



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Sen. Tavares

BILL SUMMARY

- Provides a mechanism for "drug treatment intervention," described in the succeeding dot points, that is separate from, and independent of, "intervention in lieu of conviction" under current law and specifies that the new mechanism and the related provisions take effect on January 1, 2012.
- Authorizes "first-time or second-time offenders" and certain "repeat offenders" who are charged with an illegal possession or use of a controlled substance offense, or who have been convicted of or pleaded guilty to an illegal possession or use of a controlled substance offense but upon whom sentence has not yet been imposed, and who satisfy other specified criteria to file a request with a court for drug treatment intervention.
- Specifies that, if a court makes a final determination under the bill that an offender is eligible for intervention, the court must: (1) accept the offender's request, (2) stay all criminal proceedings that relate to the illegal possession or use of a controlled substance offense, (3) order the release of the offender if in custody due to the stayed criminal proceedings, and (4) order a qualified treatment professional to assess the offender's addiction severity and need for treatment, determine appropriate drug treatment and social services for the offender, and recommend an appropriate treatment plan.
- Specifies that a court must resume the criminal proceedings against the offender if it makes a final determination that the offender is not eligible for intervention, subject to special trial and sentencing provisions.
- Requires a court that grants an offender's request for drug treatment intervention to designate an appropriate treatment provider to administer the treatment plan and a

qualified treatment professional to serve in a continuing role as an independent monitor of the offender's progress in treatment.

- Provides separate procedures for dealing with drug-related violations of the treatment plan and violations of the treatment plan that are not drug related.
- Requires a court that receives notice that an offender has successfully completed a treatment plan to dismiss the stayed proceedings against an offender who has not been convicted without an adjudication of guilt or a conviction or dismiss the stayed proceedings against an offender who has been convicted without imposing sentence.
- Provides that, if the designated period of treatment has expired but the offender has not successfully completed the treatment plan, the court may order a modification of the treatment plan and an extension of the period of treatment, subject to a total treatment period of 18 months, dismiss the stayed proceedings, terminate the treatment plan, and continue supervision of the offender for up to 90 days, or dismiss the stayed proceedings and terminate the treatment plan with a finding that the offender has either successfully completed the treatment plan or completed the treatment plan without a determination of successful completion.
- Authorizes an offender who successfully completes a treatment plan to request, and authorizes the court to order, the sealing of the official records pertaining to the illegal possession or use of a controlled substance offense, but requires law enforcement agencies to maintain certain records for specified purposes.
- Specifies that the use of the phrase "intervention in lieu of conviction" in certain occupational certification, licensing, and employment provisions, and related provisions, refers to the existing "intervention in lieu of conviction" procedures that are separate from, and independent of, the bill's "drug treatment intervention" provisions.
- Designates the Department of Alcohol and Drug Addiction Services (ODADAS) as the "lead agency" to direct implementation of programs for persons granted requests for drug treatment intervention under the bill and persons placed in treatment as a result of drug-related violations of the terms of judicial release or supervised release from prison, and to perform other specified functions.
- Creates the Substance Abuse Treatment Fund in the state treasury, and generally requires the Director of ODADAS to distribute annually, using a fair and equitable distribution formula, all moneys appropriated to the Fund to affiliated agencies or

bodies in counties or multi-county regions to pay for the costs of providing certain treatment programs.

- Requires ODADAS to ensure that recipient counties or multi-county regional bodies provide a diversity of treatment programs to ensure the availability of a continuum of services.
- Specifies a percentage of the moneys each county or multi-county region receives to be spent on the provision of types of certain treatment and rehabilitation services the bill identifies and requires each county or multi-county regional body receiving funds to submit reports detailing the use of funds provided.
- Requires ODADAS to collect and publish annually specified data to evaluate the effectiveness and financial impact of the bill's treatment programs.
- Contains statements of legislative intent and legislative purpose in enacting the bill.
- Provides for the transfer, on July 1 of fiscal year 2012 and fiscal year 2013, or as soon as possible thereafter, of \$38 million from the General Revenue Fund to the Substance Abuse Treatment Fund.

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CONTENT AND OPERATION

Overview

Currently, if an offender is charged with a criminal offense, the court has reason to believe that drug or alcohol usage by the offender was a factor leading to the offender's criminal behavior, and the offender meets other eligibility criteria, the offender may request intervention in lieu of conviction (see "**Background – intervention in lieu of conviction**," below for a discussion of that current mechanism). If the court grants the request, it must establish an intervention plan for the offender that includes the requirement that the offender abstain from using drugs and alcohol for at least one year.

The bill provides for drug treatment intervention that is separate from, and independent of, intervention in lieu of conviction. Under the bill, certain offenders who are charged with an illegal possession or use of a controlled substance offense or who have pleaded guilty to or been convicted of such an offense but have not yet been sentenced, may file a request for drug treatment intervention. If the court determines the offender is eligible, the court must order a qualified treatment professional to assess the offender's addiction severity for purposes of determining appropriate drug treatment and social services for the offender and recommending an appropriate treatment plan.

The Department of Alcohol and Drug Addiction Services is designated as the lead agency for purposes of implementing the bill's provisions. The bill creates the Substance Abuse Treatment Fund in the state treasury, the moneys of which must be used to pay for the costs of providing treatment programs for offenders granted drug treatment intervention.

Eligibility for drug treatment intervention

First- or second-time offenders

Under the bill, a "first- or second-time offender" (see "**Definitions**," below) is eligible for drug treatment intervention if the court finds all of the following:¹

(1) The offender is charged with an illegal possession or use of a controlled substance offense.

(2) The offender has not been convicted of, pleaded guilty to, or served a jail term or prison term for a violent felony within five years of committing the current offense.

