

## Staff Information Paper

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# Veterans Restorative Justice Act

September 25, 2020

In 2019, as part of a larger government finance bill that was not ultimately enacted, the Minnesota House passed a bill for an act known as the Veterans Restorative Justice Act.<sup>1</sup> In the August and September 2020 special sessions, the Minnesota Senate unanimously passed a very similar form of the bill.<sup>2</sup> The House chose not to act on the Senate bill in the 2020 special sessions, a choice reportedly related to the need for fiscal “quiet” during the state’s ongoing bond sale rather than to the merits of the bill itself.<sup>3</sup>

In light of this situation, staff views all of the following events as being foreseeably possible:

- That the Governor may again call the Legislature into special session in October;
- That the Legislature may then enact a version of the Veterans Restorative Justice Act substantially similar to the one recently passed by the Senate, which would have taken effect April 1, 2021; and
- That the Commission may then be interested in considering what, if any, immediate changes to the Sentencing Guidelines may be appropriate as a result of this enactment.

If the bill were enacted in October, the Commission might wish to hold a public hearing on conforming Guidelines changes in December, which would require the Commission to take action in November. To avoid bringing this bill to the Commission for the first time in November, staff now offers the following introduction to the Veterans Restorative Justice Act, as it was most recently passed by the Senate.<sup>4</sup> This paper concludes with questions for the Commission’s consideration.

## Outline of Bill’s Provisions

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The bill creates a new Minn. Stat. § 609.1056 (“Military Veteran Offenders Restorative Justice Sentence”), which establishes special sentencing procedures for qualifying military veterans. The following outline of the bill’s provisions are not intended to be precise, nor to replace a reading of the [actual text of the bill](#).

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<sup>1</sup> [S.F. 2227, 1st Unofficial Engrossment, 91st Minn. Leg. 2019](#), art. 8, § 9 (included in the omnibus state government finance bill, which passed the House on a vote of 73–58).

<sup>2</sup> [S.F. 14, 3rd Spec. Sess., 91st Minn. Leg. 2020](#) (vote of 67–0); [S.F. 1, 4th Spec. Sess., 91st Minn. Leg. 2020](#) (vote of 67–0).

<sup>3</sup> K. Featherly, “Bar Buzz: Veterans Restorative Justice Act on hold,” *Minnesota Lawyer* (August 14, 2020).

<sup>4</sup> [S.F. 1, 4th Spec. Sess., 91st Minn. Leg. 2020](#).

Provisions of the bill with potential Sentencing Guidelines implications apparent to staff are highlighted.

The bill is divided into four subdivisions, all of which are “effective April 1, 2021”—without language limiting applicability to “crimes committed on or after that date,” as is often seen in criminal bills.<sup>5</sup>

## Subdivision 1: Mandatory Stay of Adjudication

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### Step 1: Triggering Events

Subdivision 1 is triggered when both of the following events occur:

- A person is charged with a misdemeanor, gross misdemeanor, or felony ranked at Severity Level 7 or D7 or lower, and the person could be sentenced to prison or jail; and
- The person alleges that the offense was committed as the result of any of the following, stemming from service in the U.S. military:
  - Sexual trauma;
  - Traumatic brain injury;
  - Post-traumatic stress disorder;
  - Substance abuse; or
  - Mental health conditions.

### Step 2: Judicial Findings

Once the subdivision’s provisions are triggered, the court must make findings, by clear and convincing evidence, whether the defendant suffers from a diagnosable condition and whether that condition stems from service in the U.S. military. These findings may be based on—

- An optional court-requested assessment through existing resources;
- Military records, which the defendant must release; and
- A diagnosis of the condition and its military-service connection, which the defendant must establish.

Alternatively, the parties may stipulate to eligibility.

### Step 3: Stay of Adjudication

Qualifying veteran defendants will receive at least one stay of adjudication under subdivision 1. To receive a stay of adjudication, the defendant must—

- Plead guilty to a criminal offense;

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<sup>5</sup> Without such limiting language, a punishment-mitigating amendment to a criminal statute will apply to every case in which final judgment had not been entered as of the amendment’s effective date, regardless of when the crime was committed. *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017); *State v. Otto*, 899 N.W.2d 501 (Minn. 2017).

