

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Military and Veterans Affairs and Space

BILL: SB 1496

INTRODUCER: Senator Lee

SUBJECT: Veterans Treatment Courts

DATE: February 11, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Caldwell	MS	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

This bill creates the Florida Veterans Treatment Court Act. Similar to existing law, the bill authorizes courts to develop and operate a veterans treatment court with an emphasis on therapeutic treatment of military-related mental illness, traumatic brain injury, or substance abuse over incarceration. Like existing law, the program is open to a servicemember, veteran, defense contractor, or military member of a foreign allied country. Similarly, a veteran who has received a less than honorable discharge is eligible to participate.

Conditions of participation are set forth in a written participation agreement, signed by the defendant as well as the state attorney, if the defendant is admitted to the court prior to adjudication. Upon a finding by the court that the participant has successfully completed conditions of the agreement, the charge is disposed of in accordance with the agreement.

The bill encourages the court to develop policies and procedures, including employing a nonadversarial approach; identifying participants early in the process; and engaging in partnerships among other veterans treatment courts, the United States Department of Veterans Affairs, the Florida Department of Veteran's Affairs, public agencies, and community-based organizations.

The bill specifically addresses domestic violence charges, and clarifies that the rights of a victim provided elsewhere in law are unaltered by the participation of a defendant in a veterans treatment court.

II. Present Situation:

Veterans Courts

The first veterans court opened in Buffalo, N.Y. in 2008.¹ Veterans court follows the model of other specialty courts, such as drug court and mental health court whereby the court emphasizes treatment over incarceration.² Like other specialty courts, veterans court involves therapeutic intervention under a nonadversarial framework. Successful completion of pretrial court conditions may result in a dismissal of criminal charges.³ As of June 2016, 461 courts operate veterans court programs across the country.⁴

In Florida, 31 counties operate a veterans court program.⁵ Moreover, veterans court programs operate in 17 of the 20 judicial circuits.⁶ Even in those circuits without a designated program, accommodations are provided to defendants who would otherwise qualify to participate in a veterans court program.⁷

Military Veterans and Servicemembers Court Program

In 2012, the Legislature established the T. Patt Maney Veterans' Treatment Intervention Act.⁸ The Act authorizes the chief judge of each judicial circuit to create a Military Veterans and Servicemember Court Program (veterans court). The program is available to eligible veterans, servicemembers, current or former United States Department of Defense contractors, and current or former military members of a foreign allied country. The purpose of the program is for a court to tailor sentencing to treatment of an individual's underlying disorder. Participation is voluntary.

Eligibility to Participate in the Program

When first implemented, the bill provided that to be eligible, a veteran or servicemember must:

- Be convicted of a criminal offense;
- Suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem; and

¹ National Center for State Courts, *Veterans Courts Resource Guide*, available at <https://www.ncsc.org/Topics/Alternative-Dockets/Problem-Solving-Courts/Veterans-Court/Resource-Guide.aspx> (last visited Feb. 4, 2020).

² Public Health Post, *A New Court System to Rehabilitate Veterans*, available at <https://www.publichealthpost.org/research/rehabilitating-veterans-in-the-criminal-justice-system/> (last visited Feb. 4, 2020).

³ Law for Veterans, *Veterans Courts*, available at <https://www.lawforveterans.org/veterans-courts> (last visited Feb. 4, 2020).

⁴ National Center for State Courts, *supra* note 1.

⁵ Veterans court programs operate in Alachua, Bay, Brevard, Broward, Clay, Citrus, Collier, Duval, Escambia, Hernando, Hillsborough, Indian River, Lake, Lee, Leon, Manatee, Marion, Miami-Dade, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Pasco, Pinellas, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, and Volusia counties. Email correspondence with Sean Burnfin, Office of State Courts Administrator, Florida Courts (Jan. 21, 2020)(on file with the Senate Committee on Military and Veterans Affairs and Space).

⁶ Office of the State Courts Administrator, *2020 Judicial Impact Statement* (Feb. 5, 2020)(on file with the Senate Committee on Military and Veterans Affairs and Space).