(3) The offender has not been sentenced to a jail term, prison term, or community control sanction that would interfere with the offender's participation in the treatment plan.

(4) In the same proceeding in which the offender requests the drug treatment intervention, the offender is not charged with, does not plead guilty to, and is not convicted of any of the following:

(a) Any felony other than an illegal possession or use of a controlled substance offense, any misdemeanor offense involving theft, or any misdemeanor that involved causing or threatening to cause physical harm to another;

(b) A state or municipal offense that involved the trafficking, sale, or manufacture of a controlled substance;

(c) A state or municipal offense that involved the possession of a controlled substance and either the intent to traffic in, sell, or manufacture a controlled substance or the purpose of trafficking in, selling, or manufacturing a controlled substance;

(d) State OVI or a municipal OVI offense.

Repeat offenders

A "repeat offender" (see "**Definitions**," below) is eligible for drug treatment intervention if the court finds that the offender satisfies all of the eligibility

¹ R.C. 2951.042(B)(1).

requirements for a first- or second-time offender and that treatment is in the best interests of the offender and the public.²

Other situations

If an offender does not qualify for drug treatment intervention under the provisions described for "**First- or second-time offenders**" or "**Repeat offenders**," above, solely because the offender in the same proceeding was charged with, was convicted of, or pleaded guilty to a felony other than an illegal possession or use of a controlled substance offense, a misdemeanor theft offense, or a misdemeanor that involved causing or threatening to cause physical harm to another, the court nonetheless may find the offender eligible if the court finds all of the following:³

(1) The offense or offenses that disqualify the offender resulted from drug abuse or addiction and do not include a violent felony or misdemeanor offense that involved causing or threatening to cause physical harm to another.

(2) Treatment of the offender is in the best interests of the offender and the public.

(3) The prosecuting attorney has not proved that the offender poses a danger to the safety of others.

Request for drug treatment intervention and initial determination

The bill authorizes an offender who is charged with, or who has pleaded guilty to or been convicted of an "illegal possession or use of a controlled substance offense" (see "**Definitions**," below) but upon whom sentence has not yet been imposed, to file a request for drug treatment intervention. The request must include a waiver of the offender's right to a speedy trial and a waiver of the offender's right to a preliminary hearing, the time period within which the grand jury may consider an indictment against the offender, and arraignment, unless the hearing, indictment, or arraignment has already occurred.

Upon receiving a request, the court must stay all criminal proceedings related to the involved illegal possession or use of a controlled substance offense until the court enters its final determination as to whether the offender is eligible for treatment. The court must make an initial determination as to whether the offender is eligible within

² R.C. 2951.042(B)(2).

³ R.C. 2951.042(B)(3).

three days of receiving the request. The court may make this initial determination with or without a hearing.

If the court makes an initial determination that an offender is not eligible for drug treatment intervention without a hearing, the offender, within three days of that initial determination, may request a hearing before the determination becomes final. If the offender requests a hearing, the court must conduct a hearing within seven days of the request and, within three days after the conclusion of the hearing, must enter its final determination as to whether the offender is eligible for drug treatment intervention. If the offender does not request a hearing within three days of the initial determination, the initial determination becomes final.⁴

Final determination; treatment

Upon determination that offender is eligible

If the court makes a final determination that the offender is eligible for drug treatment intervention, the court is required to demand from the offender a written commitment to proceed with an assessment by a "qualified treatment professional" (see "**Definitions**," below) and a "preliminary confidentiality waiver" (see "**Definitions**," below) executed by the offender, which waiver is non-revocable.⁵ If the offender provides the documents, the court must do all of the following:⁶

(1) Accept the offender's request;

(2) Stay all criminal proceedings, including sentencing, that relate to the illegal possession or use of a controlled substance offense;

(3) Order the release of the offender if the offender is in custody due to the stayed criminal proceedings. The release may be into a residential treatment facility for not more than seven days for the purpose of conducting the assessment of the offender. No court that accepts an offender's request for drug treatment intervention is permitted to sentence the offender to a jail term, prison term, residential community control sanction, or term of incarceration unless the offender is removed from treatment under the bill's provisions.

(4) Designate a qualified treatment professional and order that individual to assess the offender for the purposes of determining the offender's addiction severity

⁴ R.C. 2951.042(C).

⁵ R.C. 2951.042(C)(4).

⁶ R.C. 2951.042(C)(4)(a).

and need for treatment, determining the types of drug treatment and social services that might be appropriate for the offender, and recommending an appropriate treatment plan. The qualified treatment professional must report the results of the assessment and make the recommendations to the court within seven days of the order. The court may grant the qualified treatment professional additional time to report the results and make the recommendations, if the individual notifies the court that additional time is required.

If the offender fails to provide the documents demanded by the court within a reasonable period of time as determined by the court, the offender's request for drug treatment intervention may be deemed withdrawn and the criminal proceedings against the offender may resume. If the offender has been determined to be eligible for drug treatment intervention but the offender's request is withdrawn under this provision, and if the offender is convicted of or pleads guilty to the illegal possession or use of a controlled substance offense, the offender must be sentenced for that offense, notwithstanding the Felony and Misdemeanor Sentencing Law, to a jail term or term in a community-based correctional facility of not more than 90 days.⁷

Upon determination that offender is not eligible

If the court makes a final determination that the offender is not eligible for drug treatment intervention, the court must resume the criminal proceedings against the offender as if the offender's request had not been made, except for both of the following:⁸

(1) The time within which the trial must be conducted is tolled for a number of days equal to the number of days between the day the request was made and the day the court's determination that the offender is not eligible becomes final.

