the proceeding [Administrative Rule 8(B)(3)];

(c) the number of any arrest report relating to the factual basis underlying the criminal proceeding; and

(d) the transaction control number associated with the fingerprints submitted by the arresting agency and the state identification number assigned to the defendant by the Indiana State Police Central Records Repository if the defendant has been arrested and processed at the jail.

(2) Special Prosecutor.

Any special or senior prosecuting attorney appointed to replace the elected prosecuting attorney must provide the information set out in section (A)(1) to the clerk.

(3) Deputy Prosecuting Attorneys.

Deputy prosecuting attorneys are not required to file a separate appearance or a temporary appearance in the criminal proceedings to which they are assigned; however, if an appearance is filed, to withdraw, the deputy prosecuting attorney must file a notice of withdrawal of appearance.

(4) Replacement Prosecutor.

Prosecuting attorneys, including special and senior prosecuting attorneys may substitute their names and attorney numbers in any open case with notice to the clerk. The clerk must update the information in any pending case for any elected prosecuting attorney.

(B) Defendant.

When an attorney for the defendant first appears in the criminal proceeding, the defense attorney must file an appearance form setting forth the following information:

(1) the name, address, attorney number, telephone number, and electronic mail address of the attorney representing the defendant; and

(2) the case number assigned to the criminal proceeding.

(C) Self-represented Defendant.

A self-represented defendant must file an appearance form that includes the defendant's name, address, telephone number, and e-mail address on a form as provided in section (F).

(D) Completion and Correction of Information.

If information required by this rule is not yet available, the information must be submitted to the clerk and supplemented when the absent information is acquired. Attorneys must promptly advise the clerk of any change in the information previously supplied.

(E) Limited Appearance.

A defense attorney may appear for a limited purpose, such as a bail hearing as provided in Trial Rule 3.1.

(F) Forms.

The Indiana Office of Judicial Administration must prepare and publish a standard format for compliance with the provisions of this rule.

Rule 1.4. Investigation Process

(A) Precharge Subpoena Duces Tecum

(1) When a prosecuting attorney receives information concerning the commission of a crime, the prosecuting attorney or deputy prosecuting attorney, acting without a grand jury, may apply to a court of criminal jurisdiction for a subpoena duces tecum ordering a person other than a target of the criminal investigation to produce books, papers, documents, photographs, or tangible objects.

(2) A request must include an affidavit under oath which sets forth the items to be produced either by individual item or by category and describe each item and category with reasonable particularity. The request may specify the form or forms in which electronically stored information is to be produced. The request must specify a reasonable time, place, and manner of delivering things or making the production. The request must demonstrate that the subpoena is as follows:

(a) relevant in purpose to a valid criminal investigation;

(b) sufficiently limited in scope; and

(c) specific in directive so that compliance will not be unreasonably burdensome.

(3) A court of criminal jurisdiction in Indiana may grant the prosecutor's request with or without modifications and may set conditions upon the production of such things. The court may order that the person to whom the subpoena is addressed not disclose the existence of the subpoena duces tecum to any person except those necessary to comply with the subpoena. Subpoenas issued under this subsection are confidential records until the court orders otherwise under Access to Court Records Rule 5(A)(5).

(4) A subpoena duces tecum must be issued consistently with Trial Rule 34, except that the subpoena duces tecum must state the witness or person to whom it is directed may respond to such request by submitting to its terms, by proposing different terms, by objecting specifically or generally to the request by serving a written response to the prosecutor making the request within ten days, or by moving to quash as permitted by Trial Rule 45(B).

(5) After an initial hearing, the discovery procedures set forth in Rule 2.5 apply.

(B) Subpoenas ad testificandum.

The issuance of subpoenas ad testificandum is covered by Ind. Code § 33-39-1-4 and other Indiana law.

II. Pre-Trial Procedure

Rule 2.1. Information or Indictment

A criminal case is commenced by filing a charging information or indictment, which must be of sufficient specificity to allow preparation of a defense and comply with Ind. Code § 35-40-5-12 and Access to Court Records Rule 5(C).

Rule 2.2. Presence of Prosecutor

The prosecuting attorney or a deputy prosecuting attorney must be present at all felony or misdemeanor proceedings, except for an initial hearing at which no evidence is presented.

Rule 2.3. Initial Hearing

(A) Advisements.

The court must advise the defendant of all applicable constitutional rights and deadlines under Ind. Code § 35-33-7-5.

(B) Preliminary Plea.

The court must enter a preliminary plea of not guilty unless a defendant enters a different plea.

(C) Unrepresented defendant.

If the defendant is unrepresented and has not waived the right to counsel, the state must not engage in plea negotiations or diversion agreements and the court must not accept a plea of guilty.

(D) Waiver of Hearing.

Upon a request from defendant's counsel, a court may waive an initial hearing.

Rule 2.4. Change of venue or judge

(A) Change of Venue from the County.

The state or defendant may request a change of venue from the county for cause. The motion must be accompanied by an affidavit signed by the defendant or prosecuting attorney. The affidavit must set forth facts supporting the constitutional or statutory basis for the change. Any opposing party has ten days to file counter-affidavits.

(B) Change of Judge.

Except as provided for in Rule 3.3(C), the state or defendant may request a change of judge only for bias or prejudice. The motion must be accompanied by an affidavit signed by the defendant or prosecuting attorney. The affidavit must set forth facts and the reasons for the belief that bias or prejudice exists. If the defendant signs the affidavit, the defendant's attorney must file a certification that the attorney believes in good faith the facts recited in the affidavit are true. The court must grant the request if the facts recited in the affidavit support a rational inference of bias or prejudice.