⁷ *Id.* The Tenth Judicial Circuit operates a holistic veterans court docket with dedicated staff, an outreach counselor from the Veterans Administration/Department of Veterans Affairs, veteran mentors, and partnerships with providers and the justice system. The Third Judicial Circuit issued an administrative order which details the authority for a qualifying defendant to move to transfer his or her case to a veterans court. The Sixteenth Judicial Circuit reports that it has on a case-by-case basis, provided special services to veterans in conjunction with its adult drug court upon a recommendation from the state attorney.

⁸ Chapter 2012-159, s. 9, L.O.F.; Section 394.47891, F.S.

- If a veteran, have received an honorable discharge from military service.⁹

In 2016, the Legislature expanded the requirement of an honorable discharge to include eligibility for a veteran released under a general discharge.¹⁰ Subsequently, in 2019, the Legislature again expanded the program to provide eligibility for a veteran discharged or released under any condition, including a release under a dishonorable discharge.¹¹

Pretrial Intervention Program

Both misdemeanor and felony cases may be processed in a pretrial intervention program of a veterans court. However, a court may deny admission if the defendant has previously entered a court-ordered veterans treatment program.¹² While enrolled in a pretrial intervention program, the defendant fulfills the terms of a written coordinated strategy developed by the veterans' treatment invention team.¹³ Protocol may require successful completion of outpatient or inpatient treatment, including at a jail-based treatment program. Upon successful completion of the program, the court may dismiss the charges. If the participant is otherwise eligible to do so, he or she may petition the court to have the arrest record expunged.¹⁴ If the court finds that the defendant has not successfully completed the program, the court may return the case to the criminal docket for prosecution.¹⁵

Certain pending felony charges disqualify a defendant from participation in a pretrial intervention program. Considered more serious felony charges, they include:

- Kidnapping or attempted kidnapping; false imprisonment of a child under the age of 13; or luring or enticing a child;
- Murder or attempted murder; attempted felony murder; or manslaughter;
- Aggravated battery or attempted aggravated battery;
- Sexual battery or attempted sexual battery;
- Lewd or lascivious battery, molestation, conduct, or exhibition, or attempted lewd or lascivious battery, or lewd or lascivious offense or attempted offense against an elderly or disabled person;
- Robbery or attempted robbery;
- Sexual performance of a child or attempted sexual performance of a child;
- Computer pornography of a minor; transmission of child pornography; or buying or selling of minors; and
- Aggravated assault or stalking.¹⁶

⁹ Chapter 2012-159, s. 9, L.O.F.

¹⁰ Chapter 2016-127, s. 9, L.O.F.

¹¹ Chapter 2019-61, s. 1, L.O.F.

¹² Sections 948.08(7), F.S., and 948.16(2), F.S.

¹³ Sections 948.08(7)(b), F.S., and 948.16(2)(b), F.S.

¹⁴ Sections 948.08(2)(b), F.S., and 948.16(2)(b), F.S.

¹⁵ Sections 948.08(4), F.S., and 948.16(4), F.S.

¹⁶ Section 948.06(8)(c), F.S.

Transfer of Case for Participation in a Problem-Solving Court

A veteran who is eligible for participation in a veterans court may, upon request and approval, transfer his or her case to a county other than that in which the charge arose.¹⁷ Both a representative of the original trial court and the receiving court must agree to the transfer. At the time of transfer, a court case may either be in its pretrial or postadjudicatory phase.¹⁸ The receiving jurisdiction disposes of the case.¹⁹

Participation in a Treatment Program as a Condition of Probation or Community Control

The court may order as a condition of probation or community control that a veteran or servicemember participate in a treatment program designed to address the individual's mental illness, traumatic brain injury, substance abuse disorder, or psychological problem.²⁰ The court must give preference to those treatment programs for which the veteran or servicemember is eligible through the United States Department of Veterans Affairs or the Florida Department of Veterans Affairs.²¹

Domestic Violence

Domestic violence is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or crime causing physical injury or death of one family or household member by another family or household member.²²

A victim of a domestic violence is entitled to various rights and assistance, starting at the time he or she alleges domestic violence. Upon investigation of an incident of domestic violence, a law enforcement officer must assist the victim in obtaining medical treatment, if needed. Also, the officer must inform the victim that there is a domestic violence center from which the victim may receive services, and the officer must give the victim a Legal Rights and Remedies notice.²³

A victim of domestic violence has the right to file a petition for injunction against the alleged perpetrator, and the right to petition is unaltered by the victim leaving the residence or household to avoid domestic violence.²⁴

¹⁷ Section 910.035(5)(a)(and (b), F.S.

