

FREQUENTLY ASKED QUESTIONS: CRIMINAL RULE 26

1. *What is the primary purpose of Criminal Rule 26 (CR 26)?*

The Rule is intended to improve pretrial practices in Indiana by encouraging trial judges to engage in evidence-based decision making at the pretrial stage.

2. *Does CR 26 require trial courts to release arrestees from jail without bail and/or pretrial supervision conditions?*

No. The Rule encourages trial courts to use risk assessment results and other relevant information about arrestees to determine if the individual presents a substantial risk of flight or danger to self or others in the community; thereby, informing release decisions and release conditions.

3. *What is a pretrial evidence-based risk assessment?*

An evidence-based risk assessment is the use of empirical data derived through criminal justice system scientific research that identifies factors about an individual's likelihood to reoffend while on pretrial supervision.

4. *What evidence-based risk assessment tools have been approved by the Indiana Office of Court Services (IOCS)?*

The IOCS has approved the Indiana Risk Assessment System – Pretrial Assessment Tool (IRAS-PAT) for use to assess risk at the pretrial stage pursuant to the Policy adopted by the Board of Directors of the Judicial Conference.

5. *What is the IRAS-PAT designed to predict?*

The IRAS-PAT is designed to be predictive of both an arrestee's failure-to-appear and risk of violating pretrial supervision by committing a new offense.

6. *Does CR 26 apply to my court now?*

The entire rule currently applies only to the pilot counties and courts using an approved risk assessment tool. If a court incorporates risk assessment into its pretrial release decision making, the arrestee's statements and evidence derived from those statements made in preparing an IRAS assessment generally cannot be used against the arrestee.

7. *Is the court required to administer a risk assessment prior to releasing an arrestee from jail?*

No. The court is not required to delay an arrestee's release from jail to administer the IRAS-PAT. Each court has the flexibility to develop its pretrial release practices within the guidelines of the Rule.

8. *Does CR 26 require staff to be available on a 24-hour basis to administer risk assessments to arrestees?*

No. The Rule encourages the use of risk assessments to assist in release decision making at the earliest possible time following arrest. However, each court must assess its own resources and practices to ensure that arrestees are not unnecessarily held in jail. Courts are encouraged to explore funding options available at the state and local levels to fund enhancements to current practices.

9. *Are statements made by an arrestee in the course of the administration of the IRAS-PAT admissible in court?*

Statements by arrestees made during the administration of the IRAS-PAT are not admissible against the arrestee in any civil or other criminal proceeding with one limited exception detailed in Criminal Rule 26(D)(2)(b).

10. *May the court utilize collateral information to assist with release decision-making?*

Yes. Courts are also encouraged to use other relevant and collateral information such as the probable cause affidavit, victim statement(s), domestic violence screeners, substance abuse screeners, mental health screeners and criminal history to assist in making release decisions.

11. *If your court is using a risk assessment tool that has not been approved by the IOCS, is the court required to cease using this tool under CR 26?*

No. The Rule does not require a court to cease using other assessment tools. However, any statements made by an arrestee in the course of the administration of a non-approved risk assessment tool is fully admissible in any court proceeding.

12. *Is the court required to eliminate its bond schedule under this Rule?*

No. The court may continue to utilize its bond schedule when warranted to maximize the likelihood of the arrestee's appearance at trial and for the protection of the public.

13. *Is the court prohibited from using cash bail under this Rule?*

No. The court may continue to utilize cash bonds when warranted to maximize the likelihood of the arrestee's appearance at trial and the protection of public safety.

14. I thought cash bonds helped pay for court services and programs. Will CR 26 impact this practice?

The purpose of bail is to ensure appearance at trial. There is a misconception that cash bonds fund services and programs, but many cash bonds are exhausted after the payment of the Clerk's fee, Court costs, public defender fees and fines before any cash bond amount is available for services and programs.

The court may continue to assess authorized fees for programs and services provided, and the collection of authorized fees may be pursued as currently provided under Indiana law.

15. Is Indiana the only state looking at new pre-trial practices?

No. Indiana is part of a national movement undertaking pre-trial reform including Kentucky, Arizona, Illinois, New Jersey, New Mexico, Texas and Colorado and numerous other states.

If you have any questions or need additional information on evidence-based pretrial practices, please contact Mary Kay Hudson, Deputy Director at (317) 234-0106 or mk.hudson@courts.in.gov or Samantha Goodson, Pretrial and EBDM Coordinator at (317) 234-2636 or samantha.goodson@courts.in.gov with the Indiana Office of Court Services.