

Approved: 3-18-10
Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on March 1, 2010, in Room 144-S of the Capitol.

All members were present except:
Representative Joe Patton- excused

Committee staff present:
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Others attending:
See attached list.

HB 2430 - H Sub for H 2430 by Committee on Corrections and Juvenile Justice - Allowing the court to sentence a defendant with PTSD caused by action in a combat zone while in the United States armed forces to receive mental health treatment as part of the defendant's probationary sentence

Chairperson Colloton called the meeting to order and announced to the Committee she was opening the floor for consideration on **HB 2430**.

Representative Bethell made a motion to pass the House Substitute for HB 2430 out favorably for passage. Representative McCray-Miller seconded.

Chairperson Colloton introduced Jason Thompson, Revisor's Office, to explain a balloon on the bill. (Attachment 1) Chairperson Colloton called the attention of the Committee to two handouts. *Bill Status of HB 2281 from the Illinois Legislature* (Attachment 2) and *AB 2586 Assembly Bill-Analysis from the California Legislature* (Attachment 3). She explained these handouts are on bills in these two states that are related to post traumatic syndrome and gave the Committee a few minutes to look them over.

A discussion followed.

Representative Bethell made a substitute motion to add the Revisor balloon to the bill. Representative Spalding seconded.

A discussion followed and Chairperson Colloton called for a vote on the substitute motion on the floor. **Motion Carried.**

Chairperson Colloton called the Committee's attention back to the bill.

Representative Bethell made a motion to pass House Substitute for HB 2430 out favorably as amended with the Revisor to make technical cleanup if needed. Representative Spalding seconded.

A discussion followed with Chairperson Colloton calling for a vote on the motion on the floor.

Motion carried.

Chairperson Colloton reviewed the agenda for the rest of the week and announced to the Committee they would meet this Friday but would not meet the following Friday. She also stated if the session on Friday is very early we will move out Committee up to an earlier time of 10:30 or 11:00 a.m..

Chairperson Colloton adjourned the meeting at 2:10 p.m. with the next meeting scheduled for March 2, 2010, at 1:30 p.m. in room 144-S.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 3-1-10

NAME	REPRESENTING
Richard Smawiego	Kenney & Assoc.

Substitute for HOUSE BILL No. 2430

By Committee on Corrections and Juvenile Justice

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HB2430-Balloon1.pdf
RS - JThompson - 03/01/10

Corrections and Juvenile Justice
Date: 3-1-10
Attachment # 1

9 AN ACT concerning crimes, criminal procedure and punishment; relat-
10 ing to sentencing of veterans suffering from posttraumatic stress dis-
11 order; amending K.S.A. 2009 Supp. 73-1209 and repealing the existing
12 section.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) A defendant convicted of a criminal offense, upon
16 motion of the defendant at the time of conviction or prior to sentencing,
17 may assert that such defendant committed such offense as a result of
18 mental illness, including posttraumatic stress disorder, stemming from
19 service in a combat zone in the United States armed forces. The court
20 shall hold a hearing to determine whether the defendant:

21 (1) Has been certified by the executive director of the Kansas com-
22 mission on veterans affairs as having served in the armed forces of the
23 United States of America in a combat zone, as defined in section 112 of
24 the federal internal revenue code of 1986;

25 (2) suffers from mental illness; and

26 (3) such mental illness was caused or exacerbated by events occurring
27 during such defendant's service in a combat zone.

28 (b) If the court determines that such defendant meets the criteria
29 provided in subsection (a) and such defendant's current crime of convic-
30 tion and criminal history fall within a presumptive nonprison category
31 under the sentencing guidelines, the court may order such defendant to
32 undergo treatment from any treatment facility as those terms are defined
33 in K.S.A. 59-2946, and amendments thereto, on an outpatient basis or an
34 inpatient basis with the consent of the defendant.

including any facility that
provides services for veterans,

35 (c) Nothing in this section shall be construed to limit the court's au-
36 thority to order a mental examination pursuant to K.S.A. 22-3429, and
37 amendments thereto, order commitment pursuant to K.S.A. 22-3430 et.
38 seq., and amendments thereto, or determine that a person is a mentally
39 ill person subject to involuntary commitment for care and treatment as
40 defined in K.S.A. 59-2946, and amendments thereto.

order any other sanction
pursuant to K.S.A. 21-4502
or 21-4603d, and
amendments thereto,

