

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1467 Session of
1991

INTRODUCED BY O'BRIEN, CALTAGIRONE, NOYE, DEMPSEY, MAIALE,
ULIANA, BELARDI, GRUPPO, DeLUCA, CLARK, J. TAYLOR, KENNEY,
REINARD, HAGARTY, SCHEETZ, RAYMOND, BUSH, GLADECK, BARLEY,
ARMSTRONG, MELIO, SAURMAN, ARGALL, HECKLER, NYCE, LEH, ALLEN,
VROON, PERZEL, KOSINSKI, STISH, CIVERA, M. N. WRIGHT, FARGO,
NAHILL, SERAFINI, D. W. SNYDER, FAIRCHILD, JOHNSON, NICKOL,
STABACK, CLYMER, HAYDEN, BUNT, BATTISTO, FARMER, TOMLINSON,
RIEGER, ADOLPH, FREIND, KRUSZEWSKI, GALLEN, KING, McHUGH,
TRELLO, McGEEHAN, BUTKOVITZ, DENT, DONATUCCI, PICCOLA,
MICOZZIE, FOX, GERLACH, KASUNIC, BILLOW, GEIST AND
RICHARDSON, MAY 15, 1991

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 13, 1991

AN ACT

1 Amending the act of April 14, 1972 (P.L.233, No.64), entitled
2 "An act relating to the manufacture, sale and possession of
3 controlled substances, other drugs, devices and cosmetics;
4 conferring powers on the courts and the secretary and
5 Department of Health, and a newly created Pennsylvania Drug,
6 Device and Cosmetic Board; establishing schedules of
7 controlled substances; providing penalties; requiring
8 registration of persons engaged in the drug trade and for the
9 revocation or suspension of certain licenses and
10 registrations; and repealing an act," further providing for
11 probation without verdict and for certain dispositions.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Sections 17 and 18 of the act of April 14, 1972
15 (P.L.233, No.64), known as The Controlled Substance, Drug,
16 Device and Cosmetic Act, amended October 26, 1972 (P.L.1048,
17 No.263), are amended to read:

1 ~~Section 17. Probation Without Verdict. A person may be~~ <—
2 ~~entitled to probation without verdict under the following~~
3 ~~circumstances:~~

4 ~~(1) [A] Where the prosecuting attorney does not object, a~~
5 ~~person who has not previously been convicted of an offense under~~
6 ~~this act or under a similar act of the United States, or any~~
7 ~~other state, is eligible for probation without verdict if he~~
8 ~~pleads nolo contendere or guilty to, or is found guilty of, any~~
9 ~~nonviolent offense under this act. The court may, without~~
10 ~~entering a judgment, and with the consent of such person, defer~~
11 ~~further proceedings and place him on probation for a specific~~
12 ~~time period not to exceed the maximum for the offense upon such~~
13 ~~reasonable terms and conditions as it may require.~~

14 ~~Probation without verdict shall not be available to any~~
15 ~~person who is charged with violating clause (30) of subsection~~
16 ~~(a) of section 13 of this act and who is not himself a drug~~
17 ~~abuser and who does not prove the fact of such drug abuse to the~~
18 ~~satisfaction of the court.~~

19 SECTION 17. PROBATION WITHOUT VERDICT.--[A PERSON MAY BE <—
20 ENTITLED TO PROBATION WITHOUT VERDICT UNDER THE FOLLOWING
21 CIRCUMSTANCES:

22 (1) A PERSON WHO HAS NOT PREVIOUSLY BEEN CONVICTED OF AN
23 OFFENSE UNDER THIS ACT OR UNDER A SIMILAR ACT OF THE UNITED
24 STATES, OR ANY OTHER STATE, IS ELIGIBLE FOR PROBATION WITHOUT
25 VERDICT IF HE PLEADS NOLO CONTENDERE OR GUILTY TO, OR IS FOUND
26 GUILTY OF, ANY NONVIOLENT OFFENSE UNDER THIS ACT. THE COURT MAY,
27 WITHOUT ENTERING A JUDGMENT, AND WITH THE CONSENT OF SUCH
28 PERSON, DEFER FURTHER PROCEEDINGS AND PLACE HIM ON PROBATION FOR
29 A SPECIFIC TIME PERIOD NOT TO EXCEED THE MAXIMUM FOR THE OFFENSE
30 UPON SUCH REASONABLE TERMS AND CONDITIONS AS IT MAY REQUIRE.

