

K.S.A. 2015 Supp. 21-6630 - Procedural Outline

Determining eligibility

- Upon conviction and prior to sentencing, a veteran may assert that their criminal actions were the result of mental illness. The court shall be required to hold a hearing to determine if the veteran meets the criteria established in K.S.A. 2015 Supp. 21-6630 (hereafter HB 2655). This criteria includes: (1) the veteran served in a combat zone; (2) the veteran has been honorably discharged or generally discharged under honorable conditions; (3) the veteran suffers from mental illness; and (4) such mental illness was caused or exacerbated by events occurring during the veteran's service in the combat zone.

Criteria # 1 and 2 shall be determined as follows:

- The Office of Judicial Administration (OJA) will offer a standardized form which the court will send to a liaison at the Kansas Commission on Veterans' Affairs (KCVA), who will provide: (1) information concerning the veteran's service in a combat zone; and (2) the veteran's discharge status. The KCVA anticipates such certification could be completed and returned to the court within 24-48 hours. In addition to providing the aforementioned information, the KCVA shall also submit the DD214 and 10-10-EZ forms to the Eligibility office at the VA hospital where the Veteran is likely to seek treatment.
 - The court should send out this form immediately upon the veteran's assertion that they should be sentenced pursuant to K.S.A. 2015 Supp. 21-6630. Upon receipt such certification affirming, the officer in charge of writing the PSI or the attorney representing the veteran should also contact the Veterans Justice Outreach (VJO) Officer for their district for further information and assistance in effectuating VA treatment.

Criteria # 3 and 4 shall be determined as follows:

- The court should have very little trouble in determining the eligibility of veterans who were previously in the VA system or have had their mental health issues documented by the VA, as the VA records should offer sufficient evidence of the veteran's mental health issues and whether or not they were caused or exacerbated by service in a combat zone.
 - The veteran must consent to the release of this personal health information to the court and other interested parties.
 - If the veteran's mental health issues have not previously been documented by the VA system, the VA may not be able to order an assessment solely for these purposes. A non-VA entity may be able to provide information concerning their mental health status, but it is unclear how this would occur and whether a non-VA entity would have the ability and information to make these determinations.

After Sentencing

- Once the veteran has been sentenced pursuant to K.S.A. 2015 Supp. 21-6630, the court shall require the offender to report to the VA and follow any subsequent treatment recommendations of the VA as a condition of probation.
 - In the event of waiting periods prior to access to treatment can be obtained, the probation officer shall not impose any punishment upon a veteran. However, the veteran will be required to comply with all other conditions of probation, including any conditions which may require the veteran to receive treatment from any other mental health or substance abuse provider.

- The court should require the veteran to provide their continual consent for the VA to release treatment and health records and information, including attendance, progress and other relevant information, as a condition of probation.
 - The probation officer can contact the VJO for their district for a copy of the VA Release of Information form, which the probation officer will have the veteran sign. The probation officer shall then return the completed form to the VJO, who will keep it on file or submit it to the appropriate entity within the VA system.
 - The probation officer may contact the VJO or the Release of Information Department of the VA for treatment updates throughout the course of probation.
 - If the veteran revokes their consent to allow the VA to release such information, the probation officer may impose punishment, including sanctions, or if circumstances dictate, revocation.