

## **IC 12-23-7**

### **Chapter 7. Continuance of Prosecution After Felony Charge**

#### **IC 12-23-7-1**

##### **Advising individual that prosecution may be continued if request for treatment is made; reason to believe individual is drug abuser or alcoholic; eligibility to make request under IC 12-23-6**

Sec. 1. If:

(1) a court has reason to believe that an individual charged with a felony is a drug abuser or an alcoholic or the individual states that the individual is a drug abuser or an alcoholic; and

(2) the court finds that the individual is eligible to make the request for treatment provided for in IC 12-23-6;

the court may advise the individual that the prosecution of the charge may be continued if the individual requests to undergo treatment and is accepted for treatment by the division.

*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-7-2**

##### **Advising individual of opportunity to request treatment; required information**

Sec. 2. In offering an individual an opportunity to request treatment, the court shall advise the individual of the following:

(1) If the individual requests to undergo treatment and is accepted, the individual may be placed under the supervision of the division for a period not to exceed three (3) years.

(2) During treatment the individual may be confined in an institution or, at the discretion of the division, the individual may be released for treatment or supervised aftercare in the community.

(3) If the individual completes treatment, the charge will be dismissed, but if the individual does not complete treatment, prosecution on the charge may be resumed.

(4) A request constitutes a formal waiver of the right to a speedy trial.

(5) To make a request the individual must waive a jury trial and consent to a trial by the court or must enter a guilty plea, with the general finding to be entered by the court to be deferred until the time that prosecution may be resumed.

*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-7-3**

##### **Request for treatment; examination by division; determination whether individual is alcoholic or drug abuser; likelihood of rehabilitation**

Sec. 3. If an eligible individual requests to undergo treatment, the court may order the division to conduct an examination of the individual to determine whether the individual is a drug abuser or an alcoholic and is likely to be rehabilitated through treatment.

*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-7-4**

##### **Pretrial or preplea investigation by court; denial of request**

Sec. 4. The court may deny a request if after conducting a pretrial or preplea investigation the court finds the individual would not qualify under the criteria of the court to be released on probation if convicted.

*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-7-5**

##### **Grant of request; certification to division; transmission of information**

Sec. 5. If a request is granted, the court shall do the following:

- (1) Certify to the division that the individual may request treatment.
- (2) Transmit to the division the following:
  - (A) A summary of the criminal history of the individual.
  - (B) A copy of the report of all background investigations conducted by or for the court.

*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-7-6**

##### **Examination by division; report and recommendation**

Sec. 6. Within a reasonable time after receiving an order to conduct an examination, together with the court's certification of eligibility and required supporting documents, the division shall report to the court the results of the examination and recommend if an individual should be placed under supervision for treatment.

*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-7-7**

##### **Determination that individual is not alcoholic or drug abuser or is not likely to be rehabilitated through treatment**

Sec. 7. If the court, acting on the report and other information coming to the court's attention, determines that:

- (1) an individual is not a drug abuser or an alcoholic; or
- (2) the individual is not likely to be rehabilitated through treatment;

the individual may be held to answer the charge.

*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-7-8**

##### **Deferral of trial or of entering general findings; consent of prosecuting attorney**

Sec. 8. If the court determines that an individual is a drug abuser or an alcoholic and is likely to be rehabilitated through treatment, the court may, with the consent of the prosecuting attorney:

- (1) defer the trial; or
- (2) without a jury, conduct the trial of the individual but may, with the consent of the prosecuting attorney, do the following:
  - (A) Defer entering general findings with respect to the

individual until the time that prosecution may be resumed.  
(B) Place the individual under the supervision of the division  
for treatment for a maximum of two (2) years.

*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-7-9**

##### **Progress reports**

Sec. 9. The court may require progress reports on an individual  
that the court finds necessary.

*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-7-10**

##### **Treatment placement; acceptance of individual by division**

Sec. 10. An individual may not be placed under the supervision of  
the division for treatment under this chapter unless the division  
accepts the individual for treatment.

*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-7-11**

##### **Treatment placement; continuation or dismissal of criminal charges**

Sec. 11. If an individual is placed under the supervision of the  
division for treatment under this chapter, the criminal charge against  
the individual shall be:

- (1) continued without final disposition; and
- (2) dismissed if the division certifies to the court that the  
individual has successfully completed the treatment program.

*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-7-12**

##### **Supervisory period; absence of certification that individual will complete program; determination that treatment not likely to be successful; resumption or dismissal of pending proceeding**

Sec. 12. (a) Subject to subsection (b), if by the expiration of the  
supervisory period the division has not been able to certify that an  
individual has completed the treatment program, the pending  
proceeding may be resumed.

(b) If the court believes that the individual will complete the  
treatment on a voluntary basis, the court may dismiss the criminal  
charge.

(c) If, before the supervisory period expires, the division  
determines that further treatment of the individual is not likely to be  
successful, the division shall so advise the court. The court shall  
terminate the supervision, and the pending criminal proceeding may  
be resumed.

*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-7-13**

##### **Term of imprisonment; deduction of time spent in institutional care**

Sec. 13. If a criminal proceeding is resumed, time spent in institutional care shall be deducted from a fixed term of imprisonment imposed.

*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-7-14**

##### **Programs to which offenders released**

Sec. 14. The division may not release an offender under section 2(2) of this chapter to an alcohol and drug services treatment program that is not a program administered by a court under IC 12-23-14 or that has not complied with the certification requirements of the division of mental health and addiction.

*As added by P.L.2-1992, SEC.17. Amended by P.L.40-1994, SEC.42; P.L.215-2001, SEC.63.*