¹⁸ Section 910.035(d), F.S.

¹⁹ Section 910.035(f), F.S.

²⁰ Section 948.21, F.S.; The ability of a veteran released from service under a dishonorable discharge to participate in a treatment program as a condition of probation or community control is only available to an individual who committed his or her crime on or after October 1, 2019 (s. 948.21(3), F.S.).

²¹ Section 948.21(4), F.S.

²² Section 741.28, F.S.

²³ Section 741.29(1), F.S. Along with listing contact information of the local domestic violence center, the notice must include the following statement: "IF YOU ARE THE VICTIM OF **DOMESTIC VIOLENCE**, you may ask the state attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an injunction for protection from **domestic violence** which may include, but need not be limited to, provisions which restrain the abuser from further acts of abuse; direct the abuser to leave your household; prevent the abuser from entering your residence, school, business, or place of employment; award you custody of your minor child or children; and direct the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so." Section 741.29(1)(b), F.S.

²⁴ Section 741.30(1), F.S.

At the defendant's first appearance on a charge of domestic violence, the court must consider the safety of the victim and the victim's children in determining whether to release the defendant, and whether to order the defendant to complete a batterers' intervention program.²⁵

A victim of domestic violence may participate in the address confidentiality program maintained by the Office of the Attorney General.²⁶ If a victim does so, any person who attempts to fraudulently access his or her actual address commits a third degree felony.²⁷

III. Effect of Proposed Changes:

This bill creates the Florida Veterans Treatment Court Act. The Act authorizes a court to establish a veterans treatment court to adjudicate misdemeanor and felony cases of qualifying defendants. Each case is governed by the terms of an individual Participant Agreement.

Policies and Procedures of a Veterans Treatment Court

A veterans treatment court may adopt policies and procedures that specifically include:

- Integrating substance abuse, mental health treatment services, and other treatment into case processing;
- Employing a nonadversarial approach;
- Identifying eligible defendants early in the process;
- Frequently testing for alcohol and drug use;
- Monitoring of program goals; and
- Forging partnerships among veterans treatment courts, the United States Department of Veterans Affairs, the Florida Department of Veterans' Affairs, public agencies, and community-based organizations.

Eligibility for Participation in a Veterans Treatment Court

To qualify for a veterans treatment court, a defendant must either be a veteran, defined as a person who has served in the military, or a servicemember, defined as an active or reserve member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; a member of the Florida National Guard; a contractor for the United States Department of Defense; or a military member of a foreign allied country.

To further qualify:

- The defendant must have a mental health condition, traumatic brain injury, or substance use disorder;
- The defendant must agree on the court record to enter the court voluntarily and comply with a participant agreement; and
- The defendant's participation in the court is in the interest of justice and of benefit to the defendant and the community as determined by the state attorney regarding pretrial diversion, and the court.

²⁵ Section 741.2902(1), F.S.

²⁶ Section 741.403), F.S.

²⁷ Section 741.403(5), F.S.

In determining whether participation furthers justice and is of sufficient benefit, the court must consider:

- The nature and circumstances of the offense;
- Special characteristics or circumstances of both the defendant and the victim;
- Prior criminal history and whether the defendant previously participated in a veterans treatment or other similar program;
- Whether needs exceed resources available through the court;
- Impact on the community;
- Recommendations of law enforcement;
- Recommendation of the victim;
- Provision for and the likelihood of obtaining restitution during participation in the court;
- Mitigating circumstances; and
- Other reasonably related circumstances.

A veteran or a servicemember does not have a right to participate in a veterans treatment court.