(C) Time Period for Filing Request for Change of Judge or Change of Venue

(1) Thirty Day Rule.

A party must file the motion within thirty days after the initial hearing. If a court on appeal remands a case for a new trial, a party must file the motion within thirty days after the defendant first appears in person before the trial court following remand.

(2) Subsequently Discovered Grounds.

The state or defendant may request a change of venue or change of judge after the above time limits. The motion must be accompanied by an affidavit signed by the defendant, defendant's counsel, or prosecuting attorney. The affidavit must set forth with specificity: (a) when the cause was first discovered; (b) how it was discovered; (c) the facts showing the cause for a change; and (d) why such cause could not have been discovered before the time set forth above by the exercise of due diligence. Any opposing party has ten days to file counter-affidavits.

(D) Reassignment of Case or Selecting a Special Judge.

If a change of judge is granted, the case must be reassigned or a special judge selected in accordance with Administrative Rule 21.

(E) Procedure for Change of Venue from County

(1) By Agreement.

Within seven days after the court enters an order granting a change of venue from the county, the parties may agree in open court or file a written agreement selecting the county to which venue is changed. The court will immediately direct the clerk to transfer the action to such county upon the parties' agreement.

(2) Without Agreement.

In the absence of such agreement, the court must, within two business days thereafter, submit to the parties a written list of the adjoining counties from which the parties are to strike. The court may eliminate a county or counties from the list and may substitute another county or counties where the court finds the grounds for the change exist in one or more of the adjoining counties, in order to ensure a fair and impartial trial.

(3) Striking Procedure.

The order listing the strikes must include a schedule for striking such that the parties will complete the process within fourteen days. The parties alternatively strike off the names from the court's list, with the party filing the first motion for change of venue striking first. The court must direct the clerk to transfer the action to the county remaining after striking is completed.

(4) Failure to Strike.

If the moving party fails to strike within the time ordered, such party is not entitled to a change of venue, and the court resumes general jurisdiction of the case. If the non-moving party fails to strike as ordered, the court must direct the clerk to strike the counties for that party.

(5) Emergency Powers.

Nothing in this rule should be construed as divesting the original court of its jurisdiction to hear and determine emergency matters between the time that a motion for change of venue to another county is filed and the time that the court grants an order for the change of venue.

(6) Authority to Act as Special Judge.

After a court has granted an order for a change of venue to another county, the judge granting the change of venue may be appointed as special judge for that case in the receiving county if the judge granting the change, the receiving judge, and all parties agree to the appointment.

Rule 2.5. Discovery

(A) Automatic Discovery/General Provisions.

The parties must endeavor to share information without court involvement.

(1) No written discovery motion is required, except:

- (a) to compel compliance under this rule;
- (b) for additional discovery not covered under this rule;
- (c) for a protective order; or
- (d) for an extension of time.

(2) The parties may comply with discovery obligations in any mutually agreeable manner. The court may resolve disputes over timing and manner of discovery in accordance with Trial Rule 26(F).

(3) Absent a showing under Trial Rule 26(B)(3), the following are not subject to disclosure:

- (a) privileged communications as defined by law; and
- (b) work product of the parties and their legal or investigative staff.

(4) A party has a continuing obligation to disclose supplemental discovery within a reasonable time period.

(B) Disclosures by the State

(1) The state must disclose and furnish all relevant items and information under section (B)(2) to the defense within thirty days from the date of the initial hearing, an appearance by defense counsel, or an appearance by pro se defendant, whichever is later.

(2) The state must disclose the following material and information within its possession or control:

- (a) The names and last known addresses of persons whom the state intends to call as witnesses, with their relevant written or recorded statements. The state may refrain from providing a witness' address or other contact information under this rule if the state in good faith believes the disclosure of the witness' address or other contact information may jeopardize the safety of the witness or the witness' immediate family. If the state does not disclose the witness' address or other contact information in its possession for the reason stated under this rule, then the state must make the witness available to defense counsel upon reasonable notice.
- (b) Any written, oral, or recorded statements made by the accused or by a co-defendant, regardless of whether charged or joined, and a list of witnesses to the making and acknowledgement of such statements.
- (c) A transcript of those portions of grand jury minutes containing testimony of persons whom the prosecuting attorney intends to call as witnesses at the trial.
- (d) Any reports or statements of experts, made in connection with the case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.
- (e) Any books, papers, documents, photographs, or tangible objects that the prosecuting attorney intends to use in the hearing or trial.
- (f) Any books, papers, documents, photographs, or tangible objects which were obtained from or belong to the accused.
- (g) Documents produced pursuant to Rule 1.4.

- (3) The state must disclose to the defense any material or information within its possession or control that tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment.
- (4) The state must disclose and furnish to the defense prior to the trial date, subject to protective orders: any record of prior criminal convictions or other evidence that may be used to impeach the persons whom the state intends to call as witnesses at the hearing or trial.
- (5) Upon a reasonable defense request and a showing of materiality to the preparation of the defense, the court may require disclosure to the defense of unprivileged information not covered by this rule.

