

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 Criminal Justice

BILL: CS/SB 764

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Burgess

SUBJECT: Veterans Treatment Courts

DATE: March 22, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>MS</u>	Fav/CS
2.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 764 redesignates the Military Veterans and Servicemembers Program as the Veterans Treatment Court Program. The bill authorizes courts to develop and operate a veterans treatment court. Like existing law, the program is open to a servicemember, veteran, and a current or former defense contractor or military member of a foreign allied country. However, the bill expands participation to include not just a member of the Florida National Guard, but also a National Guard of another state. Also, unlike the current program which is open to all veterans regardless of discharge status, the bill provides that the chief judge and state attorney of each circuit who create a program, jointly decide whether to admit dishonorably discharged veterans.

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 Veterans' Affairs, public agencies, and community-based organizations.

A Military Veterans and Servicemembers Court in operation as of June 30, 2021, is grandfathered in to continue as a Veterans Treatment Court but must comply with changes made under this bill.

The bill is estimated to have a negative indeterminate prison bed impact (an unquantifiable decrease in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

Problem-Solving Courts

Miami-Dade County established an adult drug court in 1989, the first problem-solving court in the United States.¹ Today, more than 184 problem-solving courts operate statewide.² These are drug court (dependency, juvenile, adult, adult misdemeanor, and adult post-adjudicatory prison diversion, and a Marchman Act Drug Court in Hillsborough County), mental health court, DUI court, and veterans court.³

Veterans Courts

Programming

The first veterans court opened in Buffalo, N.Y. in 2008.⁴ Veterans court follows the model of other specialty courts, such as drug court and mental health court whereby the court emphasizes treatment over incarceration.⁵ 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.⁶ More than 460 courts operate veterans court programs across the country.⁷

In Florida, 31 counties operate a veterans court program.⁸ Moreover, veterans court programs operate in 17 of the 20 judicial circuits.⁹ Even in those circuits without a designated program,

¹ Office of the State Courts Administrator, *Florida Problem-Solving Courts Report*, pg. 2 (Jan. 29, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

² *Id.*

³ *Id.*

⁴ Judge Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, pg. 364, American University, School of Public Affairs, Justice Programs Office Publications, available at <https://www.american.edu/spa/jpo/initiatives/drug-court/upload/veterans-treatment-court-a-proactive-approach.pdf> (last visited March 18, 2021).

⁵ Jack Tsai and Emma Ogden, *A New Court System to Rehabilitate Veterans*, Public Health Post (April 25, 2018), available at <https://www.publichealthpost.org/research/rehabilitating-veterans-in-the-criminal-justice-system/> (last visited March 18, 2021).

⁶ Law for Veterans, *Veterans Courts*, available at <https://www.lawforveterans.org/veterans-courts> (last visited March 18, 2021).

⁷ Jack Tsai, et. al., *A National Study of Veterans Court Treatment Participants: Who Benefits and Who Recidivates*, Adm. Pol. Ment. Health, (July 21, 2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5776060/> (last visited March 18, 2021).

⁸ 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. Office of the State Courts Administrator, *supra* note 1 at 10-14 (Jan. 29, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

⁹ Office of the State Courts Administrator, *2021 Judicial Impact Statement* (Jan. 27, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

accommodations are provided to defendants who would otherwise qualify to participate in a veterans court program.¹⁰

Funding

Veterans courts, like other problem-solving courts in the state, receive funding from a variety of sources both state and federal. For Fiscal Year 2020-2021, approximately 68 of the state's 184 problem-solving courts received funding through state appropriation. Other sources are federal grant funding and state agency monies through agencies targeting substance abuse and mental health treatment, such as the Department of Children and Families. An individual problem-solving court may be funded through a single, or multiple sources of funding.¹¹

The federal Veteran Treatment Court Coordination Act of 2019 directs the Department of Justice to formally create a program to provide funding and technical assistance to state, local, and tribal governments with veterans treatment courts.¹² As mandated, the Adult Drug Court and Veterans Treatment Court Discretionary Grant Program within the Department of Justice provides financial and technical assistance to states, state courts, local courts, units of local government, and federally recognized Indian tribal governments to enhance the operations of drug courts or assist or establish veterans treatment courts.¹³ The program accepts grant applications on behalf of:

- A state or territory;
- State or local court;
- County;
- A unit of local government; and
- A federally recognized Indian tribal government (as determined by the secretary of the interior).¹⁴

For statewide support of veterans treatment courts through the federal program, a state agency or the administrative office of the courts is eligible to apply for a grant.¹⁵

Military Veterans and Servicemembers Court Program

In 2012, the Legislature established the T. Patt Maney Veterans' Treatment Intervention Act.¹⁶ 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,

¹⁰ *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, trained volunteer veteran mentors, and relationships with providers and justice system partners. 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, case-by-case, provided special services to veterans in conjunction with its adult drug court upon a recommendation from the state attorney.

