

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2154** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee of the Whole amendments, as follows:

On page 1, in line 7, before "Section" by inserting "New";

On page 7, following line 34, by inserting:

"Sec. 5. K.S.A. 2014 Supp. 12-4415 is hereby amended to read as follows: 12-4415. (a)

In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the city attorney shall consider at least the following factors among all factors considered:

- (1) The nature of the crime charged and the circumstances surrounding it;
- (2) any special characteristics or circumstances of the defendant;
- (3) whether the defendant is a first-time offender of an alcohol related offense and if the defendant has previously participated in diversion, according to the certification of the division of vehicles of the state department of revenue;
- (4) whether there is a probability that the defendant will cooperate with and benefit from diversion;
- (5) whether there is a probability that the defendant committed such 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, as defined in section 112 of the federal internal revenue code of 1986, in the armed forces of the United States of America;

(6) if subsection (a)(5) applies to the defendant, whether there is a probability that the defendant will cooperate with and benefit from inpatient or outpatient treatment from any treatment facility or program operated by the United States department of defense, the United States department of veterans affairs or the Kansas national guard with the consent of the defendant, as a condition of diversion;

~~(5)~~ (7) whether the available diversion program is appropriate to the needs of the defendant;

~~(6)~~ (8) the impact of the diversion of the defendant upon the community;

~~(7)~~ (9) recommendations, if any, of the involved law enforcement agency;

~~(8)~~ (10) recommendations, if any, of the victim;

~~(9)~~ (11) provisions for restitution; and

~~(10)~~ (12) any mitigating circumstances.

(b) A city attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint alleging an alcohol related offense if the defendant:

(1) Has previously participated in diversion of an alcohol related offense;

(2) has previously been convicted of or pleaded nolo contendere to an alcohol related offense in this state or has previously been convicted of or pleaded nolo contendere to a violation of K.S.A. 8-2,144 or 8-1567 or K.S.A. 2014 Supp. 8-1025, and amendments thereto, or of a law of another state, or of a political subdivision thereof, which prohibits the acts prohibited by those statutes; or

(3) during the time of the alleged alcohol related offense was involved in a motor vehicle accident or collision resulting in personal injury or death.

(c) "Major depressive disorder," "polytrauma," "post-traumatic stress disorder" and "traumatic brain injury" shall mean the same as such terms are defined in K.S.A. 2014 Supp. 21-6630, and amendments thereto.

Sec. 6. K.S.A. 2014 Supp. 21-6630 is hereby amended to read as follows: 21-6630. (a) Upon motion of the defendant at the time of conviction or prior to sentencing, a defendant convicted of a criminal offense may assert that such defendant committed such offense as a result of ~~mental illness~~ an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder, stemming from or traumatic brain injury, connected to service in a combat zone in the ~~United States~~ armed forces of the United States of America. The court shall hold a hearing to determine whether the defendant:

(1) Has served in the armed forces of the United States of America in a combat zone, as defined in section 112 of the federal internal revenue code of 1986. Proof of such service shall consist of a certification by the executive director of the Kansas commission on veterans affairs in accordance with K.S.A. 73-1209, and amendments thereto;

~~(2) has separated from such armed forces with an honorable discharge or general discharge under honorable conditions;~~

~~(3) suffers from mental illness~~ injury; and

~~(4) (3) such mental illness was caused or exacerbated by events occurring during such defendant's service in a combat zone~~ injury was connected to service in a combat zone in the armed forces of the United States of America.

(b) (1) Except as provided in subsection (b)(2), if the court determines that such defendant meets the criteria provided in subsection (a) and such defendant's current crime of

conviction and criminal history fall within a presumptive nonprison category under the sentencing guidelines, the court may order such defendant to undergo inpatient or outpatient treatment from any treatment facility or program operated by the United States department of defense, the ~~federal veterans' administration~~ United States department of veterans affairs or the Kansas national guard ~~with the consent of the defendant,~~ if the defendant is eligible for and consents to such treatment.

