

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 1153

(SENATE AUTHORS: CHAMBERLAIN, Anderson, B., Hayden, Hawj and Newton)

DATE	D-PG	OFFICIAL STATUS
02/14/2019	373	Introduction and first reading
		Referred to Veterans and Military Affairs Finance and Policy
02/25/2019	501a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety 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 any person charged with a criminal offense that is either

1.10 Severity Level 7 or D7, or lower, in the Minnesota Sentencing Guidelines, who could

1.11 otherwise be sentenced to county jail or state prison and who alleges that the person

1.12 committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic

1.13 stress disorder, substance abuse, or mental health conditions stemming from service in the

1.14 United States military, the court shall, prior to entering a plea of guilty, make a determination

1.15 as to whether the defendant was, or currently is, a member of the United States military and

1.16 whether the defendant may be suffering from sexual trauma, traumatic brain injury,

1.17 post-traumatic stress disorder, substance abuse, or mental health conditions as a result of

1.18 that person's service. The court may request, through existing resources, an assessment to

1.19 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 and records relating to the alleged conditions stemming from

1.22 service in the United States military. These records shall be filed as confidential and remain

1.23 sealed, except as provided for in this paragraph. The defendant, through existing records or

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

2.11 (c) If the court concludes that a defendant who entered a plea of guilty to a criminal
2.12 offense is a person described in this subdivision or the parties stipulate to eligibility, and if
2.13 the defendant is otherwise eligible for probation, the court shall, upon the person entering
2.14 a plea of guilty, without entering a judgment of guilty and with the consent of the person,
2.15 defer further proceedings and place the person on probation upon reasonable conditions as
2.16 it may require and for a period not to exceed the maximum sentence provided for the
2.17 violation.

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

2.22 (e) As a condition of probation, the court may order the defendant to attend a local, state,
2.23 federal, or private nonprofit treatment program for a period not to exceed that period that
2.24 the defendant would have served in state prison or county jail, provided the defendant agrees
2.25 to participate in the program and the court determines that an appropriate treatment program
2.26 exists.

2.27 (f) A defendant granted probation under this section and ordered to attend a residential
2.28 treatment program shall earn sentence credits for the actual time the defendant serves in
2.29 residential treatment.

2.30 (g) The court, in making an order under this section to order a defendant to attend an
2.31 established treatment program, shall give preference to a treatment program that has a history
2.32 of successfully treating veterans who suffer from sexual trauma, traumatic brain injury,
2.33 post-traumatic stress disorder, substance abuse, or mental health problems as a result of that

3.1 service, including, but not limited to, programs operated by the United States Department
3.2 of Defense or the United States Department of Veterans Affairs.

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

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

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

3.22 (1) the person was granted probation and was at the time that probation was granted a
3.23 person eligible under subdivision 1 of this section;

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

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

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

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

3.32 (b) When determining whether granting restorative relief pursuant to this subdivision is
3.33 in the interests of justice, the court may consider, among other factors, all of the following:

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

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

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

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

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

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

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

4.23 (d) If the charge the person entered was a plea of guilty pursuant to subdivision 1,
4.24 paragraph (c), of this section is for an offense that is a presumptive commitment to state
4.25 imprisonment, the court may use the factors of paragraph (a) to justify a dispositional or
4.26 durational departure, or any sentence appropriate, including the application or waiver of
4.27 statutory mandatory minimums. If the court finds paragraph (a), clauses (1) to (5), factors,
4.28 defendant is presumed amenable to probation.

4.29 (e) A dismissal pursuant to this subdivision does not apply to offense for which
4.30 registration is required pursuant to section 243.166, subdivision 1b.

4.31 **Subd. 3. Optional veterans treatment court program; procedures for eligible**
4.32 **defendants.** A county or judicial district may supervise probation under this section through
4.33 a veterans treatment court, using county veterans service officers appointed under sections

5.1 197.60 to 197.606, United States Department of Veterans Affairs veterans justice outreach
5.2 specialists, probation agents, and any other rehabilitative resources available to the court.

5.3 "Veterans treatment court program" means a program that has the following essential
5.4 characteristics:

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

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

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

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

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

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

5.13 (7) ongoing judicial interaction with program participants;

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

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

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

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

5.21 Subd. 4. **Authorization for creation of county and city diversion programs.** Any
5.22 county or city may establish and operate a veterans pretrial diversion program for offenders
5.23 eligible under subdivision 1 of this section without penalty under section 477A.0175. "Pretrial
5.24 diversion" means the decision of a prosecutor to refer an offender to a diversion program
5.25 on condition that the criminal charges against the offender will be dismissed after a specified
5.26 period of time, or the case will not be charged, if the offender successfully completes the
5.27 program of treatment recommended by the United States Department of Veterans Affairs
5.28 or a local, state, federal, or private nonprofit treatment program.

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