



H.B. 466

123rd General Assembly
(As Introduced)

Rep. Damschroder

BILL SUMMARY

- Removes from eligibility for treatment in lieu of conviction a person charged with a felony of the first, second, or third degree or with a felony of the fourth or fifth degree in which the victim was 65 years of age or older, permanently and totally disabled, or under 13 years of age at the time of the commission of the alleged felony.

CONTENT AND OPERATION

Treatment in lieu of conviction

Existing law

Existing law provides that, if a court has reason to believe that an offender charged with a felony or misdemeanor is a drug dependent person or is in danger of becoming a drug dependent person, the court must accept, prior to the entry of a plea, that offender's request for treatment in lieu of conviction. If the offender requests treatment in lieu of conviction, the court must stay all criminal proceedings pending the outcome of the hearing to determine whether the offender is eligible for treatment in lieu of conviction and, at the conclusion of the hearing, must enter its findings and accept the offender's plea.

An offender who requests treatment in lieu of conviction is eligible for that treatment if the court finds that: (1) the offender's drug dependence or danger of drug dependence was a factor leading to the criminal activity with which the offender is charged, and rehabilitation through treatment would substantially reduce the likelihood of additional criminal activity, (2) the offender has been accepted into a program licensed by the Department of Alcohol and Drug Addiction Services, a program certified by the Department, a public or private hospital, the Veterans Administration or another agency of the federal government, private care or treatment rendered by a physician or a psychologist licensed in the state, or another appropriate drug treatment facility or program, (3) if the offender

is convicted of a misdemeanor, the offender would be eligible for probation, provided an R.C. 2951.02(D) criterion does not apply to the offender, or, if the offender is convicted of a felony, the offender would be eligible for a community control sanction, (4) the offender is not a repeat offender or dangerous offender, and (5) the offender is not charged with the offense of corrupting another with drugs, illegal manufacture of drugs, or illegal cultivation of marihuana, a drug trafficking offense, or a drug possession offense that is not a minor drug possession offense. Upon a finding of that nature and if the offender enters a plea of guilty or no contest, the court may stay all criminal proceedings and order the offender to a period of rehabilitation. If a plea of not guilty is entered, a trial must precede further consideration of the offender's request for treatment in lieu of conviction.

The offender and the prosecuting attorney must be afforded the opportunity to present evidence to establish eligibility or ineligibility for treatment in lieu of conviction, and the prosecuting attorney may make a recommendation to the court concerning whether the offender should receive treatment in lieu of conviction. Upon the offender's request and to aid the offender in establishing the offender's eligibility for treatment in lieu of conviction, the court may refer the offender for medical and psychiatric examination to the Department of Mental Health, to a state facility designated by the Department, to a psychiatric clinic approved by the Department, or to a facility or program described in clause (2) of the preceding paragraph.

An offender found to be eligible for treatment in lieu of conviction and ordered to a period of rehabilitation must be placed under the control and supervision of the county probation department or the APA, as if the offender were on probation or were under a community control sanction. The court must order a period of rehabilitation to continue for any period that the judge or magistrate determines. The period of rehabilitation may be extended, but the total period cannot exceed three years. The period of rehabilitation must be conditioned upon the offender's voluntary entrance into an appropriate drug treatment facility or program, faithful submission to prescribed treatment, and any other conditions the court orders. Treatment of a person ordered to such a period of rehabilitation may include hospitalization under close supervision or otherwise, release on an outpatient status under supervision, and other treatment or after-care that the appropriate drug treatment facility or program considers necessary or desirable to rehabilitate that person. Persons released from hospitalization or treatment but still subject to the ordered period of rehabilitation may be rehospitalized or returned to treatment at any time it becomes necessary for their treatment and rehabilitation.

