

HOUSE BILL 881

By Dixie

AN ACT to amend Tennessee Code Annotated, Title 16;  
Title 33 and Title 40, Chapter 20, relative to drug  
treatment.

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.** The general assembly finds that:

(1) Substance abuse treatment is proven to be an effective safety and health measure. Nonviolent, drug-dependent offenders who receive treatment are much less likely to abuse drugs and commit future crimes, and are more likely to live healthier, more stable, and more productive lives;

(2) When nonviolent persons convicted of drug possession or drug use are provided appropriate treatment instead of incarceration, communities are healthier and safer, and taxpayer dollars are saved; and

(3) The purpose of this act is to enhance public safety, improve public health, and save public funds.

**40-20-402.** As used in this part:

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

(2) "Rehabilitative treatment program" means the least restrictive rehabilitative treatment program that is appropriate, as determined by clinical assessment. Such a program shall include drug treatment provided by a certified community drug treatment program, and may include one (1) or more of the following:

- (A) Outpatient treatment;
- (B) Halfway house treatment;
- (C) Narcotic replacement therapy;
- (D) Drug education or prevention courses;
- (E) Vocational training;
- (F) Family counseling;
- (G) Literacy training;
- (H) Community service, and
- (I) Inpatient or residential drug treatment as needed to address severe dependence, special detoxification, or relapse situations.

**40-20-403.**

(a) After arraignment, the court shall direct that a clinical assessment be performed of all persons charged with a nonviolent drug offense, with the consent of the person charged. Such clinical assessment shall form the basis for all orders pursuant to this part.

(b) There shall be a presumption that any person arraigned for a nonviolent drug offense for the first time shall, upon the entry of a conditional plea of guilty, be ordered by the court to participate in and complete a rehabilitative drug treatment program. This part shall apply to all first-time felony and all misdemeanor drug offenders.

(c) Upon application and 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 in accordance with applicable

provisions of the laws of this state, but such sentence shall be suspended following participation in and 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) In addition to the conviction of the nonviolent drug offense, has been convicted in the same proceeding of a felony not related to drugs;

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

(4) Has two (2) separate convictions for nonviolent drug offenses, has participated in two (2) separate courses of rehabilitative treatment under this part, 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 person is unsuitable for the treatment being provided but may be suitable for other rehabilitative treatment programs, then the court may modify the terms of its order to ensure that the person receives the alternate treatment program.

**40-20-404.**

(a) If any person participating in a rehabilitative treatment program pursuant to this part is arrested for an offense other than a nonviolent drug offense or violates a non-drug-related condition of the order directing that person to a rehabilitative program, or non-drug-related condition of probation, the prosecuting attorney may move to proceed with prosecution of the original offense, at which time the court shall conduct a hearing.

If the alleged violation is proven by clear and convincing evidence, the court may modify its order or the conditions of probation, or may direct the prosecution to proceed.

(b) If any person participating in a rehabilitative treatment program pursuant to this part is arrested for a nonviolent drug possession offense, or violates a drug-related condition of the order that directs the person to a rehabilitative treatment program, or a drug-related condition of probation, the prosecuting attorney may move to proceed with prosecution of the original offense, at which time the court shall conduct a hearing. If the alleged violation is proven by clear and convincing evidence, and the state provides evidence to the satisfaction of the court that such person poses a danger to the safety of others, the court may direct the prosecution to proceed. Otherwise, the court may order that the rehabilitation treatment program be intensified or modified.

(c) If the court directs the prosecution of the original offense to proceed, in no event shall any person who has failed to successfully complete a rehabilitative treatment program pursuant to this part receive a sentence that exceeds the sentence the person would have received had the person declined to participate in the rehabilitative treatment program.

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

(e) If a defendant 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 program, the defendant is not eligible for continued probation under § 40-20-

403(c). Notwithstanding any other provision of law, the court shall not sentence the defendant to a term exceeding ninety (90) days in jail.

(f) At any time after completion of treatment, a person ordered to a rehabilitative treatment program pursuant to § 40-20-403(b) may petition the court for dismissal of the charges. If the court finds that the person successfully completed the rehabilitative treatment program, the charges will be dismissed in accordance with this part.

(g) At any time after completion of treatment, a defendant sentenced pursuant to § 40-20-403(c) may petition the court for dismissal of the charges. If the court finds 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 will be dismissed.

**40-20-405.**

(a) A special fund to be known as the "Substance Abuse Treatment Trust Fund" is created within the department of mental health and substance abuse services.

(b) The fund shall be administered and distributed in accordance with the provisions of the general appropriations act that may be applicable.

(c) The department shall annually conduct a study to evaluate the effectiveness and financial impact of the programs funded pursuant to this part. The study must include, but not be limited to, a study of the implementation process, a review of incarceration costs, crime rates, prison and jail construction, welfare costs, the adequacy of funds appropriated, and any other issues the department can identify.

SECTION 3. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, 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 are declared to be severable.

SECTION 4. This act shall take effect July 1, 2019, the public welfare requiring it.