

## LEGISLATIVE BILL 253

Approved by the Governor April 16, 2024

Introduced by Brewer, 43; Hardin, 48; Conrad, 46; Wayne, 13; Sanders, 45;  
Vargas, 7.

A BILL FOR AN ACT relating to criminal justice; to amend sections 28-1206, 29-2202, 29-2246, 29-2293, and 29-2294, Revised Statutes Cumulative Supplement, 2022; to provide for veteran justice programs as prescribed; to define terms; to provide requirements and duties relating to sentencing veterans; to provide duties for law enforcement, court, and correctional personnel and the State Court Administrator; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. For purposes of sections 1 to 7 of this act:

(1) Case plan means a set of goals, conditions, and programs that is:

(a) Based on a professional risk and needs assessment;

(b) Tailored to the specific risks and needs of the veteran; and

(c) Developed in collaboration with the veteran;

(2) Condition from military service means substance-use disorder, military sexual trauma, traumatic brain injury, post-traumatic stress disorder, or another mental health condition that is related to an individual's military service in some manner and includes psychological effects from a veteran's time in service as well as from the period of family separation related to deployment;

(3) Intimate partner has the same meaning as in section 28-323;

(4) Serious bodily injury has the same meaning as in section 28-109;

(5) Sexual contact and sexual penetration have the same meanings as in section 28-318;

(6) Veteran means an individual who:

(a) Is serving in the United States Armed Forces, including any reserve component or the National Guard;

(b) Has served in such armed forces and was discharged or released from such service under conditions other than dishonorable; or

(c) Has served in such armed forces and received a dishonorable discharge and such individual has been diagnosed with substance-use disorder, military sexual trauma, traumatic brain injury, post-traumatic stress disorder, or another mental health condition; and

(7) Veteran justice program means the program described in sections 2 to 4 of this act through which a veteran may request a court to defer entry of judgment of conviction for an offense pending completion of the program, and upon successful completion, avoid entry of judgment of conviction.

Sec. 2. (1) Except as provided in subsection (2) of this section, a defendant is eligible to participate in a veteran justice program if the defendant is a veteran and can show by clear and convincing evidence that a condition from military service contributed to the offense.

(2) A veteran is not eligible for participation in a veteran justice program if:

(a) The veteran is charged with:

(i) An offense that is not eligible for probation;

(ii) An offense that is listed in subdivision (1)(a)(i) of section 29-4003;

(iii) A violation of section 60-6,196 or 60-6,197, or a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197, following two or more previous convictions for a violation of any such section or ordinance; or

(iv) An offense that resulted in the death of another person; or

(b) Deferring the entry of judgment would be prohibited under section 60-4,147.01.

(3) Any document or materials received by the court pursuant to sections 2 to 4 of this act that contain military or medical records, reports, or evaluations shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge; attorneys to parties in the case; probation officers to whom a defendant's file is duly transferred; the probation administrator or his or her designee; alcohol and drug counselors, mental health practitioners, psychiatrists, and psychologists licensed or certified under the Uniform Credentialing Act to conduct substance abuse evaluations and treatment; or others entitled by law to receive such information, including personnel affiliated with the veteran justice program.

(4) Upon a court determination of eligibility for participation in a veteran justice program, the court shall provide notice to any victim or alleged victim of the offense committed by the veteran of such determination and the right of the veteran to request participation in a veteran justice program.

Sec. 3. (1) The probation administrator shall create a veteran justice program as provided in sections 2 to 4 of this act and subject to the Supreme Court's rules. The program shall be available in every district court and

county court. A veteran justice program shall not supersede, alter, or otherwise interfere with the establishment, functioning, participation, or operation of a problem solving court established pursuant to section 24-1302.

(2) A veteran justice program shall be operated by use of deferred judgments as provided in this section.

(3) Upon a finding of guilt for which a judgment of conviction may be rendered, a defendant that is eligible to participate in a veteran justice program may request the court defer the entry of judgment of conviction under this section. Upon such request, the court shall provide notice to any victim of the offense of the request and provide an opportunity for the victim to provide a statement for consideration by the court. After giving the prosecutor and defendant the opportunity to be heard, the court may defer the entry of a judgment of conviction and the imposition of a sentence and place the defendant on probation, upon conditions as the court may require under section 29-2262 and section 4 of this act. If the court defers the entry of judgment, the court shall provide notice to victims of the offense.

(4)(a) Whenever a court considers a request to defer judgment under this section, the court shall consider the following:

(i) The factors set forth in subsections (2) and (3) of section 29-2260 and section 2 of this act;

(ii) The supervision, treatment, and other programming options available in the community; and

(iii) Any other information the court deems relevant.

