

IC 11-12-3.7

Chapter 3.7. Forensic Diversion Program

IC 11-12-3.7-1

"Addictive disorder"

Sec. 1. As used in this chapter, "addictive disorder" means a diagnosable chronic substance use disorder of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

As added by P.L.85-2004, SEC.3.

IC 11-12-3.7-2

"Advisory board"

Sec. 2. As used in this chapter, "advisory board" means a:

- (1) community corrections advisory board, if there is one in the county; or
- (2) forensic diversion program advisory board, if there is not a community corrections advisory board in the county.

As added by P.L.85-2004, SEC.3.

IC 11-12-3.7-3

"Drug dealing offense"

Sec. 3. As used in this chapter, "drug dealing offense" means one (1) or more of the following offenses:

- (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1), unless the person received only minimal consideration as a result of the drug transaction.
- (2) Dealing in methamphetamine (IC 35-48-4-1.1), unless the person received only minimal consideration as a result of the drug transaction.
- (3) Dealing in a schedule I, II, III, IV, or V controlled substance (IC 35-48-4-2 through IC 35-48-4-4), unless the person received only minimal consideration as a result of the drug transaction.
- (4) Dealing in marijuana, hash oil, hashish, salvia, or a synthetic cannabinoid (IC 35-48-4-10), unless the person received only minimal consideration as a result of the drug transaction.

As added by P.L.85-2004, SEC.3. Amended by P.L.151-2006, SEC.5; P.L.138-2011, SEC.1; P.L.182-2011, SEC.1.

IC 11-12-3.7-4

"Forensic diversion program"

Sec. 4. As used in this chapter, "forensic diversion program" means a program designed to provide an adult:

- (1) who has a mental illness, an addictive disorder, or both a mental illness and an addictive disorder; and
- (2) who has been charged with a crime that is not a violent offense;

an opportunity to receive community treatment and other services addressing mental health and addiction instead of or in addition to

incarceration.

As added by P.L.85-2004, SEC.3. Amended by P.L.192-2007, SEC.4.

IC 11-12-3.7-5

"Mental illness"

Sec. 5. As used in this chapter, "mental illness" means a psychiatric disorder that is of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

As added by P.L.85-2004, SEC.3.

IC 11-12-3.7-6

"Violent offense"

Sec. 6. As used in this chapter, "violent offense" means one (1) or more of the following offenses:

- (1) Murder (IC 35-42-1-1).
- (2) Attempted murder (IC 35-41-5-1).
- (3) Voluntary manslaughter (IC 35-42-1-3).
- (4) Involuntary manslaughter (IC 35-42-1-4).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Aggravated battery (IC 35-42-2-1.5).
- (7) Battery (IC 35-42-2-1) as a:
 - (A) Class A felony, Class B felony, or Class C felony (for a crime committed before July 1, 2014); or
 - (B) Level 2 felony, Level 3 felony, or Level 5 felony (for a crime committed after June 30, 2014).
- (8) Kidnapping (IC 35-42-3-2).
- (9) A sex crime listed in IC 35-42-4-1 through IC 35-42-4-8 that is a:
 - (A) Class A felony, Class B felony, or Class C felony (for a crime committed before July 1, 2014); or
 - (B) Level 1 felony, Level 2 felony, Level 3 felony, Level 4 felony, or Level 5 felony (for a crime committed after June 30, 2014).
- (10) Sexual misconduct with a minor (IC 35-42-4-9) as a:
 - (A) Class A felony or Class B felony (for a crime committed before July 1, 2014); or
 - (B) Level 1 felony, Level 2 felony, or Level 4 felony (for a crime committed after June 30, 2014).
- (11) Incest (IC 35-46-1-3).
- (12) Robbery (IC 35-42-5-1) as a:
 - (A) Class A felony or a Class B felony (for a crime committed before July 1, 2014); or
 - (B) Level 2 felony or Level 3 felony (for a crime committed after June 30, 2014).
- (13) Burglary (IC 35-43-2-1) as a:
 - (A) Class A felony or a Class B felony (for a crime committed before July 1, 2014); or
 - (B) Level 1 felony, Level 2 felony, Level 3 felony, or Level

