

SENATE BILL No. 307

By Senator Owens

1-9

1 AN ACT concerning crimes, punishment and criminal procedure;
2 requiring veterans with a condition from military service to be offered
3 diversion for certain offenses; expanding the mitigating factor for
4 departure at sentencing for veterans; amending K.S.A. 21-6815 and
5 repealing the existing section.
6

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

8 New Section 1. (a) There is hereby established the veteran diversion
9 program. A county or district attorney shall propose a diversion agreement
10 to a defendant who:

11 (1) Is a veteran;

12 (2) has one or more indicators of mental or physical symptoms of a
13 condition from military service that could have contributed to the offense,
14 including the psychological effects from the veteran's time in service or the
15 period of family separation related to deployment and any previously or
16 provisionally diagnosed substance use, mental health disorder or
17 neurocognitive disorder; and

18 (3) is alleged to have committed a misdemeanor or a felony offense
19 that is a severity level 7, 8, 9 or 10 felony.

20 (b) Law enforcement and the county or district attorney shall verify
21 the veteran status of all individuals who are being charged with
22 committing an offense described in subsection (a)(3) to identify
23 individuals who may be eligible for participation in the program.

24 (c) (1) A veteran who is offered a diversion agreement pursuant to
25 subsection (a) shall be required to participate in evidence-based treatment
26 that is tailored to address the specific challenges facing veterans and has
27 been approved by the county or district attorney. Such veteran shall
28 comply with a case plan that:

29 (A) Is developed by the county or district attorney with input from
30 the veteran;

31 (B) is based on a professional evidence-based clinical and
32 criminogenic assessment of the veteran's specific risks and needs;

33 (C) contains clear and individualized supervision and treatment goals,
34 including guidelines that detail the conditions of supervision,
35 consequences for violating such conditions and incentives for compliance;

36 (D) sets the terms of successful completion of the program and

1 release from supervision; and

2 (E) is clearly communicated to the veteran.

3 (2) A county or district attorney shall enter into a memorandum of
4 understanding with the chief judge of a judicial district or community
5 correctional services pursuant to K.S.A. 22-2907(d), and amendments
6 thereto, to assist with supervision and monitoring of defendants who have
7 entered into a diversion agreement pursuant to this section.

8 (d) Unless otherwise provided, the provisions of K.S.A. 22-2907
9 through 22-2911, and amendments thereto, apply to such diversion
10 agreements.

11 (e) The attorney general shall provide training to law enforcement
12 and county and district attorneys designed to increase understanding of
13 cases involving veterans, including exposure to violence and trauma. Such
14 training shall include training on issues that disproportionately impact
15 females veterans, including military sexual trauma.

16 (f) (1) On July 1, 2027, and each July 1 thereafter, each county and
17 district attorney shall report to the attorney general the following
18 information related to diversion agreements pursuant to this section during
19 the previous year:

20 (A) The number of such agreements entered into, the sex, race and
21 date of birth of each veteran who entered such agreement and the offense
22 alleged to have been committed by each veteran;

23 (B) whether each agreement entered into resulted in successful
24 completion of the case plan;

25 (C) the number of veterans who were denied such agreements and the
26 reason for each denial; and

27 (D) the number of veterans who were proposed such agreements and
28 declined to enter into such agreements.

29 (2) The attorney general shall report the data received pursuant to
30 paragraph (1) and any other findings and recommendations to the
31 legislature on or before January 1 of each year.

32 (g) As used in this section:

33 (1) "Case plan" means a set of goals, conditions and programs that is
34 based on a professional risk and needs assessment that is tailored to the
35 specific risks and needs of the veteran and is developed in collaboration
36 with the veteran;

37 (2) "condition from military service" means a health condition that is
38 related to an individual's military service in some manner, including, but
39 not limited to, substance use disorder, military sexual trauma, traumatic
40 brain injury and post-traumatic stress disorder; and

41 (3) "veteran" means a person who swore an oath and entered any
42 branch of the armed forces, including the national guard or reserve, and:

43 (A) Is currently serving in such branch and has not been discharged;

1 or

2 (B) was discharged or released from such service under any
3 characterization except for those receiving dishonorable discharge unless
4 such person who was dishonorably discharged has been diagnosed with
5 substance use disorder, military sexual trauma, traumatic brain injury,
6 post-traumatic stress disorder or other mental health condition.