(2) If the offender is a repeat offender who satisfies all of the eligibility requirements the bill prescribes for a first- or second-time offender and if the offender is convicted of or pleads guilty to the illegal possession or use of a controlled substance offense, notwithstanding the Felony and Misdemeanor Sentencing Law, the court must not sentence the offender to a prison term for that offense and may sentence the offender to a jail term or term in a community-based corrections facility of not more than 90 days.

The bill states that its provisions do not limit or prohibit the application of any other provision of law regarding treatment or treatment in lieu of conviction for persons

⁷ R.C. 2951.042(C)(4)(b); conforming changes in R.C. 2929.12 and 2929.22.

⁸ R.C. 2951.042(C)(5).

who are not otherwise eligible for drug treatment intervention. In addition, if a person who files a request for drug treatment intervention has been convicted of or pleaded guilty to, or subsequently is convicted of or pleads guilty to, an illegal possession or use of a controlled substance offense that is the basis of the request, the bill does not limit or prohibit a court that is sentencing the person for that offense from imposing a financial sanction or a nonresidential community control sanction under the Felony and Misdemeanor Sentencing Law, unless the sanction clearly is inconsistent with the bill's provisions.⁹

Procedure upon accepting request for drug treatment intervention

If the court grants an offender's request for drug treatment intervention, the qualified treatment professional, after conducting an assessment of the offender, must prepare and submit to the court a treatment plan that does all of the following: (1) proposes the type and duration of the "treatment program" (see "**Definitions**," below) or programs that the offender should receive, which duration cannot exceed 12 months, (2) proposes methods of monitoring the offender's progress while in treatment, and (3) contains a list of "treatment providers" (see "**Definitions**," below) capable of administering the proposed treatment program or programs.¹⁰

The court must review the treatment plan and adopt it as submitted if the court finds that the plan is satisfactory and complies with the bill's provisions. If the court finds that the treatment plan submitted does not comply with the bill or is otherwise unsatisfactory, it must request the designated qualified treatment professional to submit a revised treatment plan.

From the list of treatment providers submitted with the treatment plan, the court must designate an appropriate treatment provider to administer the treatment plan. The treatment provider so designated is required to provide all services called for in the treatment plan or ensure access to any services that the provider does not offer. The court may appoint the qualified treatment professional who submitted the treatment plan as the treatment provider only if no other treatment provider is available.¹¹

The court must also designate a qualified treatment professional to serve in a continuing role as an independent monitor of the offender's progress in treatment. The monitor may be the same qualified treatment professional who assessed the offender. The bill requires the independent monitor to communicate with the offender, the

⁹ R.C. 2951.042(D); conforming changes in R.C. 2929.12 and 2929.22.

¹⁰ R.C. 2951.043(A).

¹¹ R.C. 2951.043(B) and (C).

treatment provider, and the court as necessary to (1) ensure that the offender is receiving the treatment and services called for in the treatment plan, (2) evaluate progress, (3) make recommendations to the court on possible changes to the treatment plan, and (4) ensure the appropriate and effective implementation of the treatment plan.

The bill authorizes the court to add reasonable conditions to the offender's terms of release to ensure compliance with the treatment plan and other court orders. It also permits the court to require an offender to pay the portion of the cost of the offender's participation in a treatment plan that the offender is reasonably able to pay. But the payment cannot be so burdensome as to make participation in a treatment plan inaccessible or be excessive or punitive in nature.

Generally, a court is prohibited from requiring an offender to waive confidentiality of medical or treatment information as a condition for participating in a treatment plan. But the court may require the offender to give written consent for the treatment provider to disclose to the court drug and alcohol abuse treatment information that includes "objective data" (see "**Definitions**," below) generated during treatment but not confidential communications. The written consent is in addition to the preliminary confidentiality waiver, is irrevocable, and must be in a form that complies with all applicable federal and state laws and regulations governing the confidentiality of drug and alcohol abuse treatment information.¹²

If the offender does not agree to the terms and conditions imposed by the court or if, during the course of the treatment plan, the offender requests to be withdrawn from the treatment plan, the court may consider the offender's request for drug treatment intervention withdrawn and may resume the criminal proceedings against the offender as if the offender's request had not been made, except for the following:¹³

(1) The time within which the trial must be conducted is tolled for a number of days equal to the number of days between the day the request was made and the day the offender's request is considered to be withdrawn.

(2) No person may use otherwise confidential drug or alcohol abuse treatment information made available to the court under the bill's provisions in any civil or criminal proceeding without the offender's prior written consent.

(3) If the offender is convicted of or pleads guilty to the illegal possession or use of a controlled substance offense, the court must sentence the offender for that offense,

¹² R.C. 2951.043(D) to (G).

¹³ R.C. 2951.043(H); conforming changes in R.C. 2929.12 and 2929.22.

notwithstanding the Felony and Misdemeanor Sentencing Law, to a jail term or term in a community-based correctional facility of not more than 90 days.

The court must order the offender to participate in and cooperate with the treatment program or programs for the period of time designated in the treatment plan. The court may extend this period of time only if, based on information provided by a qualified treatment professional who has assessed the individual, the court finds by clear and convincing evidence that an extension is necessary for treatment to be successful. But the court is prohibited from extending the length of the treatment plan more than six months; the total length of treatment required under an extended treatment plan cannot exceed a total of 18 months and in no case can court supervision of any offender extend more than 90 days after the end of treatment.

Generally, the court is required to order the offender to appear for treatment according to the treatment plan not later than 14 days after the court has determined the offender to be eligible for drug treatment intervention. Because of lack of space or other good cause shown, the court may authorize an extension of the date for entry into treatment.¹⁴

Modification of the treatment plan

Under the bill, the offender's treatment provider must notify the court and the independent monitor if the treatment provider determines either of the following during the course of the offender's treatment: (1) the treatment being provided is unsuitable for the offender or (2) the treatment provider may not practicably continue to administer the treatment plan. Upon receiving the notice, the court, after notice and an opportunity for a hearing and subject to the recommendation of a qualified treatment professional, may modify the terms of the treatment plan, designate a new or additional treatment provider, or both to ensure that the offender receives an alternative treatment program or related programs. If the court does not modify the treatment plan, it may request that the originally designated treatment provider resume care for the offender.

