

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0720.01 Richard Sweetman x4333

HOUSE BILL 17-1168

HOUSE SPONSORSHIP

Landgraf and Lee, Carver, Covarrubias, Lewis, Liston, Lundeen, Nordberg, Rankin, Weissman, Williams D.

SENATE SPONSORSHIP

(None),

House Committees

Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CRIMINAL COURT PROCEDURES FOR DEFENDANTS WHO**
102 **HAVE SERVED IN THE ARMED FORCES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

If a court determines that a criminal defendant is currently serving in the United States armed forces or is a veteran of such forces (military defendant) and has been diagnosed as having any of certain mental health problems relating to his or her military service, the court shall:

! Order the person preparing the presentence report to consult with the federal department of veterans affairs or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

another agency or person with suitable knowledge or experience, for the purpose of providing the court with information regarding treatment options available to the defendant, including federal, state, and local program options; and

! Consider such treatment options, as well as the treatment recommendations of any diagnosing or treating mental health professionals, in imposing sentence.

If the court determines that a military defendant suffers sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems during his or her service in the United States armed forces and the defendant is eligible for probation, the court shall consider such fact favorably in determining whether to grant probation and in assessing whether he or she should be ordered into a federal or community-based treatment service program.

The bill allows a court to order the criminal conviction records of a military defendant to be sealed when certain conditions are satisfied.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds that:

4 (a) In 2010, the general assembly enacted, and the governor
5 subsequently signed into law, House Bill 10-1104, which:

6 (I) Authorized the state court administrator to seek federal funding
7 for the establishment, maintenance, or expansion of veterans' treatment
8 courts; and

9 (II) Authorized the chief judge of each judicial district to establish
10 an appropriate program for the treatment of veterans and members of the
11 military;

12 (b) Although a significant majority of veterans and military
13 service members do not become involved in the criminal justice system,
14 studies indicate that some veterans who return to civilian life engage in
15 criminal behavior;

16 (c) Some veterans and military service members who are criminal

1 defendants have no opportunity to receive such restorative relief due to
2 their geographic location in the state or because their military service and
3 mitigating psychological factors are not identified by the court;

4 (d) Veterans who successfully complete court-ordered treatment
5 programs still face significant barriers regarding housing and employment
6 as a result of their criminal charges and convictions, regardless of
7 whether they suffer mental conditions that relate to their military service;
8 and

9 (e) As a state that is grateful for the service and sacrifice of our
10 military service members and veterans, we must ensure that proper
11 treatments for mental health and substance abuse problems, including
12 restorative-relief programs as alternatives to incarceration, are available
13 to all such persons when they are shown to suffer mental conditions that
14 relate to their military service.

15 (2) Now, therefore, the general assembly declares that it is in the
16 best interests of the state to establish a statewide veterans court program
17 so that, in each criminal case involving a veteran defendant or military
18 service member whose characterization of service is other than
19 dishonorable and where there is the potential that, at the time of the
20 offense, the defendant suffered from sexual trauma, traumatic brain
21 injury, post-traumatic stress disorder, substance abuse, or mental health
22 problems relating to the defendant's service in the United States military,
23 the court, prior to sentencing, shall:

24 (a) Make a determination as to such allegation; and

25 (b) When appropriate, refer the defendant to a restorative relief
26 program as an alternative to incarceration.

27 **SECTION 2.** In Colorado Revised Statutes, 16-11-102, **amend**

1 (1.9)(b) as follows:

2 **16-11-102. Presentence or probation investigation.** (1.9) Each
3 presentence report shall also:

4 (b) Provide sufficient information to allow the court to consider:

5 (I) Whether the offender is a suitable candidate for a sentencing
6 option that does not involve incarceration or a combination of sentencing
7 options that does not involve incarceration; ~~and~~

8 (II) The appropriate conditions to impose if a defendant is
9 sentenced to probation; AND

10 (III) WHETHER THE DEFENDANT IS CURRENTLY SERVING IN, OR IS
11 A VETERAN OF, THE ARMED FORCES OF THE UNITED STATES AS DEFINED IN
12 SECTION 28-3-101 (2).

