

HF478 - 0 - Veterans Sentencing; Service-Related Disorders

Chief Author: **Sandra Feist**
 Committee: **Labor, Industry, Veterans and Military Affairs**
Finance and Policy
 Date Completed: **2/10/2021 6:02:39 PM**
 Lead Agency: **Supreme Court**
 Other Agencies:
 Corrections Dept Sentencing Guidelines Comm

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept						
General Fund		-	-	(228)	(489)	(700)
State Total						
General Fund		-	-	(228)	(489)	(700)
		Total	-	-	(228)	(489)
		Biennial Total			(228)	(1,189)

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept					
General Fund	-	-	(2.5)	(5.4)	(7.8)
	Total	-	-	(2.5)	(5.4)
				(5.4)	(7.8)

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Maren Bardal **Date:** 2/10/2021 6:02:39 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept						
General Fund		-	-	(228)	(489)	(700)
Total		-	-	(228)	(489)	(700)
Biennial Total				(228)		(1,189)
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Corrections Dept						
General Fund		-	-	(228)	(489)	(700)
Total		-	-	(228)	(489)	(700)
Biennial Total				(228)		(1,189)
2 - Revenues, Transfers In*						
Corrections Dept						
General Fund		-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-

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State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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State Cost (Savings) Calculation Details

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State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

HF478 adds a new Minn. Stat. § 609.1056, Military Veteran Offenders Restorative Justice Sentence, which at subdivision 1 provides that if a defendant charged with certain criminal offenses alleges that the offense was committed as a result of conditions stemming from military service, the court shall, prior to entering a guilty plea, make a determination as to whether the defendant is or was a member of the military and whether the defendant may be suffering from one of the listed conditions as a result of the defendant’s service. The court may request, through existing resources, an assessment to aid in that determination. A defendant who requests sentencing under these provisions must release or authorize access to relevant reports and records, which shall be filed as confidential and remain sealed, and the defendant must establish by clear and convincing evidence the condition and its connection to military service. The court on the prosecutor’s motion with notice to defense counsel may order defendant to furnish to the court for in camera review or to the prosecutor copies of all relevant records. The court shall make a finding and within 15 days either party may file a challenge and demand a hearing on defendant’s eligibility.

If the court concludes that a defendant who has entered a guilty plea qualifies under these provisions, or if the parties so stipulate, the court shall not enter a judgment of guilty, and with the consent of the defendant shall place the defendant on probation on reasonable condition for a time period not to exceed the maximum period provided by law. If the defendant has previously received a stay of adjudication for a felony under these provisions, the court may in its discretion sentence under these provisions or sentence as otherwise authorized. Upon a violation of probation, the court may enter an adjudication of guilt and proceed as authorized by law.

As a condition of probation, the court may order the defendant to attend treatment, giving preference to a program with a history of treating veterans, for a period of time not to exceed that which the defendant would have served in state prison or county jail. If available, the defendant may be supervised by a veterans treatment court program in the county of offense or where the defendant resides or works, provided that if the defendant is unsuccessful in veterans court, supervision must be returned the venue county for standard sentencing. Sentencing under these provisions waives the defendant’s right to administrative or judicial review under certain provisions in sections 169A.52, 169A.53, and 171.177 regarding license revocation or cancellation resulting from the offense.

Subdivision 2 provides that a court must hold a public hearing not less than 15 days after notice to the parties and any victim and determine whether the defendant was eligible for and granted probation under the statute, is in substantial compliance, has successfully participated in treatment, and meets other requirements, and if so found, then upon the expiration of the probation period the court shall discharge the defendant and dismiss the proceedings. A not public record shall be retained by the Bureau of Criminal Apprehension and may only be opened upon court order. If the court finds the defendant does not satisfy the requirements for discharge and dismissal, the court shall enter an adjudication of guilt and proceed as provided by law. If the offense to which defendant pleaded guilty called for a presumptive commitment, the court may use the statutory factors to justify a dispositional departure, and if the court finds certain factors the defendant is presumed amendable to probation.

