

Overview of Criminal Procedure in Indiana

Link to the Indiana Criminal Code (Statutes) and Indiana Constitution:

http://www.in.gov/legislative/ic_iac/

INFORMATION / INDICTMENT

All prosecutions in Indiana are commenced by the Prosecuting Attorney filing an Information or Grand Jury Indictment with the court. There is no requirement for a Grand Jury Indictment in any case, even death penalty and murder cases. The vast majority of cases are filed by Information.

An Information requires only the signature of the Prosecuting Attorney, and charges a specific person (defendant) with a crime or crimes. All prosecution cases are entitled "The State of Indiana v. Defendant." The Prosecuting Attorney serves as the lawyer representing the State of Indiana.

Along with the Information, the Prosecuting Attorney files a Probable Cause Affidavit with the court. In order for the defendant to be held on the charges, the Judge must find that there is "probable cause" to believe that the defendant committed the specific crime(s) charged. If so, the Judge may issue an Arrest Warrant, authorizing any police officer to arrest the defendant and take him to jail to await trial or the posting of bail. If the defendant has already been arrested before the Information is filed, the Judge must make a finding of "probable cause" in order for the defendant to be held in jail to await trial or the posting of bail.

Instead of an Information, the Prosecuting Attorney may choose to call a Grand Jury. A Grand Jury is a group of six citizens chosen randomly from voter registration and taxpayer lists, who hear evidence from witnesses and decide whether there is sufficient evidence to "charge" the defendant with a specific crime or crimes. If five out of six agree, an Indictment is returned and filed by the Prosecuting Attorney. The Grand Jury does not determine guilt or innocence, but decides only if the defendant should be charged. The Prosecuting Attorney presents evidence to the Grand Jury and acts as legal advisor. Except in extraordinary circumstances, all Grand Jury proceedings are kept confidential.

INITIAL HEARING

An Initial Hearing, called an arraignment in other states, is the defendant's first appearance in court. Following his arrest, the defendant must be taken "promptly" before a Judge for an Initial Hearing. This usually means within 48 hours of arrest. If the defendant has posted bail, the Initial Hearing must be held within 20 days, or within 10 days in OWI (Operating While Intoxicated) cases.

At the Initial Hearing, the defendant is given a copy of the charging Information, advised of his rights, and appointed a Public Defender if he is indigent. A Public Defender is a lawyer paid by the court, who acts as attorney for the defendant in the case. The Court also sets the case's next court date at the Initial Hearing: normally a Bench Trial date for misdemeanors and a Pre-Trial (and Omnibus) and Jury Trial date for felonies.

Video Court (conducted every day): Initial Hearings done through video link from the Jail for people who were recently arrested and still in jail.

Bond-outs (conducted every Thursday): Initial Hearings that take place at the Courthouse in Danville (1 Courthouse Square, 46122) for people who bonded out of jail within the last week or who were summonsed in on charges (not arrested).

BAIL

Bail allows a person in jail awaiting trial to be released, and to remain free until his case comes to trial. Bail is a bond paid by a person arrested for a crime, promising to reappear in court to answer the charges against him. Only a Judge has the power to set bail, usually in a specific amount depending upon the seriousness of the crime, the person's prior criminal history, and other factors. The amount of bail may not be set higher than what is reasonably required to assure the defendant's reappearance in court. If clear and convincing evidence is presented that the defendant poses a risk to another person or to the community, bail may be set in a higher amount. A defendant has the right to have bail in some amount set in all cases, unless he is charged with Murder.

OWN RECOGNIZANCE: A Judge may release the defendant on his own recognizance; that is, merely upon his promise to reappear without posting any bail. Judges are mindful of the serious overcrowding in our jails, as well as the presumption of innocence promised to the defendant. Ordinarily, a

defendant is released on his own recognizance only in some misdemeanor cases.

CASH BOND: A Judge may require that a cash bond be posted by the defendant. If the defendant reappears for trial, he receives almost all of the cash back, even if convicted at trial.

SURETY/COMMERCIAL BOND: A Judge may allow the defendant to post a surety/commercial bond. This requires a licensed bail bondsman to post the bail. The defendant hires the bail bondsman for a fee (10% of the full amount), which is nonrefundable. If the defendant fails to appear for trial, the bail bondsman is liable for the full amount of the bail. In this event, the bail bondsman has the right and the incentive to find the defendant and bring him to jail. This is the most common method of bail in Hendricks County.

