

## No. 1994-164

## AN ACT

## SB 1836

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

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

Section 1. Section 17 of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, amended April 16, 1992 (P.L.165, No.30), is amended to read:

Section 17. Probation Without Verdict.—Except as provided in clause (1) of this subsection, the court may place a person on probation without verdict if the person pleads *nolo contendere* or guilty to any nonviolent offense under this act and the person proves he is drug dependent. For the purposes of proving drug dependency, the person must present the testimony of a physician *or psychologist* trained in the field of drug abuse. The term of probation shall be for a specific time period not to exceed the maximum for the offense upon such reasonable terms and conditions as the court may require. The following shall apply:

(1) The following persons shall be ineligible for probation without verdict:

(i) Any person who has previously been convicted of an offense under this act or similar act of the United States or any other state.

(ii) Any person who has been convicted of a misdemeanor or felony in this Commonwealth or an equivalent crime under the laws of any other state.

(iii) Any person who has been placed on Accelerated Rehabilitative Disposition where the person was charged with a violation of this act or the commission of a misdemeanor or felony in this Commonwealth.

(iv) Any person who is charged with or has pleaded guilty or *nolo contendere* to multiple offenses which are based on separate conduct or arise from separate criminal episodes such that those offenses could be tried separately in accordance with 18 Pa.C.S. § 110 (relating to when prosecution barred by former prosecution for different offense).

(v) Any person who is a dangerous juvenile offender under 42 Pa.C.S. § 6302 (relating to definitions) or who was adjudicated delinquent for conduct which would constitute a violation of clause (30) or (37) of subsection (a) of section 13 of this act.

(vi) Any person who [was] is charged with violating clause (14), (30) or (37) of subsection (a) of section 13 of this act.

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

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

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

APPROVED—The 28th day of December, A.D. 1994.

ROBERT P. CASEY