



# The Indiana Prosecutor

1st Quarter, 2022

## Vigo County High Tech Crime Unit Opens

Indiana State University and the Vigo County Prosecutor's Office recently held an open house for law enforcement officials to announce their High Tech Crime Unit is open for business.

Recently, thanks to funding from the state of Indiana, IPAC announced the creation of 10 High Tech Crime Units that would be responsible for assisting in the collection and analysis of digital evidence. These units would be spread out over the state and the hub counties would be responsible for assisting the counties surrounding their location. Thanks to conversations between the Vigo County Prosecutor and ISU that started a couple of years ago, the Vigo County hub was able to get up and running quickly.

In partnership with ISU's criminal justice program, the high tech crime unit is led by two ISU professors and comprised of eight criminal justice majors who work on gathering the cyber evidence. This unit also features four interns who are students but not sworn-in investigators who are responsible for listening to jail calls.

The genesis for these High Tech Crime Units around the state was the two successful units in Tippecanoe County and St. Joseph County. Both of those county prosecutor offices partnered with their local colleges, Purdue University and the University of Notre Dame, respectively, to create high

tech crime units to handle forensic and digital evidence. Those two programs were so successful, lawmakers wanted to expand the concept to the whole state to help with the growing number of cases prosecutors and law enforcement handle that involve digital devices.

With the amount of cell phones and computers that people own, a large majority of cases involve some type of digital evidence. But law enforcement didn't necessarily have the time or know how to extract data from computers and cell phones as part of an investigation in a timely manner. That's



Vigo County Prosecutor Terry Modesitt gives one of the Indiana State University students an investigator badge.

