

This Document can be made available
in alternative formats upon request

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
03/22/2021 Adoption of Report: Amended and re-referred to the Committee on Ways and Means

1.1 A bill for an act

1.2 relating to public safety; requiring discharge and dismissal of criminal charges
1.3 against certain veterans with service-related disorders; proposing coding for new
1.4 law in Minnesota Statutes, chapter 609.

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

1.6 Section 1. [609.1056] MILITARY VETERANS; CRIMES COMMITTED BECAUSE
1.7 OF CONDITIONS RESULTING FROM SERVICE; DISCHARGE AND DISMISSAL.

1.8 Subdivision 1. Definitions. As used in this section, the following terms have the meanings
1.9 given:

1.10 (1) "applicable condition" means sexual trauma, traumatic brain injury, posttraumatic
1.11 stress disorder, substance abuse, or a mental health condition;

1.12 (2) "eligible offense" means any misdemeanor or gross misdemeanor, and any felony
1.13 that is ranked at severity level 7 or lower or D7 or lower on the Sentencing Guidelines grid;

1.14 (3) "pretrial diversion" means the decision of a prosecutor to refer a defendant to a
1.15 diversion program on condition that the criminal charges against the defendant shall be
1.16 dismissed after a specified period of time, or the case shall not be charged, if the defendant
1.17 successfully completes the program of treatment recommended by the United States
1.18 Department of Veterans Affairs or a local, state, federal, or private nonprofit treatment
1.19 program; and

1.20 (4) "veterans treatment court program" means a program that has the following essential
1.21 characteristics:

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

2.1 (ii) the use of a nonadversarial approach involving prosecutors and defense attorneys to
2.2 promote public safety and to protect the due process rights of program participants;
2.3 (iii) early identification and prompt placement of eligible participants in the program;
2.4 (iv) access to a continuum of alcohol, controlled substance, mental health, and other
2.5 related treatment and rehabilitative services;
2.6 (v) careful monitoring of treatment and services provided to program participants;
2.7 (vi) a coordinated strategy to govern program responses to participants' compliance;
2.8 (vii) ongoing judicial interaction with program participants;
2.9 (viii) monitoring and evaluation of program goals and effectiveness;
2.10 (ix) continuing interdisciplinary education to promote effective program planning,
2.11 implementation, and operations;
2.12 (x) development of partnerships with public agencies and community organizations,
2.13 including the United States Department of Veterans Affairs; and
2.14 (xi) inclusion of a participant's family members who agree to be involved in the treatment
2.15 and services provided to the participant under the program.

2.16 **Subd. 2. Deferred prosecution.** (a) The court shall defer prosecution for an eligible
2.17 offense committed by a defendant who was, or currently is, a member of the United States
2.18 military as provided in this subdivision. The court shall do this at the request of the defendant
2.19 upon a finding of guilty after trial or upon a guilty plea.

2.20 (b) A defendant who requests to be sentenced under this subdivision shall release or
2.21 authorize access to military service reports and records relating to the alleged applicable
2.22 condition. The court must file the records as confidential and designate that they remain
2.23 sealed, except as provided in this paragraph. In addition, the court may request, through
2.24 existing resources, an assessment of the defendant. The defendant, through existing records
2.25 or licensed professional evaluation, shall establish the diagnosis of the condition, that it was
2.26 caused by military service, and that the offense was committed as a result of the condition.
2.27 The court, on its own motion or the prosecutor's, with notice to defense counsel, may order
2.28 the defendant to furnish to the court for in-camera review or to the prosecutor copies of all
2.29 medical and military service reports and records previously or subsequently made concerning
2.30 the defendant's condition and the condition's connection to service.

2.31 (c) Based on the record, the court shall determine whether, by clear and convincing
2.32 evidence: (1) the defendant suffered from an applicable condition at the time of the offense;

3.1 (2) the applicable condition was caused by service in the United States military; and (3) the
3.2 offense was committed as a result of the applicable condition. Within 15 days of the court's
3.3 determination, either party may file a challenge to the determination and demand a hearing
3.4 on the defendant's eligibility under this subdivision.

3.5 (d) If the court makes the determination described in paragraph (c), the court shall,
3.6 without entering a judgment of guilty, defer further proceedings and place the defendant
3.7 on probation upon such reasonable conditions as it may require and for a period not to
3.8 exceed the maximum period provided by law. A court may extend a defendant's term of
3.9 probation pursuant to section 609.135, subdivision 2, paragraphs (g) and (h). Conditions
3.10 ordered by the court must include treatment, services, rehabilitation, and education sufficient
3.11 so that if completed, the defendant would be eligible for discharge and dismissal under
3.12 subdivision 3. In addition, the court shall order that the defendant undergo a chemical use
3.13 assessment that includes a recommended level of care for the defendant in accordance with
3.14 the criteria contained in rules adopted by the commissioner of human services under section
3.15 254A.03, subdivision 3.

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

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

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

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

3.31 (i) The court and any assigned treatment program shall collaborate with, when available,
3.32 the county veterans service officer and the United States Department of Veterans Affairs
3.33 to maximize benefits and services provided to the defendant.

4.1 (j) If available in the county or judicial district having jurisdiction over the case, the
4.2 defendant may be supervised by a veterans treatment court program under subdivision 5.
4.3 If there is a veterans treatment court that meets the requirements of subdivision 5 in the
4.4 county in which the defendant resides or works, supervision of the defendant may be
4.5 transferred to that county or judicial district veterans treatment court program. Upon the
4.6 defendant's successful or unsuccessful completion of the program, the veterans treatment
4.7 court program shall communicate this information to the court of original jurisdiction for
4.8 further action.