1 PROBATION WITHOUT VERDICT SHALL NOT BE AVAILABLE TO ANY
2 PERSON WHO IS CHARGED WITH VIOLATING CLAUSE (30) OF SUBSECTION
3 (A) OF SECTION 13 OF THIS ACT AND WHO IS NOT HIMSELF A DRUG
4 ABUSER AND WHO DOES NOT PROVE THE FACT OF SUCH DRUG ABUSE TO THE
5 SATISFACTION OF THE COURT.] EXCEPT AS PROVIDED IN CLAUSE (1) OF
6 THIS SUBSECTION, THE COURT MAY PLACE A PERSON ON PROBATION
7 WITHOUT VERDICT IF THE PERSON PLEADS NOLO CONTENDERE OR GUILTY
8 TO, OR IS FOUND GUILTY OF, ANY NONVIOLENT OFFENSE UNDER THIS ACT
9 AND THE PERSON PROVES HE IS DRUG DEPENDENT. FOR THE PURPOSES OF
10 PROVING DRUG DEPENDENCY, THE PERSON MUST PRESENT THE TESTIMONY
11 OF A PHYSICIAN TRAINED IN THE FIELD OF DRUG ABUSE. THE TERM OF
12 PROBATION SHALL BE FOR A SPECIFIC TIME PERIOD NOT TO EXCEED THE
13 MAXIMUM FOR THE OFFENSE UPON SUCH REASONABLE TERMS AND
14 CONDITIONS AS THE COURT MAY REQUIRE. THE FOLLOWING SHALL APPLY:

15 (1) THE FOLLOWING PERSONS SHALL BE INELIGIBLE FOR PROBATION
16 WITHOUT VERDICT:

17 (I) ANY PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF AN
18 OFFENSE UNDER THIS ACT OR SIMILAR ACT OF THE UNITED STATES OR
19 ANY OTHER STATE.

20 (II) ANY PERSON WHO HAS BEEN CONVICTED OF A MISDEMEANOR OR
21 FELONY IN THIS COMMONWEALTH OR AN EQUIVALENT CRIME UNDER THE
22 LAWS OF ANY OTHER STATE.

23 (III) ANY PERSON WHO HAS BEEN PLACED ON ACCELERATED
24 REHABILITATIVE DISPOSITION WHERE THE PERSON WAS CHARGED WITH A
25 VIOLATION OF THIS ACT OR THE COMMISSION OF A MISDEMEANOR OR
26 FELONY IN THIS COMMONWEALTH.

27 (IV) ANY PERSON WHO IS CHARGED WITH, OR HAS PLEADED GUILTY
28 OR NOLO CONTENDERE TO, MULTIPLE OFFENSES WHICH ARE BASED ON
29 SEPARATE CONDUCT OR ARISE FROM SEPARATE CRIMINAL EPISODES SUCH
30 THAT THOSE CASES COULD BE TRIED SEPARATELY IN ACCORDANCE WITH 18

1 PA.C.S. § 110 (RELATING TO WHEN PROSECUTION BARRED BY FORMER
2 PROSECUTION FOR DIFFERENT OFFENSE)).

3 (V) ANY PERSON WHO IS A DANGEROUS JUVENILE OFFENDER UNDER 42
4 PA.C.S. § 6302 (RELATING TO DEFINITIONS) OR WHO WAS ADJUDICATED
5 DELINQUENT FOR CONDUCT WHICH WOULD CONSTITUTE A VIOLATION OF
6 CLAUSE (30) OR (37) OF SUBSECTION (A) OF SECTION 13 OF THIS ACT.

