

Am. S.B. 33
As Passed by the Senate

Topic: Intervention in lieu of conviction 1

_____ moved to amend as follows:

In line 1 of the title, delete the first "and" and insert a 2
comma; after "2923.129" insert ", and 2951.041" 3

In line 5 of the title, after "case" insert "and to authorize 4
a court to continue on intervention in lieu of conviction an 5
offender who is on it and violates any of its terms or conditions" 6

In line 6, delete "and" and insert a comma; after "2923.129" 7
insert ", and 2951.041" 8

Between lines 299 and 300, insert: 9

"**Sec. 2951.041.** (A)(1) If an offender is charged with a 10
criminal offense, including but not limited to a violation of 11
section 2913.02, 2913.03, 2913.11, 2913.21, 2913.31, or 2919.21 of 12
the Revised Code, and the court has reason to believe that drug or 13
alcohol usage by the offender was a factor leading to the criminal 14
offense with which the offender is charged or that, at the time of 15
committing that offense, the offender had a mental illness, was a 16
person with an intellectual disability, or was a victim of a 17
violation of section 2905.32 of the Revised Code and that the 18
mental illness, status as a person with an intellectual 19
disability, or fact that the offender was a victim of a violation 20
of section 2905.32 of the Revised Code was a factor leading to the 21

offender's criminal behavior, the court may accept, prior to the 22
entry of a guilty plea, the offender's request for intervention in 23
lieu of conviction. The request shall include a statement from the 24
offender as to whether the offender is alleging that drug or 25
alcohol usage by the offender was a factor leading to the criminal 26
offense with which the offender is charged or is alleging that, at 27
the time of committing that offense, the offender had a mental 28
illness, was a person with an intellectual disability, or was a 29
victim of a violation of section 2905.32 of the Revised Code and 30
that the mental illness, status as a person with an intellectual 31
disability, or fact that the offender was a victim of a violation 32
of section 2905.32 of the Revised Code was a factor leading to the 33
criminal offense with which the offender is charged. The request 34
also shall include a waiver of the defendant's right to a speedy 35
trial, the preliminary hearing, the time period within which the 36
grand jury may consider an indictment against the offender, and 37
arraignment, unless the hearing, indictment, or arraignment has 38
already occurred. The court may reject an offender's request 39
without a hearing. If the court elects to consider an offender's 40
request, the court shall conduct a hearing to determine whether 41
the offender is eligible under this section for intervention in 42
lieu of conviction and shall stay all criminal proceedings pending 43
the outcome of the hearing. If the court schedules a hearing, the 44
court shall order an assessment of the offender for the purpose of 45
determining the offender's eligibility for intervention in lieu of 46
conviction and recommending an appropriate intervention plan. 47

If the offender alleges that drug or alcohol usage by the 48
offender was a factor leading to the criminal offense with which 49
the offender is charged, the court may order that the offender be 50
assessed by a community addiction services provider or a properly 51
credentialed professional for the purpose of determining the 52

offender's eligibility for intervention in lieu of conviction and
 recommending an appropriate intervention plan. The community
 addiction services provider or the properly credentialed
 professional shall provide a written assessment of the offender to
 the court.

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(2) The victim notification provisions of division (C) of
 section 2930.06 of the Revised Code apply in relation to any
 hearing held under division (A)(1) of this section.

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(B) An offender is eligible for intervention in lieu of
 conviction if the court finds all of the following:

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(1) The offender previously has not been convicted of or
 pleaded guilty to a felony offense of violence or previously has
 been convicted of or pleaded guilty to any felony that is not an
 offense of violence and the prosecuting attorney recommends that
 the offender be found eligible for participation in intervention
 in lieu of treatment under this section, previously has not been
 through intervention in lieu of conviction under this section or
 any similar regimen, and is charged with a felony for which the
 court, upon conviction, would impose a community control sanction
 on the offender under division (B)(2) of section 2929.13 of the
 Revised Code or with a misdemeanor.