(b) Except as provided in subdivision (4)(c) of this section, there shall be a presumption that a veteran eligible under section 2 of this act shall be allowed to participate in a veteran justice program. The presumption shall only be overcome by a judicial finding, based on an individualized assessment of the veteran and consideration of the factors set forth in subdivisions (4)(a)(i), (ii), and (iii) of this section, that entry of judgment of conviction should not be deferred. The fact that a veteran has previously absconded from or violated pretrial release, probation, parole, supervised release, post-release supervision, or another form of court-ordered supervision, including a violation arising from commission of a new offense or an offense committed while previously participating in a veteran justice program, is not, standing alone, a sufficient basis to overcome the presumption.

(c) The presumption provided for in subdivision (4)(b) of this section does not apply to a veteran charged with:

(i) A violation of section 60-6,196 or 60-6,197, or a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197, following a previous conviction for a violation of any such section or ordinance; or

(ii) An offense that resulted in serious bodily injury to another person.

(5) Except as otherwise provided in this section and sections 29-2293 and 29-2294, the supervision of a defendant on probation pursuant to a deferred judgment shall be governed by the Nebraska Probation Administration Act and sections 29-2270 to 29-2273.

(6) After a hearing providing the prosecutor and defendant an opportunity to be heard and upon a finding that a defendant has violated a condition of his or her probation, the court may enter any order authorized by section 29-2268 or pronounce judgment and impose such new sentence as might have been originally imposed for the offense for which the defendant was convicted.

(7) Upon satisfactory completion of the conditions of probation and the payment or waiver of all administrative and programming fees assessed under section 29-2293, the defendant or prosecutor may file a motion to withdraw any plea entered by the defendant and to dismiss the action without entry of judgment. The court shall not grant such motion until a victim of the offense has received notice and the opportunity to be heard, as required by subsection (4) of section 4 of this act.

(8) Sections 2 to 4 of this act apply to offenses committed on or after July 1, 2025. For purposes of this subsection, an offense shall be deemed to have been committed prior to July 1, 2025, if any element of the offense occurred prior to such date.

Sec. 4. (1) A veteran justice program shall include the following elements:

(a) Evidence-based treatment tailored to address the specific challenges facing veterans, such as post-traumatic stress disorder, traumatic brain injury, military sexual trauma, or another condition from military service; and

(b) A case plan that meets the requirements set forth in this section. The case plan shall be:

(i) Developed by the court with probation and appropriate experts;

(ii) Based on a professional assessment of the veteran's specific risks and needs. The assessment shall include an assessment of risk of intimate partner violence, regardless of the nature of the offense;

(iii) Created in conjunction with input from the veteran;

(iv) Designed to contain clear and individualized supervision and treatment goals, including guidelines that detail the program rules, consequences for violating the rules, and incentives for compliance; and

(v) Communicated to the veteran at the start of the program.

(2) If the offense includes sexual contact or sexual penetration, the victim of the offense is an intimate partner, or the assessment of the veteran under subdivision (1)(b)(ii) of this section identifies an increased risk of intimate partner violence, the case plan shall include specifically tailored treatment or programming to address sexual assaults and domestic violence. For any veteran required to participate in such treatment or programming, the court

shall include conditions of supervision to protect victim safety that include, but are not limited to, requiring the surrender of firearms while participating in the veteran justice program.

(3) In the implementation of a veteran justice program, the district court or county court shall retain discretion in:

(a) Determining eligibility for participation, subject to sections 2 and 3 of this act;

(b) Establishing the conditions of the program, including the creation of the case plan;

(c) Setting the terms of successful program completion and release upon that successful completion; and

(d) Determining if the veteran has successfully completed the program at a final hearing.

(4) A victim of the offense shall be entitled to notice of the veteran's participation in the veteran justice program. Upon request of the victim, a victim shall be entitled to updates on the veteran's status and participation in the program. The victim shall be entitled to advance reasonable notice of a final hearing to determine successful program completion and the opportunity to be heard or submit a written statement at such hearing.

(5) Upon successful completion of a veteran justice program, the veteran shall be entitled to the relief provided for a deferred judgment under section 3 of this act.

Sec. 5. (1) When arraigning any defendant, the court shall offer the defendant the ability to communicate his or her veteran status through counsel or by other means. The court shall not require that the defendant self-identify as a veteran in open court.

(2) When sentencing a defendant who is a veteran for any offense, the court shall recognize the defendant's veteran status as a mitigating factor in determining the sentence.

(3) The court shall consider a defendant's veteran status as a mitigating factor in addition to any other mitigating factors provided by law or considered by the court. The fact that a defendant may have suffered trauma unrelated to military service or veteran status shall not be used to deny the impact of any military trauma or condition of military service.