(C) Disclosures by the Defense

(1) Within thirty days after the prosecutor's disclosure, the defense must furnish the state with the following material and information within the defense's possession or control:

- (a) The names and last known addresses of persons whom the defense intends to call as witnesses, with their relevant written or recorded statements. The defense may refrain from providing a witness' address or other contact information under this rule if the defense in good faith believes the disclosure of the witness' address or other contact information may jeopardize the safety of the witness or the witness' immediate family. If the defense does not disclose the witness' address or other contact information in its possession for the reason stated under this rule, then the defense must make the witness available to the state upon reasonable notice.
- (b) Any books, papers, documents, photographs, or tangible objects the defense intends to use as evidence.
- (c) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons, that may be used at a hearing or trial.

(2) The defense must disclose any statutory defense in writing by the statutory deadline or, if there is no statutory deadline, within a reasonable time.

(D) Court-ordered Disclosures

(1) After the formal charge has been filed, upon written motion by the state, the court may require the defendant to do the following:

- (a) appear in a line-up;
- (b) speak for identification by witnesses to an offense;
- (c) be fingerprinted;
- (d) pose for photographs not involving re-enactment of a scene;
- (e) try on articles of clothing;
- (f) allow the taking of specimens of material from under fingernails;
- (g) allow the taking of samples of blood, hair, saliva, and other bodily materials that involve no unreasonable intrusion;
- (h) provide a handwriting sample; and
- (i) submit to a reasonable physical or medical body inspection.

Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance must be given by the state to the accused and defense counsel, who have the right to be present. The court may provide for these appearances in an order admitting the accused to bail or providing for release.

(2) *Post-charge search warrants.* After a defendant is charged, the state may obtain a search warrant upon a showing of probable cause and in accordance with applicable law.

(a) Applications for warrants post charging may be obtained ex parte and such applications and warrants are confidential until ordered otherwise by the court.

(b) Within ten days of service of the search warrant, the state must disclose to the defense the search warrant application (whether oral or written), the search warrant, and the return.

(E) Subpoenas Duces Tecum and Discovery from Non-Parties

(1) A party or a third party affected by discovery may request a remedy under Trial Rule 26(C).

(2) Any party may, without leave of the court, serve on any person other than the defendant a subpoena duces tecum for the following:

(a) to produce and permit the party making the request, or someone acting on the requester's behalf, to inspect and copy, any designated documents or electronically stored information (including, without limitation, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations from which information can be obtained or translated, if necessary, by the respondent into reasonably usable form) or to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Trial Rule 26(B) and which are in the possession, custody or control of the party upon whom the request is served; or

(b) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Trial Rule 26(B).

A subpoena duces tecum under this rule must not be served upon a non-party until at least fifteen days after the date on which the party intending to serve such request or subpoena serves a copy of the proposed request and subpoena on all other parties. Provided, however, that if such request or subpoena relates to a matter set for hearing within such fifteen day period or arises out of a bona fide emergency, such request or subpoena may be served upon a non-party one day after receipt of the proposed request or subpoena by all other parties. Service is dispensed if the whereabouts of the non-party is unknown.

The subpoena duces tecum must set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The request may specify the form or forms in which electronically stored information is to be produced. The request must specify a reasonable time, place, and manner of making the inspection and performing the related acts.

A subpoena duces tecum must state that the person to whom it is directed is entitled to security against damages or payment of damages resulting from such request and may respond to such request by submitting to its terms, by proposing different terms, by objecting specifically or generally to the request by serving a written response to the party making the request within twenty days, or by moving to quash as permitted by Trial Rule 45(B).

A party receiving documents from a non-party pursuant to this provision must serve copies on all other parties within fifteen days of receiving the documents.

(F) Restrictions, Limitations, and Sanctions

(1) Restrictions on production.

Upon motion pursuant to Trial Rule 26(C), discovery provided to an opposing party containing photographs, film, video recordings, or other similar mediums showing a live individual's uncovered genitals, pubic area, buttocks, or female post-pubescent nipple; or showing a live individual engaging in or being subjected to sexual conduct; or any other subject matter sensitive in nature as determined by the court, may be prevented from duplication or distribution, except to facilitate review by a party's expert, who is also bound by these restrictions.

(a) Attorneys of record must be the only people in possession of the copies of the restricted discovery.

(b) The defendant may view the restricted discovery but is not permitted to have a copy of the restricted discovery.

(c) Defense counsel must take reasonable steps to prevent the defendant or any other person from making a copy of the restricted discovery.

(2) Restrictions on copies of evidence.

(a) The state must not provide copies of evidence illegal to reproduce or distribute, such as child pornography.

(b) The state may withhold copies of controlled drug buy videos to which privilege does not apply. Upon defense request, the trial court must order the state to provide a copy of the video in a reasonable time before a case proceeds to trial.

(c) Where the state withholds copies, the state must provide a description of the evidence and allow the defense an opportunity to review the evidence.

(3) Interrogatories and requests for admission.

Trial Rule 33 interrogatories and Trial Rule 36 requests for admission cannot be used in criminal proceedings.

(4) Depositions.

Parties may take and use depositions of witnesses in accordance with the Rules of Trial Procedure.

(a) A party may record a deposition without the use of a stenographer as provided in Trial Rule 30(B)(4).

(b) A party may take a deposition through audiovisual telecommunication. The notice must specify that the deposition will be taken through audiovisual telecommunication and provide the link for attendance. Unless the deposition is intended to be introduced in lieu of testimony, the court may not require in person depositions.

(5) Sanctions.