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(2) The offense is not a felony of the first, second, or
 third degree, is not an offense of violence, is not a violation of
 division (A)(1) or (2) of section 2903.06 of the Revised Code, is
 not a violation of division (A)(1) of section 2903.08 of the
 Revised Code, is not a violation of division (A) of section
 4511.19 of the Revised Code or a municipal ordinance that is
 substantially similar to that division, and is not an offense for
 which a sentencing court is required to impose a mandatory prison
 term, a mandatory term of local incarceration, or a mandatory term

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of imprisonment in a jail.

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(3) The offender is not charged with a violation of section 2925.02, 2925.04, or 2925.06 of the Revised Code, is not charged with a violation of section 2925.03 of the Revised Code that is a felony of the first, second, third, or fourth degree, and is not charged with a violation of section 2925.11 of the Revised Code that is a felony of the first, second, or third degree.

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(4) If an offender alleges that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged, the court has ordered that the offender be assessed by a community addiction services provider or a properly credentialed professional for the purpose of determining the offender's eligibility for intervention in lieu of conviction and recommending an appropriate intervention plan, the offender has been assessed by a community addiction services provider of that nature or a properly credentialed professional in accordance with the court's order, and the community addiction services provider or properly credentialed professional has filed the written assessment of the offender with the court.

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(5) If an offender alleges that, at the time of committing the criminal offense with which the offender is charged, the offender had a mental illness, was a person with an intellectual disability, or was a victim of a violation of section 2905.32 of the Revised Code and that the mental illness, status as a person with an intellectual disability, or fact that the offender was a victim of a violation of section 2905.32 of the Revised Code was a factor leading to that offense, the offender has been assessed by a psychiatrist, psychologist, independent social worker, licensed professional clinical counselor, or independent marriage and family therapist for the purpose of determining the offender's

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eligibility for intervention in lieu of conviction and 113
recommending an appropriate intervention plan. 114

(6) The offender's drug usage, alcohol usage, mental illness, 115
or intellectual disability, or the fact that the offender was a 116
victim of a violation of section 2905.32 of the Revised Code, 117
whichever is applicable, was a factor leading to the criminal 118
offense with which the offender is charged, intervention in lieu 119
of conviction would not demean the seriousness of the offense, and 120
intervention would substantially reduce the likelihood of any 121
future criminal activity. 122

(7) The alleged victim of the offense was not sixty-five 123
years of age or older, permanently and totally disabled, under 124
thirteen years of age, or a peace officer engaged in the officer's 125
official duties at the time of the alleged offense. 126

(8) If the offender is charged with a violation of section 127
2925.24 of the Revised Code, the alleged violation did not result 128
in physical harm to any person, and the offender previously has 129
not been treated for drug abuse. 130

(9) The offender is willing to comply with all terms and 131
conditions imposed by the court pursuant to division (D) of this 132
section. 133

(10) The offender is not charged with an offense that would 134
result in the offender being disqualified under Chapter 4506. of 135
the Revised Code from operating a commercial motor vehicle or 136
would subject the offender to any other sanction under that 137
chapter. 138

(C) At the conclusion of a hearing held pursuant to division 139
(A) of this section, the court shall enter its determination as to 140
whether the offender is eligible for intervention in lieu of 141

conviction and as to whether to grant the offender's request. If 142
the court finds under division (B) of this section that the 143
offender is eligible for intervention in lieu of conviction and 144
grants the offender's request, the court shall accept the 145
offender's plea of guilty and waiver of the defendant's right to a 146
speedy trial, the preliminary hearing, the time period within 147
which the grand jury may consider an indictment against the 148
offender, and arraignment, unless the hearing, indictment, or 149
arraignment has already occurred. In addition, the court then may 150
stay all criminal proceedings and order the offender to comply 151
with all terms and conditions imposed by the court pursuant to 152
division (D) of this section. If the court finds that the offender 153
is not eligible or does not grant the offender's request, the 154
criminal proceedings against the offender shall proceed as if the 155
offender's request for intervention in lieu of conviction had not 156
been made. 157