13 **SECTION 3.** In Colorado Revised Statutes, ~~add~~ 16-11-106 as
14 follows:

15 **16-11-106. Military and veteran defendants - treatment of**
16 **mental illness.** (1) IF A COURT DETERMINES, PURSUANT TO SECTION
17 16-11-102 (1.9)(b)(III), THAT A CRIMINAL DEFENDANT IS CURRENTLY
18 SERVING IN THE UNITED STATES ARMED FORCES OR IS A VETERAN OF SUCH
19 FORCES AND HAS BEEN DIAGNOSED AS HAVING A MENTAL ILLNESS BY A
20 QUALIFIED PSYCHIATRIST, CLINICAL PSYCHOLOGIST, LICENSED MENTAL
21 HEALTH PROFESSIONAL, OR PHYSICIAN THAT RELATES TO HIS OR HER
22 MILITARY SERVICE, THE COURT MAY:

23 (a) ORDER THE PERSON PREPARING THE PRESENTENCE REPORT TO
24 CONSULT WITH THE FEDERAL DEPARTMENT OF VETERANS AFFAIRS OR
25 ANOTHER AGENCY OR PERSON WITH SUITABLE KNOWLEDGE OR
26 EXPERIENCE, FOR THE PURPOSE OF PROVIDING THE COURT WITH
27 INFORMATION REGARDING TREATMENT OPTIONS AVAILABLE TO THE

1 DEFENDANT, INCLUDING FEDERAL, STATE, AND LOCAL PROGRAM OPTIONS;
2 AND

3 (b) CONSIDER SUCH TREATMENT OPTIONS, AS WELL AS THE
4 TREATMENT RECOMMENDATIONS OF ANY DIAGNOSING OR TREATING
5 MENTAL HEALTH PROFESSIONALS, IN IMPOSING SENTENCE.

6 (2) INFORMATION CONCERNING A DEFENDANT THAT IS OBTAINED
7 FOR THE PURPOSES OF SUBSECTION (1) OF THIS SECTION MAY NOT BE USED
8 IN ANY SUBSEQUENT PROCEEDINGS.

9 **SECTION 4.** In Colorado Revised Statutes, **amend** 13-5-144 as
10 follows:

11 **13-5-144. Chief judge - veterans treatment court authority -**
12 **cross-jurisdictional authority - interstate authority.** (1) The chief
13 judge of a judicial district may establish an appropriate program for the
14 treatment of veterans and members of the military.

15 (2) THE CHIEF JUDGE OF A JUDICIAL DISTRICT MAY ESTABLISH AN
16 APPROPRIATE PROGRAM IN WHICH VETERANS AND MEMBERS OF THE
17 MILITARY MAY BE SUPERVISED BY AN EXISTING VETERANS TREATMENT
18 PROGRAM OPERATED BY ANOTHER DISTRICT COURT IF NO SUCH PROGRAM
19 EXISTS WITHIN THE CHIEF JUDGE'S JURISDICTION.

20 (3) FOR VETERANS AND MEMBERS OF THE MILITARY WHO RESIDE
21 IN COLORADO AND ARE BEING SUPERVISED PURSUANT TO AN INTERSTATE
22 COMPACT AGREEMENT BY A COMPARABLE PROGRAM FROM ANOTHER
23 STATE, THE CHIEF JUDGE OF A JUDICIAL DISTRICT MAY:

24 (a) PLACE THE VETERAN OR MEMBER INTO AN APPROPRIATE
25 TREATMENT PROGRAM, IF ONE EXISTS IN THE JUDICIAL DISTRICT; OR

26 (b) ESTABLISH AN APPROPRIATE TREATMENT PROGRAM IN WHICH
27 THE VETERAN OR MEMBER MAY BE SUPERVISED.