The independent monitor of the offender's treatment plan must notify the court if the monitor determines either of the following during the course of the offender's treatment: (1) the treatment being provided is unsuitable for the offender or (2) necessary services are not being provided or will not be provided as called for in the treatment plan. Upon receiving the notice, the court, after notice and an opportunity for a hearing and subject to the recommendation of a qualified treatment professional, may modify the terms of the treatment plan, designate a new or additional treatment

¹⁴ R.C. 2951.043(I) and (J).

provider, or both to ensure that the offender receives an alternative treatment program or related programs as necessary to address the problems or deficiencies reported by the monitor. If the court does not modify the treatment plan, it may order the originally designated provider to resume care for the offender.¹⁵

Violations of the terms of the treatment plan

Expulsion by treatment provider

Under the bill, a treatment provider may expel an offender receiving treatment from the program if the offender commits a major violation of that program's rules or repeatedly fails to make required payments. If the treatment provider expels an offender, the treatment provider must notify the court of the expulsion.¹⁶

Violations that are not drug related

If an offender participates in a treatment plan and violates the terms of that treatment plan either by committing an offense that is not an illegal possession or use of a controlled substance offense or by violating a condition for that treatment set by the court that is not drug related, the court must conduct a hearing to consider evidence of the offense or violation and to determine whether the offender should be removed from treatment, have the level of care increased, or otherwise be sanctioned. If the offender has been convicted of a new offense that is not an illegal possession or use of a controlled substance offense, the court may remove the offender from the treatment plan if the court also finds by a preponderance of the evidence that the severity of the offense justifies removal, that the offense indicates that the individual poses a danger to the safety of others, or both. If the court finds by clear and convincing evidence that the offender violated a condition of the treatment plan set by the court that is not drug related, the court may remove the offender from the treatment plan if the court also finds by clear and convincing evidence that the severity of the offense justifies removal, that the offense indicates that the individual poses a danger to the safety of others, or both.

If the court does not remove the offender from treatment after finding that an offense or violation occurred, the court may amend the offender's treatment plan to modify or intensify the form of treatment and to extend the period of treatment, subject

¹⁵ R.C. 2951.044(A)(1) and (2).

¹⁶ R.C. 2951.044(A)(3).

to the recommendations of a qualified treatment professional. The court also may impose proportionate sanctions for the offense or violation.¹⁷

Drug-related violations

If an offender participates in a treatment plan, and is alleged to have committed a severe drug-related violation or multiple drug-related violations of the plan, a different procedure applies. In those circumstances, the court may hold a hearing to consider evidence of the violation or violations and necessary responses, including sanctions, amendment of the treatment plan to modify or increase the level of care, or removal of the offender from treatment. If, at the hearing, the court finds by clear and convincing evidence that the offender committed the violation or violations, and if the court finds this conduct to be a serious disruption of the treatment plan, the bill requires the court to impose a different set of dispositions than for violations that are not drug related.

If the court has *not previously* found the offender to have seriously disrupted the treatment plan during the current course of treatment, the court must consider evidence that the offender poses a danger to the safety of others. If the court finds by clear and convincing evidence that the offender poses a danger to the safety of others, the court may remove the offender from treatment. If the court does not so find, the court may amend the offender's treatment plan to modify or intensify the form of treatment and to extend the period of treatment, subject to the recommendations of a qualified treatment professional. The court may impose proportionate sanctions for the serious disruption of the treatment plan other than a jail term, a prison term, a residential community control sanction, or a term of incarceration.

If the court *once previously* found the offender to have seriously disrupted the treatment plan, the court must consider evidence that the offender poses a danger to the safety of others or is "not amenable to treatment" (see "**Definitions**," below). If the court finds by clear and convincing evidence that either applies, the court may remove the offender from treatment. If the court does not so find, the court may amend the offender's treatment plan to modify or intensify the form of treatment and to extend the period of treatment, subject to the recommendations of a qualified treatment professional. The court may impose proportionate sanctions for the serious disruption of the treatment plan other than a jail term, a prison term, a residential community control sanction, or a term of incarceration.

If the court *two or more times previously* found the offender to have seriously disrupted the treatment plan, the court may remove the offender from treatment. If the court does not remove the offender from treatment, the court may amend the offender's

¹⁷ R.C. 2951.044(B).

treatment plan to modify or intensify the form of treatment and to extend the period of treatment, subject to the recommendations of a qualified treatment professional. The court may impose proportionate sanctions for the serious disruption of the treatment plan.

If the court extends the period of treatment pursuant to these provisions, the total period of treatment required cannot exceed 18 months.¹⁸

Proceedings against the offender; sentence

If the offender has not pleaded guilty to or been convicted of the charge of the illegal possession or use of a controlled substance offense that gave rise to the request for drug treatment intervention and is removed from a treatment plan pursuant to the above provisions, the court may continue with the criminal proceedings against the offender. If the offender pleads guilty to or is convicted of the offense, notwithstanding the Felony and Misdemeanor Sentencing Law, the court may sentence the offender for that offense to a jail term or a term in a community-based correctional facility or halfway house that does not exceed 90 days.

If the offender has pleaded guilty to or been convicted of the illegal possession or use of a controlled substance offense that gave rise to the request and is removed from a treatment plan pursuant to the above provisions, notwithstanding the Felony and Misdemeanor Sentencing Law, the court may sentence the offender to a jail term or a term in a community-based correctional facility or halfway house that does not exceed 90 days.