7 Sec. 2. K.S.A. 21-6815 is hereby amended to read as follows: 21-
8 6815. (a) Except as provided in subsection (b), the sentencing judge shall
9 impose the presumptive sentence provided by the sentencing guidelines
10 unless the judge finds substantial and compelling reasons to impose a
11 departure sentence. If the sentencing judge departs from the presumptive
12 sentence, the judge shall state on the record at the time of sentencing the
13 substantial and compelling reasons for the departure.

14 (b) Subject to the provisions of K.S.A. 21-6817(b), and amendments
15 thereto, any fact that would increase the penalty for a crime beyond the
16 statutory maximum, other than a prior conviction, shall be submitted to a
17 jury and proved beyond a reasonable doubt.

18 (c) (1) Subject to the provisions of subsections (c)(3) and (e), the
19 following nonexclusive list of mitigating factors may be considered in
20 determining whether substantial and compelling reasons for a departure
21 exist:

22 (A) The victim was an aggressor or participant in the criminal
23 conduct associated with the crime of conviction, except that this factor
24 shall not apply to a sexually violent crime as defined in K.S.A. 22-3717,
25 and amendments thereto, or electronic solicitation as defined in K.S.A. 21-
26 5509, and amendments thereto, when:

27 (i) The victim is less than 14 years of age and the offender is 18 or
28 more years of age; or

29 (ii) the offender hires any person by giving, or offering to or agreeing
30 to give, anything of value to the person to engage in an unlawful sex act.

31 (B) The offender played a minor or passive role in the crime or
32 participated under circumstances of duress or compulsion. This factor may
33 be considered when it is not sufficient as a complete defense.

34 (C) The offender, because of physical or mental impairment, lacked
35 substantial capacity for judgment when the offense was committed. The
36 voluntary use of intoxicants, drugs or alcohol does not fall within the
37 purview of this factor.

38 (D) The defendant, or the defendant's children, suffered a continuing
39 pattern of physical or sexual abuse by the victim of the offense and the
40 offense is a response to that abuse.

41 (E) The degree of harm or loss attributed to the current crime of
42 conviction was significantly less than typical for such an offense.

43 (F) ~~The offender committed such crime as a result of an injury,~~

1 including major depressive disorder, polytrauma, post-traumatic stress
 2 disorder or traumatic brain injury, connected to service in a combat zone,
 3 as defined in section 112 of the federal internal revenue code of 1986, in
 4 the armed forces of the United States of America. As used in this
 5 subsection, "major depressive disorder," "polytrauma," "post-traumatic
 6 stress disorder" and "traumatic brain injury" shall mean the same as such
 7 terms are defined in K.S.A. 21-6630, and amendments thereto *is a veteran*
 8 *as defined in section 1, and amendments thereto. The court may take into*
 9 *consideration individual merit earned during service, overseas*
 10 *deployment, exposure to danger and service-connected disability ratings.*
 11 *The court shall not require a finding that there is a connection between the*
 12 *offense and any condition from military service.*

13 (2) (A) Subject to the provisions of subsection (c)(3), the following
 14 nonexclusive list of aggravating factors may be considered in determining
 15 whether substantial and compelling reasons for departure exist:

16 ~~(A)~~(i) The victim was particularly vulnerable due to age, infirmity, or
 17 reduced physical or mental capacity which was known or should have
 18 been known to the offender.

19 ~~(B)~~(ii) The defendant's conduct during the commission of the current
 20 offense manifested excessive brutality to the victim in a manner not
 21 normally present in that offense.

22 ~~(C)~~(iii) The offense was motivated entirely or in part by the race,
 23 color, religion, ethnicity, national origin or sexual orientation of the victim
 24 or the offense was motivated by the defendant's belief or perception,
 25 entirely or in part, of the race, color, religion, ethnicity, national origin or
 26 sexual orientation of the victim whether or not the defendant's belief or
 27 perception was correct.

28 ~~(D)~~(iv) The offense involved a fiduciary relationship which existed
 29 between the defendant and the victim.

30 ~~(E)~~(v) (a) The defendant, 18 or more years of age, employed, hired,
 31 used, persuaded, induced, enticed or coerced any individual under 16 years
 32 of age to:

33 ~~(i)~~(1) Commit any person felony;

34 ~~(ii)~~(2) assist in avoiding detection or apprehension for commission of
 35 any person felony; or

36 ~~(iii)~~(3) attempt, conspire or solicit, as defined in K.S.A. 21-5301, 21-
 37 5302 and 21-5303, and amendments thereto, to commit any person felony.