1 THE DEFENDANT WOULD HAVE SERVED IN PRISON OR JAIL, SO LONG AS THE
2 DEFENDANT AGREES TO PARTICIPATE IN THE PROGRAM.

3 (3) CONSISTENT WITH THE OBJECTIVE OF SELECTING A SENTENCE
4 THAT ADDRESSES EACH OFFENDER'S INDIVIDUAL CHARACTERISTICS
5 PURSUANT TO SECTION 18-1-102.5 (1)(e), THE COURT SHALL CONSIDER
6 THE FACT THAT A DEFENDANT IS A PERSON DESCRIBED IN SUBSECTION (1)
7 OF THIS SECTION IN ASSESSING WHETHER THE DEFENDANT SHOULD BE
8 PLACED ON PROBATION AND ORDERED INTO A FEDERAL OR
9 COMMUNITY-BASED TREATMENT SERVICE PROGRAM WITH A
10 DEMONSTRATED HISTORY OF SPECIALIZING IN THE TREATMENT OF MENTAL
11 HEALTH PROBLEMS, INCLUDING SUBSTANCE ABUSE, POST-TRAUMATIC
12 STRESS DISORDER, TRAUMATIC BRAIN INJURY, SEXUAL TRAUMA, AND
13 OTHER RELATED MENTAL HEALTH PROBLEMS.

14 (4) IN ORDERING A DEFENDANT TO A TREATMENT PROGRAM
15 PURSUANT TO THIS SECTION, THE COURT SHALL GIVE PREFERENCE TO A
16 TREATMENT PROGRAM THAT HAS A HISTORY OF SUCCESSFULLY TREATING
17 VETERANS WHO SUFFER FROM SEXUAL TRAUMA, TRAUMATIC BRAIN
18 INJURY, POST-TRAUMATIC STRESS DISORDER, SUBSTANCE ABUSE, OR
19 MENTAL HEALTH PROBLEMS RELATING TO MILITARY SERVICE, INCLUDING,
20 BUT NOT LIMITED TO, PROGRAMS OPERATED BY THE FEDERAL
21 DEPARTMENT OF DEFENSE AND THE FEDERAL DEPARTMENT OF VETERANS
22 AFFAIRS.

23 (5) COURTS ARE ENCOURAGED TO DEVELOP AND SUSTAIN
24 PROGRAMS TO SUPERVISE OFFENDERS WHO SUFFER FROM SEXUAL TRAUMA,
25 TRAUMATIC BRAIN INJURY, POST-TRAUMATIC STRESS DISORDER,
26 SUBSTANCE ABUSE, OR MENTAL HEALTH PROBLEMS AS A RESULT OF
27 MILITARY SERVICE SO THEY HAVE THE BEST OPPORTUNITY TO BE

1 REHABILITATED AND PARTICIPATE IN THE WORKFORCE OF THE STATE.

2 (6) THE COURT AND ANY TREATMENT PROGRAM MAY
3 COLLABORATE WITH THE STATE DEPARTMENT OF MILITARY AND VETERANS
4 AFFAIRS, THE STATE DEPARTMENT OF HUMAN SERVICES, AND THE FEDERAL
5 DEPARTMENT OF VETERANS AFFAIRS TO MAXIMIZE BENEFITS AND SERVICES
6 PROVIDED TO VETERANS PURSUANT TO THIS SECTION.

7 **SECTION 6.** In Colorado Revised Statutes, **add** 24-72-710 as
8 follows:

9 **24-72-710. Sealing of criminal conviction records information**
10 **for defendants who are military service members or veterans -**

11 **retroactivity.** (1) A COURT MAY ORDER THE CRIMINAL CONVICTION
12 RECORDS OF A DEFENDANT TO BE SEALED WHEN THE COURT FINDS AT A
13 PUBLIC HEARING, HELD AT LEAST THIRTY-FIVE DAYS AFTER NOTICE TO THE
14 PROSECUTION, THE DEFENSE, AND ANY VICTIM OF THE OFFENSE, THAT THE
15 DEFENDANT:

16 (a) WAS GRANTED PROBATION, AND AT THE TIME PROBATION WAS
17 GRANTED, WAS DETERMINED TO HAVE SUFFERED FROM SEXUAL TRAUMA,
18 TRAUMATIC BRAIN INJURY, POST-TRAUMATIC STRESS DISORDER,
19 SUBSTANCE ABUSE, OR MENTAL HEALTH PROBLEMS RELATING TO HIS OR
20 HER MILITARY SERVICE;

21 (b) IS IN SUBSTANTIAL COMPLIANCE WITH THE CONDITIONS OF
22 PROBATION;

23 (c) HAS SUCCESSFULLY PARTICIPATED IN COURT-ORDERED
24 TREATMENT AND SERVICES, INCLUDING ANY REQUIRED AFTER-CARE
25 TREATMENT;

26 (d) DOES NOT REPRESENT A DANGER TO THE HEALTH AND SAFETY
27 OF OTHERS; AND

1 (e) HAS DEMONSTRATED SUFFICIENT BENEFIT FROM
2 COURT-ORDERED EDUCATION, TREATMENT, OR REHABILITATION TO SHOW
3 THAT THE SEALING OF HIS OR HER CRIMINAL CONVICTION RECORDS IS
4 CONSISTENT WITH THE INTERESTS OF JUSTICE.

5 (2) IN DETERMINING WHETHER TO SEAL CRIMINAL CONVICTION
6 RECORDS AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE COURT
7 MAY CONSIDER ANY OF THE FOLLOWING FACTORS:

8 (a) THE DEFENDANT'S COMPLETION AND DEGREE OF PARTICIPATION
9 IN EDUCATION, TREATMENT, AND REHABILITATION ORDERED BY THE
10 COURT;

11 (b) THE DEFENDANT'S PROGRESS IN FORMAL EDUCATION;

12 (c) THE DEFENDANT'S DEVELOPMENT OF CAREER POTENTIAL;

13 (d) THE DEFENDANT'S LEADERSHIP AND ABILITY TO DEMONSTRATE
14 PERSONAL RESPONSIBILITY; AND

15 (e) THE DEFENDANT'S CONTRIBUTION OF SERVICE IN SUPPORT OF
16 THE COMMUNITY.

17 (3) IF THE COURT ORDERS CONVICTION RECORDS TO BE SEALED
18 PURSUANT TO THIS SECTION, THE ORDER HAS ALL OF THE EFFECTS
19 DESCRIBED IN SECTION 24-72-703.

20 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
21 THIS SECTION DOES NOT APPLY TO RECORDS OF CONVICTION FOR THE
22 FOLLOWING OFFENSES:

23 (a) ANY OFFENSE FOR WHICH THE FACTUAL BASIS INVOLVED
24 UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION 16-22-102 (9);

25 (b) ANY OFFENSE THAT IS A CRIME OF VIOLENCE, AS DEFINED IN
26 SECTION 18-1.3-406 (2); AND

27 (c) ANY OFFENSE THAT IS A VIOLATION OF SECTION 42-4-1301 (1)

1 OR (2).

2 (5) THE GENERAL ASSEMBLY INTENDS THE PROVISIONS OF THIS
3 SECTION TO APPLY PROSPECTIVELY AND RETROACTIVELY TO CRIMINAL
4 DEFENDANTS WHO SATISFY THE DESCRIPTION IN SUBSECTION (1) OF THIS
5 SECTION.

6 **SECTION 7. Act subject to petition - effective date.** This act
7 takes effect at 12:01 a.m. on the day following the expiration of the
8 ninety-day period after final adjournment of the general assembly (August
9 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
10 referendum petition is filed pursuant to section 1 (3) of article V of the
11 state constitution against this act or an item, section, or part of this act
12 within such period, then the act, item, section, or part will not take effect
13 unless approved by the people at the general election to be held in
14 November 2018 and, in such case, will take effect on the date of the
15 official declaration of the vote thereon by the governor.