If an offender is removed from a treatment plan pursuant to the above provisions and has had other criminal charges or proceedings stayed by the court, the court may continue with the proceedings related to those other charges, without any limitation by the bill's provisions.¹⁹

End of period of time for treatment

Subject to the provisions described below, if the treatment provider notifies the court that the offender has successfully completed the treatment plan or the treatment plan as modified, and if the offender had not pleaded guilty to or been convicted of the illegal possession or use of a controlled substance offense, the court must dismiss the stayed proceedings against the offender without an adjudication of guilt but may order continued supervision of the offender for up to 90 days. The bill states that the

¹⁸ R.C. 2951.044(C).

¹⁹ R.C. 2951.044(D); conforming changes in R.C. 2929.12 and 2929.22.

successful completion and the dismissal are not a criminal conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime. If the offender pleaded guilty to or was convicted of the illegal possession or use of a controlled substance offense, the court must dismiss the stayed proceedings against the offender without imposing sentence but may order continued supervision of the offender for up to 90 days. In either case, court supervision is prohibited from extending more than 90 days.²⁰

If the treatment provider notifies the court that the period of time designated in the treatment plan, or the treatment plan as modified, has expired, but that, in the opinion of the treatment provider, the offender has not successfully completed the treatment plan, the court, after consulting the treatment provider and the independent monitor, may do any of the following:²¹

(1) Issue an order that modifies the treatment plan and extends the period of treatment, provided that the total required treatment period does not exceed 18 months;

(2) Issue an order that dismisses the stayed proceedings, terminates the treatment plan, and continues supervision of the offender for up to 90 days. The continued supervision cannot include a jail term, prison term, or community residential sanction.

(3) Issue an order that dismisses the stayed proceedings and terminates the treatment plan with a finding that the offender has either successfully completed the treatment plan or completed the treatment plan without a determination of successful completion.

Sealing of records

Notwithstanding the Sealing of Criminal Conviction Records Law (R.C. 2953.31 to 2953.36, not in the bill), any offender who is the subject of an order issued as a result of the offender successfully completing treatment under the drug treatment intervention mechanism may apply to the court that issued the order for the sealing of the official records pertaining to the illegal possession or use of a controlled substance offense. The application may be filed at any time after 90 days subsequent to the date the court issues the order. Upon receiving the motion, the court must consult with the offender's treatment provider and, in the court's discretion, the independent monitor, to determine whether the offender has successfully completed treatment. If the court finds by a preponderance of the evidence that the offender successfully completed treatment,

²⁰ R.C. 2951.045(A).

²¹ R.C. 2951.045(B).

the court must order all official records pertaining to the illegal possession or use of a controlled substance offense sealed. Except as provided below, the court must order the sealing of records in the manner provided in the Sealing of Criminal Conviction Records Law and, except as described below, all law enforcement records of sealed records of illegal possession or use offenses are confidential and not subject to any disclosure.

Notwithstanding the sealing of records related to the offense in question, the bill requires law enforcement agencies to keep records of offenders' arrests, convictions, and referrals to treatment for any illegal possession or use of a controlled substance offense. The records must be maintained exclusively for the following purposes:

(1) Enabling prosecutors and courts to have information about the number of prior illegal possession or use of a controlled substance offenses for a person who subsequently is charged with or pleads guilty to or is convicted of an illegal possession or use of a controlled substance offense;

(2) To conduct criminal record checks for persons applying for a position as a law enforcement officer.

Neither the successful completion of the treatment plan nor the sealing of records relieve an offender of the obligation to disclose the arrest and any sealed or expunged conviction in response to any direct question contained in any questionnaire or application for a position as a law enforcement officer.²²

Definitions

The bill enacts the following definitions for use in the drug treatment intervention provisions it enacts:²³

"Controlled substance" has the same meaning as in existing R.C. 3719.01. In R.C. 3719.01(C), "controlled substance" means a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V of the controlled substances schedules.

"First- or second-time offender" means any of the following:

(1) A person who, on *or* after the bill's effective date, is charged with, has been convicted of, or has pleaded guilty to an illegal possession or use of a controlled substance offense and who is not a repeat offender.

²² R.C. 2951.045(C).

²³ R.C. 2951.042(A).

(2) A person who, *on* the bill's effective date, is out of custody and on probation or under a community control sanction for an illegal possession or use of a controlled substance offense, who is not a repeat offender as determined in relation to that illegal possession or use of a controlled substance offense, and who, *on or after* the bill's effective date, commits a drug-related violation of the terms or conditions of the probation or sanction.

"Illegal possession or use of a controlled substance offense" means a violation of a provision of the Revised Code or a municipal ordinance that prohibits any of the following:

(1) Having, holding, controlling, obtaining, or storing a quantity of a controlled substance that the court determines to be consistent with personal consumption or use;

(2) Consuming, using, or being under the influence of a controlled substance;

(3) Any other act not described in (1) or (2) that is incidental to drug possession or use and that does not involve causing or threatening to cause physical harm to another, including possession of drug paraphernalia, purchase of a controlled substance, and transportation of a controlled substance, when the other act is merely an extension of possession for personal use.

"Not amenable to treatment" means that one or more of the following apply to a person:

(1) The person has repeatedly committed serious violations of treatment program rules that inhibit the person's ability to function in the treatment program.

(2) The person has continually refused to participate in a treatment program.

(3) The person has asked to be removed from a treatment plan adopted by the court.

"Objective data" means confidential drug and alcohol treatment information that is specific and quantified, such as attendance records, drug test results, and progress reports. "Objective data" does not include confidential communications made by a patient to a treatment provider or program in the course of diagnosis, treatment, or referral for treatment for drug or alcohol abuse.