41 (d) (1) As used in this section:

42 (1) "Mental illness" means a mental disorder manifested by a clini-
43 cally significant behavioral or psychological syndrome or pattern and as-

Bill Status of HB2281 96th General Assembly

Short Description: CD CORR-MILITARY VETERANS

House Sponsors

Rep. Patricia R. Bellock - Linda Chapa LaVia - Ron Stephens - Esther Golar - Dennis M. Reboletti

Senate Sponsors

(Sen. Pamela J. Althoff - Kirk W. Dillard - Chris Lauzen, Dan Kotowski and Michael Bond)

Last Action

Date	Chamber	Action
7/27/2009	House	Public Act 96-0086

Statutes Amended In Order of Appearance

730 ILCS 5/5-4-1

from Ch. 38, par. 1005-4-1

Synopsis As Introduced

Amends the Unified Code of Corrections. Provides that before the sentencing hearing and as part of the presentence investigation, the court shall inquire of the defendant whether the defendant is currently serving in or is a veteran of the Armed Forces of the United States. Provides that if the defendant is currently serving in the Armed Forces of the United States or is a veteran of the Armed Forces of the United States and has been diagnosed as having a mental illness by a qualified psychiatrist or clinical psychologist or physician, the court may: (1) order that the officer preparing the presentence report consult with the United States Department of Veterans Affairs, Illinois Department of Veterans' Affairs, or 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 programming; and (2) consider the treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant in imposing sentence.

Actions

Date	Chamber	Action
2/18/2009	House	Filed with the Clerk by Rep. Patricia R. Bellock
2/18/2009	House	First Reading
2/18/2009	House	Referred to Rules Committee
2/23/2009	House	Assigned to <u>Judiciary II - Criminal Law Committee</u>
2/25/2009	House	Added Chief Co-Sponsor Rep. <u>Linda Chapa LaVia</u>
3/3/2009	House	Remove Chief Co-Sponsor Rep. <u>Linda Chapa LaVia</u>
3/3/2009	House	Added Co-Sponsor Rep. <u>Linda Chapa LaVia</u>
3/12/2009	House	Do Pass / Short Debate <u>Judiciary II - Criminal Law Committee</u> ; 007-000-000
3/12/2009	House	Placed on Calendar 2nd Reading - Short Debate
3/12/2009	House	Added Chief Co-Sponsor Rep. <u>Linda Chapa LaVia</u>
3/12/2009	House	Removed Co-Sponsor Rep. <u>Linda Chapa LaVia</u>
3/12/2009	House	Added Chief Co-Sponsor Rep. <u>Ron Stephens</u>
3/12/2009	House	Added Chief Co-Sponsor Rep. <u>Esther Golar</u>
3/12/2009	House	Added Chief Co-Sponsor Rep. <u>Dennis M. Reboletti</u>
3/23/2009	House	Second Reading - Short Debate

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3/23/2009	House	Held on Calendar Order of Second Reading - Short Debate
3/24/2009	House	Placed on Calendar Order of 3rd Reading - Short Debate
3/24/2009	House	Third Reading - Short Debate - Passed <u>114-000-000</u>
3/25/2009	Senate	Arrive in Senate
3/25/2009	Senate	Placed on Calendar Order of First Reading March 26, 2009
3/25/2009	Senate	Chief Senate Sponsor <u>Sen. Pamela J. Althoff</u>
3/25/2009	Senate	Added as Alternate Chief Co-Sponsor <u>Sen. Kirk W. Dillard</u>
3/26/2009	Senate	First Reading
3/26/2009	Senate	Referred to <u>Assignments</u>
4/15/2009	Senate	Assigned to <u>Criminal Law</u>
4/22/2009	Senate	Do Pass <u>Criminal Law</u> ; 008-000-000
4/22/2009	Senate	Placed on Calendar Order of 2nd Reading April 23, 2009
4/22/2009	Senate	Added as Alternate Co-Sponsor <u>Sen. Dan Kotowski</u>
5/4/2009	Senate	Added as Alternate Co-Sponsor <u>Sen. Michael Bond</u>
5/12/2009	Senate	Second Reading
5/12/2009	Senate	Placed on Calendar Order of 3rd Reading May 13, 2009
5/14/2009	Senate	Added as Alternate Chief Co-Sponsor <u>Sen. Chris Lauzen</u>
5/14/2009	Senate	Third Reading - Passed; <u>058-000-000</u>
5/14/2009	House	Passed Both Houses
6/12/2009	House	Sent to the Governor
7/27/2009	House	Governor Approved
7/27/2009	House	Effective Date January 1, 2010
7/27/2009	House	Public Act <u>96-0086</u>

