

STATE OF INDIANA – COUNTY OF ST. JOSEPH
IN THE ST. JOSEPH CIRCUIT, SUPERIOR, AND PROBATE COURTS

Notice of Proposed New Rule or Amendment(s) to Local Court Rule(s)

October 3, 2018

In accordance with Trial Rule 81 of the Indiana Court Rules, the St. Joseph Circuit, Superior, and Probate Courts hereby give notice to the bar and the public that the Courts propose to amend the Local Rule(s) for the courts of record of St. Joseph County, effective January 1, 2019. All new text is shown by underlining and deleted text is shown by ~~striketrough~~. Supreme Court approval is required for Local Rules concerning Caseload Allocation Plan and may not take effect until approved by the Supreme Court.

The time period for the bar and the public to comment shall begin on October 3, 2018, and shall close on November 5, 2018. The proposed amendments to the rule will be adopted, modified or rejected before November 12, 2018, and, if required, the final version of the rule will be submitted to the Indiana Supreme Court for review and approval not later than November 18, 2018.

Comments by the bar and the public should be made in writing and mailed, or emailed, to:

Lisa A. Plencner, Court Administrator of the St. Joseph Circuit Court, Attn: Public Comment on Local Rules, St. Joseph County Courthouse, 101 S. Main Street, Room 223, South Bend, Indiana 46601; or lplencner@sjcindiana.com

or

Brigette R. Wasielewski, Court Administrator of the St. Joseph Superior Court, Attn: Public Comment on Local Rules, St. Joseph County Courthouse, 101 S. Main Street, Room 23, South Bend, IN 46601; or bwasielewski@sjcindiana.com

A paper copy of the proposed amended local rule(s) will be made available for viewing in the office of the Clerk of St. Joseph County, St. Joseph County Courthouse, 101 S. Main Street, South Bend, Indiana during normal business hours. Persons with Internet access may view the proposed amended local rules at the following websites:

<http://www.stjoebar.org> or <http://www.courts.IN.gov/rules/local>

Hon. John E. Broden

Judge, St. Joseph Circuit Court

Hon. David C. Chapleau

Chief Judge, St. Joseph Superior Court

Rule LR71-CR2.2-303. Assignment of Criminal Cases.

303.3. Other Criminal Proceedings. This Rule applies to all criminal cases filed with the Superior Court, whether initiated by information, indictment (pursuant to Local Rule 302.1), or by transfer from another county. Pursuant to Rule 2.2, Indiana Rules of Criminal Procedure, criminal felony and misdemeanor cases filed in the Superior Court will be assigned as follows:

- ~~(1)~~ ~~Misdemeanor cases will not be assigned to a particular Judge (except as provided in Local Rule 107), but rather shall be heard by the judicial officer then sitting in the Traffic and Misdemeanor Division of the Court on the date such misdemeanor is to be heard.~~
- ~~(1)~~ ~~(2)~~ Each of the Judges of the court shall be assigned by the Chief Judge, responsible for the finding of probable cause in new criminal felony and misdemeanor filings.
- ~~(2)~~ ~~(3)~~ Upon the finding of probable cause on a felony charge, the Prosecutor shall submit to the Clerk of the Court the charges and Court's finding of probable cause. The Clerk shall not assign a judge or cause number to any new criminal felony filings in advance of a judicial finding of probable cause. Further, if the Prosecuting Attorney shall elect to file a case and request that the Clerk issue a summons, without first submitting the case for a finding of probable cause, or after a finding of no probable cause, the Clerk shall assign the case as provided herein.
- ~~(3)~~ ~~(4)~~ The Clerk shall, upon filing, whether by indictment or information, randomly assign, by computer, all criminal felony cases to the judges of the criminal division. Should there be a Drug Treatment Court established pursuant to Local Rule 109.2 herein, all cases assigned to that Court shall be done in accordance with an assignment order entered by the Chief Judge. The Chief Judge shall thereafter have authority to transfer such felonies to other judges of the Court to comply with Rule LR71-AR1-107, that being the Local Caseload Plan for St. Joseph County.
- ~~(4)~~ ~~(5)~~ Notwithstanding the subparagraph above, the Chief Judge may reassign a case to any other judge of the Court for good cause shown by any judge of the Court, by agreement between judges of the Court, or as may be determined to be in the best interests of the Court pursuant to Rule LR71-AR1-107 herein.
- ~~(5)~~ ~~(6)~~ Any dismissed felony charges shall, if re-filed, be assigned to the original judge, notwithstanding paragraph ~~(4)~~ ~~(3)~~ above.
- ~~(6)~~ ~~(7)~~ Upon a change of judge under C.R. 12, the case shall be reassigned pursuant to C.R. 13. If sufficient Criminal Division judges are not available, judges assigned to the Civil Division shall be available for assignment to the case.
- ~~(7)~~ Special procedures for Traffic and Misdemeanor Division, (a) upon initial appearance, counsel will be entitled, upon request, to a continuance of three (3) to four (4) weeks to investigate the case and/or discuss potential plea agreements with the prosecutor's