¹¹ Office of the State Courts Administrator, *supra* note 1, at 3.

¹² Pub. L. No. 116-153, 134 STAT. 688 (2020).

¹³ Bureau of Justice Assistance, Office of Justice Programs, Department of Justice, *Adult Drug Court and Veterans Treatment Court Discretionary Grant Program*, available at <https://bja.ojp.gov/program/adult-drug-court-and-veterans-treatment-court-discretionary-grant-program/overview> (last visited March 18, 2021).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Chapter 2012-159, ss. 16-20, L.O.F.; Section 394.47891, F.S.

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.¹⁷

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
- If a veteran, have received an honorable discharge from military service.¹⁸

In 2016, the Legislature expanded the requirement of an honorable discharge to include eligibility for a veteran released under a general discharge.¹⁹ 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.²⁰

Pretrial Intervention Program

Pretrial intervention programs are also available for veterans. Both misdemeanor and felony cases may be processed in a pretrial intervention program. However, a court may deny admission if the defendant has previously entered a court-ordered veterans treatment program.²¹ While enrolled in a pretrial intervention program, the defendant fulfills the terms of a written coordinated strategy developed by the veterans' treatment intervention team.²² The 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.²³ 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.²⁴

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;

¹⁷ Section 394.47891, F.S.

¹⁸ Chapter 2012-159, s. 9, L.O.F.

¹⁹ Chapter 2016-127, s. 9, L.O.F.

²⁰ Chapter 2019-61, s. 1, L.O.F.

²¹ Sections 948.08(7)(a) and 948.16(2)(a), F.S.

²² Sections 948.08(7)(b) and 948.16(2)(b), F.S.

²³ Sections 948.08(6)(d) and 948.16(2)(b), F.S.

²⁴ Sections 948.08(4) and 948.16(4), F.S.

- 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 by a child or attempted sexual performance by a child;
- Computer pornography of a minor; transmission of child pornography; or buying or selling of minors; and
- Aggravated assault or stalking.²⁵

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.²⁶ 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.²⁷ The receiving jurisdiction disposes of the case.²⁸

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.²⁹ 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.³⁰

The court may also order a person who commits a violation of probation or community control to successfully complete a military veterans and servicemembers court program if the underlying offense is a nonviolent felony and the person otherwise qualifies.³¹

Problem-Solving Court Reports

The Office of the State Courts Administrator is required to provide an annual report on problem-solving courts to the President of the Senate and the Speaker of the House of Representatives. Specifically, the report must include:

- Number of participants in each problem-solving court for each fiscal year the court has been operating;
- Types of services provided;
- Each source of funding for each court by fiscal year; and

²⁵ Section 948.06(8)(c), F.S.

²⁶ Section 910.035(5)(a) and (b), F.S.

²⁷ Section 910.035(5)(d), F.S.

²⁸ Section 910.035(5)(f), F.S.

²⁹ Section 948.21(1), F.S.; A treatment program as a condition of probation or community control for a veteran released from service under a dishonorable discharge is only available if the crime was committed on or after October 1, 2019 (s. 948.21(3), F.S.).

³⁰ Section 948.21(4), F.S.

³¹ Section 948.06(2)(k)1., F.S.

- Performance of each court based on outcome measures established by the courts.³²

III. Effect of Proposed Changes:

This bill redesignates as the Veterans Treatment Court Program the existing Military Veterans and Servicemembers Court Program. The program authorizes a court with jurisdiction over criminal cases to create and administer a veterans treatment court and a chief judge to issue administrative orders regarding such court.

Like existing law, a veterans treatment court can accept both pre- and post-adjudication misdemeanor and felony cases. A defendant who wishes to participate must submit an application to the state attorney. The state attorney and the court will then decide if the defendant meets eligibility requirements for the court.

Policies and Procedures of a Veterans Treatment Court

Each veterans treatment court must seek input from the state attorney and other interested persons in developing and adopting policies and procedures governing such court. A veterans treatment court must create a record of policies and procedures based on nationally recognized best practices that specifically include:

- Integrating substance abuse, mental health treatment services, and other treatment and rehabilitation services into case processing;
- Employing a nonadversarial approach in which the state attorney and defense counsel promote public safety while protecting due process rights of the defendant;
- Identifying eligible defendants early in the process;
- Frequently testing for alcohol and drug use;
- Providing ongoing judicial interaction with each defendant;
- 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.