(2) If the court determines that such defendant meets the criteria provided in subsection (a), such defendant is ineligible for treatment pursuant to subsection (b)(1) and such defendant meets the requirements established in K.S.A. 2014 Supp. 21-6824, and amendments thereto, the provisions of K.S.A. 2014 Supp. 21-6824, and amendments thereto, shall apply, ~~except that in lieu of requiring such defendant to participate in a certified drug abuse treatment program as provided in K.S.A. 2014 Supp. 75-52,144, and amendments thereto, the court may order such defendant to undergo drug abuse treatment from any treatment facility or program operated by the United States department of defense, the federal veterans' administration or the Kansas national guard with the consent of the defendant.~~

(c) Nothing in this section shall be construed to limit the court's authority to:

(1) Order any other sanction pursuant to K.S.A. 2014 Supp. 21-6602 or 21-6604, and amendments thereto;

(2) order a mental examination pursuant to K.S.A. 22-3429, and amendments thereto;

(3) order commitment pursuant to K.S.A. 22-3430 et seq., and amendments thereto; or

(4) determine that a person is a mentally ill person subject to involuntary commitment for care and treatment as defined in K.S.A. 59-2946, and amendments thereto.

(d) As used in this section:

(1) ~~"Mental illness" means a mental disorder manifested by a clinically significant behavioral or psychological syndrome or pattern and associated with either a painful symptom or an impairment in one or more important areas of functioning, and involving substantial behavioral, psychological or biological dysfunction, to the extent that the person is in need of treatment; and~~

(2) ~~"Major depressive disorder" and "post-traumatic stress disorder" means~~ posttraumatic stress disorder as mean the same as such terms are defined in the diagnostic and statistical manual of mental disorders, fifth edition (DSM-5, 2013), of the American psychiatric association and that occurred as a result of events during the ~~person's~~ defendant's service in one or more combat zones.

(2) "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.

(3) "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.

(e) This section shall be a part of and supplemental to the Kansas criminal code.

Sec. 7. K.S.A. 2014 Supp. 21-6815 is hereby amended to read as follows: 21-6815. (a) Except as provided in subsection (b), the sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines unless the judge finds substantial and compelling reasons to impose a departure sentence. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b) Subject to the provisions of ~~subsection (b)~~ of K.S.A. 2014 Supp. 21-6817(b), and amendments thereto, any fact that would increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be submitted to a jury and proved beyond a reasonable doubt.

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

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

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

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

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

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

(F) The offender committed such 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, as defined in section 112 of the federal internal revenue

code of 1986, in the armed forces of the United States of America. As used in this subsection, "major depressive disorder," "polytrauma," "post-traumatic stress disorder" and "traumatic brain injury" shall mean the same as such terms are defined in K.S.A. 2014 Supp. 21-6630, and amendments thereto.

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

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

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

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

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

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

(i) Commit any person felony;

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

or

(iii) attempt, conspire or solicit, as defined in K.S.A. 2014 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, to commit any person felony.

That the defendant did not know the age of the individual under 16 years of age shall not be a consideration.

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

(i) "Crime of extreme sexual violence" is a felony limited to the following:

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

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

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

(d) aggravated human trafficking, as defined in ~~subsection (b)~~ of K.S.A. 2014 Supp. 21-5426**(b)**, and amendments thereto, if the victim is less than 14 years of age; or

(e) commercial sexual exploitation of a child, as defined in K.S.A. 2014 Supp. 21-6422, and amendments thereto, if the victim is less than 14 years of age.

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

(a) Has one or more prior convictions of any crimes of extreme sexual violence. Any prior conviction used to establish the defendant as a predatory sex offender pursuant to this

subsection shall also be counted in determining the criminal history category; or

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

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

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

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

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

(3) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the crime severity scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

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

(1) Any evidence received during the proceeding;

(2) the presentence report;

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

and

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

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

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

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

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

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

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

Sec. 8. K.S.A. 2014 Supp. 22-2908 is hereby amended to read as follows: 22-2908. (a) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county or district attorney shall consider at least the following factors among all factors considered:

(1) The nature of the crime charged and the circumstances surrounding it;

(2) any special characteristics or circumstances of the defendant;

(3) whether the defendant is a first-time offender and if the defendant has previously participated in diversion, according to the certification of the Kansas bureau of investigation or the division of vehicles of the department of revenue;