(4) The court may take into consideration individual merit earned during military service, overseas deployment, exposure to danger, and service-connected disability ratings when considering sentencing mitigation. When considering multiple factors, a court should give additional credit for each factor.

(5) If a defendant is a veteran, is eligible for probation, and demonstrates by clear and convincing evidence a connection between the offense and a condition from military service, a sentence of imprisonment is not appropriate unless the court finds, based on the criteria in subsections (2) and (3) of section 29-2260, that imprisonment is necessary for the protection of the public.

(6) The court shall not:

(a) Use veteran status as an aggravating factor; or

(b) Require a connection between the offense and a condition from military service in order to consider veteran status as a mitigating factor.

(7) This section applies regardless of whether a veteran is eligible for participation in a veteran justice program.

Sec. 6. (1) Law enforcement, court, and correctional personnel shall verify the veteran status of any individual being processed through the criminal justice system in order to identify individuals who may be eligible for participation in a veteran justice program or for sentencing mitigation as provided in section 5 of this act.

(2) Law enforcement, court, and correctional personnel shall receive training designed to increase their understanding of cases involving veterans, including veterans' exposure to violence and trauma. Such training shall include attention on issues that disproportionately impact female veterans, such as military sexual trauma.

Sec. 7. (1) The State Court Administrator shall compile information on the number of veterans receiving, successfully completing, declining, and denied participation in a veteran justice program and the sentencing mitigation described in section 5 of this act.

(2) The State Court Administrator shall track outcomes among veterans who participate in a veteran justice program, including completion status, recidivism, and housing and employment status.

(3) Data collected under this section shall be disaggregated by race, ethnicity, gender, age, military discharge characterization, and the offense involved.

(4) On or before July 1, 2026, and on or before each July 1 thereafter, the State Court Administrator shall electronically submit a report to the Judiciary Committee of the Legislature. The report shall contain de-identified data collected pursuant to this section and shall analyze the outcomes, successes, and areas for improvement of the veteran justice programs and the sentencing mitigation described in section 5 of this act.

Sec. 8. Section 28-1206, Revised Statutes Cumulative Supplement, 2022, is amended to read:

28-1206 (1) A person commits the offense of possession of a deadly weapon by a prohibited person if he or she:

(a) Possesses a firearm, a knife, or brass or iron knuckles and he or she:

(i) Has previously been convicted of a felony;

- (ii) Is a fugitive from justice;
- (iii) Is the subject of a current and validly issued domestic violence protection order, harassment protection order, or sexual assault protection order and is knowingly violating such order; or
- (iv) Is on probation pursuant to a deferred judgment for a felony under section 29-2292 or section 3 of this act; or
- (b) Possesses a firearm or brass or iron knuckles and he or she has been convicted within the past seven years of a misdemeanor crime of domestic violence.
- (2) The felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.
- (3)(a) Possession of a deadly weapon which is not a firearm by a prohibited person is a Class III felony.
- (b) Possession of a deadly weapon which is a firearm by a prohibited person is a Class ID felony for a first offense and a Class IB felony for a second or subsequent offense.
- (4) Subdivision (1)(a)(i) of this section shall not prohibit:
  - (a) Possession of archery equipment for lawful purposes; or
  - (b) If in possession of a recreational license, possession of a knife for purposes of butchering, dressing, or otherwise processing or harvesting game, fish, or furs.
- (5)(a) For purposes of this section, misdemeanor crime of domestic violence means a crime that:
  - (i) Is classified as a misdemeanor under the laws of the United States or the District of Columbia or the laws of any state, territory, possession, or tribe;
  - (ii) Has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon; and
  - (iii) Is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323.
- (b) For purposes of this section, misdemeanor crime of domestic violence also includes the following offenses, if committed by a person against his or her spouse, his or her former spouse, a person with whom he or she is or was involved in a dating relationship as defined in section 28-323, or a person with whom he or she has a child in common whether or not they have been married or lived together at any time:
  - (i) Assault in the third degree under section 28-310;
  - (ii) Stalking under subsection (1) of section 28-311.04;
  - (iii) False imprisonment in the second degree under section 28-315;
  - (iv) First offense domestic assault in the third degree under subsection (1) of section 28-323; or
  - (v) Any attempt or conspiracy to commit any of such offenses.
- (c) A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence unless:
  - (i) The person was represented by counsel in the case or knowingly and intelligently waived the right to counsel in the case; and
  - (ii) In the case of a prosecution for a misdemeanor crime of domestic violence for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either:
    - (A) The case was tried to a jury; or
    - (B) The person knowingly and intelligently waived the right to have the case tried to a jury.
- (6) In addition, for purposes of this section:
  - (a) Archery equipment means:
    - (i) A longbow, recurve bow, compound bow, or nonelectric crossbow that is drawn or cocked with human power and released by human power; and
    - (ii) Target or hunting arrows, including arrows with broad, fixed, or removable heads or that contain multiple sharp cutting edges;
  - (b) Domestic violence protection order means a protection order issued pursuant to section 42-924;
  - (c) Harassment protection order means a protection order issued pursuant to section 28-311.09 or that meets or exceeds the criteria set forth in section 28-311.10 regarding protection orders issued by a court in any other state or a territory, possession, or tribe;
  - (d) Recreational license means a state-issued license, certificate, registration, permit, tag, sticker, or other similar document or identifier evidencing permission to hunt, fish, or trap for furs in the State of Nebraska; and
  - (e) Sexual assault protection order means a protection order issued pursuant to section 28-311.11 or that meets or exceeds the criteria set forth in section 28-311.12 regarding protection orders issued by a court in any other state or a territory, possession, or tribe.

