

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

### **Chapter 5. Conditional Deferment of Judicial Proceedings After Commission of Misdemeanor or Infraction**

#### **IC 12-23-5-0.5**

##### **Applicability after June 30, 2005**

Sec. 0.5. After June 30, 2005, this chapter does not apply to a person who:

- (1) holds a commercial driver's license; and
- (2) has been charged with an offense involving the operation of a motor vehicle in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).

*As added by P.L.219-2003, SEC.10.*

#### **IC 12-23-5-1**

##### **Judicial notice of rehabilitative or other treatment**

Sec. 1. In a criminal proceeding for a misdemeanor or infraction in which:

- (1) the use or abuse of alcohol, drugs, or harmful substances is a contributing factor or a material element of the offense; or
- (2) the defendant's mental illness other than substance abuse, is a contributing factor;

the court may take judicial notice of the fact that proper early intervention, medical, advisory, or rehabilitative treatment of the defendant is likely to decrease the defendant's tendency to engage in antisocial behavior.

*As added by P.L.2-1992, SEC.17. Amended by P.L.224-2003, SEC.125; P.L.85-2004, SEC.4.*

#### **IC 12-23-5-2**

##### **Deferral of prosecution; order requiring treatment; conditions**

Sec. 2. (a) Subject to section 8 of this chapter, before conviction a court may, with the consent of the defendant and the prosecuting attorney, conditionally defer the proceedings described in section 1 of this chapter for up to one (1) year.

(b) The court may do the following:

- (1) Order the defendant to satisfactorily complete an alcohol and drug services treatment program if the court makes a determination under section 1(1) of this chapter.
- (2) Order the defendant to undergo treatment for the defendant's mental illness if the court makes a determination under section 1(2) of this chapter.
- (3) Impose other appropriate conditions upon the defendant.

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

#### **IC 12-23-5-3**

##### **Violation of condition; resumption of criminal proceedings**

Sec. 3. If a defendant violates a condition imposed by the court, the court may order the criminal proceedings to be resumed.

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

#### **IC 12-23-5-4**

##### **Fulfillment of conditions; dismissal of charges**

Sec. 4. Except as provided in section 8 of this chapter, if a defendant fulfills the conditions set by the court, the court shall dismiss the charges against the defendant.

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

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

##### **Conditional deferral of charges under IC 9-30-5; suspension of driving privileges; probationary driving privileges; ignition interlock device**

Sec. 5. (a) Subject to subsection (b), if a court enters an order conditionally deferring charges that involve a violation of IC 9-30-5, the court shall do the following:

(1) Suspend the defendant's driving privileges for at least ninety (90) days but not more than two (2) years.

(2) Impose other appropriate conditions.

(b) A defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least thirty (30) days under IC 9-30-6-9.

(c) If a defendant has at least one (1) conviction for an offense under IC 9-30-5, the order granting probationary driving privileges under subsection (b) must, in a county that provides for the installation of an ignition interlock device under IC 9-30-8, prohibit the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If a defendant does not have a prior conviction for an offense under IC 9-30-5, the court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. An order requiring an ignition interlock device must remain in effect for at least two (2) years but not more than four (4) years.

*As added by P.L.2-1992, SEC.17. Amended by P.L.76-2004, SEC.21.*

#### **IC 12-23-5-5.5**

##### **Offenses; operating motor vehicle without ignition interlock device**

Sec. 5.5. (a) A person commits a Class B infraction if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) of this chapter.

(b) A person commits a Class B misdemeanor if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) knows the person is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) of this chapter.

*As added by P.L.76-2004, SEC.22.*

#### **IC 12-23-5-6**

##### **Misdemeanor convictions; probation; referring defendant to treatment or therapy program**

Sec. 6. If a defendant is convicted in a proceeding described in section 1 of this chapter and the court places the defendant on probation, the court may do the following:

(1) Refer the defendant to an alcohol and drug services treatment program if the court makes a determination under section 1(1) of this chapter.

(2) Refer the defendant to an appropriate therapy program if the court makes a determination under section 1(2) of this chapter.

(3) Require the defendant to undergo treatment as a condition of probation.

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

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

##### **Exceptions to eligibility for deferral**

Sec. 7. Prosecution may be deferred under sections 2 through 5 of this chapter if a defendant has been charged with a misdemeanor or infraction in which the use of alcohol or drugs was a contributing factor or material element of the offense or the defendant's mental illness was a contributing factor, unless at least one (1) of the following exists:

(1) The offense involves death or serious bodily injury.

(2) The defendant has a record of at least two (2) prior convictions of forcible felonies (as defined in IC 35-31.5-2-138).

(3) Other criminal proceedings, not arising out of the same incident, alleging commission of a felony are pending against the defendant.

(4) The defendant is on probation or parole and the appropriate parole or probation authority does not consent to the defendant's participation.

(5) The defendant fails to meet additional eligibility requirements imposed by the court.

*As added by P.L.2-1992, SEC.17. Amended by P.L.114-2012, SEC.32.*

#### **IC 12-23-5-8**

##### **Exception to eligibility for deferral; previous dismissal under this chapter of charges of operating vehicle while intoxicated**

Sec. 8. If:

(1) a defendant was previously charged under IC 9-4-1-54 (before its repeal September 1, 1983), IC 9-11-2 (before its

repeal July 1, 1991), or IC 9-30-5; and  
(2) the previous charges were dismissed under this chapter;  
the individual is not eligible to have subsequent charges under  
IC 9-30-5 dismissed under this chapter.  
*As added by P.L.2-1992, SEC.17.*

#### **IC 12-23-5-9**

##### **Programs in which defendants ordered to participate**

Sec. 9. A court may not order a defendant or a convicted individual to complete an alcohol and drug services treatment program under section 2(b)(1) or 6(1) of this chapter unless the court determines that the program in which the individual is to participate is administered by a court under IC 12-23-14 or is certified by the division of mental health and addiction.  
*As added by P.L.2-1992, SEC.17. Amended by P.L.40-1994, SEC.41; P.L.215-2001, SEC.62.*