(4) whether there is a probability that the defendant will cooperate with and benefit from diversion;

(5) whether the available diversion program is appropriate to the needs of the defendant;

(6) whether there is a probability that the defendant committed such 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, as defined in section 112 of the federal internal revenue code of 1986, in the armed forces of the United States of America;

(7) if subsection (a)(6) applies to the defendant, whether there is a probability that the defendant will cooperate with and benefit from inpatient or outpatient treatment from any treatment facility or program operated by the United States department of defense, the United States department of veterans affairs or the Kansas national guard with the consent of the defendant, as a condition of diversion;

~~(6)~~(8) the impact of the diversion of the defendant upon the community;

~~(7)~~(9) recommendations, if any, of the involved law enforcement agency;

~~(8)~~(10) recommendations, if any, of the victim;

~~(9)~~(11) provisions for restitution; and

~~(10)~~(12) any mitigating circumstances.

(b) A county or district attorney shall not enter into a diversion agreement in lieu of

further criminal proceedings on a complaint if:

(1) The complaint alleges a violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and amendments thereto, and the defendant: (A) Has previously participated in diversion upon a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been convicted of or pleaded nolo contendere to a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death;

(2) the complaint alleges that the defendant committed a class A or B felony or for crimes committed on or after July 1, 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes, a drug severity level 1 or 2 felony for drug crimes committed on or after July 1, 1993, but prior to July 1, 2012, or a drug severity level 1, 2 or 3 felony committed on or after July 1, 2012; or

(3) the complaint alleges a domestic violence offense, as defined in K.S.A. 2014 Supp. 21-5111, and amendments thereto, and the defendant has participated in two or more diversions in the previous five year period upon complaints alleging a domestic violence offense.

(c) A county or district attorney may enter into a diversion agreement in lieu of further criminal proceedings on a complaint for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, if such diversion carries the same penalties as the conviction for the corresponding violations. If the defendant has previously participated in one or more diversions for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and

amendments thereto, then each subsequent diversion shall carry the same penalties as the conviction for the corresponding violations.

(d) As used in this section, "major depressive disorder," "polytrauma," "post-traumatic stress disorder" and "traumatic brain injury" shall mean the same as such terms are defined in K.S.A. 2014 Supp. 21-6630, and amendments thereto.

Sec. 9. K.S.A. 2014 Supp. 48-3406 is hereby amended to read as follows: 48-3406. (a) For the purposes of this section:

(1) ~~"Licensing body" has the meaning ascribed thereto in K.S.A. 74-146, and amendments thereto~~ means an official, agency, board or other entity of the state which authorizes individuals to practice a profession in this state and issues a license, registration, certificate, permit or other authorization to an individual so authorized;

(2) ~~"military-service servicemember"~~ means a member of the army, navy, marine corps, air force, air or army national guard of any state, coast guard or any branch of the military reserves of the United States; and

(3) ~~"military service member" means a member who entered into military service and separated from such military service with an honorable discharge or a general discharge under honorable conditions; and~~

~~(4)~~ "military spouse" means the spouse of an individual who is currently in active service in any branch of the armed forces of the United States.

(b) Notwithstanding any other provision of law, any licensing body shall:

(1) Upon submission of a completed application, issue a license, registration or certification to a nonresident military spouse, so that the nonresident military spouse may

lawfully practice the person's occupation; and

(2) upon submission of a completed application within six months following release from military service, issue a license, registration or certification to a military servicemember with an honorable discharge so that the military servicemember may lawfully practice the ~~person's~~ military servicemember's occupation.