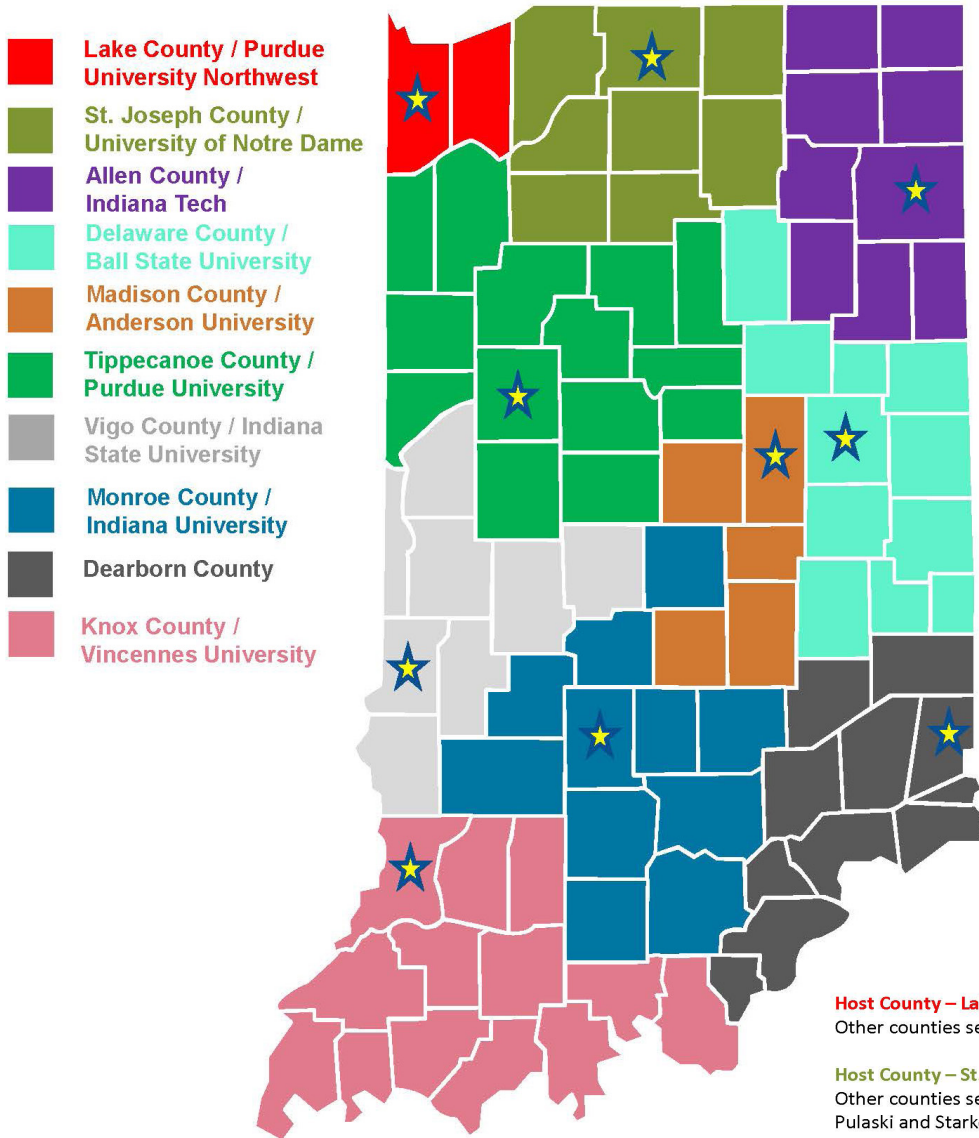


One of the work stations at Indiana State's high tech crime unit.

where the new high tech crime units like the one in Vigo County come in. Each county in Indiana will be part of a unit where they can submit devices as part of an investigation.

At the Vigo County open house, it was a chance for law enforcement to see the lab and learn a little bit more about the process of how to submit devices and the turnaround time. Vigo County Prosecutor Terry Modesitt said the turnaround time for processing digital evidence will be dramatically shortened thanks to this new unit.

IPAC anticipates that by the summer of 2022, all 10 of the high tech crime units will be up and running and ready to serve law enforcement and local prosecutors who need assistance with digital evidence. If you're not sure what hub you are in, a detailed map with host counties and hub breakdowns is on the next page.



**Host County – Lake County / Partner Institution – Purdue University Northwest**  
 Other counties serviced in this hub: Porter County

**Host County – St. Joseph County / Partner Institution – University of Notre Dame**  
 Other counties serviced in this hub: Elkhart, Fulton, Kosciusko, LaPorte, Marshall, Pulaski and Starke counties.

**Host County – Allen County / Partner Institution – Indiana Tech**  
 Other counties serviced in this hub: Adams, DeKalb, Huntington, LaGrange, Noble, Steuben, Wells and Whitley counties.

**Host County – Tippecanoe County / Partner Institution – Purdue University**  
 Other counties serviced in this hub: Benton, Boone, Carroll, Cass, Clinton, Howard, Jasper, Miami, Montgomery, Newton, Tipton, Warren and White counties.

**Host County – Delaware County / Partner Institution – Ball State University**  
 Other counties serviced in this hub: Blackford, Fayette, Grant, Henry, Jay, Rush, Union, Wabash and Wayne counties.

**Host County – Madison County / Partner Institution – Anderson University**  
 Other counties serviced in the hub: Hamilton, Hancock, Johnson and Shelby counties.

**Host County – Vigo County / Partner Institution – Indiana State University**  
 Other counties serviced in the hub: Clay, Fountain, Hendricks, Parke, Putnam, Sullivan and Vermillion counties.

**Host County – Monroe County / Partner Institution – Indiana University**  
 Other counties serviced in the hub: Bartholomew, Brown, Greene, Jackson, Lawrence, Marion, Morgan, Orange, Owen and Washington counties.

**Host County – Dearborn County**  
 Other counties serviced in the hub: Clark, Decatur, Floyd, Franklin, Jefferson, Jennings, Ohio, Ripley, Scott and Switzerland counties.

**Host County – Knox County / Partner Institution – Vincennes University**  
 Other counties serviced in the hub: Crawford, Daviess, Dubois, Gibson, Harrison, Martin, Perry, Pike, Posey, Spencer, Vanderburgh and Warrick counties.

# Legislative Update

By Brock Patterson, Legislative Liaison

Contact Brock: [BPatterson2@ipac.in.gov](mailto:BPatterson2@ipac.in.gov)

A quick, hectic session for the Indiana General Assembly came to an end in the early morning hours of March 9. We will have a much more thorough breakdown of all the new laws and how they effect prosecutors and police officers at IPAC’s Spring Seminar in May but for this newsletter we will go through some of the highlights as well as some bills that didn’t survive the session. For prosecutors and law enforcement, this was an excellent session for crime victims with laws being strengthened in the areas of rape, human trafficking and protective orders. Here are some of the more important bills.

**HB 1079 Elements of Rape** - HEA 1079 amends the rape statute (IC 35-42-4-1) to include clarifying language that force is not required to commit rape. Without directly referencing consent, the new subsection (4) as added by HEA 1079 spells out what rape is in most scenarios

where prosecution has been difficult to prove to the jury in the past. The state can now point to this portion of the statute to explain to the jury that rape does not necessarily have to be committed by force.

