

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 Judiciary

BILL: SB 1170

INTRODUCER: Senator Bradley

SUBJECT: Problem-solving Courts

DATE: March 9, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Brown	Cibula	JU	Pre-meeting
2. _____	_____	ACJ	_____
3. _____	_____	FP	_____

I. Summary:

SB 1170 authorizes cases in a veterans' court or a mental health court to be transferred between counties in the same manner current law authorizes the transfer of drug court cases. The bill also defines the term "problem-solving court" to include drug courts, veterans' courts, and mental health courts.

Under existing law, drug courts, veterans' courts, and mental health courts enable qualifying defendants to participate in pretrial or post-adjudication diversion programs. Although each court type has a similar function, only drug courts are authorized to transfer a case from one county having a drug court program to another county having a drug court program.

This bill enables veterans' courts and mental health courts to transfer cases to other counties on the same basis and under similar conditions as that provided for cases in which defendants are eligible for drug court treatment programs. As is the case for drug court transfers, the county to which the mental health or veterans' court case is transferred must first approve the transfer. Likewise, the court to which the case has been transferred retains jurisdiction to dispose of the case upon the defendant's successful completion of the program, order continued treatment, or authorize prosecution.

The bill designates drug courts, veterans' courts, and mental health courts as problem-solving courts.

II. Present Situation:

Transfer of Criminal Cases Between Counties

Florida law authorizes the transfer of a criminal case between counties in instances in which:

- An indictment or information is pending in one county and a defendant is arrested or held in another county, if the defendant requests in writing to plea guilty or nolo contendere, waive trial in the county in which the warrant was issued, and consent to disposition of the case in another county. The prosecutor of the court in which the indictment or information is pending must also consent to the transfer.¹
- An indictment or information is not pending and a defendant is arrested on a warrant issued upon a complaint in a county other than the county of arrest and requests in writing that he or she wishes to plea guilty or nolo contendere, to waive trial in the county in which the warrant was issued, and consent to disposition of the case in the county in which the defendant was arrested. The prosecuting attorney must also consent to the transfer.
- A defendant is eligible to participate in a drug court treatment program as part of a pretrial intervention program. Additionally, the drug court must consent and the following conditions must be met:
 - The authorized representatives of the drug court programs consult about the transfer;
 - The trial court accepts a plea from the defendant of nolo contendere and enters a transfer order² for the clerk to transfer the case to the county which has accepted the defendant into its drug court program; and
 - Once the transfer takes place, the clerk must schedule a hearing before the drug court for the defendant to begin the drug court program.³

If a case is transferred to a county where the defendant successfully completes a drug court program, the court that received the transfer will dispose of the case by dismissing the criminal charges.⁴ If the court finds that the defendant failed to successfully complete the program, the court may order the defendant to continue education and treatment including through substance-abuse treatment or jail-based treatment programs, or authorize the prosecution of the criminal charges.⁵

Pre-trial Intervention in Criminal Cases

The Department of Corrections (DOC) supervises pretrial intervention programs for defendants who have criminal charges pending. Pretrial intervention is available to defendants who are charged with a misdemeanor or third degree felony as a first offense or who have previously committed one nonviolent misdemeanor.⁶

¹ The formal charging document in a criminal case is known as an indictment or an information. Indictments are returned by a grand jury and presented to the court, and an information is made by a prosecutor in the absence of an indictment by the grand jury. BLACK'S LAW DICTIONARY (10th ed. 2014).

² The transfer order must include all documents relating to the case, including the probable cause affidavit, charging documents, witness statements, the defendant's written consent to abide by all rules of the drug court program, and the defendant's contact information. Section 910.035(5)(c), F.S.

³ Section 910.035(1), (2), and (5), F.S.

⁴ Section 948.08(6)(c), F.S.

⁵ *Id.*

⁶ A misdemeanor is punishable by up to 1 year term in a county jail and a \$500 to a \$1,000 fine. Sections 775.08(2) and 775.083(1)(d) and (e), F.S. A felony is punishable by a minimum of more than a 1 year term of imprisonment in a state penitentiary and fines that range from \$5,000 to \$15,000. Sections 775.08(1) and 775.083(1)(a) through (d), F.S.