office; (b) at the second appearance, counsel and defendant must be present and unless good cause shown, be prepared to enter a plea or set the matter for trial.

Rule LR71-CR00-304. Appearance, Withdrawal and Presence of Defendants.

304.1. **Written Appearance.** An attorney entering an appearance on behalf of any party, or defendant appearing “Pro-se” shall file a written appearance electronically as provided by and in accordance with Rule 3.1 of the Indiana Rules of Trial Procedure.

304.2. **Withdrawal of Counsel.** Counsel for the defendant charged with a criminal offense may file a motion to withdraw from the case pursuant to I.C. 35-36-8-2. A motion to withdraw shall be in writing with an attached notice to the client of the intention to withdraw. The notice of the intention to withdraw shall be sent to the client no later than ten (10) days prior to the filing of the motion to withdraw. The notice of the intention to withdraw shall include an explanation of the present status of the case, the dates of the scheduled hearings or other pending matters in the case and the potential consequences to the client’s case resulting from the failure of the client to act promptly or to secure new counsel.

~~304.1~~ 304.3. **Personal Presence of Defendants.** All felony defendants shall be present in Court at every stage of the proceedings conducted in open Court. All felony defendants shall be personally present at every stage of the proceedings including hearings on motions.

304.4. **Presence of Traffic and Misdemeanor Defendants.** Traffic and Misdemeanor defendants represented by counsel, upon request of counsel and leave of the Court, may be excused from appearing in Traffic and Misdemeanor Court except for (a) initial hearing, (b) second appearance, (c) record and trial setting. A traffic and misdemeanor defendant who is excused under this rule stipulates that notice to the attorney of the next court date requiring his or her presence shall constitute notice to the traffic and misdemeanor defendant.

304.5. **Witness Subpoena Release.** A witness whose appearance at a criminal trial has been compelled by subpoena remains subject to the subpoena until either (1) released by the Court, or (2) such time as the trial is continued or vacated by order of the Court.

Rule LR71-CR00-305. Discovery.

305.6. **Defendant’s Disclosure.** Defendant’s counsel shall furnish the State with the following material and information within his/her possession or control:

- (1) Any statutory defenses that he/she intends to make at a hearing or trial;
- (2) The names and last known addresses of persons he/she intends to call as witnesses, with their relevant written or recorded statements and any record of prior criminal convictions known to him/her.

(3) Any books, papers, documents, photographs or tangible objects he/she intends to use as evidence;

(4) Medical, scientific or expert witness evaluations, statements, reports or testimony that may be used at a hearing or trial. After the formal charge has been filed, upon written motion by the State, the Court may require the accused, among other things, to:

(1) Appear in a lineup;

(2) Speak for identification by witnesses to an offense;

(3) Be fingerprinted;

(4) Pose for photographs not involving re-enactment of a scene;

(5) Try on articles of clothing;

(6) Allow the taking of specimens of material from under his/her fingernails;

(7) Allow the taking of samples of his/her blood, hair and other materials of his/her body that involve no unreasonable intrusion;

(8) Provide a sample of his/her handwriting;

(9) Submit to a reasonable physical or medical inspection of his/her body.

Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given by the State to the accused and his/her counsel, who shall have the right to be present. Provision may be made for appearances for such purposes in an order admitting the accused to bail or providing for his/her release.