**SB 155 Human Trafficking** - SEA 155 provides language in the “protected person” statute that is beneficial to young victims. Specifically, the language expands the age of a protected person from 14 years of age to 14 years of age at the time of the offense but less than 18 years of age at the time of trial. The act also expands human trafficking to include both the trafficker and the john as a level 4 felony.

**HB 1363 Department of Child Services Matters** - What started off as a DCS agency bill, HEA 1363 ended the session to include language from another bill that expands the crimes of child exploitation and possession of child pornography. The new language in both crimes provides that the state need not prove that the child actually exists. This is a result of issues in the field from ICAC presented to legislators that child pornographers are using computer software to evade Indiana law by creating computer generated images of child pornography. The criminal images now include images depicting sexual conduct (1) by a child who the person knows is less than 18, (2) by a child less than 18 or by a person that appears to be a child less than 18 if the image is obscene, or (3) simulated sexual conduct involving a representation that appears to be a child less than 18 if the image is obscene.

**HB 1137 Protective Orders** - HEA 1137 provides that in instances where a crime is committed that results in the offender having to register for the lifetime registry, the victim in that case can petition for a lifetime order of protection rather than the current two year timeline. This legislation results after a compelling case out of Hamilton County where a rape victim was being harassed by their perpetrator every time they had to renew the ex parte order. The language in the act provides better protection and peace of mind for the victims of these heinous acts.

**Senate Enrolled Act 148** - The prosecuting attorneys bill. Although a good deal of this bill was cut out after concerns from county councils and commissioners regarding budgeting issues, there were some good pieces that were ultimately passed, the biggest being that all prosecutors, including deputies will now be represented by the Indiana Attorney General’s office in disciplinary complaint matters.

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# Naylor's Notes



By Chris Naylor  
IPAC Executive Director

IPAC has had an excellent start for 2022. The General Assembly passed a number of bills that will be helpful for prosecutors, and now the IPAC team has kicked off its training calendar and is excited to be carrying out our training mission. The Board of Directors for IPAC and for the Association of Indiana Prosecuting Attorneys, Inc. have been meeting regularly to address the needs for all Indiana prosecutors and to stay abreast of statewide policy discussions. Below are a few priority agenda items from Board meetings held so far this year.

## **Prosecutor Workloads, Deputy Prosecutor Compensation and State Funding**

The Board of Directors for the Association of Indiana Prosecuting Attorneys, Inc. has contracted with Muncie management consulting firm, Waggoner, Irwin, Scheele & Associates to complete a number of tasks for prosecutor offices. This firm will take on the following tasks: 1.) conduct a staffing/workload analysis to develop workload measures; 2.) develop an index of benchmark job descriptions; 3.) conduct comparative compensation analysis and develop baseline pay guidelines. The Association Board has been focused on the issue of prosecutor workloads and staff compensation for several months. IPAC Senior Counsel Dave Powell has served as a facilitator for a prosecutor work group to help shape the analysis that will be done by the consulting firm. Prosecutors participating in the work group included: Bruce Auckerman, Vicki Becker, Lee Buckingham, Ken Cotter, Bob Guy, Pat Harrington, Bill Hartley and Brad Landwerlen. The work of the consulting firm will be completed this fall. With solid information and data from this outside, independent firm regarding prosecutor workloads and staffing and compensation needs, the next step will be to seek additional state funding for all prosecutor offices. IPAC staff has already initiated conversations with legislative leadership to make the case for this state funding. These conversations with legislators in coming weeks and the results of

the consulting firm's analysis will help determine the funding requests for prosecutors during the 2023 legislative Session. The deliverables prepared by the consulting firm should also assist each prosecutor in developing budget requests with county officials.

## **Preventive Detention**

When Indiana justice stakeholders started conversations about the development of Evidence Based Decision-Making (EBDM) concepts roughly seven or eight years ago, one of the more appealing aspects of EBDM for prosecutors was the use of preventive detention for certain offenses and/or offenders. Indiana has been slow to formally adopt preventive detention measures. The Indiana General Assembly considered multiple bail bills during the 2022 session. With this interest in bail procedures expressed by some legislators and the recent Indiana Supreme Court ruling in *DeWees v. State*, which highlighted continued confusion regarding pretrial detention procedures, the Board of Directors for IPAC has authorized development of a draft amendment to the Indiana Constitution that would fully imbed preventive detention measures in the Indiana justice system. A preventive detention work group of prosecutors was formed to review constitutional amendments from a number of states that have taken steps towards some form of preventive detention. Prosecutors participating in this work group include: Vicki Becker, Lee Buckingham, Loren Delp and Rob Roberts. IPAC Director of Research Glenn Johnson has been a tremendous resource for this group. Next steps will be to present a draft constitutional amendment to legislators and to the state Justice Reinvestment Advisory Council.

