

By: Ellis

S.B. No. 112

A BILL TO BE ENTITLED

AN ACT

1
2 relating to deferred prosecution programs for certain military
3 service members and veterans.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 32, Code of Criminal Procedure, is
6 amended by adding Article 32.03 to read as follows:

7 Art. 32.03. DEFERRED PROSECUTION PROGRAMS FOR MILITARY
8 SERVICE MEMBERS OR VETERANS. (a) For purposes of this article,
9 "military service member or veteran" means an individual who is
10 serving or has served in the army, navy, air force, marine corps, or
11 coast guard of the United States or in an auxiliary service of one
12 of those branches of the armed forces.

13 (b) The judges of the county courts, statutory county
14 courts, and district courts trying criminal cases in each county,
15 by local rule, shall establish and publish written countywide
16 eligibility requirements and guidelines for implementation of a
17 deferred prosecution program for military service members or
18 veterans who demonstrate that their criminal conduct was materially
19 affected by brain injuries or mental illnesses, including
20 post-traumatic stress disorder, resulting from military service in
21 a combat zone or other similar hazardous duty area. The court may:

22 (1) allow participation in the program by eligible
23 defendants in misdemeanor or felony cases only as the court
24 considers appropriate; and

1 (2) on its own motion, dismiss a criminal action
2 against a defendant on the defendant's successful completion of the
3 conditions imposed by the court under the program.

4 (c) The local rules for a program established under this
5 article must require a qualified military or veterans organization
6 to:

7 (1) promptly review the defendant's military record to
8 determine the types of assignments in which the defendant served
9 and evaluate a defendant's eligibility to participate in the
10 program; and

11 (2) prepare and submit to the court in a timely manner
12 a report that:

13 (A) confirms whether the defendant is a military
14 service member or veteran;

15 (B) determines whether the defendant suffers
16 from a brain injury or mental illness that resulted from the
17 defendant's military service in a combat zone or other similar
18 hazardous duty area; and

19 (C) recommends any available treatment options
20 to address the defendant's brain injury or mental illness.

21 (d) The attorney representing the state and the attorney
22 representing the defendant are each entitled to obtain independent
23 evaluations of the defendant's eligibility to participate in the
24 deferred prosecution program. The results of an independent
25 evaluation must be reported to the court.

26 (e) The court shall consider the report prepared under
27 Subsection (c) and any independent evaluations conducted under

1 Subsection (d) in determining whether to allow a defendant to
2 participate in the deferred prosecution program. The court shall
3 require the defendant, as a condition of participating in the
4 program, to pursue any available treatment option recommended in
5 the report.

6 SECTION 2. Article 55.01(b), Code of Criminal Procedure, is
7 amended to read as follows:

8 (b) Except as provided by Subsection (c) of this section, a
9 district court may expunge all records and files relating to the
10 arrest of a person who has been arrested for commission of a felony
11 or misdemeanor under the procedure established under Article 55.02
12 of this code if the person [~~is~~]:

13 (1) is tried for the offense for which the person was
14 arrested, ~~[+]~~

15 [~~(2)~~] convicted of the offense, ~~[+]~~ and

16 [~~(3)~~] acquitted by the court of criminal appeals; or

17 (2) in connection with the offense for which the
18 person was arrested, successfully completes a deferred prosecution
19 program established under Article 32.03, if the judge subsequently
20 dismisses the criminal action against the person under Subsection
21 (b)(2) of that article.

22 SECTION 3. The judges of the county courts, statutory
23 county courts, and district courts trying criminal cases in each
24 county shall establish the deferred prosecution program required by
25 Article 32.03, Code of Criminal Procedure, as added by this Act, not
26 later than September 1, 2010.

27 SECTION 4. This Act takes effect September 1, 2009.