Any violation of this rule may result in a sanction deemed appropriate by the court, except as limited by rule.

Rule 2.6. Pretrial Release

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

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

(2) The arrestee is on 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.

(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 Office of Judicial Administration, 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 be paid from said partial payment. If the court authorizes the acceptance of a cash partial payment to satisfy bail, the court must first secure the arrestee's agreement that, in the event of failure to appear as scheduled, the arrestee forfeits the deposit and must also pay such additional amounts as to satisfy the full amount of bail plus associated court costs, fees, and expenses.

(D) Statements by Arrestee

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

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

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

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

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

Rule 2.7. Written Motions and Legal Memoranda

All written motions must include specific contentions supported by cogent reasoning and pertinent legal authorities.

(A) Motion to Dismiss.

A separate legal memorandum must accompany any motion to dismiss. Additional requirements are prescribed by Ind. Code § 35-34-1-4.

(B) Motion to Suppress.

A defendant who seeks to exclude evidence must make a timely objection at trial. To facilitate judicial economy, counsel is also strongly encouraged to file a pretrial motion to suppress at least ten days before a jury trial. Moving counsel must clearly state the items or statements to be suppressed and the basis for the suppression.

III. Trials and Guilty Pleas

Rule 3.1. Jury Trials: Demand, Notice, and Waiver

(A) Felony

A defendant charged with a felony is entitled to a trial by jury unless that right is waived personally, knowingly, voluntarily, and intelligently. In any case involving a felony, the state and the court must consent to a defendant's waiver of trial by jury.

(B) Misdemeanor

(1) The defendant may demand a trial by jury by filing a written demand not later than ten days before the first scheduled trial date. The failure of a defendant to demand a trial by jury as required by this rule constitutes a waiver of trial by jury unless the defendant has not had at least fifteen days advance notice of the scheduled trial date, and the defendant has not been advised of the consequences of the failure to demand a trial by jury.

(2) The court must not grant a demand for a trial by jury filed after the time fixed has elapsed except upon the written agreement of the state and defendant, which agreement must be filed with the court and made a part of the record. If such agreement is filed, then the court may, in its discretion, grant a trial by jury.

(3) The state may not request a jury trial.

Rule 3.2. Jury Instructions

Jury Rules 20 and 26 and Trial Rule 51 govern jury instructions in a criminal case.

Rule 3.3. Considering and Accepting a Plea of Guilty or Guilty but Mentally Ill

(A) Entering a Plea.

A defendant may plead not guilty, guilty, or guilty but mentally ill.

(B) Considering and Accepting a Guilty or Guilty but Mentally Ill Plea.

(1) Advising and Questioning the Defendant.

Before the court accepts a plea of guilty or guilty but mentally ill, the court must advise the defendant of the following:

- (a) the nature of the charges;
- (b) by pleading guilty the defendant waives the rights to public and speedy trial by jury, to confront and cross-examine witnesses, to have compulsory process, to have proof by the state of guilt beyond a reasonable doubt, not to be compelled to testify against himself/herself, and to appeal the conviction;
- (c) the maximum and minimum possible sentences for the crimes charged, any possible increased sentence by reason of prior convictions, and any possibility of consecutive sentences;
- (d) in cases of domestic violence that the defendant will lose the right to possess a firearm if convicted;
- (e) if there is a plea agreement and the court accepts the agreement, the court will be bound by the terms of the plea agreement at sentencing and with respect to sentence modification; and
- (f) that if the defendant is not a citizen of the United States, conviction on the charges may change the defendant's immigration status. The defendant may either be in a less favorable immigration status or subject to being deported from the United States. The court must provide the defendant time to consult with counsel about immigration matters when the defendant requests.

(2) Waiver of rights.

A defendant must waive the rights set forth in section (B)(1) personally, knowingly, voluntarily, and intelligently. In a plea to a felony, the defendant must orally waive the rights. In a plea to a misdemeanor, the defendant may waive the rights by signing a written waiver.

(3) Ensuring representation.

The Court must not accept a plea of guilty or guilty but mentally ill from an unrepresented defendant unless:

- (a) the court has advised and ensured that the defendant understands the disadvantages of pleading guilty without the advice of counsel; and
- (b) the defendant has personally, knowingly, voluntarily, and intelligently waived the right to counsel.

(4) Ensuring That a Plea Is Voluntary.

Before accepting a plea of guilty or guilty but mentally ill, the court must address the defendant personally on the record and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(5) Determining the Factual Basis for a Plea.

Before entering judgment on a guilty plea, the court must find a factual basis for the plea. A defendant may not plead guilty while asserting innocence.

(C) Plea Agreement Procedure.

(1) In General.

The defendant may plead guilty to all charged offenses without a plea agreement or to at least one of the charged offenses pursuant to a plea agreement negotiated with the state. The court must not participate in plea discussions. A plea agreement to a felony conviction must be in writing and filed with the court.

(2) Judicial Consideration of a Plea Agreement.

(a) *Taking plea under consideration.* The court may take the plea under advisement until the sentencing hearing and/or review of the pre-sentence investigation report.

(b) *Accepting a Plea Agreement.* If the court accepts the plea agreement, the court is bound by and must follow the terms of the agreement.

Rule 3.4. Entry of Judgment

The court must promptly note the verdict of a jury or the decision of the court in the chronological case summary. At or before sentencing, the court must enter judgment of conviction. The provisions of Trial Rule 58(B) relating to the content of a judgment do not apply in criminal proceedings.