4.9 (k) Sentencing pursuant to this subdivision waives any right to administrative review
4.10 pursuant to section 169A.53, subdivision 1, or judicial review pursuant to section 169A.53,
4.11 subdivision 2, for a license revocation or cancellation imposed pursuant to section 169A.52,
4.12 and also waives any right to administrative review pursuant to section 171.177, subdivision
4.13 10, or judicial review pursuant to section 171.177, subdivision 11, for a license revocation
4.14 or cancellation imposed pursuant to section 171.177, if that license revocation or cancellation
4.15 is the result of the same incident that is being sentenced.

4.16 Subd. 3. **Discharge and dismissal.** (a) Upon the expiration of the period of the defendant's
4.17 probation the court shall hold a hearing to discharge the defendant from probation and
4.18 determine whether to dismiss the proceedings against a defendant who received a deferred
4.19 sentence under subdivision 2. The hearing shall be scheduled so that the parties have adequate
4.20 time to prepare and present arguments regarding the issue of dismissal. The parties may
4.21 submit written arguments to the court prior to the date of the hearing and may make oral
4.22 arguments before the court at the hearing. The defendant must be present at the hearing
4.23 unless excused under Minnesota Rules of Criminal Procedure, rule 26.03, subdivision 1,
4.24 clause (3).

4.25 (b) The court shall provide notice to any identifiable victim of the offense at least 15
4.26 days before the hearing is held. Notice to victims of the offense under this subdivision must
4.27 specifically inform the victim of the right to submit an oral or written statement to the court
4.28 at the time of the hearing describing the harm suffered by the victim as a result of the crime
4.29 and the victim's recommendation on whether dismissal should be granted or denied. The
4.30 judge shall consider the victim's statement when making a decision. If a victim notifies the
4.31 prosecutor of an objection to dismissal and is not present at the hearing, the prosecutor shall
4.32 make the objections known to the court.

4.33 (c) The court shall dismiss proceedings against a defendant if the court finds by clear
4.34 and convincing evidence that the defendant:

5.1 (1) is in substantial compliance with the conditions of probation;

5.2 (2) has successfully participated in court-ordered treatment and services to address the
5.3 applicable condition caused by military service;

5.4 (3) does not represent a danger to the health or safety of victims or others; and

5.5 (4) has demonstrated significant benefit from court-ordered education, treatment, or
5.6 rehabilitation to clearly show that a discharge and dismissal under this subdivision is in the
5.7 interests of justice.

5.8 (d) In determining the interests of justice, the court shall consider, among other factors,
5.9 all of the following:

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

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

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

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

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

5.16 (6) the level of harm to the community from the offense; and

5.17 (7) the statement of the victim, if any.

5.18 (e) If the court finds that the defendant does not qualify for discharge and dismissal
5.19 under paragraph (c), the court shall enter an adjudication of guilt and proceed as otherwise
5.20 provided in law, including as provided in subdivision 4.

5.21 (f) Discharge and dismissal under this subdivision shall be without court adjudication
5.22 of guilt, but a not public record of the discharge and dismissal shall be retained by the Bureau
5.23 of Criminal Apprehension for the purpose of use by the courts in determining the merits of
5.24 subsequent proceedings against the defendant. The not public record may also be opened
5.25 only upon court order for purposes of a criminal investigation, prosecution, or sentencing.
5.26 Upon request by law enforcement, prosecution, or corrections authorities, the bureau shall
5.27 notify the requesting party of the existence of the not public record and the right to seek a
5.28 court order to open the not public record under this paragraph. The court shall forward a
5.29 record of any discharge and dismissal under this subdivision to the bureau, which shall
5.30 make and maintain the not public record of the discharge and dismissal. The discharge and
5.31 dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities

6.1 imposed by law upon conviction of a crime or for any other purpose. For purposes of this
6.2 paragraph, "not public" has the meaning given in section 13.02, subdivision 8a.

6.3 **Subd. 4. Sentencing departure; waiver of mandatory sentence.** (a) This subdivision
6.4 applies to defendants who plead or are found guilty of any criminal offense except one for
6.5 which registration is required under section 243.166, subdivision 1b.

6.6 (b) Prior to sentencing, a defendant described in paragraph (a) may present proof to the
6.7 court that the defendant has, since the commission of the offense, engaged in rehabilitative
6.8 efforts consistent with those described in this section. If the court determines that the
6.9 defendant has engaged in substantial rehabilitative efforts and the defendant establishes by
6.10 clear and convincing evidence that:

- 6.11 (1) the defendant suffered from an applicable condition at the time of the offense;
- 6.12 (2) the applicable condition was caused by service in the United States military; and
- 6.13 (3) the offense was committed as a result of the applicable condition;

6.14 the court may determine that the defendant is particularly amenable to probation and order
6.15 a mitigated durational or dispositional sentencing departure or a waiver of any statutory
6.16 mandatory minimum sentence applicable to the defendant.

6.17 **Subd. 5. Optional veterans treatment court program; procedures for eligible**
6.18 **defendants.** A county or judicial district may supervise probation under this section through
6.19 a veterans treatment court, using county veterans service officers appointed under sections
6.20 197.60 to 197.606, United States Department of Veterans Affairs veterans justice outreach
6.21 specialists, probation agents, and any other rehabilitative resources available to the court.

6.22 **Subd. 6. Creation of county and city diversion programs; authorization.** Any county
6.23 or city may establish and operate a veterans pretrial diversion program for offenders eligible
6.24 under subdivision 2 without penalty under section 477A.0175.

6.25 **Subd. 7. Exception.** This section does not apply to a person charged with an offense for
6.26 which registration is required under section 243.166, subdivision 1b.

6.27 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to crimes
6.28 committed on or after that date.