

SENATE BILL 967

By Niceley

AN ACT to amend Tennessee Code Annotated, Title 40,
relative to criminal procedure.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Drug Treatment Instead of Incarceration Act."

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 20, is amended by adding the following as a new part:

40-20-401.

As used in this part, unless the context otherwise requires:

(1) "Nonviolent drug offense" means an offense involving the possession or sale of a controlled substance, as defined in § 39-17-402, that does not involve the actual, attempted, or threatened use of physical force against another person; and

(2) "Rehabilitative treatment program":

(A) Means the least restrictive rehabilitative treatment program that is appropriate, as determined by clinical assessment;

(B) Must include drug treatment provided by a certified community drug treatment program; and

(C) May include one (1) or more of the following:

(i) Outpatient treatment;

(ii) Halfway house treatment;

(iii) Narcotic replacement therapy;

(iv) Drug education or prevention courses;

- (v) Vocational training;
- (vi) Family counseling;
- (vii) Literacy training;
- (viii) Community service; and
- (ix) Inpatient or residential drug treatment as needed to address severe dependence, special detoxification, or relapse situations.

40-20-402.

(a) When a person is charged with a nonviolent drug offense and consents to a clinical assessment, the court shall order that a clinical assessment be performed on the person. The clinical assessment conducted under this subsection (a) forms the basis for all orders pursuant to this section.

(b) A presumption exists that any person who would otherwise be charged with a nonviolent drug offense for the first time shall, prior to the entry of a guilty plea, be ordered by the court to participate in and complete a rehabilitative drug treatment program. This section applies to all first-time felony and all misdemeanor drug offenders.

(c) Upon application by the defendant, and upon good cause shown, the court may allow a repeat nonviolent felony drug offender to plead guilty to the drug offense and subsequently order the person to participate in and complete a rehabilitative treatment program. The repeat nonviolent felony drug offender shall be sentenced, but the sentence shall be suspended following the defendant's participation in and successful completion of appropriate rehabilitative treatment.

(d) Subsections (b) and (c) shall not apply to any person who:

(1) Has been convicted within the previous five (5) years of a felony involving the use, attempted use, or threatened use of physical force against another person;

(2) Has been convicted in the same proceeding of a felony not related to the use of drugs, in addition to the conviction of the nonviolent drug offense;

(3) Refuses participation in a clinical assessment or rehabilitative treatment program; or

(4) Has two (2) separate convictions for nonviolent drug offenses, has participated in two (2) separate courses of rehabilitative treatment under this section, and is found by the court by clear and convincing evidence to be unsuitable for any available form of rehabilitative treatment.

(e) If during the course of rehabilitative treatment, the treatment provider determines that the defendant is unsuitable for the treatment being provided but may be suitable for other rehabilitative treatment programs, the court may modify the terms of its order to ensure that the person receives the alternative treatment or program.

(f) Nothing in this section requires a defendant to participate in a clinical assessment or rehabilitative treatment program. A person who declines participation shall be prosecuted and sentenced in accordance with otherwise applicable sentencing laws.

40-20-403.

(a) The district attorney may move to proceed with prosecution of any person who participates in a rehabilitative treatment program pursuant to § 40-

20-402 and is arrested for an offense other than a nonviolent drug offense, violates a non-drug-related condition of the order directing that person to a rehabilitative treatment program, or violates a non-drug-related condition of probation. Following a hearing on the district attorney's motion, the court may modify its order directing the person to rehabilitative treatment, modify the conditions of probation, or direct prosecution to proceed.

(b) If the court finds during a hearing on the motion of the district attorney made pursuant to subsection (a) that the person poses a danger to the safety of other persons, the court may direct prosecution to proceed or order that the rehabilitative treatment program be intensified or modified.

(c) If the court directs prosecution to proceed under subsection (a) or (b), in no event shall any person who has failed to successfully complete a rehabilitative treatment offense pursuant to this section receive a sentence that exceeds the sentence the person would have received if the person declined to participate in the rehabilitative treatment program.

(d) If the court directs prosecution of a person to proceed for a first-time felony or any misdemeanor nonviolent drug offense because the person has failed to successfully complete a rehabilitative treatment program pursuant to this section, the trial court shall not sentence the defendant to a term that exceeds thirty (30) days in jail.

(e) If a person has two (2) separate convictions for a nonviolent drug offense, has participated in two (2) separate courses of drug treatment, and is found by the court by clear and convincing evidence to be unsuitable for any available form of drug treatment, the person is not eligible for continued probation

under § 40-20-402. The trial court shall not sentence the person to a term that exceeds ninety (90) days in jail.

(f) Following successful completion of a rehabilitative treatment program pursuant to § 40-20-402(b), a person may petition the court for dismissal of the nonviolent drug offense charges. If the court finds that the defendant successfully completed the prescribed course of treatment and substantially complied with the conditions of probation, the charges against the person will be dismissed.

(g) Following successful completion of a rehabilitative treatment program pursuant to § 40-20-402(c), a person may petition the court for dismissal of the nonviolent drug offense charges. If the court finds that the defendant successfully completed the prescribed course of treatment, the conviction on which the sentence was based shall be set aside, the plea entered by the defendant will be withdrawn, and the charges dismissed.

40-20-404.

(a) There is created a special account in the state general fund to be known as the "substance abuse treatment trust fund," referred to in this part as the "fund." Any fund balance remaining unexpended at the end of a fiscal year shall be carried forward into the subsequent fiscal year. Interest accruing on investments and deposits of the fund shall be carried forward into the subsequent fiscal year. The fund shall consist of appropriations to the fund and donations to the fund from private sources. No part of the fund shall be diverted to the general fund or any other public fund. Moneys in the fund shall be invested by the state treasurer in accordance with the provisions of § 9-4-603, and the funds shall be administered by the department of mental health and substance abuse services. Moneys in the fund shall only be expended in accordance with this part.

(b) The commissioner of mental health and substance abuse services shall distribute monies annually to the counties to fund drug treatment programs under this part.

(c) Annual distribution of monies to counties shall be done using a fair and equitable distribution formula, as determined by the commissioner of mental health and substance abuse services, as necessary to carry out the purposes of this part. The formula includes, but is not limited to, such factors as per capita arrests for controlled substance possession violations and substance abuse treatment case load.

(d) The commissioner of mental health and substance abuse services may reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which demand for drug treatment services is not adequately met by existing rehabilitative treatment programs. Nothing in this section allows any entity to use funds from the fund to supplant funds from any existing funding source or mechanism currently used to provide substance abuse treatment.

40-20-405.

(a) The department of mental health and substance abuse services shall annually conduct a study to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this part.

(b) The study required under subsection (a) shall include, but is not limited to, a study of:

- (1) The implementation process of the programs created by this part;
- (2) Incarceration costs;
- (3) Crime rates;
- (4) Prison and jail construction statistics;
- (5) Welfare costs;

(6) The adequacy of funds appropriated by the fund; and

(7) Any other issues the department identifies as relevant to the rehabilitation programs provided under this part.

SECTION 3. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 4. This act shall take effect July 1, 2017, the public welfare requiring it.