IV. Speedy Trial Requirements and Remedies

Rule 4. Impact of Delay in Criminal Trials

(A) Defendant in Jail.

If a defendant is detained in jail on a pending charge, a trial must be commenced no later than 180 days from the date the criminal charge against the defendant is filed, or from the date of arrest on such charge, whichever is later. Delays caused by a defendant, congestion of the court calendar, or an emergency are excluded from the time period. Any defendant detained beyond the time period of this section must be released on recognizance but continues to be subject to the criminal charge within the limitations provided for in section (C).

(B) Defendant in Jail – Motion for Early Trial.

A defendant held in jail on a pending charge may move for an early trial. If such motion is filed, a trial must be commenced no later than seventy calendar days from the date of such motion except as follows:

- (1) delays due to congestion of the court calendar or emergency are excluded from the seventy-day calculation;
- (2) the defendant who moved for early trial is released from jail before the expiration of the seventy-day period; or
- (3) an act of the defendant delays the trial.

If a defendant is held beyond the time limit of this section and moves for dismissal, the criminal charge against the defendant must be dismissed.

(C) Defendant Not in Jail – One year limit.

No person can be held on recognizance or otherwise to answer a criminal charge for a period in aggregate exceeding one year from the date the criminal charge against such defendant is filed, or from the date of the arrest on such charge, whichever is later. Delays caused by a defendant, congestion of the court calendar, or an emergency are excluded from the time period. If a defendant is held beyond the time limit of this section and moves for dismissal, the criminal charge

against the defendant must be dismissed. The one-year time limit does not apply to a retrial following a mistrial or vacation of a conviction or sentence following a motion to correct error, appeal, post-conviction relief, or habeas corpus proceedings. The trial court must commence the retrial within a reasonable time.

(D) Dismissal for Delay in Trial – When May be Refused – Extensions of Time.

If a defendant moves for dismissal under this rule, the trial may be continued for ninety days and the defendant released without money bail or surety, subject to such restrictions and conditions as determined by the court, if the state shows the following:

- (1) there is evidence the state would be entitled to present at trial;
- (2) the evidence is presently unavailable;
- (3) a reasonable and diligent effort was made to procure the evidence in a timely manner prior to moving for an extension of time; and
- (4) the evidence can be obtained within ninety days.

If the defendant is not brought to trial within the ninety-day period, the criminal charges against the defendant must be dismissed with prejudice.

For purposes of this section, the evidence sought need not be essential or unique, nor is the state required to actually present such evidence at trial. However, if the state fails to make reasonable and diligent efforts to procure the evidence after the court grants the extension, the court may dismiss the criminal charges against the defendant with prejudice.

Rule 4.1. Computation of Time

(A) The court must compute the time periods under Rule 4 as follows:

- (1) In computing any time period under this rule, each and every day must be counted, including every Saturday, Sunday and holiday.
- (2) If the last day of the time period falls on a day the court is closed, the period runs until the next day the court is open.
- (3) In computing the period of delay caused by a motion to continue, the delay is measured from the original trial date to the rescheduled trial date. In the event no trial date has yet been scheduled and a pretrial hearing is continued, the period of delay is measured from the original hearing date to the rescheduled hearing date.
- (4) When granting or ordering a continuance, the court must designate whether the delay is excluded from the Rule 4 time period due to the act of the defendant, court congestion, or emergency.

(B) Time Periods Extended. If the defendant causes any delay during the last thirty days of any period of time set by operation of this rule, the state may petition the court for an extension of such period for an additional thirty days.

Rule 4.2. Commencement of Rule 4 Time Periods for Those Incarcerated Outside of State or in Another County

(A) If a defendant is charged in Indiana but apprehended outside the state or is held in Indiana in federal custody, the Rule 4 time periods commence when the defendant is returned to Indiana or is made available by federal authorities for prosecution in Indiana.

(B) If a defendant is charged in one Indiana county prior to or during the time the defendant is incarcerated in a different county, the Rule 4 time periods commence on the earlier of: (1) the date the court in the non-custodial county orders the

defendant's appearance; or (2) the date the defendant provides written notice to the court where the charge is pending of the defendant's location and requests initiation of proceedings in the non-custodial county.

V. Post-Trial Proceedings

Rule 5.1. Advisements After Sentencing

(A) Upon entering a conviction, the court must sentence a defendant within thirty days of the plea or the finding or verdict of guilty, unless extended for good cause.

(B) Following the sentencing of a defendant on a conviction, or on a revocation or modification of post-conviction conditions in which the defendant has not waived the right to appeal, the judge must immediately advise the defendant:

(1) The defendant is entitled to take an appeal or file a motion to correct error.

(2) If the defendant wishes to file a motion to correct error, it must be done within thirty days of the sentencing.

(3) If the defendant wishes to take an appeal, the defendant must file a notice of appeal within thirty days after the sentencing or within thirty days after the motion to correct error is denied or deemed denied, if one is filed; if the notice of appeal is not timely filed, the right to appeal may be forfeited.

(4) If the defendant is financially unable to employ an attorney, the court will appoint counsel for defendant at public expense for the purpose of taking an appeal.

(C) After these advisements, the court must inquire whether the defendant wishes to appeal. If the defendant desires an appeal, the court must inquire whether defendant has funds to employ an attorney. If the court finds the defendant who wishes to appeal is financially unable to employ counsel, the court must promptly appoint an attorney to represent the defendant and notify the defendant.