Participant Agreement

Participation in a veterans treatment court requires a defendant to sign and a court to approve a participant agreement. If the defendant is admitted to the court before receiving a conviction, the prosecutor must also sign the agreement. If a court determines that a defendant has fully complied with the agreement, the charge is disposed of in accordance with the participation agreement and any applicable plea agreement, order, or judgment.

Domestic Violence Offenses

For an offense involving domestic violence, the court must offer the victim of the offense the opportunity to provide a recommendation. The victim must additionally be offered a referral to services for victims of domestic violence and information on how to report an allegation of an offense by the defendant or a violation by the defendant of the participation agreement. Other rights of a victim provided for elsewhere in law are unaltered by the participation of a defendant in the court.

Records and Confidentiality

The bill defines as a record information that is inscribed in a tangible or electronic format, retrievable in perceivable form.

A statement or a document is not considered a record if:

- The statement or record submitted by a defendant in a veterans treatment court is subject to protection from disclosure as individually identifiable health information cited in 42 U.S. Code s. 290dd-2 and 42 C.F.R. part 2, as amended regarding confidentiality²⁸; or

²⁸ 42 U.S. Code s. 290dd-2., and 42 C.F.R. part 2, provide for the confidentiality of patient records created or maintained as part of a substance abuse treatment or education program.

- The information is individually identifiable health information or a record about a defendant in a veterans treatment court who is receiving substance abuse services subject to privacy under the Health Insurance Portability and Accountability Act.²⁹

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

As this bill authorizes, rather than requires courts to establish veterans treatment courts, the bill does not impose a mandate on local municipalities or counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By reducing the number of veterans who are incarcerated and linking conditions with treatment, the bill may reduce costs for veterans and their families.

C. Government Sector Impact:

Costs to the Judiciary

The Office of the State Courts Administrator (OSCA) provides that the fiscal impact of the bill cannot be accurately determined due to an unavailability of data needed to quantifiably establish an impact on judicial workload. In so determining, the OSCA notes

²⁹ 42 U.S. Code s. 1320d-6., provides a penalty for the wrongful disclosure of individually identifiable health information under the Health Insurance Portability and Accountability Act (HIPAA), and 45 C.F.R. parts 160, 162, and 164, relate to privacy and administrative requirements under the HIPAA rule.

that creation of a veterans treatment court is discretionary. Additionally, it is unclear how the provisions in the bill will comport with existing law establishing and cross-referencing the Military Veterans and Servicemember Court Program.³⁰

Prison Beds Cost

As of March 2019, the state has 31 veterans courts. Per the Department of Corrections, in Fiscal Year 2018-2019, there were 142 offenders admitted for veterans' treatment intervention. A fiscal impact from an increase in eligible participants to veterans treatment intervention is not quantifiable at this time. However, this bill is estimated to have a negative indeterminate prison bed impact.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Veterans Treatment Court established in this bill is very similar to the existing Military Veterans and Servicemembers Court Program provided in s. 394.47891, F.S. Therefore, it is unclear how to reconcile this bill with existing law.

The bill provides that individually identifiable health information that is wrongfully disclosed, as well as information protected from disclosure by HIPAA, is not considered a record under the bill. Although unclear, if the intent of this language is to newly protect the information, a public record exemption for medical information already exists in law, both through HIPAA and Florida law. In Florida law, s. 397.501(7), F.S., makes confidential and exempt records of service providers which pertain to the identity, diagnosis, prognosis, and services provided to an individual. Court rules mirror the statutory language in including in their list of confidential court records information from substance abuse service providers on the identify, diagnosis, and prognosis of and services provided to individuals.³² Therefore, it is recommended that the language be deleted or include a cross-reference to s. 397.501(7), F.S.

The bill alternately refers to the role of the prosecutor or the state attorney. It is recommended that reference to one or the other be made.

VIII. Statutes Affected:

This bill creates section 26.58 of the Florida Statutes.

³⁰ Office of the State Courts Administrator, *supra* note 6.

³¹ Office of Economic and Demographic Research, *Impact Conference Results* (Jan. 27, 2020) (on file with the Senate Committee on Military and Veterans Affairs and Space).

³² Rule 2.420(d)(1)(B)(ix), F.R.J.A.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
