



2018 New York State YMCA

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Committee Assignment: Assembly Liberty 4

Bill #: AL-29

1 **Sponsors:** Jayden Fritz-Berrios, Jasmine Willard

2

3 **An Act To**

4 Amend § 730.40 of the New York State Criminal Prosecution Law by adding
5 subsection six to postpone the prosecution of veterans who have been accused of
6 misdemeanors if they have been diagnosed with mental illness due to military
7 service.

8

9 *The People of the State of New York, represented in the Senate and Assembly do enact as follows:*

10

11 **Purpose**

12 The purpose of this bill is to postpone prosecution of veterans who have been
13 accused of misdemeanors if they have been diagnosed with mental illness due to
14 military service.

15 **Summary of Provisions**

16 **Section 1: Definitions**

17 PTSD: a trauma and stress related disorder that may develop after exposure to an
18 event or ordeal in which death, severe physical harm or violence occurred or was
19 threatened.

20 Sexual trauma: an all-encompassing term that refers to crimes such as sexual
21 assault, rape, and sexual abuse.

22 Mental health problems: any mental illness deemed by the court to be deserving of
23 postponement of prosecution and (for the intents of this bill) caused by previous or
24 current military service.

25 Department of Defense: executive branch department charged with coordinating
26 and supervising all agencies and functions of the government concerned directly
27 with national security

28 Department of Veterans Affairs: provides patient care and federal benefits to
29 veterans and their dependents.

30 Pretrial diversion: the procedure of postponing prosecution, either temporarily or
31 permanently, at any point in the judicial process from the point at which the
32 accused is charged until adjudication.

33 **Section 2:**

34 § 730.40. 6.) (a) This chapter shall apply whenever a case is before a court on an
35 accusatory pleading alleging the commission of a misdemeanor offense, and both of
36 the following apply to the defendant: (1) The defendant was, or currently is, a
37 member of the United States military. (2) The defendant may be suffering from
38 sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance
39 abuse, or mental health problems as a result of his or her military service. The
40 court may request, using existing resources, an assessment to aid in the
41 determination that this paragraph applies to a defendant.

42 (b) If the court determines that a defendant charged with an applicable offense
43 under this chapter is a person described in subdivision (a), the court, with the
44 consent of the defendant and a waiver of the defendant's speedy trial right, may
45 place the defendant in a pretrial diversion program, as defined in section 1. If

46 mental health treatment services are ordered by the court, the county mental
47 health agency shall coordinate appropriate referral of the defendant to the county
48 veterans service officer. An order shall be made referring a defendant to a county
49 mental health agency only if that agency has agreed to accept responsibility for all
50 of the following: (1) The treatment of the defendant. (2) The coordination of
51 appropriate referral to a county veterans' service officer. (3) The filing of reports
52 pursuant to subdivision (d).

53 (c) The period during which criminal proceedings against the defendant may be
54 diverted shall be no longer than two years. The responsible agency or agencies
55 shall file reports on the defendants' progress in the diversion program with the
56 court and with the prosecutor not less than every six months.

57 (d) A record filed with the Department of Justice shall indicate the disposition in
58 those cases diverted pursuant to this chapter. Upon successful completion of a
59 diversion program, the arrest upon which the diversion was based shall be deemed
60 to have never occurred. The defendant may indicate in response to a question
61 concerning his or her prior criminal record that he or she was not arrested or
62 diverted for the offense, except as specified in subdivision (f). A record pertaining
63 to an arrest resulting in successful completion of a diversion program shall not,
64 without the defendant's consent, be used in any way that could result in the denial
65 of any employment, benefit, license, or certificate.

66 (e) If it appears to the court that the defendant is performing unsatisfactorily in the
67 assigned program, or that the defendant is not benefiting from the treatment and
68 services provided under the diversion program, after notice to the defendant, the
69 court shall hold a hearing to determine whether the criminal proceedings should be
70 reinstated. If the court finds that the defendant is not performing satisfactorily in
71 the assigned program, or that the defendant is not benefiting from diversion, the
72 court may end the diversion and order resumption of the criminal proceedings. If
73 the defendant has performed satisfactorily during the period of diversion, at the end
74 of the period of diversion, the criminal charges shall be dismissed.

75 **Justification**

76 The service men and women are some of the most reassured and renounced
77 citizens in our country, and as of late there has been a rise in mental illness directly
78 caused by their time spend defending the freedoms and rights of the people. It is
79 now time to stand up for them and attempt to help them through this unbelievably
80 hard time by giving them a break when their mental troubles are too much to
81 handle, it's time to rise and support the people who have protected us for so much
82 of their lives.

83 **Fiscal Implications**

84 Veteran Centers run by the Department of Veterans Affairs across the country
85 provide a broad range of counseling, outreach, and referral services to combat
86 Veterans and their families. Services for a Veteran may include individual and group
87 counseling in areas such as Post-Traumatic Stress Disorder (PTSD), alcohol and
88 drug assessment, and suicide prevention referrals. All services through the
89 Department of Veterans Affairs are free of cost and are strictly confidential.

90 **Effective Date**

91 This bill will go into effect one year after its passage.