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HB2281 Enrolled

LRB096 09107 RLC 19250 b

Search By Number
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AN ACT concerning criminal law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

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Section 5. The Unified Code of Corrections is amended by changing Section 5-4-1 as follows:

Search By Keyword

(730 ILCS 5/5-4-1) (from Ch. 38, par. 1005-4-1)

Sec. 5-4-1. Sentencing Hearing.

Go

Alternate

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(a) Except when the death penalty is sought under hearing procedures otherwise specified, after a determination of guilt, a hearing shall be held to impose the sentence. However, prior to the imposition of sentence on an individual being sentenced for an offense based upon a charge for a violation of Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance, the individual must undergo a professional evaluation to determine if an alcohol or other drug abuse problem exists and the extent of such a problem. Programs conducting these evaluations shall be licensed by the Department of Human Services. However, if the individual is not a resident of Illinois, the court may, in its discretion, accept an evaluation from a program in the state of such individual's residence. The court may in its sentencing order approve an eligible defendant for placement in a Department of Corrections impact incarceration program as provided in Section 5-8-1.1 or 5-8-1.3. The court may in its sentencing order recommend a defendant for placement in a Department of Corrections substance abuse treatment program as provided in paragraph (a) of subsection (1) of Section 3-2-2 conditioned upon the defendant being accepted in a program by the Department of Corrections. At the hearing the court shall:

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- (1) consider the evidence, if any, received upon the trial;
- (2) consider any presentence reports;
- (3) consider the financial impact of incarceration based on the financial impact statement filed with the clerk of the court by the Department of Corrections;
- (4) consider evidence and information offered by the parties in aggravation and mitigation;
- (4.5) consider substance abuse treatment, eligibility

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screening, and an assessment, if any, of the defendant by an agent designated by the State of Illinois to provide assessment services for the Illinois courts;

(5) hear arguments as to sentencing alternatives;

(6) afford the defendant the opportunity to make a statement in his own behalf;

(7) afford the victim of a violent crime or a violation of Section 11-501 of the Illinois Vehicle Code, or a similar provision of a local ordinance, or a qualified individual affected by: (i) a violation of Section 405, 405.1, 405.2, or 407 of the Illinois Controlled Substances Act or a violation of Section 55 or Section 65 of the Methamphetamine Control and Community Protection Act, or (ii) a Class 4 felony violation of Section 11-14, 11-15, 11-17, 11-18, 11-18.1, or 11-19 of the Criminal Code of 1961, committed by the defendant the opportunity to make a statement concerning the impact on the victim and to offer evidence in aggravation or mitigation; provided that the statement and evidence offered in aggravation or mitigation must first be prepared in writing in conjunction with the State's Attorney before it may be presented orally at the hearing. Any sworn testimony offered by the victim is subject to the defendant's right to cross-examine. All statements and evidence offered under this paragraph (7) shall become part of the record of the court. For the purpose of this paragraph (7), "qualified individual" means any person who (i) lived or worked within the territorial jurisdiction where the offense took place when the offense took place; and (ii) is familiar with various public places within the territorial jurisdiction where the offense took place when the offense took place. For the purposes of this paragraph (7), "qualified individual" includes any peace officer, or any member of any duly organized State, county, or municipal peace unit assigned to the territorial jurisdiction where the offense took place when the offense took place;

(8) in cases of reckless homicide afford the victim's spouse, guardians, parents or other immediate family members an opportunity to make oral statements; and

(9) in cases involving a felony sex offense as defined under the Sex Offender Management Board Act, consider the results of the sex offender evaluation conducted pursuant to Section 5-3-2 of this Act.

(b) All sentences shall be imposed by the judge based upon his independent assessment of the elements specified above and any agreement as to sentence reached by the parties. The judge who presided at the trial or the judge who accepted the plea of guilty shall impose the sentence unless he is no longer sitting as a judge in that court. Where the judge does not impose sentence at the same time on all defendants who are convicted as a result of being involved in the same offense, the defendant or the State's Attorney may advise the sentencing court of the disposition of any other defendants who have been sentenced.