- 4 felony (for a crime committed after June 30, 2014).
- (14) Carjacking (IC 35-42-5-2) (repealed).
- (15) Assisting a criminal (IC 35-44.1-2-5) as a:
- (A) Class C felony (for a crime committed before July 1, 2014); or
 - (B) Level 5 felony (for a crime committed after June 30, 2014).
- (16) Escape (IC 35-44.1-3-4) as a:
- (A) Class B felony or Class C felony (for a crime committed before July 1, 2014); or
 - (B) Level 4 felony or Level 5 felony (for a crime committed after June 30, 2014).
- (17) Trafficking with an inmate (IC 35-44.1-3-5) as a:
- (A) Class C felony (for a crime committed before July 1, 2014); or
 - (B) Level 5 felony (for a crime committed after June 30, 2014).
- (18) Causing death when operating a vehicle (IC 9-30-5-5).
- (19) Criminal confinement (IC 35-42-3-3) as a:
- (A) Class B felony (for a crime committed before July 1, 2014); or
 - (B) Level 3 felony (for a crime committed after June 30, 2014).
- (20) Arson (IC 35-43-1-1) as a:
- (A) Class A or Class B felony (for a crime committed before July 1, 2014); or
 - (B) Level 2, Level 3, or Level 4 felony (for a crime committed after June 30, 2014).
- (21) Possession, use, or manufacture of a weapon of mass destruction (IC 35-47-12-1).
- (22) Terroristic mischief (IC 35-47-12-3) as a:
- (A) Class B felony (for a crime committed before July 1, 2014); or
 - (B) Level 4 felony (for a crime committed after June 30, 2014).
- (23) Hijacking or disrupting an aircraft (IC 35-47-6-1.6).
- (24) A violation of IC 35-47.5 (controlled explosives) as a:
- (A) Class A or Class B felony (for a crime committed before July 1, 2014); or
 - (B) Level 2 or Level 4 felony (for a crime committed after June 30, 2014).
- (25) A crime under the laws of another jurisdiction, including a military court, that is substantially similar to any of the offenses listed in this subdivision.
- (26) Any other crimes evidencing a propensity or history of violence.

As added by P.L.85-2004, SEC.3. Amended by P.L.125-2012, SEC.400; P.L.126-2012, SEC.31; P.L.158-2013, SEC.178.

Advisory board's duty to develop a plan

Sec. 7. (a) An advisory board shall develop a forensic diversion plan to provide an adult who:

- (1) has a mental illness, an addictive disorder, or both a mental illness and an addictive disorder; and
- (2) has been charged with a crime that is not a violent crime; an opportunity, pre-conviction or post-conviction, to receive community treatment and other services addressing mental health and addictions instead of or in addition to incarceration.

(b) The forensic diversion plan may include any combination of the following program components:

- (1) Pre-conviction diversion for adults with mental illness.
- (2) Pre-conviction diversion for adults with addictive disorders.
- (3) Post-conviction diversion for adults with mental illness.
- (4) Post-conviction diversion for adults with addictive disorders.

(c) In developing a plan, the advisory board must consider the ability of existing programs and resources within the community, including:

- (1) a problem solving court established under IC 33-23-16;
- (2) a court alcohol and drug program certified under IC 12-23-14-13;
- (3) treatment providers certified by the division of mental health and addiction under IC 12-23-1-6 or IC 12-21-2-3(5); and
- (4) other public and private agencies.

(d) Development of a forensic diversion program plan under this chapter or IC 11-12-2-3 does not require implementation of a forensic diversion program.

(e) The advisory board may:

- (1) operate the program;
- (2) contract with existing public or private agencies to operate one (1) or more components of the program; or
- (3) take any combination of actions under subdivisions (1) or (2).

(f) Any treatment services provided under the forensic diversion program:

- (1) for addictions must be provided by an entity that is certified by the division of mental health and addiction under IC 12-23-1-6; or
- (2) for mental health must be provided by an entity that is:
 - (A) certified by the division of mental health and addiction under IC 12-21-2-3(5);
 - (B) accredited by an accrediting body approved by the division of mental health and addiction; or
 - (C) licensed to provide mental health services under IC 25.

As added by P.L.85-2004, SEC.3. Amended by P.L.192-2007, SEC.5; P.L.108-2010, SEC.2; P.L.2-2014, SEC.55.

IC 11-12-3.7-8

Request for treatment; tolling of speedy trial period

Sec. 8. (a) An individual may request treatment under this chapter or the court may order an evaluation of the individual to determine if the individual is an appropriate candidate for forensic diversion.