"Offender" means a person who (1) has been convicted of or pleaded guilty to an illegal possession or use of a controlled substance offense, (2) has been charged with an illegal possession or use of a controlled substance offense, but who has not been convicted of or pleaded guilty to that offense, or (3) is out of custody and on probation

or under a community control sanction for an illegal possession or use of a controlled substance offense and who commits a drug-related violation of the terms of the probation or sanction.

"Preliminary confidentiality waiver" means an offender's written consent for limited disclosure of information to the involved court by a qualified treatment professional to be designated by the court, as necessary to and provided for in the bill for the assessment of the offender and the creation of a treatment plan for the offender, which written consent is governed by, and in a form that satisfies the requirements of, federal and state law and regulations protecting the confidentiality of drug and alcohol abuse treatment information.

"Qualified treatment professional" means an individual who is appropriately credentialed by certification or licensing, who has specialized knowledge, skill, experience, training, or education in the areas of mental health, substance abuse, or addiction therapy, and who has the expertise needed to conduct the addiction and life skills assessments necessary to determine an offender's suitability to one or more forms of treatment and to recommend an appropriate treatment plan or serve as an independent monitor of an offender's treatment plan.

"Repeat offender" means a person who, on or after the bill's effective date, is charged with, has pleaded guilty to, or has been convicted of an illegal possession or use of a controlled substance offense and to whom one or both of the following applies:

(1) Within five years of the offense, the person previously has been convicted of or pleaded guilty to two or more illegal possession or use of a controlled substance offenses.

(2) Within five years of the offense, the person previously has participated in two or more courses of treatment under a drug treatment intervention under the bill.

"Request for drug treatment intervention" or **"request"** means a motion filed under the bill that satisfies specified criteria for such a request.

"Treatment program" and **"treatment"** mean a treatment program, rehabilitation program, or treatment and rehabilitation program, or set of programs, designed to reduce or eliminate substance abuse or drug dependency and to increase employability and that is appropriately licensed, certified, or licensed and certified. The program or set of programs may include outpatient treatment, half-way house treatment, sober living environments, narcotic replacement therapy, drug education or prevention courses, or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. The program or set of

programs must include, as the court determines appropriate, access to vocational training, literacy training, family counseling, mental health services, or similar support services. A U.S. Veterans Administration treatment facility may serve as a treatment program for an appropriate offender, irrespective of state licensure. "Treatment program" and "treatment" do not include programs offered to a person in a prison or jail facility or in another form of incarceration.

"Treatment provider" means an appropriately licensed, certified, or licensed and certified provider or facility, or an appropriately licensed and credentialed professional, that is recognized by the lead agency and provides a treatment program or treatment.

"Violent felony" means any felony that includes as one or more elements of the offense that the offender has caused or threatened to cause physical harm to any person.

Licensing of certain occupations and professions and employment

Under existing law, an individual's certificate or license for, or authority to engage in, certain occupations and professions may be denied, suspended, revoked, or sanctioned due to the individual's guilty plea, conviction, or judicial finding of eligibility for intervention in lieu of conviction for various criminal offenses. The bill specifies that the use of the phrase "intervention in lieu of conviction" in these certification and licensing provisions refers to the procedure under existing law and makes conforming changes (see "**Background – intervention in lieu of conviction,**" below). The occupations and professions to which these provisions apply are dentists, dental hygienists, embalmers, funeral directors, nurses, physician assistants, physicians, limited practitioners, chiropractors, anesthesiologist assistants, respiratory care professionals, podiatrists, pharmacists, pharmacy interns, optometrists, veterinarians, acupuncturists, persons licensed by the State Board of Emergency Medical Services, radiologist assistants, certain providers under agreement with the Department of Job and Family Services, and employees of certain waiver agencies providing specified services through that Department.²⁴

Relationship to intervention in lieu of conviction

The bill includes in the existing provisions that govern intervention in lieu of conviction statements specifying that that mechanism is separate from, and independent of, drug treatment intervention under the bill and that an offender charged with illegal possession or use of a controlled substance who has made a request for

²⁴ R.C. 109.572, 3719.121, 3719.70, 4715.30, 4717.05, 4717.14, 4723.28, 4730.14, 4730.25, 4730.31, 4730.48, 4731.22, 4731.223, 4731.281, 4734.31, 4760.06, 4760.13, 4760.15, 4761.09, 4762.06, 4762.13, 4762.15, 4765.112, 4774.06, 4774.13, 4774.15, 5111.032, 5111.033, and 5111.034.

drug treatment intervention under the bill is not eligible for intervention in lieu of treatment.²⁵

Implementation provisions

Lead agency

The bill identifies the Department of Alcohol and Drug Addiction Services as the lead agency for its implementation. The bill requires the lead agency to promulgate regulations for the implementation of the drug treatment intervention program and the provisions described under this part of the analysis, consistent with its purposes and intent. The lead agency must ensure that recipient counties or multi-county regional bodies provide a diversity of treatment programs to ensure the availability of a continuum of services from low-threshold to residential drug treatment, as well as services designed for the special needs of women and parents, pregnant women, and other culturally and linguistically diverse populations.²⁶

Distribution of funds

The bill creates the Substance Abuse Treatment Fund in the state treasury for the purposes of the drug treatment intervention program.²⁷ Generally, the director of the lead agency must distribute annually all moneys appropriated to the Substance Abuse Treatment Fund to the lead agency's affiliated agencies or bodies in counties or multi-county regions. These moneys must be used to pay for the costs of providing treatment programs for offenders granted a request for treatment under the bill's provisions and for persons placed in treatment for a drug-related violation of the terms of their release from prison.