Rule 5.2. Abstract of Judgment

Upon sentencing a person for any felony conviction, the court must complete an abstract of judgment in an electronic format approved by the Indiana Office of Judicial Administration (IOJA). The IOJA will maintain an automated system for purposes of submitting the electronic abstract of judgment.

Rule 5.3. Motion to Correct Error

(A) When Mandatory.

A motion to correct error is not a prerequisite for appeal, except when a party seeks to address newly discovered material evidence, including alleged jury misconduct, capable of production within thirty days after the sentencing date which, with reasonable diligence, could not have been discovered and produced at trial.

All other issues and grounds for appeal appropriately preserved during trial may be initially addressed in the appellate brief.

(B) Time for Filing.

A motion to correct error, if any, must be filed within thirty days after the date of sentencing, or the date of entry on the chronological case summary of an order of dismissal or an order of acquittal.

Rule 5.4. Time Within Which the Appeal Must be Submitted

The notice of appeal must be filed within thirty days after the date of entry on the chronological case summary of an order of sentencing, dismissal, or acquittal. However, if a motion to correct error is timely filed pursuant to Rule 5.3, the notice of appeal must be filed within thirty days after the ruling on the motion to correct error is entered on the chronological case summary or the motion to correct error is deemed denied under Trial Rule 53.3, whichever occurs earlier.

VI. Miscellaneous

Rule 6.1. Capital Cases

(A) Supreme Court Case Number.

Whenever a prosecuting attorney seeks the death sentence by filing a request pursuant to Ind. Code § 35-50-2-9, the prosecuting attorney must file that request with the trial court and with Supreme Court Services, Indiana Supreme Court, 315 State House, Indianapolis, Indiana 46204. Upon receipt of same, Supreme Court Services must open a case number in the Supreme Court and notify counsel.

(B) Appointment of Qualified Trial Counsel.

Upon a finding of indigence, it is the duty of the judge presiding in a capital case to enter a written order specifically naming two qualified attorneys to represent an individual in a trial proceeding where a death sentence is sought. The provisions for the appointment of counsel set forth in this section do not apply in cases wherein counsel is employed at the expense of the defendant.

(1) Lead Counsel; Qualifications.

One of the attorneys appointed by the court must be designated as lead counsel. To be eligible to serve as lead counsel, an attorney must:

- (a) be an experienced and active trial practitioner with at least five years of criminal litigation experience;
- (b) have prior experience as lead or co-counsel in no fewer than five felony jury trials which were tried to completion;
- (c) have prior experience as lead or co-counsel in at least one case in which the death penalty was sought; and
- (d) have completed within two years prior to appointment at least twelve hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

(2) Co-Counsel, Qualifications.

The remaining attorney must be designated as co-counsel. To be eligible to serve as co-counsel, an attorney must:

- (a) be an experienced and active trial practitioner with at least three years of criminal litigation experience;
- (b) have prior experience as lead or co-counsel in no fewer than three felony jury trials which were tried to completion; and
- (c) have completed within two years prior to appointment at least twelve hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

(3) Workload of Appointed and Salaried Capital Counsel.

In the appointment of counsel, the nature and volume of the workload of appointed counsel must be considered to assure that counsel can direct sufficient attention to the defense of a capital case.

(a) Attorneys accepting appointments pursuant to this rule must provide each client with quality representation in accordance with constitutional and professional standards. Appointed counsel must not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.

(b) A judge must not make an appointment of counsel in a capital case without assessing the impact of the appointment on the attorney's workload, including the administrative duties of a chief or managing public defender.

(c) Salaried or contractual public defenders may be appointed as trial counsel in a capital case, if:

(i) the public defender's caseload will not exceed twenty open felony cases while the capital case is pending in the trial court;

(ii) no new cases will be assigned to the public defender within thirty days of the trial setting in the capital case;

(iii) none of the public defender's cases will be set for trial within fifteen days of the trial setting in the capital case; and

(iv) compensation is provided as specified in paragraph (C).

(d) The workload of full-time salaried capital public defenders will be limited consistent with subsection (B)(3)(a). The head of the local public defender agency or office, or in the event there is no agency or office, the trial judge, must not make an appointment of a full-time capital public defender in a capital case without assessing the impact of the appointment on the attorney's workload, including the administrative duties of a chief or managing public defender. In assessing an attorney's workload, the head of the local public defender agency or office, or in the event there is no agency or office, the trial judge must be guided by Standard J of the Standards for Indigent Defense Services in Non-Capital cases as adopted by the Indiana Public Defender Commission, effective January 1, 1995, and must treat each capital case as the equivalent of forty felonies under the Commission's "all felonies" category. Appointment of counsel is also subject to subsections (B)(3)(c)(ii), (iii) and (iv).

(C) Compensation of Appointed Trial Counsel.

All hourly rate trial defense counsel appointed in a capital case must be compensated under subsection (1) of this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Hourly rate counsel must submit periodic billings not less than once every thirty days after the date of appointment by the trial court. All salaried capital public defenders compensated under subsection (4) of this provision must present a monthly report detailing the date, activity, and time duration of services rendered after the date of appointment. Periodic payment during the course of counsel's representation must be made.

(1) Hours and Hourly Rate.

