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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **478**

01/28/2021 Authored by Feist, Ecklund, Moller, Frederick, Keeler and others
The bill was read for the first time and referred to the Committee on Labor, Industry, Veterans and Military Affairs Finance and Policy
02/22/2021 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Civil Law
03/04/2021 Adoption of Report: Re-referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy

1.1 A bill for an act
1.2 relating to crime; providing guidance to courts on sentencing veterans for criminal
1.3 offenses related to a service-related disorder; proposing coding for new law in
1.4 Minnesota Statutes, chapter 609.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[609.1056] MILITARY VETERAN OFFENDERS RESTORATIVE**
1.7 **JUSTICE SENTENCE.**

1.8 **Subdivision 1. Offenses as a result of military service; presentence supervision**
1.9 **procedures.** (a) In the case of a person charged with a criminal offense that is either Severity
1.10 Level 7, D7, or lower in the Minnesota Sentencing Guidelines, including misdemeanor or
1.11 gross misdemeanor offenses, who could otherwise be sentenced to county jail or state prison
1.12 and who alleges that the offense was committed as a result of sexual trauma, traumatic brain
1.13 injury, post-traumatic stress disorder, substance abuse, or mental health condition stemming
1.14 from service in the United States military, the court shall, prior to entering a plea of guilty,
1.15 make a determination as to whether the defendant was, or currently is, a member of the
1.16 United States military and whether the defendant may be suffering from sexual trauma,
1.17 traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health
1.18 condition as a result of that person's service. The court may request, through existing
1.19 resources, an assessment to aid in that determination.

1.20 (b) A defendant who requests to be sentenced under this section shall release or authorize
1.21 access to military service reports and records relating to the alleged conditions stemming
1.22 from service in the United States military. The records shall be filed as confidential and
1.23 remain sealed, except as provided for in this paragraph. The defendant, through existing

records or licensed professional evaluation, shall establish the diagnosis of the condition and its connection to military service. The court, on the prosecutor's motion with notice to defense counsel, may order the defendant to furnish to the court for in camera review or to the prosecutor copies of all medical and military service reports and records previously or subsequently made concerning the defendant's condition and its connection to service. Based on the record, the court shall make findings on whether, by clear and convincing evidence, the defendant suffers from a condition identified in paragraph (a) and whether that condition stems from service in the United States military. Within 15 days of the court's findings, either party may file a challenge to the findings and demand a hearing on the defendant's eligibility under this section.

(c) If the court concludes that a defendant who entered a plea of guilty to a criminal offense is a person described in this subdivision or the parties stipulate to eligibility, the court shall, upon the defendant entering a plea of guilty, without entering a judgment of guilty and with the consent of the defendant, defer further proceedings and place the defendant on probation upon such reasonable conditions as it may require and for a period not to exceed the maximum period provided by law. If the veteran has previously received a stay of adjudication for a felony offense under this section, the court may in its discretion sentence consistent with this section or deny the use of this section on subsequent felony offenses. If the court denies a stay of adjudication on this basis, the court may sentence pursuant to the guidelines, application or waiver of statutory mandatory minimums, or a departure pursuant to subdivision 2, paragraph (e).

(d) Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided by law, including sentencing pursuant to the guidelines, application or waiver of statutory mandatory minimums, or a departure pursuant to subdivision 2, paragraph (e).

(e) As a condition of probation, the court may order the defendant to attend a local, state, federal, or private nonprofit treatment program for a period not to exceed that period which the defendant would have served in state prison or county jail.

(f) A defendant granted probation under this section and ordered to attend a residential treatment program may be awarded sentence credits for the actual time the defendant serves in residential treatment.

(g) The court, in making an order under this section to order a defendant to attend an established treatment program, shall give preference to a treatment program that has a history of successfully treating veterans who suffer from sexual trauma, traumatic brain injury,

post-traumatic stress disorder, substance abuse, or mental health conditions as a result of that service, including but not limited to programs operated by the United States Department of Defense or Veterans Affairs.

(h) The court and the assigned treatment program shall, when available, collaborate with the county veterans service officer and the United States Department of Veterans Affairs to maximize benefits and services provided to the veteran.

(i) If available in the county or judicial district having jurisdiction over the case, the defendant may be supervised by the veterans treatment court program under subdivision 3. If there is a veterans treatment court that meets the requirements of subdivision 3 in the county in which the defendant resides or works, supervision of the defendant may be transferred to that county or judicial district veterans treatment court program. If the defendant successfully completes the veterans treatment court program in the supervising jurisdiction, that jurisdiction shall sentence the defendant under this section. If the defendant is unsuccessful in the veterans treatment court program, the defendant's supervision shall be returned to the jurisdiction that initiated the transfer for standard sentencing.

(j) Sentencing pursuant to this section waives any right to administrative review pursuant to section 169A.53, subdivision 1, or judicial review pursuant to section 169A.53, subdivision 2, for a license revocation or cancellation imposed pursuant to section 169A.52, and also waives any right to administrative review pursuant to section 171.177, subdivision 10, or judicial review pursuant to section 171.177, subdivision 11, for a license revocation or cancellation imposed pursuant to section 171.177, if that license revocation or cancellation is the result of the same incident that is being sentenced.

