

IC 35-33-7

Chapter 7. Probable Cause; Initial Hearing

IC 35-33-7-1

Arrest without warrant; initial hearing; venue

Sec. 1. (a) A person arrested without a warrant for a crime shall be taken promptly before a judicial officer:

- (1) in the county in which the arrest is made; or
- (2) of any county believed to have venue over the offense committed; for an initial hearing in court.

(b) Except as provided in subsection (c), if the person arrested makes bail before the person's initial hearing before a judicial officer, the initial hearing shall occur at any time within twenty (20) calendar days after the person's arrest.

(c) If a person arrested under IC 9-30-5 makes bail before the person's initial hearing before a judicial officer, the initial hearing must occur within ten (10) calendar days after the person's arrest.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.126-1989, SEC.27; P.L.2-1991, SEC.103.

IC 35-33-7-2

Probable cause; affidavit or oral presentation under oath; record; determination; detention or release

Sec. 2. (a) At or before the initial hearing of a person arrested without a warrant for a crime, the facts upon which the arrest was made shall be submitted to the judicial officer, ex parte, in a probable cause affidavit. In lieu of the affidavit or in addition to it, the facts may be submitted orally under oath to the judicial officer. If facts upon which the arrest was made are submitted orally, the proceeding shall be recorded by a court reporter, and, upon request of any party in the case or upon order of the court, the record of the proceeding shall be transcribed.

(b) If the judicial officer determines that there is probable cause to believe that any crime was committed and that the arrested person committed it, the judicial officer shall order that the arrested person be held to answer in the proper court. If the facts submitted do not establish probable cause or if the prosecuting attorney informs the judicial officer on the record that no charge will be filed against the arrested person, the judicial officer shall order that the arrested person be released immediately.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.12.

IC 35-33-7-3

Filing of indictment or information; recess or continuation of initial hearing; informing accused of rights

Sec. 3. (a) When a person is arrested for a crime before a formal charge has been filed, an information or indictment shall be filed or be prepared to be filed at or before the initial hearing, unless the

prosecuting attorney has informed the court that there will be no charges filed in the case.

(b) If the prosecuting attorney states that more time is required to evaluate the case and determine whether a charge should be filed, or if it is necessary to transfer the person to another court, then the court shall recess or continue the initial hearing for up to seventy-two (72) hours, excluding intervening Saturdays, Sundays, and legal holidays.

(c) Before recessing the initial hearing and after the ex parte probable cause determination has been made, the court shall inform a defendant charged with a felony of the rights specified in subdivisions (1), (2), (3), (4), and (5) of section 5 of this chapter.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.13; P.L.320-1983, SEC.8.

IC 35-33-7-3.5

Conformity of initial hearing to summons; probable cause

Sec. 3.5. The initial hearing of a person issued a:

- (1) summons; or
- (2) summons and promise to appear;

must take place according to the terms of the summons. At such an initial hearing, a determination of probable cause is not required unless the prosecuting attorney requests on the record that the person be held in custody before his trial.

As added by P.L.320-1983, SEC.9.

IC 35-33-7-4

Arrest under warrant; jurisdiction; time of initial hearing

Sec. 4. A person arrested in accordance with the provisions of a warrant shall be taken promptly for an initial hearing before the court issuing the warrant or before a judicial officer having jurisdiction over the defendant. If the arrested person has been released in accordance with the provisions for release stated on the warrant, the initial hearing shall occur at any time within twenty (20) days after his arrest.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-7-5

Informing of accused

Sec. 5. At the initial hearing of a person, the judicial officer shall inform him orally or in writing:

- (1) that he has a right to retain counsel and if he intends to retain counsel he must do so within:
 - (A) twenty (20) days if the person is charged with a felony;
 - or
 - (B) ten (10) days if the person is charged only with one (1) or more misdemeanors;

after this initial hearing because there are deadlines for filing motions and raising defenses, and if those deadlines are missed, the legal issues and defenses that could have been raised will be

- waived;
- (2) that he has a right to assigned counsel at no expense to him if he is indigent;
 - (3) that he has a right to a speedy trial;
 - (4) of the amount and conditions of bail;
 - (5) of his privilege against self-incrimination;
 - (6) of the nature of the charge against him; and
 - (7) that a preliminary plea of not guilty is being entered for him and the preliminary plea of not guilty will become a formal plea of not guilty:
 - (A) twenty (20) days after the completion of the initial hearing; or
 - (B) ten (10) days after the completion of the initial hearing if the person is charged only with one (1) or more misdemeanors;
- unless the defendant enters a different plea.

In addition, the judge shall direct the prosecuting attorney to give the defendant or his attorney a copy of any formal felony charges filed or ready to be filed. The judge shall, upon request of the defendant, direct the prosecuting attorney to give the defendant or his attorney a copy of any formal misdemeanor charges filed or ready to be filed.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.14; P.L.320-1983, SEC.10.

IC 35-33-7-6

Indigent defendant; assignment of counsel; payment to supplemental public defender services fund

Sec. 6. (a) Prior to the completion of the initial hearing, the judicial officer shall determine whether a person who requests assigned counsel is indigent. If the person is found to be indigent, the judicial officer shall assign counsel to the person.

(b) If jurisdiction over an indigent defendant is transferred to another court, the receiving court shall assign counsel immediately upon acquiring jurisdiction over the defendant.

(c) If the court finds that the person is able to pay part of the cost of representation by the assigned counsel, the court shall order the person to pay the following:

- (1) For a felony action, a fee of one hundred dollars (\$100).
- (2) For a misdemeanor action, a fee of fifty dollars (\$50).

The clerk of the court shall deposit fees collected under this subsection in the county's supplemental public defender services fund established under IC 33-40-3-1.

(d) The court may review the finding of indigency at any time during the proceedings.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.216-1996, SEC.11; P.L.98-2004, SEC.139.

IC 35-33-7-7

Order of release not to bar further proceedings

Sec. 7. An order releasing a person under this chapter does not bar further proceedings in the case.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.15.