Defense counsel appointed at an hourly rate in capital cases filed or remanded after appeal on or after January 1, 2001, must be compensated for time and services performed at the hourly rate of ninety dollars only for that time and those services determined by the trial judge to be reasonable and necessary for the defense of the defendant. The trial judge's determination must be made within thirty days after submission of billings by counsel. Counsel may seek advance authorization from the trial judge, ex parte, for specific activities or expenditures of counsel's time.

The hourly rate set forth in this rule is subject to review and adjustment on a biennial basis by the Chief Administrative Officer (CAO) of the Indiana Office of Judicial Administration (IOJA). Beginning July 1, 2002, and July 1st of each even year thereafter, the CAO will announce the hourly rate for defense counsel appointed in capital cases filed or remanded after appeal on or after January 1, of the years following the announcement. The hourly rate will be calculated using the Gross Domestic Product Implicit Price Deflator, as announced by the United States Department of Commerce, for the last two years ending December 31st preceding the announcement. The calculation by the CAO must be rounded to the next closest whole dollar.

In the event the appointing judge determines that the rate of compensation is not representative of practice in the community, the appointing judge may request the CAO of the IOJA to authorize payment of a different hourly rate of compensation in a specific case.

(2) Support Services and Incidental Expenses.

Counsel appointed at an hourly rate in a capital case must be provided, upon an ex parte showing to the trial court of reasonableness and necessity, with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase. In addition to the hourly rate provided in this rule, all counsel must be reimbursed for reasonable and necessary incidental expenses approved by the trial judge. Counsel may seek advance authorization from the trial judge, ex parte, for specific incidental expenses.

Full-time salaried capital public defenders must be provided with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase, as determined by the head of the local public defender agency or office, or in the event there is no agency or office, by the trial judge as set forth above.

(3) Contract Employees.

In the event counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty case to reflect the limitations of case assignment established by this rule.

(4) Salaried Capital Public Defenders.

In those counties having adopted a Comprehensive Plan as set forth in Ind. Code § 33-9-15 et. seq., which has been approved by the Indiana Public Defender Commission, and who are in compliance with Commission standards authorized by Ind. Code § 33-9-13-3(2), a full-time salaried capital public defender meeting the requirements of this rule may be assigned in a capital case by the head of the local public defender agency or office, or in the event there is no agency or office, by the trial judge. Salaried capital public defenders may be designated as either lead counsel or co-counsel. Salaried capital lead counsel and co-counsel must be paid salary and benefits equivalent to the average of the salary and benefits paid to lead prosecuting attorneys and prosecuting attorneys serving as co-counsel, respectively, assigned to capital cases in the county.

Each year, by July 1, those counties wishing to utilize full-time salaried capital public defenders for capital cases must submit to the CAO of the IOJA the salary and benefits proposed to be paid the capital public defenders for the upcoming year along with the salaries and benefits paid to lead prosecutors and prosecutors serving as co-counsel assigned capital cases in the county in the thirty-six months prior to July 1, or a certification that no such prosecutor assignments were made. The CAO must verify and confirm to the Indiana Public Defender Commission and the requesting county that the proposed salary and benefits are in compliance with this rule. In the event a county determines that the rate of compensation set forth herein is not representative of practice in the community, the county may request the CAO to authorize a different salary for a specific year.

(D) Transcription of Capital Cases.

The trial or post-conviction court in which a capital case is pending must provide for stenographic reporting with computer-aided transcription of all phases of trial and sentencing and all evidentiary hearings, including both questions and answers, all rulings of the judge in respect to the admission and rejection of evidence and objections thereto and oral argument. If the parties agree, on the record, the court may permit electronic recording or stenographic reporting without computer-aided transcription of pre-trial attorney conferences and pre-trial or post-trial non-evidentiary hearings and arguments.

(E) Imposition of Sentence.

Whenever a court sentences a defendant to death, the court must pronounce said sentence and issue its order to the Department of Correction for the defendant to be held in an appropriate facility. A copy of the order of conviction, order sentencing the defendant to death, and order committing the death-sentence inmate to the Department of Correction

must be forwarded by the court imposing sentence to Supreme Court Services. When a trial court imposes a death sentence, it must, on the same day sentence is imposed, order the court reporter and clerk to begin immediate preparation of the record on appeal.

(F) Setting of Initial Execution Date—Notice.

In the sentencing order, the trial court must set an execution date one year from the date of judgment of conviction. The trial court must send copies of the order to:

- (1) the prosecuting attorney of record;
- (2) the defendant;
- (3) the defendant's attorney of record;
- (4) the appellate counsel, if such has been appointed;
- (5) the Attorney General;
- (6) the commissioner of the Department of Correction;
- (7) the warden of the institution where the defendant is confined; and
- (8) the State Public Defender.

Contemporaneously with the service of the order setting the date of execution to the parties listed in this section, the trial court must forward to Supreme Court Services a copy of the order, with a certification by the clerk of the court that the parties listed in this section were served a copy of the order setting the date of execution.

(G) Stay of Execution Date.

This section governs the stay of execution for defendants sentenced to death.

(1) Stay of Execution—General.

The Supreme Court has exclusive jurisdiction to stay the execution of a death sentence. In the event the Supreme Court stays the execution of a death sentence, the Supreme Court must order the new execution date when the stay is lifted. A copy of an order to stay an execution or set a new date for execution will be sent to the persons set forth in section (F).

(2) Stay of Initial Execution Date.

