

SESSION OF 2015

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 12**

As Recommended by House Committee on
Veterans, Military and Homeland Security

Brief*

House Sub. for SB 12 would amend statutes related to diversion, court-ordered treatment, and sentencing with regard to military service members.

Municipal and District Court Diversion

The bill would expand the list of factors that must be considered by prosecuting attorneys when determining whether to enter into a diversion agreement with a defendant, by including the following factors:

- Whether there is a probability the defendant committed the crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder, or traumatic brain injury (all terms defined below) connected to service in a combat zone in the U.S. Armed Forces; and
- If so, whether there is a probability the defendant will cooperate with and benefit from inpatient or outpatient treatment in a facility operated by the U.S. Department of Defense, the U.S. Department of Veterans Affairs, or the Kansas National Guard, with the defendant's consent, as a condition of diversion.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Court-Ordered Treatment

Current law allows a defendant, at the time of conviction or prior to sentencing, to assert the offense was committed as a result of mental illness stemming from service in a combat zone while in the U.S. Armed Forces. If the court determines the defendant meets certain criteria, and would fall within a presumptive non-prison category under sentencing guidelines, the court may order the defendant to undergo inpatient or outpatient treatment in facilities or programs operated by the U.S. Department of Defense, the U.S. Department of Veterans Affairs, or the Kansas National Guard.

The bill would make the following changes:

- Replace the term “mental illness” with the phrase “injury, including major depressive disorder, polytrauma, post-traumatic stress disorder, or traumatic brain injury” and provide the following definitions:
 - “Major depressive disorder” and “post-traumatic stress disorder” mean the same as the terms are defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5, 2013);
 - “Polytrauma” means injury to multiple body parts and organ systems that occurred as a result of events during the defendant's service in one or more combat zones; and
 - “Traumatic brain injury” means injury to the brain caused by physical trauma that occurred as a result of events during the defendant's service in one or more combat zones;
- Eliminate from the qualifying criteria the requirement that the defendant separated from the armed forces with an honorable discharge or general discharge under honorable conditions; and

- Provide an alternative for a defendant who meets the qualifying criteria but is ineligible for treatment in facilities or programs operated by the U.S. Department of Defense, the U.S. Department of Veterans Affairs, or the Kansas National Guard. If a court determines such defendant meets the requirements for treatment under the alternative sentencing provisions of 2003 SB 123 (applicable to certain nonviolent offenders convicted of drug possession), the statutes pertaining to SB 123 must apply.

Sentencing

The bill would expand the nonexclusive list of mitigating factors a sentencing judge may consider in determining whether to depart from the presumptive sentence provided by sentencing guidelines. In addition to the mitigating factors in continuing law, the judge could consider whether the offender committed the crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder, or traumatic brain injury connected to service in a combat zone while in the U.S. Armed Forces.

Background

SB 12, as introduced, would have expanded the crimes of battery and aggravated battery against law enforcement officers to include judges, attorneys, and court services offices while performing their duties. The bill was amended in the Senate Committee on Corrections and Juvenile Justice, and passed the Senate. It was assigned to the House Committee on Corrections and Juvenile Justice, but did not pass out of that Committee and, subsequently, was referred to the House Committee on Veterans, Military and Homeland Security.

The House Committee on Veterans, Military and Homeland Security removed the contents of SB 12, inserted provisions related to veterans, and passed House Sub. for SB 12.

The Committee previously held an informational hearing on veterans treatment courts. Kansas' first veterans court is anticipated to begin operation in Johnson County in fall, 2015. Members noted the substitute bill creates a tool that could be used in veterans treatment courts.

There is no fiscal note for the substitute bill.