- Be otherwise eligible for probation; and
- Consent to the proceedings.

Although a guilty plea is offered, the court does not enter a judgment of guilt. Instead, further proceedings are deferred and the defendant may be placed on probation for a duration of up to the statutory maximum sentence.

For misdemeanors and gross misdemeanors, the stay of adjudication is mandatory. For felonies, the first stay of adjudication is mandatory. If the defendant has previously received a stay of adjudication for a felony under this section, then a subsequent stay of adjudication is discretionary with the court. If the court denies a subsequent stay of adjudication, the court may sentence pursuant to the Guidelines, application or waiver of statutory mandatory minimums, or the sentencing departure described in subdivision 2 (see “Discretionary Sentencing Departure; Presumptive Amenability to Probation” on page 4, below).

#### **Step 4: Probation Conditions**

If the defendant agrees to treatment, probation may include treatment for a period not to exceed that period for which the defendant would have served in prison or jail. The court must give preference to programs with a history of successfully treating veterans who suffer from the qualifying conditions described above, including DOD and VA programs. The court and the treatment program shall collaborate with the county veterans service officer and the VA to maximize benefits and services.

The court may award sentence credits for actual time served in court-ordered residential treatment.

If there is a veterans treatment court in the sentencing jurisdiction, or in the jurisdiction where the defendant lives or works, the defendant’s supervision may be transferred to that court. If the defendant is unsuccessful in veterans treatment court, supervision will be returned to the original jurisdiction.

#### **Step 5: Probation Revocation**

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 the sentencing departure described in subdivision 2 (see “Discretionary Sentencing Departure; Presumptive Amenability to Probation” on page 4, below).

### **Subdivision 2:**

## **Mandatory Discharge & Dismissal; Discretionary Sentencing Departure**

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### **Requirements**

Subdivision 2 applies when all of the following are true:

- The defendant was granted probation for an offense that does not require predatory offender registration;

- At the time the defendant was granted probation, the defendant was a person eligible under subdivision 1;
- The defendant is now in substantial compliance with probation;
- The defendant has successfully participated in court-ordered treatment and services to address the military-service connected condition described in subdivision 1;
- The defendant does not represent a danger to the health and safety of others; and
- The defendant has demonstrated significant benefit from court-ordered education, treatment, or rehabilitation to clearly show that granting restorative relief pursuant to this subdivision would be in the interests of justice. In making this determination, the court may consider, among other factors—
  - the defendant's completion and degree of participation in education, treatment, and rehabilitation as ordered by the court;
  - the defendant's progress in formal education;
  - the defendant's development of career potential;
  - the defendant's leadership and personal responsibility efforts;
  - the defendant's contribution of service in support of the community; and
  - the level of harm to the community or victim from the offense.

### **Mandatory Discharge and Dismissal**

If the court finds these requirements are satisfied, then upon expiration of the period of probation the court shall discharge the defendant and dismiss the proceedings against that defendant. Discharge and dismissal under subdivision 2 shall be without court adjudication of guilt.

A not-public record of the proceedings will be maintained by the BCA “for the purpose of use by the courts in determining the merits of subsequent proceedings against the defendant. The not public record may also be opened only upon court order for purposes of a criminal investigation, prosecution, or sentencing.”

“The discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.”

### **Discretionary Sentencing Departure; Presumptive Amenability to Probation**

If the defendant has entered a plea of guilty to a felony ranked at Severity Level 7 or D7 or lower that is a presumptive commitment to state prison, the court may use the factors described in the “Requirements” section, above, “to justify a dispositional departure or any appropriate sentence, including the application of or waiver of statutory mandatory minimums.”

A finding of those factors results in a presumption that the defendant is amenable to probation.

## **Subdivisions 3 & 4:**

### **Veterans Treatment Courts & Pretrial Diversion Programs**

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Subdivision 3 permits supervision under the bill to occur through a veterans treatment court, and describes eleven essential characteristics of a veterans treatment court program.