7 (VI) ANY PERSON WHO WAS CHARGED WITH VIOLATING CLAUSE (14),
8 (30) OR (37) OF SUBSECTION (A) OF SECTION 13 OF THIS ACT.

9 (2) Upon violation of a term or condition of probation, the
10 court may enter a judgment and proceed as in any criminal case,
11 or may continue the probation without verdict.

12 (3) Upon fulfillment of the terms and conditions of
13 probation, the court shall discharge such person and dismiss the
14 proceedings against him. Discharge and dismissal shall be
15 without adjudication of guilt and shall not constitute a
16 conviction for any purpose whatever, including the penalties
17 imposed for second or subsequent convictions: Provided, That
18 probation without verdict shall be available to any person only
19 once: And further provided, That notwithstanding any other
20 provision of this act, the prosecuting attorney or the court,
21 and the council shall keep a list of those persons placed on
22 probation without verdict, which list may only be used to
23 determine the eligibility of persons for probation without
24 verdict and the names on such lists may be used for no other
25 purpose whatsoever.

26 Section 18. Disposition in Lieu of Trial or Criminal
27 Punishment.--(a) If a person charged with a nonviolent crime
28 claims to be drug dependent or a drug abuser and prior to trial
29 he requests appropriate treatment, including but not limited to,
30 admission or commitment under the Mental Health and Mental

1 Retardation Act of 1966 in lieu of criminal prosecution, a
2 physician experienced or trained in the field of drug dependency
3 or drug abuse shall be appointed by the court to examine, if
4 necessary, and to review the accused's record and advise the
5 government attorney, the accused and the court in writing
6 setting forth that for the treatment and rehabilitation of the
7 accused it would be preferable for the criminal charges to be
8 held in abeyance or withdrawn in order to institute treatment
9 for drug dependence, or for the criminal charges to be
10 prosecuted. The government attorney shall exercise his
11 discretion whether or not to accept the physician's
12 recommendation.

13 (b) In the event that [he] the government attorney does not
14 accept the physician's recommendation [he shall state in writing
15 and furnish the defendant a copy of his decision and the reasons
16 therefor], the person charged shall not be eligible for relief
17 under this section.

18 (c) If the government attorney accepts the physician's
19 advice to hold in abeyance, he shall arrange for a hearing
20 before the appropriate court to hold in abeyance the criminal
21 prosecution. The court, upon its approval, shall proceed to make
22 appropriate arrangements for treatment.

23 (d) The government attorney, upon his own application, may
24 institute proceedings for appropriate treatment, including but
25 not limited to, commitment pursuant to the Mental Health and
26 Mental Retardation Act of 1966.

27 (e) A criminal charge may be held in abeyance pursuant to
28 this section for no longer than the lesser of either (i) the
29 appropriate statute of limitations or (ii) the maximum term that
30 could be imposed for the offense charged. At the expiration of

1 such period, the criminal charge shall be automatically
2 dismissed. A criminal charge may not be prosecuted except by
3 order of court so long as the medical director of the treatment
4 facility certifies that the accused is cooperating in a
5 prescribed treatment program and is benefiting from treatment.

6 [(f) If, after conviction, the defendant requests probation
7 with treatment or civil commitment for treatment in lieu of
8 criminal punishment, the court may appoint a qualified physician
9 to advise the court in writing whether it would be preferable
10 for the purposes of treatment and rehabilitation for him to
11 receive a suspended sentence and probation on the condition that
12 he undergo education and treatment for drug abuse and drug
13 dependency, or to be committed pursuant to the Mental Health and
14 Mental Retardation Act of 1966 for treatment in lieu of criminal
15 punishment, or to receive criminal incarceration. A copy of the
16 physician's report shall be furnished the court, the defendant
17 and the government attorney. The court shall exercise its
18 discretion whether to accept the physician's advice.]

19 (g) Disposition in lieu of trial as provided in this section
20 shall be available to any person only once.

21 Section 2. This act shall take effect in 60 days.