

In the  
Indiana Supreme Court

Cause No. 94S00-1701-MS-5



Order Amending Criminal Rule 26

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, and in light of legislative changes made to I.C. 35-33-8.5 et. seq. by HEA 1137, the Indiana Rule of Criminal Procedure 26 is amended as follows (deletions shown by ~~striking~~ and new text shown by underlining):

...

**Rule 26. Pretrial Release**

(A) If an arrestee does not present a substantial risk of flight or danger to ~~themselves~~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 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 isare 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, became effective September 7, 2016 in the pretrial pilot courts and in courts using an approved evidence based risk assessment under Section B.

Sections C. and D. became effective September 7, 2016, in all courts.

Sections A. and B. will be effective in all courts January 1, 2020.

Done at Indianapolis, Indiana, on 9/5/2017 .



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Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.