

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 292

(SENATE AUTHORS: MITCHELL, Duckworth, Howe, Morrison and Carlson)		
DATE	D-PG	OFFICIAL STATUS
01/17/2023	193	Introduction and first reading Referred to Judiciary and Public Safety
01/19/2023	310	Author added Carlson HF substituted in committee HF45

1.1

A bill for an act

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relating to judiciary; establishing an assessment process to determine if current

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and former members of the military charged with certain offenses are eligible for

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deferred prosecution; amending Minnesota Statutes 2022, section 609.1056,

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subdivision 2, by adding a subdivision.

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

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Section 1. Minnesota Statutes 2022, section 609.1056, is amended by adding a subdivision

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to read:

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Subd. 1a. **Eligibility assessment.** (a) At any time before sentencing, a defendant who

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was, or currently is, a member of the United States military and who is charged with an

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eligible offense may request that the court determine whether the defendant is eligible for

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deferred prosecution under this section.

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(b) Upon making a request for an eligibility assessment, the defendant shall release or

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authorize access to military service reports and records relating to an alleged applicable

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condition stemming from service in the United States military. The court must file the

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records as confidential, and the records must remain sealed, except as provided in this

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paragraph. The defendant, through existing records or licensed professional evaluation,

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shall establish the diagnosis of the applicable condition and the condition's connection to

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military service. The court, on its motion or the prosecutor's motion with notice to defense

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counsel, may order the defendant to furnish to the court for in-camera review or to the

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prosecutor copies of all medical and military service reports and records previously or

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subsequently made concerning the defendant's condition and its connection to service.

(c) The defendant is eligible for deferred prosecution under this section if the court determines by clear and convincing evidence that:

(1) the defendant suffers from an applicable condition;

(2) the condition stems from service in the United States military; and

(3) the offense was committed as a result of the applicable condition.

(d) If the defendant requests an eligibility assessment before a finding of guilty after trial or entry of a guilty plea, the court may make the finding required under paragraph (c), clause (3), based on the information in a citation or complaint and any accompanying police reports.

(e) Within 15 days of the court's findings, either party may file a challenge and demand a hearing on the defendant's eligibility for deferred prosecution.

Sec. 2. Minnesota Statutes 2022, section 609.1056, subdivision 2, is amended to read:

Subd. 2. **Deferred prosecution.** (a) If the court finds a defendant eligible for deferred prosecution pursuant to subdivision 1a and the defendant is found guilty, after trial or upon a plea of guilty, the court shall defer prosecution for an eligible offense committed by a defendant who was, or currently is, a member of the United States military as provided in this subdivision. The court shall defer prosecution at the request of the defendant upon a finding of guilty after trial or upon a guilty plea.

~~(b) A defendant who requests to be sentenced under this section shall release or authorize access to military service reports and records relating to an alleged applicable condition stemming from service in the United States military. The court must file the records as confidential, and the records must remain sealed, except as provided in this paragraph. The defendant, through existing records or licensed professional evaluation, shall establish the diagnosis of the applicable condition and its connection to military service. The court, on its motion or 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.~~

~~(c) Based on the record, the court shall determine, by clear and convincing evidence, whether the defendant suffers from an applicable condition, whether that condition stems from service in the United States military, and whether the offense was committed as a result of the applicable condition. Within 15 days of the court's findings, either party may~~

3.1 ~~file a challenge to the findings and demand a hearing on the defendant's eligibility under~~
3.2 ~~this section.~~

3.3 ~~(d) If the court makes the determination described~~ (b) Except as provided in paragraph
3.4 (c), the court shall, without entering a judgment of guilty, defer further proceedings and
3.5 place ~~the~~ a defendant who is eligible for deferred prosecution on probation upon such
3.6 reasonable conditions as it may require and for a period not to exceed the maximum period
3.7 provided by law. A court may extend a defendant's term of probation pursuant to section
3.8 609.135, subdivision 2, paragraphs (g) and (h). Conditions ordered by the court must include
3.9 treatment, services, rehabilitation, and education sufficient so that if completed, the defendant
3.10 would be eligible for discharge and dismissal under subdivision 3. If the court determines
3.11 that a defendant suffers from a substance use disorder, the court shall order a Rule 25
3.12 assessment under Minnesota Rules, part 9530.6615, and order the defendant to follow the
3.13 recommendations contained in the assessment. If the court determines that a defendant
3.14 suffers from posttraumatic stress disorder, sexual trauma, traumatic brain injury, or other
3.15 mental health conditions, the court shall order a mental health assessment conducted by a
3.16 licensed mental health professional and follow the recommendations contained in the
3.17 examiner's report.

3.18 ~~(e)~~ (c) If the court determines that the defendant is eligible for a deferred sentence but
3.19 the defendant has previously received a deferred sentence for a felony offense under this
3.20 subdivision, the court may, but is not required to, impose a deferred sentence. If the court
3.21 does not impose a deferred sentence, the court may sentence the defendant as otherwise
3.22 provided in law, including as provided in subdivision 4.

3.23 ~~(f)~~ (d) Upon violation of a condition of probation, the court may enter an adjudication
3.24 of guilt and proceed as otherwise provided in law, including as provided in subdivision 4.

3.25 ~~(g)~~ (e) As a condition of probation, the court may order the defendant to attend a local,
3.26 state, federal, or private nonprofit treatment program for a period not to exceed the maximum
3.27 period for which the defendant could have been incarcerated.

3.28 ~~(h)~~ (f) The court, when issuing an order under this subdivision that a defendant attend
3.29 an established treatment program, shall give preference to a treatment program that has a
3.30 history of successfully treating veterans who suffer from applicable conditions caused by
3.31 military service, including but not limited to programs operated by the United States
3.32 Department of Defense or Veterans Affairs.

3.33 ~~(i)~~ (g) The court and any assigned treatment program shall collaborate with, when
3.34 available, the county veterans service officer and the United States Department of Veterans

Affairs to maximize benefits and services provided to the defendant. If an appropriate treatment provider is not available in the defendant's county of residence or public funding is not available, the Minnesota Department of Veterans Affairs shall coordinate with the United States Department of Veterans Affairs to locate an appropriate treatment program and sources to fund the cost of the defendant's participation in the program.

~~(j)~~ (h) If available in the county or judicial district having jurisdiction over the case, the defendant may be supervised by a veterans treatment court program under subdivision 5. If there is a veterans treatment court that meets the requirements of subdivision 5 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. Upon the defendant's successful or unsuccessful completion of the program, the veterans treatment court program shall communicate this information to the court of original jurisdiction for further action.

~~(k)~~ (i) Sentencing pursuant to this subdivision 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 for which the defendant is being sentenced.