Before a case may be transferred to another county, the following is required:

- Approval from the administrator of the pretrial intervention program, a victim, the state attorney, and the judge who presided at the initial first appearance of the defendant;
- Voluntary and written agreement from the defendant; and
- Knowing and intelligent waiver of speedy trial rights from the defendant during the term of diversion.⁷

While a defendant is in the program, criminal charges remain pending. If the defendant fails to successfully complete the program, the program administrator may recommend further supervision or the state attorney may resume prosecution of the case. The defendant does not have the right to a public defender unless the offender is subject to incarceration if convicted.⁸ If the defendant successfully completes the program, the program administrator may recommend that charges be dismissed without prejudice.⁹

The purpose of pretrial intervention is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, and medical and psychological treatment as appropriate.¹⁰

Veterans Programs and Courts for Criminal Offenders

The Use of Veterans' Courts Nationally

A 2012 national survey found that 71 percent of participants in veterans' courts experienced trauma while serving in the military.¹¹ More recently, in 2014 a veterans' court report found that 46 percent of participants were diagnosed with substance abuse and mental health problems.

Veterans' courts are modeled after other specialty courts, such as drug courts and mental health courts. The goal of specialty courts is to provide treatment interventions to resolve underlying causes of criminal behavior to "reintegrate court participants into society, reduce future involvement with the criminal justice system, and promote public safety."¹²

Like other specialty courts, veterans' courts require the defendant to appear before the court over a specified period of time. On average, it takes 12 to 18 months for a veterans' court to dispose of a case.¹³

Veterans' Courts in Florida Law

The 2012 Florida Legislature placed into law the "T. Patt Maney Veterans' Treatment Intervention Act."¹⁴ The law:

⁷ Section 948.08 (2), F.S.

⁸ Section 948.08(3) and (4), F.S.

⁹ Section 948.08(5), F.S. If a case is dismissed without prejudice, the case can be refiled at a later time.

¹⁰ Section 948.08(1), F.S.

¹¹ Office of Program Policy Analysis & Government Accountability, Research Memorandum, *State-Funded Veterans' Courts in Florida*, pg. 1 (Jan. 30, 2015).

¹² *Id.*

¹³ *Id.*

¹⁴ Senate Bill 138 (ch. 2012-159, Laws of Fla.).

- Recognizes veterans' courts;
- Requires courts to hold a pre-sentencing hearing if a combat veteran alleges military-related injury, to determine if the defendant suffers from certain conditions, such as post-traumatic stress disorder, a traumatic brain injury, or substance abuse due to military service;
- Establishes pretrial and post-adjudication intervention programs for combat veterans having pending criminal charges or convictions; and
- Enables counties to establish programs to divert eligible defendants who are veterans into treatment programs.

Veterans' Courts

The chief judge of each judicial circuit may establish a Military Veterans and Servicemembers Court Program to serve the special needs of veterans and servicemembers who are convicted of criminal offenses.¹⁵ In sentencing defendants, these specialty courts will consider whether military-related conditions, such as mental illness, traumatic brain injury, or substance abuse can be addressed through programs designed to serve the specific needs of the participant.¹⁶

As of January 2015, 21 veterans' courts in 20 counties operate in Florida.¹⁷ Seven courts received funding from state general revenue. From July 2013 to October 2014, 45 participants graduated from the state-funded courts.¹⁸ Fifty-two percent of the participants faced felony charges, mainly third-degree felonies.¹⁹ Sixty-two percent of the participants in state-funded veterans' courts between July 2013 and October 2014 had a dual diagnosis of mental health issues and substance abuse.

Pre-trial Intervention Programs

To be eligible to participate in diversion programs, veterans can be charged with misdemeanors²⁰ or felonies²¹. However, veterans must not be charged with a disqualifying felony offense. Disqualifying offenses are serious felony offenses and include:

- Kidnapping and attempted kidnapping;
- Murder or attempted murder;
- Aggravated battery or attempted aggravated battery;
- Sexual battery or attempted sexual battery;
- Lewd or lascivious battery and certain other sexual offenses against children;
- Robbery or attempted robbery;

¹⁵ Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. Section 250.01(19), F.S.