(b) A request for treatment or an order for an evaluation under this chapter tolls the running of the speedy trial time period until the court has made a determination of eligibility for the program under this section.

As added by P.L.85-2004, SEC.3.

IC 11-12-3.7-9

Periodic progress report; court order required for release from program

Sec. 9. (a) A court shall be provided with periodic progress reports on an individual who is ordered by the court to undergo treatment in a forensic diversion program.

(b) A participant may not be released from a forensic diversion program without a court order. The court must consider the recommendation of the forensic diversion program before ordering a participant's release.

As added by P.L.85-2004, SEC.3.

IC 11-12-3.7-10

Forensic diversion advisory board; members

Sec. 10. (a) A county that does not have a community corrections advisory board may form a forensic diversion advisory board.

(b) A forensic diversion advisory board formed under subsection (a) shall consist of the following:

(1) A judge exercising criminal jurisdiction in the county.

(2) The head of the county public defender office, if there is one in the county, or a criminal defense attorney who practices in the county if there is not a county public defender office in the county.

(3) The chief probation officer.

(4) The prosecuting attorney.

(5) The drug court judge or the designee of the drug court judge if there is a certified drug court in the county.

(6) The supervising judge of the court alcohol and drug services program or the designee of the supervising judge, if there is a certified court alcohol and drug services program in the county.

(7) An individual who is certified or licensed as a substance abuse professional.

(8) An individual who is certified or licensed as a mental health professional.

(9) An individual with expertise in substance abuse or mental health treatment.

As added by P.L.85-2004, SEC.3.

IC 11-12-3.7-11

Eligibility for pre-conviction forensic diversion; advisements; stay of entry of judgment; consequences of successful completion or

failure

Sec. 11. (a) A person is eligible to participate in a pre-conviction forensic diversion program only if the person meets the following criteria:

- (1) The person has a mental illness, an addictive disorder, or both a mental illness and an addictive disorder.
- (2) The person has been charged with an offense that is:
 - (A) not a violent offense; and
 - (B) a Class A, B, or C misdemeanor, or a Level 6 felony that may be reduced to a Class A misdemeanor in accordance with IC 35-50-2-7.
- (3) The person does not have a conviction for a violent offense in the previous ten (10) years.
- (4) The court has determined that the person is an appropriate candidate to participate in a pre-conviction forensic diversion program.
- (5) The person has been accepted into a pre-conviction forensic diversion program.

(b) Before an eligible person is permitted to participate in a pre-conviction forensic diversion program, the court shall advise the person of the following:

- (1) Before the individual is permitted to participate in the program, the individual will be required to enter a guilty plea to the offense with which the individual has been charged.
- (2) The court will stay entry of the judgment of conviction during the time in which the individual is successfully participating in the program. If the individual stops successfully participating in the program, or does not successfully complete the program, the court will lift its stay, enter a judgment of conviction, and sentence the individual accordingly.
- (3) If the individual participates in the program, the individual may be required to remain in the program for a period not to exceed three (3) years.
- (4) During treatment the individual may be confined in an institution, be released for treatment in the community, receive supervised aftercare in the community, or may be required to receive a combination of these alternatives.
- (5) If the individual successfully completes the forensic diversion program, the court will waive entry of the judgment of conviction and dismiss the charges.
- (6) The court shall determine, after considering a report from the forensic diversion program, whether the individual is successfully participating in or has successfully completed the program.

(c) Before an eligible person may participate in a pre-conviction forensic diversion program, the person must plead guilty to the offense with which the person is charged.

(d) Before an eligible person may be admitted to a facility under the control of the division of mental health and addiction, the individual must be committed to the facility under IC 12-26.

(e) After the person has pleaded guilty, the court shall stay entry of judgment of conviction and place the person in the pre-conviction forensic diversion program for not more than:

- (1) two (2) years, if the person has been charged with a misdemeanor; or
- (2) three (3) years, if the person has been charged with a felony.

(f) If, after considering the report of the forensic diversion program, the court determines that the person has:

- (1) failed to successfully participate in the forensic diversion program, or failed to successfully complete the program, the court shall lift its stay, enter judgment of conviction, and sentence the person accordingly; or
- (2) successfully completed the forensic diversion program, the court shall waive entry of the judgment of conviction and dismiss the charges.

As added by P.L.85-2004, SEC.3. Amended by P.L.192-2007, SEC.6; P.L.168-2014, SEC.25.