The bill requires the director of the lead agency to establish a fair and equitable distribution formula for estimating the need for funds of the various counties and multi-county regions. The formula must include factors such as population, the number of arrests for illegal possession or use of a controlled substance offenses, substance abuse treatment and rehabilitation services caseload, the need for infrastructure and professional development to provide treatment and rehabilitative services, and any other factor the director of the lead agency deems appropriate. The director must use this formula to determine the allocation of the moneys in the Substance Abuse Treatment Fund among each of the counties and multi-county regions. The lead agency

²⁵ R.C. 2951.041.

²⁶ Section 5(A) and (B).

²⁷ R.C. 2951.042(E).

also may reserve up to 5% of the moneys available in the Fund to pay the lead agency's administrative costs associated with the implementation provisions. The lead agency also may reserve up to 1% of the moneys available in the Fund to pay for a long-term study of the offender populations and treatment programs affected by the bill.

Each county or multi-county region must spend at least 85% of the moneys it receives under the provision described in the preceding paragraph on the provision of community-based treatment and rehabilitation services to offenders granted a request for treatment under the bill or persons who commit drug-related violations of the terms of judicial release or supervised release from prison. The bill prohibits a county or multi-county region from devoting, in any fiscal year, more than 15% of the funds it receives to expenses other than treatment necessitated by the bill, including, but not limited to, administration costs for treatment providers, transportation for offenders to treatment, additional probation department costs, and court costs. The director of the lead agency may stipulate permissible uses of non-treatment funds and may annually set the percentage of available moneys that may be used for treatment of persons on judicial release or supervised release from prison.

Each county or multi-county regional body receiving funds under the provision described in the second preceding paragraph must submit to the lead agency annual reports detailing the use of funds provided. The reports are subject to annual audits by the Auditor of State. The director of the lead agency may require more frequent reports.²⁸

Lead agency collection of data

The bill requires the lead agency to collect and publish annually data to evaluate the effectiveness and financial impact of the treatment programs implemented under the bill. The study must include, but is not limited to, all of the following: (1) a review of the implementation process, (2) case dispositions for offenders found eligible for treatment under the bill, (3) any changes in overall drug-related costs of probation, incarceration, and supervised release, (4) changes in recidivism rates for nonviolent drug offenders, (5) reductions in crime, (6) reductions in prison and jail construction, (7) changes in health outcomes for drug users, (8) reduced welfare costs, (9) employment levels for persons completing treatment funded under the provisions described in "**Distribution of funds**," above, (10) comparisons of treatment modalities, (11) the adequacy of funds appropriated, and (12) other impacts or issues identified by the lead agency.

²⁸ Section 5(C) to (E).

The bill also requires the lead agency to seek to collect data on the race, gender, and age of drug offenders, and demographic information on types and numbers of controlled substances arrests, prosecutions, diversions to treatment, and completion of treatment.²⁹

Statement of legislative purpose

The bill states the General Assembly's purposes and intent in enacting the bill are as follows:³⁰

(1) To break the cycle of drug use, addiction, and crime as early as possible by guaranteeing the opportunity for treatment and rehabilitation services to non-violent drug users entering the criminal justice system;

(2) To halt the wasteful expenditure of millions of dollars each year on the incarceration and re-incarceration of non-violent drug users who would be better served by more cost-effective treatment and rehabilitation and to promote medical and public health responses to drug abuse that reject incarceration for non-violent defendants charged with a drug possession or use offense;

(3) To provide substance abuse treatment and rehabilitation programs to non-violent defendants charged with a drug possession or use offense, in order to reduce or eliminate substance abuse and addiction and increase the employability of such persons;

(4) To enhance public safety by reducing drug use-related crime and by preserving jail and prison cells for serious and violent offenders and to improve public health by reducing drug abuse and dependence through professionally supervised drug treatment programs;

(5) To rest responsibility for the treatment and supervision of non-violent defendants charged with a drug possession or use offense with qualified treatment professionals, with appropriate links to the criminal justice system, and to ensure that drug testing is used as a treatment tool, with relapse understood to often be a part of the process of recovery signaling the need for a consequence or increase in the level of care, and not discontinuation of treatment;

(6) To maintain existing efforts in Ohio to prevent drug use and to provide treatment and rehabilitation to substance users and abusers, regardless of whether they

²⁹ Section 5(F).

³⁰ Section 4.

are involved in the criminal justice system, without reducing funding for such efforts in order to pay for treatment programs made necessary by the bill.

Statement of legislative intent

The bill states that the General Assembly expresses its intention to do the following:³¹

(1) Maintain its prior efforts to provide substance abuse treatment and rehabilitation during at least the first six fiscal years following the effective date of the bill.

(2) During the six-year period described in (1), have the funding relative to substance abuse treatment appropriated in the bill, and funding relative to such treatment similarly appropriated in subsequent acts during that period, supplement, not supplant, funding for other substance abuse prevention and treatment programs and other rehabilitation programs and support services, such as vocational training, literacy training, family counseling, and mental health services operating prior to the bill's enactment.

(3) During the six-year period described in (1), continue to appropriate funds for substance abuse prevention and treatment programs and other related rehabilitation programs in amounts equal to or greater than the amounts appropriated for substance abuse prevention and treatment programs and other rehabilitation programs in fiscal year 2005, in constant 2006 dollars, without taking into account any funds from the Substance Abuse Treatment Fund.