38 (b) That the defendant did not know the age of the individual under
 39 16 years of age shall not be a consideration.

40 ~~(F)~~(vi) The defendant's current crime of conviction is a crime of
 41 extreme sexual violence and the defendant is a predatory sex offender. As
 42 used in this subsection:

43 ~~(i)~~(a) "Crime of extreme sexual violence" is a felony limited to the

1 following:

2 (a)(1) A crime involving a nonconsensual act of sexual intercourse or
3 sodomy with any person;

4 (b)(2) a crime involving an act of sexual intercourse, sodomy or lewd
5 fondling and touching with any child who is 14 or more years of age but
6 less than 16 years of age and with whom a relationship has been
7 established or promoted for the primary purpose of victimization;

8 (c)(3) a crime involving an act of sexual intercourse, sodomy or lewd
9 fondling and touching with any child who is less than 14 years of age;

10 (d)(4) aggravated human trafficking, as defined in K.S.A. 21-5426(b),
11 and amendments thereto, if the victim is less than 14 years of age; or

12 (e)(5) commercial sexual exploitation of a child, as defined in K.S.A.
13 21-6422, and amendments thereto, if the victim is less than 14 years of
14 age.

15 (ii)(b) "Predatory sex offender" ~~is~~ means an offender who has been
16 convicted of a crime of extreme sexual violence as the current crime of
17 conviction and who:

18 (a)(1) Has one or more prior convictions of any crimes of extreme
19 sexual violence. Any prior conviction used to establish the defendant as a
20 predatory sex offender pursuant to this subsection shall also be counted in
21 determining the criminal history category; or

22 (b)(2) suffers from a mental condition or personality disorder which
23 makes the offender likely to engage in additional acts constituting crimes
24 of extreme sexual violence.

25 (iii)(c) "Mental condition or personality disorder" means an
26 emotional, mental or physical illness, disease, abnormality, disorder,
27 pathology or condition which motivates the person, affects the
28 predisposition or desires of the person, or interferes with the capacity of
29 the person to control impulses to commit crimes of extreme sexual
30 violence.

31 (G)(vii) The defendant was incarcerated during the commission of the
32 offense.

33 (H)(viii) The crime involved two or more participants in the criminal
34 conduct, and the defendant played a major role in the crime as the
35 organizer, leader, recruiter, manager or supervisor.

36 (B) In determining whether aggravating factors exist as provided in
37 this section, the court shall review the victim impact statement.

38 (C) *Status as a veteran as defined in section 1, and amendments*
39 *thereto, shall not be considered an aggravating factor.*

40 (3) If a factual aspect of a crime is a statutory element of the crime or
41 is used to subclassify the crime on the crime severity scale, that aspect of
42 the current crime of conviction may be used as an aggravating or
43 mitigating factor only if the criminal conduct constituting that aspect of the

1 current crime of conviction is significantly different from the usual
2 criminal conduct captured by the aspect of the crime.

3 (d) In determining aggravating or mitigating circumstances, the court
4 shall consider:

5 (1) Any evidence received during the proceeding;

6 (2) the presentence report;

7 (3) written briefs and oral arguments of either the state or counsel for
8 the defendant; and

9 (4) any other evidence relevant to such aggravating or mitigating
10 circumstances that the court finds trustworthy and reliable.

11 (e) Upon motion of the prosecutor stating that the defendant has
12 provided substantial assistance in the investigation or prosecution of
13 another person who is alleged to have committed an offense, the court may
14 consider such mitigation in determining whether substantial and
15 compelling reasons for a departure exist. In considering this mitigating
16 factor, the court may consider the following:

17 (1) The court's evaluation of the significance and usefulness of the
18 defendant's assistance, taking into consideration the prosecutor's
19 evaluation of the assistance rendered;

20 (2) the truthfulness, completeness and reliability of any information
21 or testimony provided by the defendant;

22 (3) the nature and extent of the defendant's assistance;

23 (4) any injury suffered, or any danger or risk of injury to the
24 defendant or the defendant's family resulting from such assistance; and

25 (5) the timeliness of the defendant's assistance.

26 Sec. 3. K.S.A. 21-6815 is hereby repealed.

27 Sec. 4. This act shall take effect and be in force from and after its
28 publication in the statute book.