(c) In imposing a sentence for a violent crime or for an offense of operating or being in physical control of a vehicle while under the influence of alcohol, any other drug or any combination thereof, or a similar provision of a local ordinance, when such offense resulted in the personal injury to someone other than the defendant, the trial judge shall specify on the record the particular evidence, information, factors in mitigation and aggravation or other reasons that led to his

sentencing determination. The full verbatim record of the sentencing hearing shall be filed with the clerk of the court and shall be a public record.

(c-1) In imposing a sentence for the offense of aggravated kidnapping for ransom, home invasion, armed robbery, aggravated vehicular hijacking, aggravated discharge of a firearm, or armed violence with a category I weapon or category II weapon, the trial judge shall make a finding as to whether the conduct leading to conviction for the offense resulted in great bodily harm to a victim, and shall enter that finding and the basis for that finding in the record.

(c-2) If the defendant is sentenced to prison, other than when a sentence of natural life imprisonment or a sentence of death is imposed, at the time the sentence is imposed the judge shall state on the record in open court the approximate period of time the defendant will serve in custody according to the then current statutory rules and regulations for early release found in Section 3-6-3 and other related provisions of this Code. This statement is intended solely to inform the public, has no legal effect on the defendant's actual release, and may not be relied on by the defendant on appeal.

The judge's statement, to be given after pronouncing the sentence, other than when the sentence is imposed for one of the offenses enumerated in paragraph (a)(3) of Section 3-6-3, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, assuming the defendant receives all of his or her good conduct credit, the period of estimated actual custody is ... years and ... months, less up to 180 days additional good conduct credit for meritorious service. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations, does not receive those credits, the actual time served in prison will be longer. The defendant may also receive an additional one-half day good conduct credit for each day of participation in vocational, industry, substance abuse, and educational programs as provided for by Illinois statute."

When the sentence is imposed for one of the offenses enumerated in paragraph (a)(3) of Section 3-6-3, other than when the sentence is imposed for one of the offenses enumerated in paragraph (a)(2) of Section 3-6-3 committed on or after June 19, 1998, and other than when the sentence is imposed for reckless homicide as defined in subsection (e) of Section 9-3 of the Criminal Code of 1961 if the offense was committed on or after January 1, 1999, and other than when the sentence is imposed for aggravated arson if the offense was committed on or after July 27, 2001 (the effective date of Public Act 92-176), the judge's statement, to be given after pronouncing the sentence, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, assuming the defendant receives all of his or her good conduct credit, the period of estimated actual custody is ...

years and ... months, less up to 90 days additional good conduct credit for meritorious service. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations, does not receive those credits, the actual time served in prison will be longer. The defendant may also receive an additional one-half day good conduct credit for each day of participation in vocational, industry, substance abuse, and educational programs as provided for by Illinois statute."

When the sentence is imposed for one of the offenses enumerated in paragraph (a)(2) of Section 3-6-3, other than first degree murder, and the offense was committed on or after June 19, 1998, and when the sentence is imposed for reckless homicide as defined in subsection (e) of Section 9-3 of the Criminal Code of 1961 if the offense was committed on or after January 1, 1999, and when the sentence is imposed for aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof as defined in subparagraph (F) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code, and when the sentence is imposed for aggravated arson if the offense was committed on or after July 27, 2001 (the effective date of Public Act 92-176), the judge's statement, to be given after pronouncing the sentence, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, the defendant is entitled to no more than 4 1/2 days of good conduct credit for each month of his or her sentence of imprisonment. Therefore, this defendant will serve at least 85% of his or her sentence. Assuming the defendant receives 4 1/2 days credit for each month of his or her sentence, the period of estimated actual custody is ... years and ... months. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations receives lesser credit, the actual time served in prison will be longer."

When a sentence of imprisonment is imposed for first degree murder and the offense was committed on or after June 19, 1998, the judge's statement, to be given after pronouncing the sentence, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, the defendant is not entitled to good conduct credit. Therefore, this defendant will serve 100% of his or her sentence."

