

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 910

INTRODUCER: Senator Gainer

SUBJECT: Court-ordered Treatment Programs

DATE: March 19, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	Recommend: Favorable
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

I. Summary:

SB 910 expands the eligibility criteria for individuals who may participate in a military veterans' and servicemembers' court program, more commonly known as veterans' courts. A veterans' court is a problem-solving court providing treatment intervention to military veterans and servicemembers who are charged with or convicted of criminal offenses and who are also suffering military-related injuries, such as post-traumatic stress disorder, traumatic brain injury, or a substance abuse disorder.

Currently, individuals who are eligible to participate in a veterans' court include honorably discharged veterans, generally discharged veterans, and active duty servicemembers. The bill expands participation eligibility by eliminating the requirement that a veteran be honorably or generally discharged. Instead, the bill provides that any veteran discharged or released under any condition is eligible to participate in a veterans' court.

Additionally, the bill expands participation eligibility beyond veterans and active duty servicemembers to individuals who are current or former United States defense contractors and military members of a foreign allied country.

While the bill may increase the number of cases referred to veterans' courts, the bill does not have a fiscal impact on state funds. See Section V.

The bill takes effect on October 1, 2020.

II. Present Situation:

Veterans' courts are problem-solving courts aimed at addressing the root causes of criminal behavior.¹ Modeled after the drug court treatment programs, the purpose of the veterans' courts is to divert eligible defendants who are veterans or servicemembers into treatment programs for military-related conditions or war-related trauma, such as post-traumatic stress disorder, mental illness, traumatic brain injury, or substance abuse. Diversion to a veterans' court treatment program may occur either before trial or at sentencing.²

Veterans' courts consider whether an individual's military-related condition can be addressed through an individualized treatment program.³ Like the drug courts, the veterans' courts implement the following 10 key components⁴ when addressing the needs of the individual:

- Integration of alcohol, drug treatment, and mental health services into justice system case processing;
- Nonadversarial approach;
- Early identification of eligible participants;
- Continuum of services;
- Alcohol and drug testing for abstinence;
- Coordinated strategy for responses to participants' compliance;
- Ongoing judicial interaction;
- Monitoring and evaluation for program effectiveness;
- Interdisciplinary education; and
- Partnerships with stakeholders.⁵

Significantly, veterans' courts involve not only nonadversarial cooperation among "traditional partners found in drug courts, such as the judge, state attorney, public defender, case manager, treatment provider, probation, and law enforcement[.]" but also cooperation with "representatives of the Veterans Health Administration (VHA) and the Veterans Benefit Administration as well as State Departments of Veterans Affairs, Vet Centers, Veterans Service Organizations, Department of Labor, volunteer veteran mentors, and other veterans support groups."⁶ Veterans' courts are also able to "leverage resources available from the U.S. Department of Veterans Affairs" to provide treatment and other services to veterans and servicemembers.⁷

¹ Florida Courts, *Problem-Solving Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/> (last visited March 10, 2019).

² See notes 14, 15, and 16 and accompanying text, *infra*.

³ Section 394.47891, F.S.

⁴ Section 397.334(4), F.S.

⁵ See Florida Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited March 10, 2019), noting that the 10 key components derive from "The Ten Key Components of Veterans Treatment Court" provided by Justice for Vets, a division of the National Association of Drug Court Professionals. See also Justice for Vets, *The Ten Key Components of Veterans Treatment Courts*, <https://justiceforvets.org/wp-content/uploads/2017/02/The-Ten-Key-Components-of-Veterans-Treatment-Courts.pdf> (last visited March 10, 2019).

⁶ Florida Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited March 10, 2019).