Subdivision 3 provides that a county or judicial district may supervise the probation under this section through a veterans treatment court, and any other resources available to the court. Subdivision 4 provides that a county or city may establish and operate a veterans pretrial diversion program for eligible offenders without penalty under section 477A.0175 (Aid Reductions For Operating An Unauthorized Diversion Program). Subdivision 5 provides that the provisions in the statute do not apply to offenses requiring predatory offender registration, except that courts may use certain factors to justify a dispositional departure or other appropriate sentence, and upon finding certain factors the

defendant is presumed amenable to probation.

Assumptions

It is assumed that the provisions of this bill will not result in additional criminal case filings and will not significantly decrease the number of case filings. It is assumed that if the court is required to conduct in camera review of medical and military records in order to determine eligibility that the provisions of this bill could significantly impact the judicial branch resources required to process these existing criminal cases.

It is unclear under the provisions of the bill whether and under what circumstances a court would order the defendant to produce the necessary records for in camera review when the defendant is already required to file, or upon release have the appropriate agency or entity file, with the court the necessary records to establish the condition. It is assumed that if a defendant wants to be found eligible the defendant will voluntarily file the necessary records and the court would not be required in most cases to order the defendant to produce the documents for in camera review.

If the documents are filed with the court, the documents would be maintained in the court's case file; if the documents are ordered produced for in camera review, the documents would not ordinarily be maintained in the court's case file. If a judge made an eligibility finding that was challenged, it is assumed that the hearing on eligibility would be public and that the documents reviewed, or their relevant contents, may then become public. It is unclear whether the bill anticipates that any records the defendant files with the court would be kept confidential or sealed in the court's file; it is assumed the court would seal the records.

It is assumed that if a defendant is not alleged and found to have violated a condition of probation, conviction cannot be entered, and the case will be dismissed at the end of the term of probation whether or not a hearing is held, consistent with existing case law. It is also assumed that the records of these criminal cases, even if discharge and dismissal occurs, will remain public in the court's case management system unless and until a judge orders the case expunged or sealed.

Expenditure and/or Revenue Formula

It is not anticipated that the provisions of this bill will have a significant fiscal impact on the Judicial Branch to the extent that an additional judge or court staff FTE would be required, but the provisions could require significant judge time to determine eligibility.

Long-Term Fiscal Considerations

None

Local Fiscal Impact

None

References/Sources

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Chief Author: **Sandra Feist**
 Committee: **Labor, Industry, Veterans and Military Affairs Finance and Policy**
 Date Completed: **2/10/2021 6:02:39 PM**
 Agency: **Corrections Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

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Biennial Total			(228)		(1,189)	

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
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General Fund	-	-	(2.5)	(5.4)	(7.8)
Total	-	-	(2.5)	(5.4)	(7.8)

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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State Cost (Savings) Calculation Details

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General Fund	-	-	-	(228)	(489)	(700)
Total		-	-	(228)	(489)	(700)
Biennial Total				(228)		(1,189)
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

The proposed legislation would establish deferred judgment procedures for veterans with service-related disorders facing felony charges.

Assumptions

The MSGC assumes the dismissal procedures and the departure procedures would apply to any offender on probation as of August 1, 2021, who can establish eligibility and can establish the existence of the factors found in subd. 2(a).

The MSGC has no information as to how many felony offenses are committed by veterans and how many might qualify for the discharge and dismissal procedure.

Six percent of offenders incarcerated in a Minnesota correctional facility (569 of 9,479) on January 1, 2019 self-reported that they were a veteran.

A Bureau of Justice report indicates that, from 2011 - 2012, eight percent of state and federal inmates were reported veterans, and about one-half of them were diagnosed with a mental health disorder.

It is therefore assumed that about three percent of Minnesota Department of Corrections (DOC) inmates are veterans with a mental health disorder. It is not known how many of those mental health disorders are service-connected or offense-connected.