¹⁶ The authority for Veterans' Courts Programs is in ch. 394, F.S., which addresses mental health. Section 394.47891, F.S.

¹⁷ Office of Program Policy Analysis & Government Accountability, *supra* note 11 at 2 and 8. Alachua, Clay, Duval, Okaloosa, Orange, Pasco, and Pinellas counties received state general revenue funding to operate in Fiscal Year 2014-15. Other counties having veterans' courts are Brevard, Broward, Collier, Hillsborough, Indian River, Lake, Lee, Marion, Osceola, Palm Beach, Seminole, St. Lucie, and Volusia counties. Volusia County maintains two veterans' courts.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 5.

²⁰ Section 948.16 (2)(a), F.S., establishes the misdemeanor pretrial veterans' treatment intervention program.

²¹ Section 948.08(7)(a), F.S., authorizes courts to consider veterans charged with non-disqualifying felonies for pretrial veterans' treatment intervention programs.

- Burglary or attempted burglary;
- Aggravated assault;
- Aggravated stalking; and
- Treason.²²

Prior to placement in a program, a veterans' treatment intervention team must develop an individualized coordinated strategy for the veteran. The team must present the coordinated strategy to the veteran in writing before he or she agrees to enter the program. The strategy is modeled after the ten therapeutic jurisprudence principles and key components for treatment-based drug court programs.²³

During the time that the defendant is allotted participation in the treatment program, the court retains jurisdiction in the case. At the end of the program, the court considers recommendations for disposition by the state attorney and the program administrator. If the veteran successfully completes the treatment program, the court must dismiss the criminal charges. If the court finds that the veteran did not successfully complete the program, the court can either order the veteran to continue in education and treatment or authorize the state attorney to proceed with prosecution.

Eligible veterans who successfully complete the diversion program may petition the court to order the expunction of the arrest record and the plea.

Post-adjudication Treatment Programs

Veterans and servicemembers²⁴ on probation or community control who committed a crime on or after July 1, 2012, and who suffer from military-related mental illness, traumatic brain injury, or substance abuse may also qualify for treatment programs. A court may impose, as a condition of probation or community control, successful completion of a mental health or substance abuse treatment program.²⁵

Mental Health Courts

Florida law does not recognize the specialty court of a mental health court.

²² Section 948.06(8)(c), F.S.

²³ Section 948.08(7)(b), F.S., requires a coordinated strategy for veterans charged with felonies who are participating in pretrial intervention programs. Section 948.16(2)(b), F.S., requires a coordinated strategy for veterans charged with misdemeanors. Section 397.334(4), F.S., requires treatment based court programs to include therapeutic jurisprudence principles and components recognized by the United States Department of Justice and adopted by the Florida Supreme Court Treatment-based Drug Court Steering Committee.

²⁴ Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. (Section 250.01(19), F.S.)

²⁵ Section 948.21, F.S.

III. Effect of Proposed Changes:

This bill enables veterans' courts and mental health courts to transfer cases to other counties on the same basis, and under similar conditions as that provided for cases in which defendants are eligible for drug court treatment programs.

As is the case for drug court transfers, the county to which the mental health or veterans' court case is transferred must first approve the transfer. Likewise, the court to which the case has been transferred retains jurisdiction to dispose of the case upon the defendant's successful completion of the program, order continued treatment, or authorize prosecution.

The bill establishes the term "problem-solving court" to apply to the specialty courts of drug courts, veterans' courts, and mental health courts.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill requires consent from a receiving county prior to transfer. Therefore, a county does not have to accept transfer of a problem-solving court case and provide services.

For this reason, the bill does not appear to create a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may facilitate a person's participation in a veterans' court program or mental health court program by allowing a defendant to participate in a program in his or her home county instead of the county where a crime occurred.

C. Government Sector Impact:

Although the original legislation creating veterans' courts in 2012 included an appropriation, this bill does not.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 910.035, Florida Statutes.

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.