Subd. 2. Restorative justice for military veterans; dismissal of charges. (a) It is in the interests of justice to restore a defendant who acquired a criminal record due to a mental health condition stemming from service in the United States military to the community of law-abiding citizens. The restorative provisions of this subdivision apply to cases in which a court monitoring the defendant's performance of probation under this section finds by clear and convincing evidence at a public hearing, held after not less than 15 days' notice to the prosecution, the defense, and any victim of the offense, that all of the following describe the defendant:

(1) the defendant was granted probation and was a person eligible under subdivision 1 at the time that probation was granted;

(2) the defendant is in substantial compliance with the conditions of that probation;

4.1 (3) the defendant has successfully participated in court-ordered treatment and services
4.2 to address the sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance
4.3 abuse, or mental health conditions stemming from military service;

4.4 (4) the defendant does not represent a danger to the health and safety of others; and

4.5 (5) the defendant has demonstrated significant benefit from court-ordered education,
4.6 treatment, or rehabilitation to clearly show that granting restorative relief pursuant to this
4.7 subdivision would be in the interests of justice.

4.8 (b) When determining whether granting restorative relief under this subdivision is in
4.9 the interests of justice, the court may consider, among other factors, all of the following:

4.10 (1) the defendant's completion and degree of participation in education, treatment, and
4.11 rehabilitation as ordered by the court;

4.12 (2) the defendant's progress in formal education;

4.13 (3) the defendant's development of career potential;

4.14 (4) the defendant's leadership and personal responsibility efforts;

4.15 (5) the defendant's contribution of service in support of the community; and

4.16 (6) the level of harm to the community or victim from the offense.

4.17 (c) If the court finds that a case satisfies each of the requirements described in paragraph
4.18 (a), then upon expiration of the period of probation the court shall discharge the defendant
4.19 and dismiss the proceedings against that defendant. Discharge and dismissal under this
4.20 subdivision shall be without court adjudication of guilt, but a not public record of the
4.21 discharge and dismissal shall be retained by the Bureau of Criminal Apprehension for the
4.22 purpose of use by the courts in determining the merits of subsequent proceedings against
4.23 the defendant. The not public record may also be opened only upon court order for purposes
4.24 of a criminal investigation, prosecution, or sentencing. Upon request by law enforcement,
4.25 prosecution, or corrections authorities, the bureau shall notify the requesting party of the
4.26 existence of the not public record and the right to seek a court order to open the not public
4.27 record under this section. The court shall forward a record of any discharge and dismissal
4.28 under this subdivision to the bureau which shall make and maintain the not public record
4.29 of the discharge and dismissal as provided under this subdivision. The discharge or dismissal
4.30 shall not be deemed a conviction for purposes of disqualifications or disabilities imposed
4.31 by law upon conviction of a crime or for any other purpose. For purposes of this subdivision,
4.32 "not public" has the meaning given in section 13.02, subdivision 8a.

(d) If the court finds that a defendant placed under probation under subdivision 1 does not satisfy each of the requirements described in paragraph (a), the court shall enter an adjudication of guilt and proceed as otherwise provided by law, including sentencing pursuant to the guidelines, application or waiver of statutory mandatory minimums, or a departure pursuant to paragraph (e).

(e) If the charge to which the defendant entered a plea of guilty is listed under subdivision 1, paragraph (a), and is for an offense that is a presumptive commitment to state imprisonment, the court may use the factors of paragraph (a) to justify a dispositional departure or any appropriate sentence, including the application or waiver of statutory mandatory minimums. If the court finds paragraph (a), clauses (1) to (5), factors, the defendant is presumed particularly amenable to probation.

Subd. 3. Optional veterans treatment court program; procedures for eligible defendants. (a) A county or judicial district may supervise probation under this section through a veterans treatment court, using county veterans service officers appointed under sections 197.60 to 197.606, United States Department of Veterans Affairs veterans justice outreach specialists, probation agents, and any other rehabilitative resources available to the court.

(b) "Veterans treatment court program" means a program that has the following essential characteristics:

(1) the integration of services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to a continuum of alcohol, controlled substance, mental health, and other related treatment and rehabilitative services;

(5) careful monitoring of treatment and services provided to program participants;

(6) a coordinated strategy to govern program responses to participants' compliance;

(7) ongoing judicial interaction with program participants;

(8) monitoring and evaluation of program goals and effectiveness;

(9) continuing interdisciplinary education to promote effective program planning, implementation, and operations;

6.1 (10) development of partnerships with public agencies and community organizations,
6.2 including the United States Department of Veterans Affairs; and

6.3 (11) inclusion of a participant's family members who agree to be involved in the treatment
6.4 and services provided to the participant under the program.

6.5 Subd. 4. **Creation of county and city diversion programs; authorization.** Any county
6.6 or city may establish and operate a veterans pretrial diversion program for offenders eligible
6.7 under subdivision 1 without penalty under section 477A.0175. "Pretrial diversion" means
6.8 the decision of a prosecutor to refer an offender to a diversion program on condition that
6.9 the criminal charges against the offender shall be dismissed after a specified period of time,
6.10 or the case shall not be charged, if the offender successfully completes the program of
6.11 treatment recommended by the United States Department of Veterans Affairs or a local,
6.12 state, federal, or private nonprofit treatment program.

6.13 Subd. 5. **Exception.** With the exception of subdivision 2, paragraph (e), this section
6.14 does not apply to an offense for which registration is required under section 243.166,
6.15 subdivision 1b.

6.16 **EFFECTIVE DATE.** This section is effective August 1, 2021.