Assuming one-third are both service- and offense-connected and would have been able to satisfactorily complete probation and meet the requirements of this bill, it is assumed that one percent of DOC inmates would have been eligible for a mandatory stay of adjudication under the provisions of this bill; so it is therefore assumed that one percent of offenders in the future who would otherwise receive prison sentences would receive a mandatory stay of adjudication, excluding offenders on the sex offender grid and offenses ranked at severity level 8/D8 and above.

The MSGC estimates the provisions of this bill would result in 31 imprisoned offenders a year receiving stays of adjudication.

The MSGC estimates the provisions of this bill would result in 121 non-imprisoned offenders receiving stays of adjudication. They would serve less time in local correctional facilities because they would receive credit for time in treatment. It is not known how many of those deferrals might end in probation violations which could end in the imposition of a sentence.

The MSGC estimates the number of prison beds saved could reach 53 beds per year by FY2028.

The MSGC estimates that bed savings would be 24 beds in FY2023, 36 beds in FY2024, 49 beds in FY2025, 51 beds in FY2026, 52 beds in FY2027, and 53 beds in FY2028 and each subsequent year.

Prison bed savings are based on a marginal per diem cost of \$40.75 for FY2022, \$41.59 for FY2023, \$42.50 for FY2024, and \$43.47 for FY2025 and each subsequent year. This includes marginal costs for all facility, private and public bed rental, health care and support costs.

The annual savings are estimated by multiplying the number of prison beds by the subsequent annual per diem. Unless otherwise noted, prison beds are phased out on a quarterly basis.

Prison bed FTE impact for the decrease in the offender population assumes 80 percent of the ongoing bed impact is personnel-related and the average salary per FTE is \$72,000 including benefits.

There would be some minimal impact to supervision caseloads statewide if offenders receive probation dismissals sooner than they would have if a sentence had been imposed.

This bill would be effective August 1, 2021.

Expenditure and/or Revenue Formula

Costs/(Savings) for Prison Beds - DOC

Fiscal Year	2021	2022	2023	2024	2025
Number of Prison Beds	0	0	-24	-36	-49
Cost of Prison Beds (in 000s)	\$0	\$0	(\$228)	(\$489)	(\$700)
FTEs	0	0	-2.5	-5.4	-7.8

Long-Term Fiscal Considerations

Estimated prison bed savings would reach 53 beds and \$841,000 in FY2029 and continue into subsequent years.

Local Fiscal Impact

There may be some savings for local correctional resources as result of this bill if qualifying veterans serve less time in local correctional facilities. The MSGC cannot identify the number of veteran offenders, and cannot estimate an impact at this time.

References/Sources

Minnesota Sentencing Guidelines Commission

Department of Corrections staff

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HF478 - 0 - Veterans Sentencing; Service-Related Disorders

Chief Author: **Sandra Feist**
 Committee: **Labor, Industry, Veterans and Military Affairs Finance and Policy**
 Date Completed: **2/10/2021 6:02:39 PM**
 Agency: **Sentencing Guidelines Comm**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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State Cost (Savings) Calculation Details

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State Cost (Savings) = 1-2 Dollars in Thousands	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-
Biennial Total			-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*					
Total	-	-	-	-	-
Biennial Total			-		-
2 - Revenues, Transfers In*					
Total	-	-	-	-	-
Biennial Total			-		-

Bill Description

The bill creates a new Minn. Stat. § 609.1056 (“Military Veteran Offenders Restorative Justice Sentence”).

Subdivision 1 establishes deferred judgment procedures for criminal offenses related to service-related disorders. If a defendant is a service member or veteran charged with an offense no more severe than Severity Level (SL) 7 on the Standard Grid or D7 on the Drug Offender Grid, including misdemeanor or gross misdemeanor offenses, who could otherwise be sentenced to a county jail or state correctional facility, and the defendant alleges that the offense was committed as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health condition stemming from military service, then the court must, before entering a guilty plea, make a determination as to the alleged service-related disorder. If the offense is found or stipulated to be related to a service-related disorder, and if the defendant pleads guilty and consents to the deferred judgment procedure, then the court must defer further proceedings without adjudicating guilt and place the defendant on probation.