If the appropriate drug treatment facility or program reports to the probation officer that the offender has successfully completed treatment and is rehabilitated, the court may dismiss the charges pending against the offender. If the facility or program reports to the probation officer that the offender has successfully completed treatment and is rehabilitated or has obtained maximum benefits from treatment and has completed the period of rehabilitation and other conditions ordered by the court, the court must dismiss the charges pending against the offender. If the facility or program reports to the probation officer that the offender has failed treatment, has failed to submit to or follow the prescribed treatment, or has become a discipline problem, if the offender does not satisfactorily complete the rehabilitation period or the other conditions ordered by the court, or if the offender violates the conditions of the rehabilitation period, the offender must be arrested and removed from the facility or program, and the court immediately must hold a hearing to determine if the offender failed treatment, failed to submit to or follow the prescribed treatment, did not satisfactorily complete the rehabilitation period or any other condition ordered by the court, or violated any condition of the rehabilitation period. If the court so determines, it immediately must enter an adjudication of guilt and impose upon the offender a term of imprisonment.

At any time and for any appropriate reason, the offender, the offender's probation officer, the authority or department that has the duty to control and supervise the offender, or the facility or program may petition the court to reconsider, suspend, or modify its order for treatment concerning that offender. The appropriate drug treatment facility or program must report to the authority or department that has the duty to control and supervise the offender at any periodic reporting period the court requires and whenever the offender is changed from an inpatient to an outpatient, is transferred to another treatment facility or program, fails treatment, fails to submit to or follow the prescribed treatment, becomes a discipline problem, does not satisfactorily complete the rehabilitation period or other conditions ordered by the court, has violated the conditions of the period of rehabilitation, is rehabilitated, or obtains the maximum benefit of treatment.

If, on the motion of an offender ordered to a rehabilitation period, the court finds that the offender has successfully completed the rehabilitation period ordered by the court, is rehabilitated, is no longer drug dependent or in danger of becoming drug dependent, and has completed all other conditions, the court must dismiss the proceeding against the offender. Successful completion of a rehabilitation period under this provision must be without adjudication of guilt and is not a criminal conviction for purposes of disqualifications or disabilities imposed by law and upon conviction of a crime, and the court may order the sealing of records in the manner provided in the existing Conviction Records Sealing Law.

An offender who is charged with a drug abuse offense, other than a minor misdemeanor offense involving marihuana, and who otherwise is eligible for treatment in lieu of conviction may request and may be ordered to a period of rehabilitation even though certain specified findings that otherwise would be required for eligibility are not made. An order to rehabilitation under this provision is subject to the conditions that the court requires but cannot be conditioned upon entry into an appropriate drug treatment facility or program. (R.C. 2951.041.)

Operation of the bill

The bill removes from eligibility for treatment in lieu of conviction any person charged with a felony of the first, second, or third degree or with a felony of the fourth or fifth degree in which the victim was 65 years of age or older, permanently and totally disabled, or under 13 years of age at the time of the commission of the alleged felony. Thus, under the bill, if the court has reason to believe that an offender, who is charged with a misdemeanor or with a felony of the fourth or fifth degree that does not involve a victim who was 65 years of age or older, permanently and totally disabled, or under 13 years of age at the time of the commission of the alleged felony, is a drug dependent person or is in danger of becoming a drug dependent person, the court must accept, prior to the entry of a plea, the offender's request for treatment in lieu of conviction. (R.C. 2951.041(A).)

The bill also requires the court to make an additional finding before the person is eligible for treatment in lieu of conviction: the court also must find that the offender is not charged with a felony of the first, second, or third degree or with a felony of the fourth or fifth degree in which the victim was 65 years of age or older, permanently and totally disabled, or under 13 years of age at the time of the commission of the alleged felony. (R.C. 2951.041(B)(6).)

The bill makes a number of conforming changes throughout the Revised Code (R.C. 4715.30(F), 4717.05(A)(2), 4717.14(D), 4730.25(I), and 4731.22(I)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-30-99	p. 1232

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