Appropriation; effective dates

The bill specifies that, on July 1 of fiscal year 2012 and fiscal year 2013, or as soon as possible thereafter, the Director of Budget and Management must transfer \$38 million in cash from the General Revenue Fund to the Substance Abuse Treatment Fund, as established by the bill. The bill includes an appropriation of the transferred cash. Within the limits set forth in the bill, the Director of Budget and Management is required to establish accounts indicating source and amount of funds for each appropriation made in the bill and to determine the form and manner in which appropriation accounts must be maintained. Expenditures from appropriations contained in the bill must be accounted for as though made in the main operating appropriations act of the 129th General Assembly. The appropriations made in the bill

³¹ Section 6.

are subject to all provisions of the main operating appropriations act of the 129th General Assembly that are generally applicable to such appropriations.³²

The bill provides that the codified and uncodified sections of law contained in the bill, and the items of law of which the codified and uncodified sections of law contained in the bill are composed, are not subject to the referendum. Therefore, the codified and uncodified sections of law contained in the bill, and the items of law of which the codified and uncodified sections of law contained in the bill are composed, can go into immediate effect when the bill becomes law.³³

However, the bill states that its codified sections of law take effect on January 1, 2012. The bill also states that the codified sections of law contained in it apply to all charges of an illegal possession or use of a controlled substance offense, as that term is defined for the bill's drug treatment intervention, and all proceedings involving an illegal possession or use of a controlled substance offense in which sentence has yet to be imposed that are before a court on or after January 1, 2010.³⁴

Background – intervention in lieu of conviction

Existing law provides for intervention in lieu of conviction in specified circumstances.³⁵

Eligibility

Under existing law, an offender is eligible for intervention in lieu of conviction if the court finds all of the following:

(1) The offender previously has not been convicted of or pleaded guilty to a felony, previously has not been through intervention in lieu of conviction or any similar regimen, and is charged with a felony for which the court would impose a community control sanction or is charged with a misdemeanor.

(2) The offense is *not* a first, second, or third degree felony, an offense of violence, aggravated vehicular homicide, aggravated vehicular assault, state or municipal OVI, or an offense subject to a mandatory prison term, a mandatory term of local incarceration, or a mandatory jail term.

³² Section 7.

³³ Section 8.

³⁴ Section 3.

³⁵ R.C. 2950.041.

(3) The offense is *not* corrupting another with drugs, a drug trafficking offense, illegal manufacturing of drugs, illegal cultivation of marihuana, or illegal administration or distribution of anabolic steroids, and is not a drug possession offense that is a felony of the first, second, or third degree.

(4) The offender is not charged with a fourth degree felony drug possession offense or is charged with such an offense and the prosecutor recommended that the offender be eligible for intervention in lieu of conviction.

(5) The offender has been assessed by a licensed provider, certified facility, or licensed and credentialed professional for the purpose of determining the offender's eligibility for intervention in lieu of conviction and recommending an appropriate intervention plan.

(6) The offender's drug or alcohol usage was a factor leading to the offense and intervention in lieu of conviction would not demean the seriousness of the offense and would substantially reduce the likelihood of any future criminal activity.

(7) The alleged victim of the offense was *not* 65 or older, permanently and totally disabled, under 13, or a peace officer engaged in official duties at the time of the offense.

(8) If the offense is tampering with drugs, the offense did not result in physical harm to any person, and the offender previously has not been treated for drug abuse.

(9) The offender is willing to comply with all terms and conditions imposed by the court under the order granting intervention in lieu of conviction.

Request for intervention in lieu of conviction

If an offender is charged with a criminal offense and the court has reason to believe that drug or alcohol usage by the offender was a factor leading to the offense, the court may accept, prior to the entry of a guilty plea, the offender's request for intervention in lieu of conviction. The request must include a waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment against the offender, and arraignment, unless the hearing, indictment, or arraignment has already occurred. The court may reject a request without a hearing. If the court elects to consider a request, the court must conduct a hearing to determine whether the offender is eligible for intervention, must stay all criminal proceedings pending the hearing, and must order an assessment of the offender for determining the offender's eligibility and recommending an appropriate intervention plan.

Court determination; treatment

At the conclusion of the hearing, the court must determine whether the offender is eligible for intervention in lieu of conviction and whether to grant the offender's request. If the court finds that the offender is eligible and grants the request, it must accept the offender's plea of guilty and waiver of rights. In addition, the court then may stay all criminal proceedings and order the offender to comply with all terms and conditions imposed by the court. If the court finds that the offender is not eligible or does not grant the request, the criminal proceedings against the offender must proceed as if the request had not been made.

If the court grants an offender's request, the court must place the offender under the control and supervision of the county probation department, the Adult Parole Authority, or another appropriate local probation or court services agency, as if the offender was subject to a community control sanction. The court must establish an intervention plan for the offender. The terms and conditions of the plan must require the offender, for at least one year from the date on which the court grants the order of intervention, to abstain from the use of illegal drugs and alcohol and to submit to regular random testing for drug and alcohol use. It may include any other treatment terms and conditions, or terms and conditions similar to community control sanctions, that are ordered by the court.

Violations of terms of treatment plan

If the court grants an offender's request for intervention in lieu of conviction and the offender fails to comply with any term or condition imposed as part of the intervention plan, the supervising authority promptly must advise the court of this failure. The court then must hold a hearing to determine whether the offender failed to comply with any term or condition imposed as part of the plan. If the court determines that the offender has failed to comply with any of those terms and conditions, it must enter a finding of guilty and impose an appropriate sanction under the Felony and Misdemeanor Sentencing Law.

End of period of time for treatment; sealing of records

If the court grants an offender's request for intervention in lieu of conviction and the court finds that the offender has successfully completed the intervention plan, including all terms and conditions ordered by the court, it must dismiss the proceedings against the offender. Successful completion of the intervention plan must be without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law upon conviction of a crime. The court may order the sealing of records related to the offense in question in the manner provided in the Sealing of Criminal Conviction Records Law.

HISTORY

ACTION

DATE

Introduced

02-01-11

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