Upon petition or on its own motion, the Supreme Court must stay the initial execution date set by the trial court. On the thirtieth day following completion of rehearing, the Supreme Court must enter an order setting an execution date, unless counsel has appeared and requested a stay in accordance with section (H). A copy of any order entered under this provision will be sent to the persons set forth in section (F).

(H) Post-Conviction Relief—Stay—Duty of Counsel.

Within thirty days following completion of rehearing, private counsel retained by the inmate or the State Public Defender (by deputy or by special assistant in the event of a conflict of interest) must enter an appearance in the trial court, advise the trial court of the intent to petition for post-conviction relief, and request the Supreme Court to extend the stay of execution of the death sentence. A copy of said appearance and notice of intent to file a petition for post-conviction relief must be served by counsel on Supreme Court Services. When the request to extend the stay is received, the Supreme Court will direct the trial court to submit a case management schedule consistent with Ind. Code § 35-50-2-9(i) for approval. On the thirtieth day following completion of any appellate review of the decision in the post-conviction proceeding, the Supreme Court must enter an order setting the execution date. It is the duty of counsel of record to provide notice to Supreme Court Services of any action filed with or decision rendered by a federal court that relate to defendants sentenced to death by a court in Indiana.

(I) Initiation of Appeal.

When a trial court imposes a death sentence, it must on the same day sentence is imposed order the court reporter and clerk to begin immediate preparation of the record on appeal.

(J) Appointment of Appellate Counsel.

Upon a finding of indigence, the trial court imposing a sentence of death must immediately enter a written order specifically naming counsel under this provision for appeal. If qualified to serve as appellate counsel under this rule, trial counsel must be appointed as sole or co-counsel for appeal.

(1) Qualifications of Appellate Counsel.

An attorney appointed to serve as appellate counsel for an individual sentenced to die, must:

- (a) be an experienced and active trial or appellate practitioner with at least three years of experience in criminal litigation;
- (b) have prior experience within the last five years as appellate counsel in no fewer than three (3) felony convictions in federal or state court; and
- (c) have completed within two years prior to appointment at least twelve hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

(2) Workload of Appointed Appellate Counsel.

In the appointment of appellate counsel, the judge must assess the nature and volume of the workload of appointed appellate counsel to assure that counsel can direct sufficient attention to the appeal of the capital case. In the event the appointed appellate counsel is under a contract to perform other defense or appellate services for the court of appointment, no new cases for appeal must be assigned to such counsel until the Appellant's Brief in the death penalty case is filed.

(K) Compensation of Appellate Counsel.

Appellate counsel appointed to represent an individual sentenced to die must be compensated under this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Counsel must submit periodic billings not less than once every thirty days after the date of appointment. Attorneys employed by appellate counsel for consultation must be compensated at the same rate as appellate counsel.

(1) Hours and Hourly rate.

Appellate defense counsel appointed on or after January 1, 2001, to represent an individual sentenced to die must be compensated for time and services performed at the hourly rate of ninety dollars only for that time and those services determined by the trial judge to be reasonable and necessary for the defense of the defendant. The trial judge's determination must be made within thirty days after submission of billings by counsel. Counsel may seek advance authorization from the trial judge, ex parte, for specific activities or expenditures of counsel's time.

The hourly rate set forth above must be subject to review and adjustment as set forth in section (C)(1).

In the event the appointing judge determines that this rate of compensation is not representative of practice in the community, the appointing judge may request the CAO of the IOJA to authorize payment of a different hourly rate of compensation in a specific case.

(2) Contract Employees.

In the event appointed appellate counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty appeal to reflect the limitations of case assignment established by this rule.

(3) Salaried Capital Public Defenders.

In the event appointed appellate counsel is a salaried capital public defender, as described in section (C)(4), the county must comply with, and counsel must be compensated according to, the requirements of section (C)(4).

(4) Incidental Expenses.

In addition to the hourly rate or salary provided in this rule, appellate counsel must be reimbursed for reasonable incidental expenses as approved by the court of appointment.

Rule 6.2. Right to Counsel in Juvenile Delinquency Proceedings

(A) Right to Counsel.

A child charged with a delinquent act is entitled to be represented by counsel in accordance with Ind. Code § 31-32-4-1.

(B) Mandatory Appointment of Counsel in Certain Juvenile Delinquency Proceedings.

However, counsel for the child must be appointed:

- (1) when there is a request to waive the child to a court having criminal jurisdiction; or
- (2) when a parent, guardian, or custodian of the child has an interest adverse to the child; or
- (3) before convening any hearing in which the court may find facts (or the child may admit to facts) on the basis of which the court may impose the following:
 - (a) wardship of the child to the Department of Correction;
 - (b) placement of the child in a community based correctional facility for children;
 - (c) confinement or continued confinement of the child in a juvenile detention center following the earlier of an initial or detention hearing;
 - (d) placement or continued placement of the child in a secure private facility following the earlier of an initial or detention hearing;
 - (e) placement or continued placement of the child in a shelter care facility following the earlier of an initial or detention hearing; or
 - (f) placement or continued placement of the child in any other non-relative out of home placement following the earlier of an initial or detention hearing; or unless or until a valid waiver has been or is made under section (C).

(C) Waiver.

Following the appointment of counsel under section (B), any waiver of the right to counsel must be made in open court, on the record and confirmed in writing, and in the presence of the child's attorney.

(D) Withdrawing Waiver.

Waiver of the right to counsel may be withdrawn at any stage of a proceeding, in which event the court must appoint counsel for the child.