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S.F. No. 116 – Stay of Adjudication/Discharge and Dismissal for Certain Veterans (as amended by SCS0116A-3)

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SF No. 116 (as amended by SCS0116A-3) requires courts to order a stay of adjudication for certain criminal defendants. The stay must be ordered following a guilty plea or guilty verdict if the judge determines by clear and convincing evidence that (1) the defendant suffered from an applicable condition (sexual trauma, traumatic brain injury, PTSD, substance abuse, or a mental health condition) at the time of the offense, (2) the condition was caused by service in the United States military, and (3) the offense was committed as a result of the condition. Upon this determination, the court shall defer further proceedings and place the defendant on probation. The terms of the probation must include treatment and other rehabilitative elements. Provides guidance and requirements to the court regarding other elements of the defendant's probation. Authorizes the transfer of the defendant to a veteran's court program in another county (where the defendant resides or works) for supervision during the probationary period. Authorizes counties and judicial districts to supervise probation under the bill in several specified ways. Authorizes the court to enter the adjudication of guilt and proceed as otherwise provided in law if the defendant violates a condition of probation. While the stay of adjudication is mandatory in most instances (upon the requisite judicial finding), it is permissive if the defendant has previously been given a stay of adjudication under the bill for a felony level offense.

Requires the court to discharge the defendant from probation and dismiss the proceedings at the expiration of the probationary period if the court finds by clear and convincing evidence that the defendant (1) is in substantial compliance with the terms of probation, (2) has successfully participated in court-ordered treatment and services to address the condition that caused the offense, (3) does not represent a danger to the public, and (4) has demonstrated significant benefit from court-ordered education, treatment, or rehabilitation to show that the discharge and dismissal is in the interests of justice. Gives guidance on what constitutes being in the interests of justice. If the court does not find this, then the court is required to enter an adjudication of guilt and proceed as otherwise provided in law. Provides that a discharge and dismissal results in a not public record of the matter being maintained by the Bureau of Criminal Apprehension (BCA) and is not legally deemed a conviction.

Provides that defendants who did not receive a discretionary stayed sentence under the bill (i.e., a person who previously received a stayed sentence for a felony offense) or who received a stayed sentence but failed in probation can receive a downward sentencing departure or a waiver of an applicable mandatory sentence.

The stay of adjudication and discharge and dismissal portions of the bill apply to any misdemeanor or gross misdemeanor, and any felony ranked at severity level 7 or lower or D7 or lower on the Sentencing Guidelines grid. The bill does not apply to crimes that would require predatory offender registration (however, these defendants could receive the benefit of a permissive downward sentencing departure or waiver of a mandatory sentence).

Authorizes prosecutors to establish and operate veteran's pretrial diversion programs. Defines key terms.