When the sentencing order recommends placement in a substance abuse program for any offense that results in incarceration in a Department of Corrections facility and the crime was committed on or after September 1, 2003 (the effective date of Public Act 93-354), the judge's statement, in addition to any other judge's statement required under this Section, to be given after pronouncing the sentence, shall include the following:

"The purpose of this statement is to inform the public of

the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, the defendant shall receive no good conduct credit under clause (3) of subsection (a) of Section 3-6-3 until he or she participates in and completes a substance abuse treatment program or receives a waiver from the Director of Corrections pursuant to clause (4.5) of subsection (a) of Section 3-6-3."

(c-4) Before the sentencing hearing and as part of the presentence investigation under Section 5-3-1, the court shall inquire of the defendant whether the defendant is currently serving in or is a veteran of the Armed Forces of the United States. If the defendant is currently serving in the Armed Forces of the United States or is a veteran of the Armed Forces of the United States and has been diagnosed as having a mental illness by a qualified psychiatrist or clinical psychologist or physician, the court may:

(1) order that the officer preparing the presentence report consult with the United States Department of Veterans Affairs, Illinois Department of Veterans' Affairs, or 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 programming; and

(2) consider the treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant in imposing sentence.

For the purposes of this subsection (c-4), "qualified psychiatrist" means a reputable physician licensed in Illinois to practice medicine in all its branches, who has specialized in the diagnosis and treatment of mental and nervous disorders for a period of not less than 5 years.

(d) When the defendant is committed to the Department of Corrections, the State's Attorney shall and counsel for the defendant may file a statement with the clerk of the court to be transmitted to the department, agency or institution to which the defendant is committed to furnish such department, agency or institution with the facts and circumstances of the offense for which the person was committed together with all other factual information accessible to them in regard to the person prior to his commitment relative to his habits, associates, disposition and reputation and any other facts and circumstances which may aid such department, agency or institution during its custody of such person. The clerk shall within 10 days after receiving any such statements transmit a copy to such department, agency or institution and a copy to the other party, provided, however, that this shall not be cause for delay in conveying the person to the department, agency or institution to which he has been committed.

(e) The clerk of the court shall transmit to the department, agency or institution, if any, to which the defendant is committed, the following:

- (1) the sentence imposed;
- (2) any statement by the court of the basis for imposing the sentence;
- (3) any presentence reports;
- (3.5) any sex offender evaluations;
- (3.6) any substance abuse treatment eligibility

screening and assessment of the defendant by an agent designated by the State of Illinois to provide assessment services for the Illinois courts;

(4) the number of days, if any, which the defendant has been in custody and for which he is entitled to credit against the sentence, which information shall be provided to the clerk by the sheriff;

(4.1) any finding of great bodily harm made by the court with respect to an offense enumerated in subsection (c-1);

(5) all statements filed under subsection (d) of this Section;

(6) any medical or mental health records or summaries of the defendant;

(7) the municipality where the arrest of the offender or the commission of the offense has occurred, where such municipality has a population of more than 25,000 persons;

(8) all statements made and evidence offered under paragraph (7) of subsection (a) of this Section; and

(9) all additional matters which the court directs the clerk to transmit.

(Source: P.A. 94-156, eff. 7-8-05; 94-556, eff. 9-11-05; 95-331, eff. 8-21-07.)

Effective Date: 1/1/2010

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BILL ANALYSIS

AB 2586
Page 1Date of Hearing: May 9, 2006
Counsel: Heather HopkinsASSEMBLY COMMITTEE ON PUBLIC SAFETY
Mark Leno, Chair

AB 2586 (Parra) - As Amended: April 6, 2006

SUMMARY : Allows the court to consider treatment programs as part of probation in cases involving military veterans who suffer from post traumatic stress disorder (PTSD), substance abuse, or psychological problems stemming from their military service. Specifically, this bill :

- 1) Makes legislative findings and declarations regarding PTSD among veterans. States legislative intent to extend the opportunity for alternative sentencing to all combat veterans regardless of where or when those veterans served the country when those veterans are found by the court to be suffering from PTSD.
- 2) Expands which convicted veterans who allege they committed offenses as a result of PTSD, substance abuse, or psychological problems stemming from combat and then receive a hearing prior to sentence to determine if this is true, from Vietnam veterans convicted of felonies to all combat veterans convicted of any criminal offense.
- 3) Provides that if the court concludes that a defendant convicted of a criminal offense is a combat veteran who committed the offense as a result of PTSD, substance abuse, or psychological problems stemming from that combat service, and if the defendant is otherwise eligible for probation and the court places the defendant on probation, the court may order the defendant into a local; state; federal; or private, non-profit treatment program for a period not to exceed that which the defendant would have served in state prison or county jail, provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists.
- 4) Provides what when determining the "needs of the defendant," for purposes of probation, the court shall consider the fact

□

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that the defendant is a combat veteran who committed the offense as a result of PTSD, substance abuse, or psychological problems stemming from that combat service in assessing whether the defendant should be placed on probation.