(c) A military servicemember with an honorable discharge or nonresident military spouse shall receive a license, registration or certification under subsection (b) of this section:

(1) Pursuant to applicable licensure, registration or certification by endorsement, reinstatement or reciprocity statutes of the licensing body of this state for the profession license, registration or certification within 60 days from the date a complete application was submitted;

or

(2) if the professional practice act does not have licensure, registration or certification by endorsement, reinstatement or reciprocity statutes, then, at the time of application, the military servicemember or nonresident military spouse:

(A) Holds a current license, registration or certification in another state, district or territory of the United States with licensure, registration or certification requirements that the licensing body determines are equivalent to those established by the licensing body of this state;

(B) has not committed an act in any jurisdiction that would have constituted grounds for the limitation, suspension or revocation or that the applicant has never been censured or had other disciplinary action taken or had an application for licensure, registration or certification denied or refused to practice an occupation for which the military servicemember or nonresident military spouse seeks licensure, registration or certification;

(C) has not been disciplined by a licensing, registering, certifying or other credentialing entity in another jurisdiction and is not the subject of an unresolved complaint, review procedure or disciplinary proceeding conducted by a licensing, registering, certifying or other credentialing entity in another jurisdiction nor has surrendered their membership on any professional staff in any professional association or society or faculty for another state or ~~licensing~~ jurisdiction while under investigation or to avoid adverse action for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action in a Kansas practice act;

(D) pays any fees required by the licensing body of this state; and

(E) submits with the application a signed affidavit stating that the application information, including necessary prior employment history, is true and accurate. Upon receiving such affidavit, the licensing body shall issue the license, registration or certification within 60 days from the date a complete application was submitted, to the military servicemember or nonresident military spouse on a probationary basis, but may revoke the license, registration or certification at any time if the information provided in the application is found to be false. Any probationary license issued under this ~~section~~ subsection to a military servicemember or nonresident military spouse shall not exceed ~~three~~ six months.

(d) Any person who has not been in the active practice of the occupation during the two years preceding the application for which the applicant seeks a license, registration or certification may be required to complete such additional testing, training, mentoring, monitoring or education as the Kansas licensing body may deem necessary to establish the applicant's present ability to practice with reasonable skill and safety.

(e) A nonresident military spouse licensed, registered or certified under this section

shall be entitled to the same rights and subject to the same obligations as are provided by the licensing body for Kansas residents, except that revocation or suspension of a nonresident military spouse's license, registration or certificate in the nonresident military spouse's state of residence or any jurisdiction in which the nonresident military spouse held ~~licensure~~ a license, registration or certificate shall automatically cause the same revocation or suspension of such nonresident military spouse's license, registration or certificate in Kansas. No hearing shall be granted to a nonresident ~~licensee~~ military spouse where ~~the~~ such nonresident military spouse's license, registration or certificate is subject to such automatic revocation or suspension except for the purpose of establishing the fact of revocation or suspension of the nonresident military spouse's license, registration or certificate by the nonresident military spouse's state of residence.

(f) In the event the licensing body determines that the license, registration or certificate currently held by the military servicemember or nonresident military spouse under subsection (c)(2)(A) is not equivalent to those issued by the licensing body of this state, the licensing body may issue a temporary permit for a limited period of time to allow the military servicemember or nonresident military spouse to lawfully practice the ~~person's~~ military servicemember's or nonresident military spouse's occupation while completing any specific requirements that are required in this state for licensure, registration or certification that ~~were~~ was not required in the state, district or territory of the United States in which the military servicemember or nonresident military spouse was licensed ~~or, registered, certified or otherwise credentialed.~~

(g) A licensing ~~board~~ body may grant ~~certification,~~ licensure, registration, certification or a temporary permit to any person who meets the requirements under this section but was separated from such military service under less than honorable conditions or with a general

discharge under honorable conditions.

(h) Each licensing body may adopt rules and regulations necessary to implement and carry out the provisions of this section.

(i) This section shall not apply to the practice of law or the regulation of attorneys pursuant to K.S.A. 7-103, and amendments thereto.";

Also on page 7, in line 35, after "Supp." by inserting "12-4415, 21-6630, 21-6815, 22-2908, 48-3406 and";

And by renumbering sections accordingly;

On page 1, in the title, in line 2 by striking "military matters" and inserting "servicemembers and veterans of the United States armed forces; relating to private sector employment; postsecondary educational institution tuition; diversions and sentencing; servicemember and military spouse expedited professional credentialing"; in line 3, after "Supp." by inserting "12-4415, 21-6630, 21-6815, 22-2908, 48-3406 and"

And your committee on conference recommends the adoption of this report.

Conferees on part of Senate

Conferees on part of House