PROPERTY BOND: A Judge may also allow a property bond to be posted by the defendant. This requires a lien to be attached to real estate owned by the defendant or others who are willing. If the defendant fails to appear for trial, foreclosure may result.

A Judge may also attach reasonable restrictions and conditions to the defendant's release. For example, requiring the defendant to report to a probation officer on a weekly basis, or forbidding him to leave the county or state. The Judge may also enter a **NO CONTACT ORDER**, forbidding the defendant from having any contact whatsoever with another person, usually the victim of the crime. A violation of the Protective Order may constitute the crime of Invasion of Privacy. A violation of any of these restrictions or conditions may result in revocation of bail, causing the defendant to be held in jail until trial.

While bail is not formally set until the Initial Hearing, most counties, including Hendricks County, have a bail schedule which allows the person arrested to post bail immediately upon arrest. With certain exceptions, the defendant may gain release before appearing in court by posting a cash or surety bond. A person who posts bond without appearing before the Judge will usually need to appear for his initial hearing the next week in bond out hearings.

DISCOVERY

Discovery is the process by which both the State and the defendant are required to exchange information before trial about their respective cases. In contrast to what is commonly seen on television, it is very rare for there to be any big last minute surprises at trial for either side. Both sides are ordinarily required long before trial to disclose to the other: all witnesses to be called, including expert witnesses; all statements of any witnesses; and all reports and other evidence of any kind to be introduced at trial. In addition, the State of Indiana is required to disclose to the defendant before trial any evidence which tends in any way to prove the innocence of the defendant. The defendant does not have a comparable duty to disclose evidence which tends to establish his guilt.

As part of the discovery process, both sides have the right to subpoena a witness to appear before trial for a deposition. A deposition is merely a statement given by a witness under oath before trial, in response to questions by the attorneys for both sides of the case. It is ordinarily given in the Courthouse, and in the presence of the prosecutor, defense attorney, and a court reporter. The questions and answers are then transcribed and a copy is given to each side for use at trial.

MOTIONS

A Motion is merely a request for the Judge to do something. It is very common for the defendant to file several motions before trial, some of which may cause a delay in the trial. For example, a MOTION TO REDUCE BAIL (seeks to have the Judge reduce the amount required to be posted in order for the defendant to be released from jail while awaiting trial), a MOTION TO CHANGE VENUE (seeks to move the trial from Hendricks County to another county, most often on grounds of prejudicial pretrial publicity), and a MOTION TO SUPPRESS EVIDENCE (seeks to have the Judge exclude from evidence at trial of a confession by the defendant or the fruits of a search, on the grounds that it was obtained in violation of the defendant's rights).

PRETRIAL CONFERENCE

A pretrial conference is merely a meeting between the attorneys for each side before trial to discuss pretrial motions and other trial issues, and to determine whether there will actually be a trial or if the parties anticipate

reaching a plea agreement. A pretrial conference date is ordinarily set at the Initial Hearing.

PLEA AGREEMENTS

A plea agreement is an agreement between the State of Indiana (Prosecuting Attorney) and the defendant, requiring the defendant to enter a guilty plea to the charged crime or to a lesser included crime, in exchange for a specific sentence and/or the dismissal of other counts by the State. If a plea agreement is entered, there is no trial. Most criminal cases are concluded without a trial by a plea agreement.

When a plea agreement is reached between the State and the defendant it must be in writing and filed with the court. The Prosecutor is required to notify the victim in a felony case of the plea agreement, and the victim must be given an opportunity to make a statement to the Judge. The Judge then makes the final decision on whether to accept or reject the plea agreement. If accepted, the Judge must sentence the defendant in accordance with the terms of the agreement. The Judge may choose not to accept the guilty plea, and then sentence the defendant to a different term than provided in the agreement. If the plea agreement is rejected by the Judge, the case is set for trial and the proposed agreement cannot be used against the defendant at trial.