Rule LR71-CR00-306. Dispositive Motions, Motions to Suppress, Other Motions.

306.2. Hearings on Motions. The Court will not ordinarily set for hearing any motion to dismiss, motion to suppress, motion in limine (where the grounds therefore are known prior to trial), or other such dispositive motion, unless the motion contains a factual explanation as to why the granting of such is appropriate and is accompanied by a sufficient memorandum of law Unless good cause is shown, the responding party opposing such dispositive motions shall file no later than fifteen (15) days a response which contains a factual explanation as to why denying the motion is appropriate accompanied by a sufficient memorandum of law. Such motions, filed after the omnibus date, may not be given a hearing prior to trial.

Rule LR71-CR00-307. Plea Agreement Deadlines.

308.3. Bond Schedule. Each of the Courts, individually or in concert, may establish a presumptive bond schedule for criminal cases. The schedule is attached hereto as Appendix A.

~~**308.4. Subsequent Arrest of a Person Already Released on Bail.**~~—Any person arrested for either a felony or misdemeanor, without a warrant, while already admitted to bail on a pending criminal charge, either felony or misdemeanor, shall not be eligible for pre-trial release pursuant to the presumptive bond schedule for St. Joseph County, Indiana, contained in Rule LR71-CR00-308.3 (Appendix A), but shall instead remain in custody until a determination of probable cause shall be made at or before an initial hearing before a judicial officer pursuant to I.C. 35-33-7-1 and I.C. 35-33-7-2. If probable cause is found, bail shall be determined pursuant to I.C. 35-33-8-1 et seq. If probable cause is not found, the arrested person shall be immediately released.

APPENDIX A-1 TO LOCAL CRIMINAL RULES, 300 SERIES

~~PRESUMPTIVE BOND SCHEDULE~~

~~FOR COURTS IN ST. JOSEPH COUNTY, INDIANA~~

<u>Offense</u>	<u>Bond Amount</u>
Murder	No bond if guilt is evident or presumption of guilt is strong
Level 1	
Level 1 Felony	\$50,000/\$5,000
Level 1 Felony — crime of violence*	\$100,000/\$10,000
Level 2	
Level 2 Felony	\$50,000/\$5,000

~~Level 2 Felony – crime of violence*~~ \$100,000/\$10,000

~~Level 3~~

~~Level 3 Felony~~ \$30,000/\$3,000

~~Level 3 Felony – crime of violence*~~ \$50,000/\$5,000

~~Level 4~~

~~Level 4 Felony~~ \$20,000/\$2,000

~~Level 4 Felony – crime of violence*~~ \$40,000/\$4,000

~~Level 5~~

~~Level 5 Felony~~ \$10,000/\$1,000

~~Level 5 Felony – crime of violence*~~ \$30,000/\$3,000

~~Level 6~~

~~Level 6 Felony~~ \$5,000/\$500

~~Level 6 Felony – crime of violence*~~ \$10,000/\$1,000

~~Level 6 Felony – DUI or drug offense~~ \$7,500/\$750

~~Misdemeanors~~

~~A Misdemeanor: Domestic Battery, Battery~~ \$500 cash

~~Intimidation, Invasion of Privacy and DUI (Class A or C)~~

~~A misdemeanor~~ \$250 cash

~~B misdemeanor~~ \$150 cash

~~C misdemeanor~~ \$150 cash

~~* "Crime of violence" (as defined by I.C.35-50-1-2(a)) includes: murder, attempted murder, voluntary manslaughter, involuntary manslaughter, reckless homicide, aggravated battery, kidnapping, rape, criminal deviate conduct, child molesting, sexual misconduct with a minor (Level 1 or 2/Class A or B), robbery (Level 2 or 3/Class A or B), burglary (Level 2,3 or 4/Class A or B), OWI causing death or serious bodily injury, and resisting law enforcement.~~

~~Proposed May 29, 2014, effective for crimes committed after July 1, 2014.~~

~~The effective date of this Presumptive Bond Schedule is July 1, 2014.~~

Appendix A-1 to Local Criminal Rules

St. Joseph County Pretrial Release Schedule

This schedule applies to all cases to be filed in the Circuit and Superior Courts of this county. The Sheriff of St. Joseph County is hereby ordered to follow this schedule for determining the pretrial release/detention for all persons arrested for criminal offenses to be filed in the above Courts.