## **Supreme Court Equity & Access Commission**

In the fall of 2021, the Indiana Supreme Court announced the creation of the Indiana Commission on Equity and Access in the Court System. The Supreme Court created the Commission to: provide a review of state court systems, policies and practices; identify areas of strength and areas where resources are needed to achieve greater and more equal access; and establish work groups to provide recommendations to address these issues. I was appointed to represent prosecutors, and the 21-member commission includes judges, legislators, the Attorney General, and Justice Steven David among others. Indianapolis attorneys Deborah Daniels and Norris Cunningham serve as co-chairs. Courtney Curtis and I have each been participating in work groups, and the expectation is that the Commission will issue a report before the close of 2022.

# IPAC CASE NOTES

By Glenn Johnson, Director of Research



## DeWees v. State

IPAC's Director of Research Glenn Johnson summarizes another recent ruling regarding pre-trial release and Criminal Rule 26:

Sierra DeWees was charged with Level 2 felony aiding, inducing, or causing burglary. She is alleged to have acted as getaway driver for 3 others who invaded a 67-year-old man's home with the intent of robbing him. One of the other suspects shot at the victim, who returned fire and shot one of the suspects. The trial court set bond for DeWees at \$50,000 cash only. She was a high school student at the time of the incident, admitted to 2 nursing schools, unemployed, and with no previous arrests, although she had smoked marijuana in the recent past. DeWees filed a motion for bond reduction or pretrial release on home detention, which the trial court denied. She appealed, and the Court of Appeals reversed and ordered DeWees released to home detention, after it had recalculated DeWees's IRAS-PAT score from a 4 to a 2. The COA also bypassed the ordinary certification process of Ind. Appellate Rule 65(E) and ordered that its decision be effective immediately.

The Supreme Court has now ruled that the trial court's original bond determination was not an abuse of discretion. In reaching that decision the Court has attempted to provide some additional guidance on how Ind. Criminal Rule 26 and Indiana's bail statutes should be applied. First, the Court delved into some of the history that led to adoption of Rule 26, including a desire to use more evidence-based risk assessment tools when making pretrial release decisions.

Second, the Court explored the interrelationship between the bail statutes and Rule 26. Ultimately, the Court said the adoption of the Rule and evidence-based practices (i.e., the IRAS-PAT) was intended to maintain judicial flexibility in

setting bail. And, importantly, the Court emphasized: "Trial courts should consider any factor relevant to the detainee's risk of nonappearance and potential danger to the community, and Indiana's recent bail reforms enhance their discretion." The Court further held that an IRAS-PAT score is not by itself conclusive. "While Indiana Code section 35-33-8-3.8 mandates a trial court to 'consider the results' of an IRAS (if available), there's nothing in the statute that compels the defendant's release or that requires the court to rely on the results of the IRAS assessment when setting bail." Furthermore, the Court observed that IRAS-PAT measures only risk of non-appearance and re-offending, and trial courts should therefore look beyond an IRAS score and look at all available information, "including the probable cause affidavit, victim statement(s), domestic violence screeners, substance abuse screeners, mental health screeners, and criminal history— to determine whether the defendant poses a 'danger to self or others in the community.'"

Applying this framework to the facts of DeWees's case, the Court disagreed with the COA that the trial court imposed too high of a bond. There was sufficient clear and convincing evidence that DeWees potentially posed a threat of harm to the community, despite her claim that she was "only" an accomplice/getaway driver. And there was sufficient evidence she was a flight risk, particularly given the severity of the charges she was facing.

Hopefully, this opinion should be a strongly-worded and good reminder to trial courts that they are NOT bound by IRAS-PAT scores, that they should look beyond such scores and to all information at their disposal, and that they should always consider public safety in making pretrial release decisions and make such decisions accordingly if a public safety risk is shown by clear and convincing evidence.

## IPAC Launches Traffic Safety Newsletter, Forum

IPAC's Traffic Safety team, consisting of TSRP Chris Daniels and Assistant TSRP Erica Dobbs, recently launched a newsletter for prosecutors in Indiana who deal with motor vehicle related crimes, the first of which was sent out in January.