IC 11-12-3.7-12

Eligibility for post-conviction forensic diversion; probation; nonsuspendible sentences; consequences of successful or unsuccessful participation

Sec. 12. (a) A person is eligible to participate in a post-conviction forensic diversion program only if the person meets the following criteria:

- (1) The person has a mental illness, an addictive disorder, or both a mental illness and an addictive disorder.
- (2) The person has been convicted of an offense that is:
 - (A) not a violent offense; and
 - (B) not a drug dealing offense.
- (3) The person does not have a conviction for a violent offense in the previous ten (10) years.
- (4) The court has determined that the person is an appropriate candidate to participate in a post-conviction forensic diversion program.
- (5) The person has been accepted into a post-conviction forensic diversion program.

(b) If the person meets the eligibility criteria described in subsection (a) and has been convicted of an offense that may be suspended, the court may:

- (1) suspend all or a portion of the person's sentence;
- (2) place the person on probation for the suspended portion of the person's sentence; and
- (3) require as a condition of probation that the person successfully participate in and successfully complete the post-conviction forensic diversion program.

(c) If the person meets the eligibility criteria described in subsection (a) and has been convicted of an offense that is nonsuspendible, the court may:

- (1) order the execution of the nonsuspendible sentence; and

(2) stay execution of all or part of the nonsuspendible portion of the sentence pending the person's successful participation in and successful completion of the post-conviction forensic diversion program.

The court shall treat the suspendible portion of a nonsuspendible sentence in accordance with subsection (b).

(d) The person may be required to participate in the post-conviction forensic diversion program for no more than:

(1) two (2) years, if the person has been charged with a misdemeanor; or

(2) three (3) years, if the person has been charged with a felony.

The time periods described in this section only limit the amount of time a person may spend in the forensic diversion program and do not limit the amount of time a person may be placed on probation.

(e) If, after considering the report of the forensic diversion program, the court determines that a person convicted of an offense that may be suspended has failed to successfully participate in the forensic diversion program, or has failed to successfully complete the program, the court may do any of the following:

(1) Revoke the person's probation.

(2) Order all or a portion of the person's suspended sentence to be executed.

(3) Modify the person's sentence.

(4) Order the person to serve all or a portion of the person's suspended sentence in:

(A) a work release program established by the department under IC 11-10-8 or IC 11-10-10; or

(B) a county work release program under IC 11-12-5.

(f) If, after considering the report of the forensic diversion program, the court determines that a person convicted of a nonsuspendible offense failed to successfully participate in the forensic diversion, or failed to successfully complete the program, the court may do any of the following:

(1) Lift its stay of execution of the nonsuspendible portion of the sentence and remand the person to the department.

(2) Order the person to serve all or a portion of the nonsuspendible portion of the sentence that is stayed in:

(A) a work release program established by the department under IC 11-10-8 or IC 11-10-10; or

(B) a county work release program under IC 11-12-5.

(3) Modify the person's sentence.

However, if the person failed to successfully participate in the forensic diversion program, or failed to successfully complete the program while serving the suspendible portion of a nonsuspendible sentence, the court may treat the suspendible portion of the sentence in accordance with subsection (e).

(g) If, after considering the report of the forensic diversion program, the court determines that a person convicted of a nonsuspendible offense has successfully completed the program, the court shall waive execution of the nonsuspendible portion of the

person's sentence.

As added by P.L.85-2004, SEC.3. Amended by P.L.39-2006, SEC.1; P.L.192-2007, SEC.7.

IC 11-12-3.7-13

Forensic diversion program account

Sec. 13. (a) As used in this section, "account" means the forensic diversion program account established as an account within the state general fund by subsection (b).

(b) The forensic diversion program account is established within the state general fund to administer and carry out the purposes of this chapter. The department shall administer the account.

(c) The expenses of administering the account shall be paid from money in the account.

(d) The treasurer of state shall invest money in the account in the same manner as other public money may be invested.

(e) Money in the account at the end of the state fiscal year does not revert to the state general fund.

(f) The account consists of:

(1) amounts appropriated by the general assembly; and

(2) donations, grants, and money received from any other source.

(g) The department shall adopt guidelines governing the disbursement of funds to the advisory board to support the operation of the forensic diversion program.

(h) There is annually appropriated to the department from the account an amount sufficient to carry out the purposes of this chapter.

As added by P.L.85-2004, SEC.3.