Subdivision 4 authorizes counties and cities to establish veterans pretrial diversion programs for defendants eligible under subdivision 1. Under such programs, prosecutors choose to dismiss or not to file charges upon successful completion of a program of treatment recommended by the VA or other treatment program.

### **Questions for the Commission**

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If this bill were enacted in a potential October special session, staff would intend to draft potential conforming Sentencing Guidelines changes and present them to the Commission for possible action on November 5, 2020.

- Does the Commission have any preliminary guidance to staff regarding what should be included among those draft changes?
- Is there additional information that would assist the Commission in deciding what, if any, Sentencing Guidelines changes to adopt?

SENATE  
STATE OF MINNESOTA  
FOURTH SPECIAL SESSION

S.F. No. 1

(SENATE AUTHORS: CHAMBERLAIN, Ruud, Lang, Anderson, B. and Howe)

DATE	D-PG	OFFICIAL STATUS
09/11/2020	5	Introduction and first reading
	5	Laid on table
	12	Taken from table
		Urgency declared rules suspended
	12	Second reading
	12	Third reading Passed

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 conditions 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 conditions 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

2.1 records or licensed professional evaluation, shall establish the diagnosis of the condition  
2.2 and its connection to military service. The court, on the prosecutor's motion with notice to  
2.3 defense counsel, may order the defendant to furnish to the court for in camera review or to  
2.4 the prosecutor copies of all medical and military service reports and records previously or  
2.5 subsequently made concerning the defendant's condition and its connection to service. Based  
2.6 on the record, the court shall make findings on whether, by clear and convincing evidence,  
2.7 the 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 defendant entering  
2.14 a plea of guilty, without entering a judgment of guilty and with the consent of the defendant,  
2.15 defer further proceedings and place the defendant on probation upon such reasonable  
2.16 conditions as it may require and for a period not to exceed the maximum sentence provided  
2.17 for the violation. If the veteran has previously received a stay of adjudication for a felony  
2.18 offense under this section, the court may in its discretion sentence consistent with this section  
2.19 or deny the use of this section on subsequent felony offenses. If the court denies a stay of  
2.20 adjudication on this basis, the court may sentence pursuant to the guidelines, application or  
2.21 waiver of statutory mandatory minimums, or a departure pursuant to subdivision 2, paragraph  
2.22 (d).

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

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

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

3.1 (g) The court, in making an order under this section to order a defendant to attend an  
3.2 established treatment program, shall give preference to a treatment program that has a history  
3.3 of successfully treating veterans who suffer from sexual trauma, traumatic brain injury,  
3.4 post-traumatic stress disorder, substance abuse, or mental health conditions as a result of  
3.5 that service, including but not limited to programs operated by the United States Department  
3.6 of Defense or Veterans Affairs.

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

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

3.19 (j) Sentencing pursuant to this section waives any right to administrative review pursuant  
3.20 to section 169A.53, subdivision 1, or judicial review pursuant to section 169A.53, subdivision  
3.21 2, for a license revocation or cancellation imposed pursuant to section 169A.52, and also  
3.22 waives any right to administrative review pursuant to section 171.177, subdivision 10, or  
3.23 judicial review pursuant to section 171.177, subdivision 11, for a license revocation or  
3.24 cancellation imposed pursuant to section 171.177, if that license revocation or cancellation  
3.25 is the result of the same incident that is being sentenced.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.3 (d) If the charge to which the defendant entered a plea of guilty is listed under subdivision  
5.4 1, paragraph (a), and is for an offense that is a presumptive commitment to state  
5.5 imprisonment, the court may use the factors of paragraph (a) to justify a dispositional  
5.6 departure or any appropriate sentence, including the application or waiver of statutory  
5.7 mandatory minimums. If the court finds paragraph (a), clauses (1) to (5), factors, defendant  
5.8 is presumed amenable to probation.

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

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

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

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

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

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

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

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

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

5.27 (7) ongoing judicial interaction with program participants;

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

5.29 (9) continuing interdisciplinary education to promote effective program planning,  
5.30 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 **EFFECTIVE DATE.** This section is effective April 1, 2021.