- 5) Provides that if a defendant granted probation under this section and committed to a residential treatment program shall earn sentence credits for the actual time the defendant served in residential treatment.
- 6) Provides that the court, in making an order under this section to commit a defendant to a treatment program, shall give preference to a treatment program that has a history of successfully treating combat veterans who suffer from post traumatic stress disorder, substance abuse, or psychological problems as a result of that service.

EXISTING LAW :

- 1) Provides that in the case of any person convicted of a felony who would otherwise be sentenced to state prison, the court shall consider whether the defendant was a member of the military forces of the United States who served in combat in Vietnam and suffers from substance abuse or psychological problems resulting from that service. (Penal Code Section 1170.9.)
- 2) Provides that if the court concludes that the defendant is a Vietnam veteran who suffers from substance abuse or psychological problems resulting from that service, the court may order the defendant committed to the custody of federal correctional officials for incarceration for a term equivalent to that which the defendant would have served in state prison. (Penal Code Section 1170.9.)
- 3) Provides that the court may make such a commitment only if the defendant agrees to such a commitment, the court has

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determined that appropriate federal programs exist, and federal law authorizes the receipt of the defendant under such conditions. (Penal Code Section 1170.9.)

FISCAL EFFECT : None

COMMENTS :

□

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1) Author's Statement : According to the author, "The discretion afforded to judges, allowing them to divert Vietnam-era veterans diagnosed with PTSD into alternative institutions, as granted in current law, must be extended to veterans of the Iraq and Afghanistan conflicts. In addition, a judge should have the ability to divert these affected individuals into state, local and non-profit treatments programs in addition to federal institutions."

2) Scope of the Problem : According to background provided by the author, "In 1982, 10 years after the Vietnam War, the California Legislature enacted Penal Code Section 1170.9. That section allows judges the discretion to divert Vietnam veterans diagnosed with PTSD to federal institutions as an alternative to incarceration in a state or county facility.

"That section is not sufficient to cover returning Iraq and Afghanistan veterans. This bill addresses that inequity and will also allow judges to divert eligible individuals under this section into accredited state, local and non-profit treatment programs in addition to federal institutions.

"The incarceration of veterans who have been diagnosed with PTSD, according to the National Center for Post-Traumatic Stress Disorder, has proven detrimental to their recovery. The center has established, through numerous research efforts spanning two decades, that psychiatric treatment is wholly necessary if these individuals are to fully recover. Incarceration intensifies the negative attitudes and feelings that stem from this disorder, and adversely affects the veteran's ability to integrate back into society upon returning from a combat theatre."

3) Arguments in Support :

a) The Armed Forces Retirees Association of California state, "In 1982 (10 years after the Vietnam War), the State of California passed a law that authorized judges to refer Vietnam veterans to mental treatment offered by federal programs in lieu of incarceration. Because of the 10-year delay, that legislation has seldom been used. During the Vietnam War, we saw a high number of our returning combat veterans were incarcerated because PTSD was not understood nor recognized at the time. PTSD was not recognized as an illness until 1980 by the American Psychiatric Association.

□

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"In light of the current conflict in Iraq and Afghanistan, a higher number of military personnel are returning home after engaging in combat with symptoms of PTSD. PTSD often leads our veterans to commit crimes that otherwise they might not have committed if they were not suffering from PTSD."

b) The California Society of Addiction Medicine states, "As physicians who specialize in treating people suffering from the disease of addiction, we see this as a public health issue. Many studies have shown the benefits of treatment for addiction, in terms of costs to society, to families, and to individuals. Veterans who have served this country certainly deserve the option of treatment."

c) The California Association of County Veterans Service Officers state, "[B]ecause some veterans may suffer from PTSD due to their combat service, they may face difficulties to readjusting to civilian life and may get into legal trouble. This bill offers them a chance to receive the treatment they need rather than to be incarcerated."

4) Related Legislation : AB 1542 (Parra) would have created a

3-2