⁷ *Id.*

Florida's Veterans' Courts

In 2012, the Florida Legislature passed the “T. Patt Maney Veterans’ Treatment Intervention Act.”⁸ The Act created the military veterans and servicemembers court program,⁹ better known as veterans’ courts.¹⁰ Specifically, the Act authorizes the chief judge of each judicial circuit to establish a veterans’ court program to serve the special needs of eligible veterans¹¹ and active duty servicemembers¹² who are:

- Suffering a military-related condition, such as mental illness, traumatic brain injury, or substance abuse; and
- Charged with or convicted of a criminal offense.¹³

The Act also added provisions to chapter 948, F.S., providing for when veterans and servicemembers may be eligible to participate in the veterans’ court program for treatment and services. Eligible individuals may participate after being:

- Charged with a criminal misdemeanor¹⁴ or certain felony offenses but before being convicted (pretrial intervention);¹⁵ or
- Convicted and sentenced, as a condition of probation or community control.¹⁶

Pretrial Intervention Participation

After a criminal arrest, rather than being prosecuted, eligible veterans may be diverted to a pretrial intervention program. Prior to placement in a pretrial intervention 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.¹⁷

If the defendant agrees to participate in the pretrial intervention program, while participating in the program, the court retains jurisdiction in the defendant’s 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

⁸ CS/CS/SB 922 (ch. 2012-159, Laws of Fla.).

⁹ Section 394.47891, F.S.

¹⁰ Florida Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited March 10, 2019).

¹¹ 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.

¹² Section 250.01(19), F.S., defines a servicemember 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..

¹³ Section 394.47891, F.S.

¹⁴ Section 948.16(2), F.S., establishes the misdemeanor pretrial veterans’ treatment intervention program.

¹⁵ Section 948.08(7), F.S., authorizes courts to consider veterans charged with non-disqualifying felonies for pretrial veterans’ treatment intervention programs. There is also a cross-reference in section 948.08(7), F.S., to the disqualifying felony offenses listed in s. 948.06(8)(c), F.S., which lists 19 disqualifying felony offenses of a serious nature, including kidnapping, murder, sexual battery, treason, etc.

¹⁶ Section 948.21, F.S.

¹⁷ See section 948.08(7)(b), F.S. (requiring a coordinated strategy for veterans charged with felonies); section 948.16(2)(b), F.S. (requiring a coordinated strategy for veterans charged with misdemeanors). See also section 397.334(4), F.S. (requiring 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).

dismiss the criminal charges. If the court finds that the veteran did not successfully complete the pretrial intervention program, the court can either order the veteran to continue in education and treatment or authorize the state attorney to proceed with prosecution.¹⁸

Eligible veterans who successfully complete the diversion program may petition the court to order the expunction of the arrest record and the plea.¹⁹

Participation in Treatment Program while on Probation or Community Control

Veterans and servicemembers may also qualify for treatment and services as part of their criminal sentence. For crimes committed on or after July 1, 2012, a court may order a veteran or servicemember suffering from a military-related mental illness, a traumatic brain injury, or a substance abuse disorder to successfully complete a mental health or substance abuse treatment program as a condition of probation or community control.²⁰

Current Court Statistics

According to the State Court Administrator's Office of Court Improvement, as of July 2018, there were 30 veterans' courts in Florida.²¹ Additionally, the Office of Court Improvement reports that in 2017, "Florida's veterans' courts admitted 1,051 participants and graduated 593."²²

Expansion of Participant Eligibility in Florida's Veterans' Courts

Under current law, to be eligible to participate in the veterans' court program, the defendant must allege that he or she is suffering a military-related injury and establish that he or she is:

- An honorably discharged veteran;²³
- A generally discharged veteran;²⁴ or
- An active duty servicemember.²⁵

By the recommendation of the Task Force on Substance Abuse and Mental Health Issues in the Courts,²⁶ Florida's court system has proposed that eligibility to participate in the veterans' courts be expanded to all veterans of any discharge status. The Task Force also recommends that

¹⁸ Section 948.08(7)(b)-(c), F.S.

¹⁹ Sections 948.16(2)(b), 948.08(7)(b), F.S.

²⁰ Section 948.21(1), F.S. For crimes committed after July 1, 2012, veterans discharged or released under a general discharge also qualified for participation in veterans' treatment programs as a condition of probation or community control. Section 948.21(2), F.S.

²¹ Florida Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Feb. 25, 2019).