If you or someone in the office would like more detailed breakdowns on traffic legislation, new technology to detect impaired drivers and much more, be sure to join the mailing list by contacting Erica Dobbs at [ErDobbs@ipac.in.gov](mailto:ErDobbs@ipac.in.gov).

Chris and Erica also launched a Slack channel for traffic and OWI prosecutors throughout the state. We know that a lot of times, individual prosecutors can feel like they are on an island when they are the only ones in the office that handle a certain type of case. Through this forum, Chris and Erica are hoping that individuals can have a sounding board of sorts where they can talk to peers about cases, new issues they are seeing or just chat with other prosecutors.

To sign up for the Slack channel, email Erica at [ErDobbs@ipac.in.gov](mailto:ErDobbs@ipac.in.gov)

# News & Notes

## Lee Buckingham named Association President

Hamilton County Prosecutor Lee Buckingham will lead the Association of Indiana Prosecuting Attorneys, Inc. as President in 2022. He was elected during IPAC’s Winter Conference at the end of 2021 to officially take over for former president and former Huntington County Prosecutor Amy Richison.

Lee served as the Association’s President-Elect during 2021 and ran the Association Board meetings when Richison became a Magistrate Judge in the middle of the year. He has been the elected prosecutor in Hamilton County since 2011 and also serves on IPAC’s Legislative Committee and chairs the Juvenile Committee.

Joining Lee on the Association slate is President-Elect Rodney Cummings (Madison County); Vice President Ken Cotter (St. Joseph County) and Secretary/Treasurer Dan Murrie (Daviness County)

The Association Board for 2021 is as follows:

- Bernard Carter (Lake County)
- William Hartley, Jr. (Wabash County)
- Nicholas Hermann (Vanderburgh County)
- Jarrold Holtsclaw (Greene County)
- Karen Richards (Allen County)
- Bruce Aukerman (Vermillion County)
- Nathan Harter IV (Decatur County)
- Richard Hertel (Ripley County)
- Dustin Houchin (Washington County)

## Calendar of Events

- **Violence Against Women & Children**  
May 12  
Indianapolis
- **Spring Seminar**  
May 20  
Indianapolis
- **IV-D Summer Conference**  
June 7-10  
French Lick
- **Summer Conference**  
June 22-24  
French Lick



## Chemistry 101: IPAC to Host 3 Trainings with Indiana State Police Lab Chemists

As part of the 2022 training calendar, IPAC will be hosting three trainings featuring Indiana State Police chemists who handle the drug testing at the various ISP labs around the state. These identical, one-day trainings will take place in May and will be located the northern part of Indiana, the south and Indianapolis. The southern training will have the ISP chemist from Evansville, the northern the chemists from Lowell and Fort Wayne labs and the Indianapolis lab chemist will be at the Indianapolis training. No need to travel far to get a more in depth look at how the labs operate, just sign up for the training with the lab you frequently use.

There will be plenty of time for questions and work shopping how back logs can be reduced. The ISP team will also talk about what they can and can’t test, what does lab report terminology mean, rush test requests, and other common questions that they get will be discussed. Any and all questions you have, or have had, on previous cases, about testing, lab reports, court testimony, etc will all be answered at this training – so start making a list.

Dates and locations are as follows:

- Tuesday, May 10 - South Bend (Fort Wayne & Lowell labs)
- Thursday, May 12 - Huntingburg (Evansville lab)
- Wednesday, May 18 - Indianapolis (Indianapolis lab)

## Prosecutor stories wanted

The IPAC Board of Directors recently tasked the Public Relations Committee to come up with a better strategy for finding and distributing more positive prosecutor stories. It seems that most of the news stories involving prosecutors is either what happens in court or giving a press conference about charges after a bad situation has happened.

We know there’s much more that goes on in a prosecutor’s office than that. So we want to hear about your cool office programs that you do in your community. We want to hear about the unique people who work in your office (like Chief Deputy Emily Stumler from Harrison County who played in Taylor Swift’s band before becoming a lawyer)

IPAC Public Information Officer Zach Osowski will do all the work when it comes to collecting the information and pitching the story to your local media outlets all we need from you is the information. A fun outreach program, an employee who has a cool hobby, anything has the potential to be interesting for the people in your community.