TRIAL RIGHTS

At any trial, the defendant has the right to be represented by competent counsel, provided at no expense to him if he is indigent, with the power to compel the production of witnesses and evidence, and to present and cross examine witnesses. At any trial, the defendant cannot be compelled to be a witness against himself. At any trial, the defendant is presumed innocent, and the burden is on the State of Indiana (Prosecuting Attorney) to prove his guilt of the charged crimes "beyond a reasonable doubt."

BENCH TRIAL

A defendant has the right to a trial by jury in Indiana when charged with any crime. However, if the defendant, the prosecutor, and the Judge agree, a jury trial may be waived and a bench trial held. A bench trial is a trial in front of the Judge instead of a jury. The same rights apply, but it is the Judge who sits as a fact finder and decides the guilt or innocence of the defendant.

JURY TRIAL

A jury consists of twelve persons when the defendant is charged with Murder or a Class A, B, or C Felony. In other lesser cases, the jury consists of six persons. In either case, the defendant is presumed innocent, and the burden is on the State of Indiana (Prosecuting Attorney) to prove his guilt of the charged crimes "beyond a reasonable doubt." All jury verdicts must be unanimous.

ORDER OF TRIAL

Voir Dire (Jury selection process - prospective jurors are chosen at random from voter registration and taxpayer lists, then questioned by the State and the Defense)

Preliminary Instructions given to jury by Judge

Opening Statement by the State (Gives preview of expected evidence from the State's perspective)

Opening Statement by the Defendant (Gives preview of expected evidence from the defendant's perspective)

State's Evidence (Witnesses called and questioned by State, cross examined by defense)

Defendant's Evidence (optional - Witnesses called and questioned by defense, cross examined by State)

Rebuttal Evidence

Closing Arguments (The State, with the burden of proof, last in closing)

Final Instructions given to jury by the Judge

Jury Deliberations (May take 20 minutes or 20 days until a verdict is reached. Ordinarily a verdict is reached within a few hours)

Jury Verdict

(The jury only determines whether the defendant is guilty or not guilty of the charged crimes or lesser crimes. The jury does not determine or even

consider the appropriate sentence, which is left to the discretion of the Judge. All verdicts must be unanimous. If a verdict cannot be agreed upon and a "hung jury" results, a mistrial is declared and the case is reset for another trial.)

During trial, the bailiff is in charge of the jury. The jury must remain together and not discuss the case while the trial is in progress. Except in Death Penalty cases, however, they are allowed to separate and return to their homes at night. Once jury deliberations have begun, they must be kept together until a verdict is reached, even if hotel accommodations are necessary.

SENTENCING

If a plea agreement is reached, the case is set for sentencing and if the plea agreement is accepted, the defendant is sentenced in accordance with its terms.

If the defendant is found guilty at trial, the case is set for sentencing, usually within 20-30 days following the verdict. This time allows the court's Probation Department to prepare a Presentence Investigation Report, which includes information regarding the background and history of the defendant, as well as a statement of the impact of the crime upon the victim. The Judge then uses this information, along with the evidence presented at trial, to fix an appropriate sentence within the limits imposed by statute:

Crime	Minimum, (Advisory) and Maximum Term of Imprisonment	Maximum Fine
Murder	45 (55) 65 years, or Death Sentence or Life Without Parole	\$10,000
Class A Felony	20 (30) 50 years	\$10,000
Class B Felony	6 (10) 20 years	\$10,000
Class C Felony	2 (4) 8 years	\$10,000
Class D Felony	1/2 (1 1/2) 3 years (or judgment as Class A Misdemeanor)	\$10,000
Class A Misdemeanor	up to 1 year	\$5,000
Class B	up to 180 days	\$1,000

Misdemeanor		
Class C Misdemeanor	up to 60 days	\$500

In Indiana, the defendant is sentenced to a fixed determinate term of imprisonment. As long as the defendant does not violate any rules of the Indiana Department of Correction (IDOC), the defendant is released on parole after serving 1/2 of his sentence.

In addition to incarceration, the Judge has many other sentencing options available. The Judge may suspend the sentence and place the defendant on Probation with conditions; the defendant may be placed under "house arrest" or required to wear a monitor as part of the home incarceration program; the defendant may be required to complete a counseling program, or to perform community service, or required to pay a fine or restitution to the victim. These sentencing options may be used in combination.