If the veteran has previously received a stay of adjudication under this section, the court may deny the use of this section on subsequent felony offenses. When available, the court and treatment program shall collaborate with the United States Departments of Defense and or Veterans Affairs to maximize services and benefits. The offender may be supervised by veterans’ treatment court programs where available.

An offender who requests to be sentenced under the new provision, must release or authorize access to military service and records relating to the alleged condition. Sentencing pursuant to this section waives any right to administrative review of license revocation or cancellation under Minn. Stat. §§ 169A.53, 169A.52, or 171.177 if it is the result of the same incident being sentenced. The court must make a finding based on clear and convincing evidence whether the defendant suffers from a diagnosable condition and whether that condition stems from military service.

If residential treatment is ordered as a condition of probation, the defendant may be awarded sentence credit for residential treatment time served. Subdivision 1 also provides optional guidance regarding the parameters of such treatment. The duration of treatment ordered may not exceed that period which the defendant would have served in state prison or county jail.

Subdivision 2(a) and 2(c) establish dismissal relief for defendants who were eligible for deferred judgment procedures under subdivision 1 at the time they were placed on probation. After notice to the victim and prosecutor, and hearing, a court must discharge such a person and dismiss the proceedings, without adjudication of guilt, if the court finds by clear and convincing evidence that the defendant is in substantial compliance with probation conditions, has successfully participated in court-ordered treatment and services to address the service-related disorder, does not represent a health or safety danger, and whose demonstrated, significant benefit from court-ordered education, treatment, or rehabilitation clearly shows that discharge and dismissal is in the interests of justice. To aid the court in determining whether granting such relief is in the interests of justice, Subdivision 2(b) gives the court a list of optional considerations. The records of such proceedings shall be nonpublic, but records shall be maintained by the BCA for purposes of future criminal investigation.

Subdivision 2(d) permits the court to enter an adjudication of guilt and proceed as otherwise provided upon violation of a condition of probation. Subdivision 2(d) requires the court to do so if it is unable to make the findings described in the preceding paragraph.

Subdivision 2(e) establishes alternative relief for offenses whose presumptive sentence is commitment to prison; for such offenses, the court may employ the factors in subd. 2(a) to justify a mitigated dispositional departure, or any appropriate sentence; a finding of those factors causes a defendant to be presumably particularly amenable to probation.

Subdivisions 3 and 4 authorize optional veterans' courts and local diversion programs.

Subdivision 5 exempts offenses for which predatory offender registration is required from the scope of the statute, except that predatory offenses remain eligible for the alternative relief described in subd. 2(e).

The bill is effective August 1, 2021.

Assumptions

It is assumed that the dismissal procedures of subd. 2(c) and the departure procedures of subd. 2(e) apply to any offender on probation as of August 1, 2021, who can establish eligibility under subdivision 1 and who can establish the existence of the factors found in subd. 2(a). However, because subdivision 1 did not exist heretofore, it is assumed that few offenders would have been placed on deferred judgment pursuant to subdivision 1 and therefore be eligible for the dismissal or departure relief of subdivision 2. On the other hand, it is assumed that the law will, upon enactment, have immediate effect for eligible guilty pleas, with the first defendants to benefit from dismissal or departure relief to do so upon completion of probation.

Section 3.F, Military Veterans, of the Minn. Sentencing Guidelines states: "Under Minn. Stat. § 609.115, subd. 10, when a defendant is convicted of a crime, the court must inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States, and if so, may take further action as permitted by that provision." It is assumed that the Commission will modify this section of the Guidelines, as well as the section on grounds for mitigated departures, to comport with the bill's language.

MSGC has no information as to how many felony offenses are committed by veterans and how many might qualify for the discharge and dismissal procedure.