The court may also establish policies and procedures for referring a defendant to a health care provider, or assisting with housing, employment, nutrition, mentoring, education, and driver license reinstatement.

Eligibility for Participation in a Veterans Treatment Court

The state attorney and the court review each application for veterans treatment court. To qualify, 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 National Guard, either in Florida or of another state; a current or former contractor for the United States Department of Defense; or a current or former military member of a foreign allied country. Whether to include veterans who

³² Section 43.51(1), F.S.

are dishonorably discharged from military service is a joint decision of the chief judge and state attorney of the circuit that creates and administers the court.

To further qualify:

- The defendant must have a military- or service-related mental health condition, traumatic brain injury, substance use disorder, or psychological problem;
- The defendant must agree to the terms of a participant agreement by signing the agreement; and
- The defendant's participation in the court is in the interest of justice and of benefit to the defendant and the community.

In determining whether participation furthers justice and is of sufficient benefit, the state attorney, for pretrial diversion, and the court, for all other matters, must consider:

- The nature and circumstances of the offense;
- The recommendation of the state attorney;
- 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.

The program is available to a defendant whose case is at any stage of a criminal proceeding. However, a veteran or a servicemember does not have a right to participate in a veterans treatment court.

Condition of Probation or Community Control

The bill authorizes a veterans treatment court to impose a condition requiring a probationer or community controllee to participate in a treatment program to treat mental illness, traumatic brain injury, a substance abuse disorder, or a psychological problem. This provision applies to a veteran or servicemember who otherwise qualifies and who committed the underlying crime on or after July 1, 2021.

Existing Military Veterans and Servicemembers Program and Participants

By amending s. 394.47891, F.S., the bill substitutes the term "Veterans Treatment Court" for a "Military Veterans and Servicemembers Court." As such, a Military Veterans and Servicemembers Court in operation as of June 30, 2021, is grandfathered in to continue as a Veterans Treatment Court but must comply with changes made under this bill. Similarly, the bill does not affect or alter the rights or responsibilities of any person admitted to and participating in the program.

Cross-references and conforming changes are provided to enable a defendant currently authorized to participate in a military veterans and servicemembers court to participate in a veterans treatment court, and from the current pretrial veterans' treatment intervention program to a veterans treatment court program. Therefore, cross-references and conforming changes to ss. 43.51, 910.035, 948.06, 948.08, 948.16, and 948.21, F.S., are included in the bill.

The bill takes effect July 1, 2021.

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 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.³³

Prison Beds Cost

To date, 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, and in Fiscal Year 2019-2020, 108 offenders were admitted. A fiscal impact from an increase in eligible participants to veterans treatment intervention is not quantifiable at this time.³⁴ The Criminal Justice Impact Conference considered this bill on March 8, 2021, and determined that the bill is estimated to have a negative indeterminate prison bed impact (an unquantifiable decrease in prison beds).³⁵

VI. Technical Deficiencies:

Lines 57-60 of the bill provide that a participant agreement is the agreement as provided in subsection 9 of the bill, including modifications in subsection 10. A participant agreement is not referenced in these subsections. Additionally, the participant agreement is referenced on lines 145-146, but it should not be referenced since the substance of the bill does not contain a participation agreement.

VII. Related Issues:

Lines 83 through 87 provide that whether to admit dishonorably discharged veterans is a decision jointly left to the chief judge and state attorney of each circuit. The bill is unclear on whether the decision is a blanket approval to not exclude a veteran based on a dishonorable status, or whether the decision is to be made case-by-case.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.47891, 43.51, 910.035, 948.06, 948.08, 948.16, and 948.21.

³³ Office of the State Courts Administrator, *supra* note 9.

³⁴ Office of Economic and Demographic Research, *SB 764 -- Veterans Treatment Courts*; (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

³⁵ Office of Economic and Demographic Research, Criminal Justice Impact Conference, *Agenda* (March 8, 2021), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm> (last visited March 21, 2021).

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Military and Veterans Affairs, Space, and Domestic Security on March 16, 2021:

The committee substitute:

- Expands participation in a veterans treatment court to include a member of a National Guard of another state;
- Requires the underlying condition that qualifies a person to participate in a veterans treatment court to be military- or service- related;
- Removes language providing the process of a participant agreement;
- Makes conforming changes to replace participation in a pretrial veterans' treatment intervention program with a veterans treatment court program; and
- Clarifies as an underlying condition a substance use disorder, rather than a substance abuse disorder.

B. Amendments:

None.