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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 998

02/11/2019 Authored by Ecklund, Dettmer, Davids, Persell, Sundin and others
The bill was read for the first time and referred to the Committee on Ways and Means

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 Severity
1.10 Level 7 or lower in the Minnesota Sentencing Guidelines who could be sentenced to a
1.11 county jail or a state correctional facility and who alleges that the offense was committed
1.12 as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance
1.13 abuse, or mental health conditions stemming from service in the United States military, the
1.14 court shall, prior to entering a plea of guilty, make a determination as to whether the
1.15 defendant was, or currently is, a member of the United States military and whether the
1.16 defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress
1.17 disorder, substance abuse, or mental health conditions as a result of that person's service.
1.18 The court may request, through existing resources, an assessment to aid in that determination.

1.19 (b) If the court concludes that a defendant who entered a plea of guilty to a criminal
1.20 offense is a person described in paragraph (a) or the parties stipulate to eligibility, and if
1.21 the defendant is otherwise eligible for probation, the court shall, upon the defendant entering
1.22 a plea of guilty, without entering a judgment of guilty and with the consent of the defendant,
1.23 defer further proceedings and place the defendant on probation upon such reasonable

2.1 conditions as the court requires for a period not to exceed the maximum sentence provided
2.2 for the violation.

2.3 (c) Upon violation of a condition of probation, the court may enter an adjudication of
2.4 guilt and proceed as otherwise provided.

2.5 (d) As a condition of probation, the court may order the defendant to attend a local, state,
2.6 federal, or private nonprofit treatment program for a period not to exceed the period that
2.7 the defendant would have served in a state correctional facility or county jail, provided the
2.8 defendant agrees to participate in the program and the court determines that an appropriate
2.9 treatment program exists.

2.10 (e) A defendant granted probation under this section and ordered to attend a residential
2.11 treatment program shall earn sentence credits for the actual time the defendant serves in
2.12 residential treatment.

2.13 (f) The court, in ordering a defendant under this section to attend an established treatment
2.14 program, shall give preference to a treatment program that has a history of successfully
2.15 treating veterans who suffer from sexual trauma, traumatic brain injury, post-traumatic
2.16 stress disorder, substance abuse, or mental health problems as a result of military service,
2.17 including but not limited to programs operated by the United States Department of Defense
2.18 or the United States Department of Veterans Affairs.

2.19 (g) The court and the assigned treatment program shall, when available, collaborate with
2.20 the Minnesota Department of Veterans Affairs and the United States Department of Veterans
2.21 Affairs to maximize benefits and services provided to the veteran.

2.22 (h) If available in the county or judicial district having jurisdiction over the case, the
2.23 defendant may be supervised by the veterans treatment court program pursuant to subdivision
2.24 3. If there is a veterans treatment court that meets the requirements of subdivision 3 in the
2.25 county in which the person resides or works, supervision of the person may be transferred
2.26 to that county or judicial district veterans treatment court program. If the person successfully
2.27 completes the veterans treatment court program in the supervising jurisdiction, that
2.28 jurisdiction shall sentence the person pursuant to this section. If the person is unsuccessful
2.29 in the veterans treatment court program, the person's supervision should be returned to the
2.30 jurisdiction that initiated the transfer for standard sentencing.

2.31 Subd. 2. **Restorative justice for military veterans; dismissal of charges.** (a) It is in
2.32 the interests of justice to restore a defendant who acquired a criminal record due to a mental
2.33 health condition stemming from service in the United States military to the community of
2.34 law abiding citizens. The restorative provisions of this subdivision apply to cases in which

3.1 a court monitoring the defendant's performance of probation pursuant to this section finds
3.2 at a public hearing, held after not less than 15 days' notice to the prosecution, the defense,
3.3 and any victim of the offense, that the defendant:

3.4 (1) was granted probation and, at the time probation was granted, was a person eligible
3.5 under subdivision 1;

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

3.7 (3) has successfully participated in court-ordered treatment and services to address the
3.8 sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or
3.9 mental health problems stemming from military service;

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

3.11 (5) has demonstrated significant benefit from court-ordered education, treatment, or
3.12 rehabilitation to clearly show that granting restorative relief under this subdivision is in the
3.13 interest of justice.

3.14 (b) When determining whether granting restorative relief under this subdivision is in
3.15 the interests of justice, the court may consider, at a minimum, the defendant's:

3.16 (1) completion and degree of participation in education, treatment, and rehabilitation as
3.17 ordered by the court;

3.18 (2) progress in formal education;

3.19 (3) development of career potential;

3.20 (4) leadership and personal responsibility efforts;

3.21 (5) contribution of service in support of the community; and

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

3.23 (c) If the court finds that a case satisfies each of the requirements under paragraph (a),
3.24 then upon expiration of the probation period the court shall discharge the person and dismiss
3.25 the proceedings against that person. Discharge and dismissal under this subdivision shall
3.26 be without court adjudication of guilt, but a not public record shall be retained by the Bureau
3.27 of Criminal Apprehension for the purpose of use by the courts in determining the merits of
3.28 subsequent proceedings against the person. The not public record may also be opened only
3.29 upon court order for purposes of criminal investigation, prosecution, or sentencing. Upon
3.30 request by law enforcement, prosecution, or corrections authorities, the bureau shall notify
3.31 the requesting party of the existence of the not public record and the right to seek a court
3.32 order to open it under this section. The court shall forward a record of any discharge and

4.1 dismissal under this subdivision to the bureau, which shall make and maintain the not public
 4.2 record as provided under this subdivision. The discharge or dismissal shall not be deemed
 4.3 a conviction for purposes of disqualifications or disabilities imposed by law upon conviction
 4.4 of a crime or for any other purpose. For purposes of this subdivision, "not public" has the
 4.5 meaning given in section 13.02, subdivision 8a.

4.6 (d) If the person entered a plea of guilty pursuant to paragraph (a) for an offense that is
 4.7 a presumptive commitment to state imprisonment, the court may use the factors of paragraph
 4.8 (a) to justify a dispositional or durational departure, or any appropriate sentence. If the court
 4.9 finds the factors under paragraph (a), the defendant is presumed amenable to probation.

4.10 (e) A dismissal under this subdivision does not apply to an offense for which registration
 4.11 is required under section 243.166, subdivision 1b.

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

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

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

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

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

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

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

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

4.27 (7) ongoing judicial interaction with program participants;

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

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

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

5.3 (11) inclusion of a participant's family member who agrees to be involved in the treatment
5.4 and services provided to the participant under the program.

5.5 Subd. 4. **Authorization for creation of county and city diversion programs.** (a) A
5.6 county or city may establish and operate a veterans pretrial diversion program for offenders
5.7 eligible under subdivision 1 without penalty under section 477A.0175.

5.8 (b) "Pretrial diversion" means the decision of a prosecutor to refer an offender to a
5.9 diversion program on condition that the criminal charges against the offender are dismissed
5.10 after a specified period of time, or the case is not charged, if the offender successfully
5.11 completes the program of treatment recommended by the Department of Veterans Affairs
5.12 or a local, state, federal, or private nonprofit treatment program.

5.13 **EFFECTIVE DATE.** This section is effective August 1, 2019.