According to the Minn. Department of Corrections (DOC), on January 1, 2019, six percent of offenders incarcerated in a Minnesota Correctional Facility (569 of 9,479), self-reported that they were a veteran. This is similar to a Bureau of Justice Statistics (BJS) report indicating that, from 2011-12, eight percent of state and federal inmates were reportedly veterans.

According to BJS data, about half of the incarcerated veterans reported having been diagnosed with a mental health disorder. Thus, it is assumed that about 3 percent of DOC inmates are veterans with a mental health disorder. It is not known how many of those mental health disorders are service-connected, nor offense-connected. Assuming that one-third are both service- and offense-connected and would have been able to satisfactorily complete probation and meet the requirements of subd. 2(a), it is assumed that 1 percent of DOC inmates would have been eligible for a mandatory stay of adjudication under subd. 1(c). It is therefore assumed that 1 percent of offenders in the future who would otherwise receive prison sentences will receive a mandatory stay of adjudication, excluding offenders on the sex offender grid and offenses ranked at SL 8/D8 and above.

In 2019, there were 2,336 offenders sentenced to prison for offenses ranked at SL 7 or below who had presumptive prison sentences (aggravated dispositional departures excluded because most are requests for prison). In 2019, there were 753 offenders who received prison sentences for drug offenses ranked at SL D7 or below on the Drug Offender Grid. Therefore, a total of 3,089 offenders sentenced to prison might be eligible for stays of adjudication based only on the offense. If one percent were to qualify as veterans who meet the criteria in 2(a), that would result in 31 imprisoned offenders a year receiving stays of adjudication instead.

In 2019, 8,541 offenders received non-prison sentences for offenses that were non-drug offenses at SL7 or below. In 2019, 3,608 offenders received non-prison sentences for drug offenses ranked at SL D7 or below on the Drug Offender

Grid. Based only on the offense, a total of 12,149 offenders might be eligible for stays of adjudication under subd. 1. If one percent of the 12,149 offenders were to qualify as veterans who meet the criteria in subd. 1, it is estimated that 121 non-imprisoned offenders per year will receive stays of adjudication under the provisions of this bill.

It is assumed that offenders who qualify for stays of adjudication may serve less time in local correctional facilities because they may receive credit for time in treatment. However, this savings may be offset to some extent by time served in local facilities by offenders receiving subd. 2(e) departures. It is also not known what percent of those stays of adjudication might end in probation violations which could end in the imposition of a sentence.

Expenditure and/or Revenue Formula

NA

Long-Term Fiscal Considerations

If the bill results in an increase in veterans who qualify for stays of adjudication, there could be some eventual prison bed savings. The 31 offenders now sentenced to prison who would qualify for stays of adjudication would eventually have used 53 beds, the use of which would be avoided under the bill. It is estimated that 24 beds would be saved in FY2023, 36 in FY2024, 49 in FY2025, 51 in FY2026, 52 in FY2027 and 53 in FY2028, and annually every year after.

If 121 probationary offenders annually receive stays of adjudication, there could be long-term savings in probation supervision costs if those offenders receive probation dismissals sooner. Some or all of these savings could be offset by increased assessment costs to determine eligibility, and increased supervision costs among the 31 offenders not sentenced to prison under the provisions of this bill.

Local Fiscal Impact

Because it is assumed that this bill will result in qualifying veterans serving less time in local correctional facilities, and possibly less time on supervision, there may be some local government fiscal impact. Because MSGC cannot identify veteran offenders, it is unable to estimate an impact at this time.

References/Sources

Minn. Sentencing Guidelines Commission. Minn. Sentencing Guidelines and Commentary (2018).
Duwe, Grant. "RE: Veterans information for SF 1153." Message to Anne Wall.
Bureau of Justice Statistics. Veterans in Prison and Jail, 2011-12. Retrieved on October 13, 2020 at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5479>.
MSGC Monitoring Data, 2019.

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