If you are interested, email Zach at [zosowski@ipac.in.gov](mailto:zosowski@ipac.in.gov)

# IPAC Award Winners

## Amy Richison receives Powell - Feller Award Tippecanoe County DPA gets Steve Johnson Award

The Indiana Prosecuting Attorneys Council honored several people during its Winter Conference Awards Ceremony in December, including legislators, victim advocates, administrators and law enforcement officers. In all, 10 individuals were recognized at the ceremony for their accomplishments during the past year and over the length of some very long careers.

This was the first Awards Ceremony IPAC has hosted since 2019, with the 2020 event being cancelled due to the COVID pandemic. As a result, there were several award winners and some awards were handed out to multiple winners. The highlights of the evening were the Powell – Feller and the Stephen J. Johnson awards. The Powell – Feller award is the highest award handed out by the Association of Indiana Prosecuting Attorneys, Inc. and has been given out to prosecutors, judges, attorneys general and governors. This year, the award was bestowed on Amy Richison, the former Huntington County Prosecutor who recently became a Magistrate Judge in Huntington County. Richison was extremely involved with IPAC during her tenure as prosecutor, sitting on the Board of Directors and often serving as faculty at training courses. The award was especially poignant for Richison as her father, former prosecutor John Branham, is also a Powell – Feller recipient, winning the award in 2006. Branham was on hand at the ceremony to see his daughter win the award.

The Stephen J. Johnson award, named after former IPAC Executive Director Stephen Johnson, is given to Indiana prosecutors who have provided exemplary service during their career. The 2021 winner was Tippecanoe County Deputy Prosecutor Timothy Kern, who just celebrated his 40th year at the prosecutor’s office this summer. His boss, Tippecanoe County Prosecutor Pat Harrington marveled at Kern’s dedication, legal acumen and passion for teaching.

The IPAC Board of Directors also handed out four Legislative Excellence

Awards for 2021. The winners were Representative Tim Brown, R-Crawfordsville, Representative Greg Steuerwald, R-Avon, Senator Eric Koch, R-Bedford and Senator Ryan Mishler, R-Bremen. The four lawmakers were all selected for their work on IPAC’s priority legislation of the 2021 session, the High Tech Crime Units bill.

Two law enforcement officers were also recognized for their accomplishments during the ceremony. Washington County Police officer Brandon Garland, who also works for Daviess County’s Drug Enforcement group, won the Law Enforcement Officer of the year award for 2021. His nominator, Daviess County Prosecutor Dan Murrie credited Garland with singlehandedly transforming the county’s drug interdiction program.

The 2021 award program featured the debut of a brand-new award, the Law Enforcement Distinguished service award, created to celebrate law enforcement officers who have had lengthy and successful careers working with prosecutor offices. The first recipient of this award was Hendricks County investigator Rick Lang.

Two office administrators were recognized for their long service. Cindy Pope from the Monroe County Prosecutor’s Office and Diane Singer from the Franklin County Prosecutor’s Office were both given IPAC’s Kathy Falkner Richey Award for outstanding service as office staff.

And Shelby County’s Victim Services Coordinator, Rebecca Miller, was honored as the 2021 Victim Advocate of the Year for her long career in helping crime victims of Shelby County as they try to navigate the often complex legal world.



Some of the award winners from IPAC’s Award Ceremony. From top Amy Richison and John Branham; Tim Kern and Pat Harrington; Erika Oliphant and Cindy Pope; Diane Singer and Chris Huerkamp; and Becky Miller and Brad Landwerlen

# Evidence Bootcamp kicks off 2022 Training

The 2022 training season is officially underway after 30 new deputy prosecutors took part in IPAC's Evidence Bootcamp. The bootcamp is a one-day dive into Indiana rules of evidence for new prosecutors who need some experience before jumping into real jury trials. Under the tutelage of some very experienced prosecutors from around the state and IPAC staff, students were given several different issues regarding evidence, motions and witnesses that will pop up in real world scenarios and asked to work through them as a group.

In addition to the live workshops, students also heard lectures on how to examine witnesses, how to enter

evidence, hearsay and other objections and other basic jury trial strategies. Bootcamp is the best way for new prosecutors to get real world training without running their own jury trial.

IPAC has several other training courses on the way this year, including a Trial Advocacy I in August and an advanced Trial Advocacy III focused on Voir Dire in September.

There will also be a one-day training on violence against women and children in May along with plenty of other training this year. Visit IPAC's Training page on our website to see all the webinars, conferences and trainings coming later this year



Groups of young deputy prosecutors, led by faculty, discuss problems with the case and potential solutions to those issues



IPAC's Chief of Criminal Law Jim Oliver instructs the student's during one of his lectures during Evidence Bootcamp