This Order shall not be interpreted to limit judicial discretion.

Pursuant to the authority of the St. Joseph County Circuit and Superior Courts to establish a reasonable basis for release/detention in criminal cases, a pretrial release program was established in accordance with the following terms and conditions:

1. All persons detained in the St. Joseph County Jail for:
 - a. Any felony
 - b. Any misdemeanor
 - i. against a person or animal; or
 - ii. involving the possession and/or use of a firearm

and otherwise eligible to post bond shall be screened by Pretrial Services.

2. Screening shall consist of at least one State-approved pretrial risk assessment instrument and such other risk assessment instrument(s) that may be approved and required by the judges of the Circuit and Superior Courts of St. Joseph County.

3. A person is eligible for screening upon being booked into the St. Joseph County Jail unless the person lacks the capacity to participate in a valid risk assessment due to the effects of drugs, chemical withdrawal or a mental or emotional condition. A person booked in for an alcohol-related offense becomes eligible for screening pursuant to the chart established for release eligibility in Ind. Code 35-33-1-6. A person who lacks the

capacity to participate in a valid risk assessment becomes eligible for screening when he/she regains capacity or at the discretion of the pretrial services assessor.

4. All decisions regarding release and/or release conditions under this Pretrial Release Matrix/Schedule are conditional and may be reviewed *sua sponte* by the Court. After the initial hearing (or waiver thereof), the Court *sua sponte* may review the defendant's pretrial release/detention status and/or conditions of release. After the initial hearing, the Prosecuting Attorney or defendant, by written motion, may request a hearing to review the defendant's pretrial release/detention status and/or conditions of release.

5. All persons arrested and for whom:

a. The identity of the arrestee is unknown (this includes, but is not limited to, those individuals who refuse to cooperate in their identification, individuals who possess conflicting identification, and individuals whose identifying information cannot be verified); or

b. There is good cause to believe that the arrestee is on probation, home detention/house arrest, parole; or

c. There is good cause to believe the arrestee is on pretrial release or bond for a pending criminal offense; shall be held without bond until the person is brought before the Court for a hearing to consider release conditions.

6. At the time of finding of probable cause, the judicial officer reviewing probable cause may:

a. Order the arrestee held without bond until the person is brought before the Court for a hearing to consider release conditions; or

b. Set a bond in accordance with the attached monetary bond schedule; or

c. If provisions 5(a)-5(c) do not apply to an arrestee, release the arrestee according to the attached release/detention matrix.

7. If the Sheriff has a reasonable belief that an arrestee is intoxicated notwithstanding the results of a breath test, the Sheriff may hold that arrestee for no more than twenty-four (24) hours from the time of arrest.

a. A person arrested for an alcohol related offense shall be detained until their blood/breath alcohol level reaches .05 or below. The jail may utilize the chart in Ind. Code 35-33-1-6 to determine the number of hours needed to reach that level.

b. For the purposes of this provision, "intoxicated" means under the influence of:

i. alcohol;

ii. a controlled substance (as defined in IC 35-48-1);

iii. a drug other than alcohol or a controlled substance;

iv. a substance described in IC 35-46-6-2 or IC 35-46-6-3;

v. a combination of substances described in subdivisions (1) through (4);

or

vi. any other substance, not including food and food ingredients (as defined in IC 6-2.5-1-20), tobacco (as defined in IC 6-2.5-1-28), or a

dietary supplement (as defined in IC 6-2.5-1-16); so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties. Ind. Code 9-13-2-86.

8. In accordance with Ind. Code 35-33-8-3.5(c), a Court may not admit a sexually violent predator defendant, a person charged with child molesting, or a person charged with child solicitation to bail until the Court has conducted a bail hearing in open Court.

9. In accordance with Ind. Code 35-33-8-6.5, a Court and/or the St. Joseph County Jail may not release a person arrested for a crime of domestic violence on bail until at least eight (8) hours from the time of the person's arrest.