²² Email from the Office of the State Courts Administrator, March 1, 2019 (on file with Senate Criminal and Civil Justice Appropriations Committee).

²³ Section 1.01(14), F.S.

²⁴ Section 948.21(2), F.S.

²⁵ Section 250.01(19), F.S.

²⁶ The "Task Force on Substance Abuse and Mental Health Issues in the Courts" is the task force "charged with developing a strategy for ensuring fidelity to nationally accepted key components of veterans courts" pursuant to Florida Supreme Court Administrative Order 14-46. See Judicial Branch 2019 Legislative Agenda, *Expansion of Veterans Court Eligibility*, p. 51, n. 17 (on file with Senate Judiciary Committee).

veterans' courts be extended to other military-related individuals: current or former United States defense contractors, and current or former military members of a foreign allied country.²⁷

The proposed expansion to include contractors and military members of foreign allied countries is in response to nationwide reports “that a large number of service personnel are being excluded from veterans courts because they do not meet the definition of ‘veteran’ or ‘servicemember’” who have “served our country and would respond well to veterans court interventions.”²⁸

III. Effect of Proposed Changes:

Section 1 amends s. 394.47891, F.S., to expand the eligibility criteria for who may participate in the Military Veterans' and Servicemembers' Court Program. This section does two things:

- (1) It eliminates the requirement that a veteran be honorably or generally discharged, providing instead that any veteran discharged or released under any condition is eligible to participate.
- (2) It expands eligibility beyond veterans and active duty servicemembers to include individuals who are current or former United States defense contractors and current or former military members of a foreign allied country.

Sections 2, 3, and 4 make conforming changes to the statutory provisions concerning pretrial intervention and sentencing based on the expanded eligibility for Veterans' court treatment programs set out in Section 1.

Section 2 amends s. 948.08, F.S., to clarify that pretrial intervention programs extend to any person charged with a **felony**²⁹ who is a veteran discharged for any reason, an active duty servicemember, a current or former United States defense contractor, or a current or former military member of a foreign allied country.

Section 3 amends s. 948.16, F.S., to clarify that **misdemeanor** pretrial intervention programs extend to any person charged with a misdemeanor who is a veteran discharged for any reason, an active duty servicemember, a current or former United States defense contractor, or a current or former military member of a foreign allied country.

Section 4 amends s. 948.21, F.S., to clarify that a court may impose a **condition of probation or community control** requiring participation in a treatment program to any person who is a veteran discharged for any reason, an active duty servicemember, a current or former United States defense contractor, or a current or former military member of a foreign allied country.

Section 5 provides the bill takes effect on October 1, 2020.

²⁷ *Id.* at 50.

²⁸ *Id.* at 52.

²⁹ Except the more serious felony offenses listed in s. 948.06(8)(c), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

Adults who participate in specialty court programs such as Veterans' Court may have to pay a fee, depending on the guidelines established by each individual judicial circuit. The participant may also have to pay restitution as part of the program. Additionally, the goal is to divert individuals away from costly incarceration and into more appropriate settings for treatment. This often allows individuals to remain employed which can have far-reaching positive economic and societal impacts.

C. Government Sector Impact:

The bill's expansion of eligible veterans and other military-related individuals (contractors and allied country military members) for purposes of veterans' courts will increase the number of people eligible to participate in veterans' court programs, which will likely increase the costs associated with these programs. While these individuals are already in the court system, problem solving courts are more time consuming than felony or misdemeanor court. Admissions to veterans' court are discretionary and courts would only be able to admit persons up to their program capacity which is limited by the amount of state funds (and local match) appropriated to such programs.

Other factors to consider include the additional workload associated with the Public Defender and State Attorney Offices. In general, specialty court programs are more intensive and require more appearances in front of judges. These costs may be offset to the extent that the need for prison beds is reduced by diversion to veterans' court programs. Recidivism rates are lower for participants of problem-solving courts overall.

Accordingly, the bill does not have a fiscal impact on state funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.47891, 948.08, 948.16, and 948.21.

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.