

Intervention in Lieu of Conviction

Most criminal matters before the Court are resolved in either a plea of guilty or a finding of guilt or innocence after a trial. Following a guilty plea or finding, the accused becomes the convicted and proceeds to a sentencing hearing. At a sentencing hearing the judge pronounces the punishment and penalty that the convicted person must undergo. In some cases, however, the legislature has created an alternative resolution called Intervention in Lieu of Conviction.

Alcohol and drugs account for a large majority of crime in our community and the State of Ohio. The legislature recognized this and since 1976 there has been a State wide law recognizing the role addiction and abuse can play in causing a person to commit crimes. The legislature created the opportunity for individuals who are charged with certain offenses to ask the Court for the opportunity to seek help with their substance abuse issues and to complete a court approved intervention plan. If an individual successfully completes the intervention plan, the charges are dismissed and the individual is not convicted of any crimes. Only certain offenses qualify for this opportunity and not all individuals are eligible for intervention.

An individual must file a request with the court for intervention before trial and before a plea of guilty is entered. The request filed with the Court must allege that drug and alcohol use was a factor leading to the offender's criminal behavior. The Court has the right to deny such a request without a hearing and the individual's case would proceed as if the request had never been filed. However, the Court can grant the right to a hearing and order an assessment of the offender for determining eligibility for the treatment program.

To be eligible for Intervention in Lieu of Conviction, the individual cannot have a prior felony conviction or have participated in a prior intervention in lieu of conviction program. The crime the offender is charged with must also meet certain requirements. The crime must be one that would result in community control, which is what is commonly thought of as intensive probation. Further, the crime cannot be a felony of the first, second or third degree. In addition, certain crimes are specifically prohibited from consideration of Intervention in Lieu of Conviction including, Aggravated Vehicular Assault, Vehicular Homicide, Vehicular Manslaughter Vehicular Assault, OVI, Corrupting Another with Drugs, Trafficking in Drugs, Illegal Manufacture of Drugs or Cultivation of Marihuana, Illegal Administration or Distribution of Anabolic Steroids, and certain offenses of Possession of Drugs. The court must also look at any victim that may exist. An offender is not eligible for intervention if the victim of the crime was sixty-five years or older, is permanently or totally disabled, is under thirteen years of age, or is a peace officer who was acting in their official duties at the time of the incident.

If the Court grants the offender a hearing, a licensed and qualified individual must meet with and assess the offender to determine eligibility for the Intervention program. Further, the assessor should provide the court with a recommended treatment intervention

plan. The assessor should determine if the offender's drug and alcohol usage was a factor leading to the criminal offense.

At a Court hearing, the Judge must determine based on the report prepared by the qualified assessor, statements of the accused, the accused's counsel and the Prosecutor, if the defendant would be a good candidate for the Court's Intervention program. The Court must determine if granting Intervention in Lieu of Conviction would demean the seriousness of the crime and if undergoing an intervention program would substantially reduce the likelihood of any future crimes being committed by the accused. If the Court finds that the offender is eligible for Intervention in Lieu of Conviction, the court shall accept the offender's guilty plea and shall hold the plea in abeyance and stay, or pause, the acceptance of the plea and all future proceedings.

If the Court grants the offender the opportunity to complete an Intervention program, the Court will determine and order a treatment plan. The offender will be required to be under the supervision of the community control (probation) department for a minimum of one year. The treatment plan will require the offender to abstain from the use of illegal drugs and alcohol, to participate in treatment and recovery support services and to submit to random testing for drug and alcohol use. In addition, the Court may include orders to complete community service and to pay restitution to any victims.

If an individual successfully completes the intervention plan, the Court shall dismiss the proceedings against the offender. The individual shall not have a finding of guilty and will not have a criminal conviction. The individual can also petition to have the records related to the offense in question sealed pursuant to Ohio law.

If an individual is unsuccessful at completing the intervention plan, the Court shall hold a hearing to determine whether the offender failed to comply with the intervention plan. If the court determines the offender has failed to comply with the terms and conditions imposed, the Court shall accept the plea of guilty and enter a finding of guilty and proceed to sentencing. The offender will have a criminal conviction and will have to complete the sentence imposed by the Court.

Currently, there is pending legislation before the Ohio Legislature that would make more offenses eligible for Intervention in Lieu of Conviction. Such changes would include individuals who suffer from mental illness or are classified as developmentally disabled. It would also automatically allow all fourth degree felony drug possession offenses to be eligible for intervention, whereas currently, the prosecutor must recommend the accused be granted intervention in such instances. The legislation would also allow individuals who are charged with low level drug trafficking charges to be eligible for intervention. Finally, the pending legislation would allow the opportunity for intervention to individuals with prior felony convictions, so long as they have not been convicted of an offense of violence. The pending legislation was approved by the Ohio House on May 6, 2011 and is expected to pass the Ohio Senate and be signed into law by Governor Kasich in the next few months.