10. The following three (3) risk categories are established:
 - a. Low
 - b. Moderate
 - c. High

11. The following five (5) offense categories are established:
 - a. Category 1
 - i. Murder and Treason; all Level 1 and Level 2 felonies; more serious Level 3, 4 and 5 felonies;
 1. Against a person; or
 2. Involving the possession and/or use of a firearm; or
 3. Involving drug dealing; or
 4. Involving possession with intent to deal; or
 5. Residential burglary; or
 6. Arson
 - b. Category 2
 - i. More serious Level 6 felonies and more serious misdemeanors:
 1. Against a person or animal; or
 2. Involving the possession and/or use of a firearm; or
 3. Resisting law enforcement: with a vehicle or resulting in injury
 - c. Category 3
 - i. All other Level 3, 4 and 5 felonies
 - d. Category 4
 - i. All other Level 6 felonies
 - e. Category 5
 - i. All other misdemeanors

12. All persons charged with a Category 1 Offense, regardless of risk level, shall be held in custody until his or her release/detention can be reviewed by a judicial officer at or before the initial hearing.

13. For Category 2 Offenses:

a. A person charged with a Category 2 Offense, who is determined to be either moderate or high risk shall be held in custody until his or her release/detention can be reviewed by a judicial officer at or before the initial hearing.

b. A person charged with a Category 2 Offense, who is determined to be low risk may be released on their own recognizance and shall be supervised through the pretrial release program.

14. For Category 3 Offenses:

a. A person charged with a Category 3 Offense, who is determined to be high risk shall be held in custody until his or her release/detention can be reviewed by a judicial officer at or before the initial hearing.

b. A person charged with a Category 3 Offense, who is determined to be moderate or low risk may be released on their own recognizance and shall be supervised through the pretrial release program.

15. For Category 4 Offenses:

a. A person charged with a Category 4 Offense, regardless of risk level, may be released on their own recognizance and shall be supervised through the pretrial release program.

16. For Category 5 Offenses:

a. A person charged with a Category 5 Offense, regardless of risk level, shall be released on their own recognizance and shall be supervised through the pretrial release program.

17. The Sheriff shall provide all persons released prior to initial hearing with a Notice/Promise to Appear and an initial court hearing date.

18. If the Prosecuting Attorney of St. Joseph County, after a review of all the circumstances of a case, believes that the release/detention decision should deviate from the attached matrix or bond schedule, the Prosecutor may request, in writing, such a deviation.

19. Pretrial conditions of release under this pretrial release schedule shall include that the person released:

a. Shall appear in Court at all times required by the Court;

b. Shall not leave the State of Indiana without the prior written consent of the Court and shall agree to waive extradition as a condition of the Court granting such consent;

c. Shall not commit nor be arrested for another criminal offense;

d. Shall keep his/her attorney, the Court and Pretrial Services advised in writing of any change in address or telephone number within forty-eight (48) hours of such change;

e. Shall comply with any conditions ordered by the Court;

f. In appropriate cases, the defendant may be required to refrain from any direct or indirect contact with an alleged victim of an offense or other individual as ordered by the Court pursuant to Ind. Code 35-33-8-3.2.

20. Any violation of any condition may result in the revocation of bond or recognizance and issuance of an arrest warrant.

St. Joseph County
Monetary Bond Schedule

If a Defendant is eligible for non-monetary release under CR26, the Court should consider releasing Defendant according to the CR26 matrix.

A Defendant is not eligible for CR26 release if:

1. Defendant presents a substantial risk of flight or danger to themselves or others;
2. The defendant is charged with murder or treason;
3. The arrestee is on pretrial release not related to the incident that is the basis for the present arrest;
4. The defendant is on probation, parole or other community supervision.

Bail Factor Score		IRAS-PAT Risk Level		
		Low	Moderate	High
4+	\$5,000-\$20,000	\$10,000-\$40,000	\$30,000-\$100,000	
3	\$1,000-\$7,500	\$2,000-\$20,000	\$4,000-\$30,000	
2	\$250-\$3,000	\$500-\$5,000	\$750-\$10,000	
1	\$0-\$750	\$250-\$1,500	\$500-\$3,000	
0	\$0-\$250	\$250-\$500	\$500-\$1,000	
Misdemeanor				
	\$0-\$200	\$0-\$500	\$0-\$1,000	