(D) If the court grants an offender's request for 158
intervention in lieu of conviction, the court shall place the 159
offender under the general control and supervision of the county 160
probation department, the adult parole authority, or another 161
appropriate local probation or court services agency, if one 162
exists, as if the offender was subject to a community control 163
sanction imposed under section 2929.15, 2929.18, or 2929.25 of the 164
Revised Code. The court shall establish an intervention plan for 165
the offender. The terms and conditions of the intervention plan 166
shall require the offender, for at least one year from the date on 167
which the court grants the order of intervention in lieu of 168
conviction, to abstain from the use of illegal drugs and alcohol, 169
to participate in treatment and recovery support services, and to 170
submit to regular random testing for drug and alcohol use and may 171
include any other treatment terms and conditions, or terms and 172

conditions similar to community control sanctions, which may 173
 include community service or restitution, that are ordered by the 174
 court. 175

(E) If the court grants an offender's request for 176
 intervention in lieu of conviction and the court finds that the 177
 offender has successfully completed the intervention plan for the 178
 offender, including the requirement that the offender abstain from 179
 using illegal drugs and alcohol for a period of at least one year 180
 from the date on which the court granted the order of intervention 181
 in lieu of conviction, the requirement that the offender 182
 participate in treatment and recovery support services, and all 183
 other terms and conditions ordered by the court, the court shall 184
 dismiss the proceedings against the offender. Successful 185
 completion of the intervention plan and period of abstinence under 186
 this section shall be without adjudication of guilt and is not a 187
 criminal conviction for purposes of any disqualification or 188
 disability imposed by law and upon conviction of a crime, and the 189
 court may order the sealing of records related to the offense in 190
 question in the manner provided in sections 2953.31 to 2953.36 of 191
 the Revised Code. 192

(F) If the court grants an offender's request for 193
 intervention in lieu of conviction and the offender fails to 194
 comply with any term or condition imposed as part of the 195
 intervention plan for the offender, the supervising authority for 196
 the offender promptly shall advise the court of this failure, and 197
 the court shall hold a hearing to determine whether the offender 198
 failed to comply with any term or condition imposed as part of the 199
 plan. If the court determines that the offender has failed to 200
 comply with any of those terms and conditions, it ~~shall~~ may 201
continue the offender on intervention in lieu of conviction, 202
continue the offender on intervention in lieu of conviction with 203

additional terms, conditions, and sanctions, or enter a finding of 204
 guilty and ~~shall~~ impose an appropriate sanction under Chapter 205
 2929. of the Revised Code. If the court sentences the offender to 206
 a prison term, the court, after consulting with the department of 207
 rehabilitation and correction regarding the availability of 208
 services, may order continued court-supervised activity and 209
 treatment of the offender during the prison term and, upon 210
 consideration of reports received from the department concerning 211
 the offender's progress in the program of activity and treatment, 212
 may consider judicial release under section 2929.20 of the Revised 213
 Code. 214

(G) As used in this section: 215

(1) "Community addiction services provider" has the same 216
 meaning as in section 5119.01 of the Revised Code. 217

(2) "Community control sanction" has the same meaning as in 218
 section 2929.01 of the Revised Code. 219

(3) "Intervention in lieu of conviction" means any 220
 court-supervised activity that complies with this section. 221

(4) "Intellectual disability" has the same meaning as in 222
 section 5123.01 of the Revised Code. 223

(5) "Peace officer" has the same meaning as in section 224
 2935.01 of the Revised Code. 225

(6) "Mental illness" and "psychiatrist" have the same 226
 meanings as in section 5122.01 of the Revised Code. 227

(7) "Psychologist" has the same meaning as in section 4732.01 228
 of the Revised Code." 229

In line 338, delete "and" and insert a comma; after 230

"2923.129" insert ", and 2951.041" 231

The motion was _____ agreed to.