Sec. 9. Section 29-2202, Revised Statutes Cumulative Supplement, 2022, is amended to read:

29-2202 Except as provided in sections 29-2292 to 29-2294 or sections 1 to 4 of this act, if the defendant has nothing to say, or if he or she shows no good and sufficient cause why judgment should not be pronounced, the court shall proceed to pronounce judgment as provided by law. The court, in its discretion, may for any cause deemed by it good and sufficient, suspend execution of sentence for a period not to exceed ninety days from the date

judgment is pronounced. If the defendant is not at liberty under bail, he or she may be admitted to bail during the period of suspension of sentence as provided in section 29-901.

Sec. 10. Section 29-2246, Revised Statutes Cumulative Supplement, 2022, is amended to read:

29-2246 For purposes of the Nebraska Probation Administration Act and sections 43-2,123.01 and 83-1,102 to 83-1,104, unless the context otherwise requires:

- (1) Association means the Nebraska District Court Judges Association;
- (2) Court means a district court, county court, or juvenile court as defined in section 43-245;
- (3) Office means the Office of Probation Administration;
- (4) Probation means a sentence under which a person found guilty of a crime upon verdict or plea or adjudicated delinquent or in need of special supervision is released by a court subject to conditions imposed by the court and subject to supervision. Probation includes post-release supervision and supervision ordered by a court pursuant to a deferred judgment under section 29-2292 or section 3 of this act;
- (5) Probationer means a person sentenced to probation or post-release supervision;
- (6) Probation officer means an employee of the system who supervises probationers and conducts presentence, predisposition, or other investigations as may be required by law or directed by a court in which he or she is serving or performs such other duties as authorized pursuant to section 29-2258, except unpaid volunteers from the community;
- (7) Juvenile probation officer means any probation officer who supervises probationers of a separate juvenile court;
- (8) Juvenile intake probation officer means an employee of the system who is called upon by a law enforcement officer in accordance with section 43-250 to make a decision regarding the furtherance of a juvenile's detention;
- (9) Chief probation officer means the probation officer in charge of a probation district;
- (10) System means the Nebraska Probation System;
- (11) Administrator means the probation administrator;
- (12) Non-probation-based program or service means a program or service established within the district, county, or juvenile courts and provided to individuals not sentenced to probation who have been charged with or convicted of a crime for the purpose of diverting the individual from incarceration or to provide treatment for issues related to the individual's criminogenic needs. Non-probation-based programs or services include, but are not limited to, problem solving courts established pursuant to section 24-1302 and the treatment of problems relating to substance abuse, mental health, sex offenses, or domestic violence;
- (13) Post-release supervision means the portion of a split sentence following a period of incarceration under which a person found guilty of a crime upon verdict or plea is released by a court subject to conditions imposed by the court and subject to supervision by the office; and
- (14) Rules and regulations means policies and procedures written by the office and approved by the Supreme Court.

Sec. 11. Section 29-2293, Revised Statutes Cumulative Supplement, 2022, is amended to read:

29-2293 Upon entry of a deferred judgment pursuant to section 29-2292 or section 3 of this act, the court shall order the defendant to pay all administrative and programming fees authorized under section 29-2262.06, unless waived under such section. The defendant shall pay any such fees to the clerk of the court. The clerk of the court shall remit all fees so collected to the State Treasurer for credit to the Probation Program Cash Fund.

Sec. 12. Section 29-2294, Revised Statutes Cumulative Supplement, 2022, is amended to read:

29-2294 An entry of deferred judgment pursuant to section 29-2292 or section 3 of this act is a final order as defined in section 25-1902.

Sec. 13. This act becomes operative on July 1, 2025.

Sec. 14. Original sections 28-1206, 29-2202, 29-2246, 29-2293, and 29-2294, Revised Statutes Cumulative Supplement, 2022, are repealed.