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Committee on Military Affairs and Domestic Security

VETERANS' COURTS

Issue Description

There is a growing trend among judicial jurisdictions to experiment with court dockets created specifically to address offenders who are veterans. This trend occurred because some judges nationwide began to recognize veterans appearing in their courts with similar personal problems. There seemed to be a correlation among veterans between the commission of offenses, substance abuse issues, mental health issues, and cognitive functioning problems. As a result, these judges began to suspect that returning veterans may have service connected conditions such as post traumatic stress disorder, traumatic brain injury, depression, and inadequate ability to deal with these conditions on their own, which contributed to their encounters with the legal system. The trend has resulted in both local jurisdiction initiatives and legislation at the state level to establish veterans' specialty courts.

Veterans' courts are patterned after other successful specialty courts, such as drug courts and mental health courts. They take a team approach to identifying veterans within the judicial system who may benefit from a coordinated treatment program in lieu of expensive incarceration.

Since 2008 the following states have either adopted or considered legislation authorizing the establishment of veterans' courts: California, Colorado, Texas, Nevada, Illinois, Connecticut, New Mexico, New York, Minnesota, and Oklahoma.

The purpose of this interim report is to conduct a review and analysis of veterans' courts projects and their potential applicability to Florida's courts system.

Background

A report by the Substance Abuse and Mental Health Services Administration's Center for Mental Health Services National GAINS Center determined that: "On any given day, veterans account for nine of every hundred individuals in U.S. jails and prisons.¹ Although veterans are not overrepresented in the justice system as compared to their proportion in the United States population, the unmet mental health service needs of justice-involved veterans are of growing concern as more veterans of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) return home with combat stress exposure resulting in high rates of post traumatic stress disorder and depression."²

According to a recent study by the Rand Center for Military Health Policy Research, for military veterans, "There is consistent evidence that depression, PTSD (Post Traumatic Stress Disorder), and TBI (Traumatic Brain Injury)

¹ Prison inmates are surveyed at approximately five to six year intervals to determine certain demographic information. The last such survey was conducted by the U. S. Department of Justice Bureau of Judicial Statistics in 2004. The data referenced in this statement generally will not reflect the current generation of OIF and OEF veterans returning from Iraq and Afghanistan. However, the statement that veterans are not overrepresented in the justice system is likely accurate.

² GAINS Center, *Responding to the Needs of Justice-Involved Combat Veterans with Service-Related Trauma and Mental Health Conditions*, August 2008, page 1, at www.gainscenter.samhsa.gov/pdfs/veterans/CVTJS_Report.pdf last viewed on 09/21/2010.

all increase the risk for suicide.”³ Additional studies indicate that the development of PTSD is higher among servicemembers who have served multiple combat tours, which is a hallmark of both OIF and OEF.⁴ Servicemembers are also surviving brain injuries, including both physical trauma and concussion related injuries, at much higher rates than in previous conflicts. The possibility exists that TBI may be contributing to mental health disorders among an increasing population of combat injury survivors.⁵

The Rand report defines PTSD, Major Depressive Disorder (MDD), and TBI as:

- PTSD is an anxiety disorder that occurs after a traumatic event in which there was a threat of serious injury or death, and the individual’s response involved intense fear, helplessness, or horror. Among civilians, approximately 8 percent of the population meets criteria for PTSD during their lifetime.
- MDD is a type of mood disorder that consists of several pervasive depressive symptoms that interfere with everyday life functioning. In the United States, about 16 percent of the adult population meets criteria for major depressive disorder.
- TBI is generally described as a trauma to the head that either temporarily or permanently disrupts the brain’s function. There are three types of injuries to the brain that can be caused by a blast: primary blast injuries caused by wave-induced changes in atmospheric pressure; secondary blast injuries when objects put in motion by the blast hit people; and tertiary blast injuries when individuals themselves are put in motion by the blast and then hit some object. The majority of TBI seen in the civilian population is Mild TBI, which is defined as an injury resulting in the loss of consciousness for up to 30 minutes; loss of memory of the events immediately before and after the accident for as much as 24 hours; becoming dazed, disoriented, or confused as a result of the accident; or any focal neurological deficits that may or may not be transient.⁶

From 5 to 15 percent of OIF and OEF service members are returning with PTSD, 2 to 10 percent with depression, and an unknown number may be suffering from TBI,⁷ according to the Rand report.⁸ Rand further states that, “[t]he presence of any one of these disorders predicts a greater likelihood that an individual will experience other psychiatric diagnoses as well. An estimated 29,000 returning veterans residing in Florida may suffer from PTSD or some form of major depression.”⁹

Subsequent studies cited by the GAINS Center report indicated that in the U.S.:

- Approximately 18.5 percent of individuals with OEF/OIF service had a current mental health condition;
- Approximately 19.5 percent had experienced a traumatic brain injury; and
- The prevalence of PTSD was 14.0 percent.¹⁰

The GAINS Center report stated that, “Behaviors that promote survival within the combat zone may cause difficulties during the transition back to civilian life. Hyper-vigilance, aggressive driving, carrying weapons at all times, and command and control interactions, all of which may be beneficial in theater, can result in negative and potentially criminal behavior back home.” GAINS goes on to quote a training module developed by the Walter

³ Rand Center for Military Health Policy Research, Benjamin R. Karney, Rajeev Ramchand, Karen Chan Osilla, Leah B. Caldarone, and Rachel M. Burns, *Invisible Wounds, Predicting the Immediate and Long-Term Consequences of Mental Health Problems in Veterans of Operation Enduring Freedom and Operation Iraqi Freedom*, April 2008, page xxi.

⁴ *Ibid*, Rand, page 1.

⁵ See Senate Project Report 2008-145, *Florida Veterans’ Healthcare Facilities and Outreach Services*, October 2007, at http://www.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-145ms.pdf, last viewed on 09/21/2010.

⁶ *Ibid*, Rand, pages 5-7.

⁷ The Congressional Research Service (CRS) cites a Department of Defense figure of 43,799 OIF and OEF patients who have been diagnosed with a TBI injury in calendar years 2003 through 2007 in CRS’ *United States Military Casualty Statistics: Operation Iraqi Freedom and Operation Enduring Freedom*, March 25, 2009. The Rand report finds fault with the quality of TBI prevalence data implying that TBI prevalence is significantly under reported.

⁸ *Ibid*, Rand, page 127.

⁹ Florida Department of Veterans’ Affairs and Florida Office of Drug Control, Green Paper, *Returning Veterans and Their Families with Substance Abuse and Mental Health Needs: Florida’s Action Plan*, January 2009, page 5.

¹⁰ *Ibid*, GAINS, page 5.

Reed Army Institute of Research, "In combat: Driving unpredictably, fast, using rapid lane changes and keeping other vehicles at a distance is designed to avoid improvised explosive devices. At home: Aggressive driving and straddling the middle line leads to speeding tickets, accidents, and fatalities." ¹¹ Continued combat theater behaviors in conjunction with mental health and substance abuse problems place a portion of this country's returning veterans at increased risk of entering the justice system.

In addition, out of a population of OEF/OIF veterans who screened positive for PTSD or depression, only half sought treatment in the 12 months preceding one study. Of OEF/OIF veterans who were receiving health care services from a U. S. Department of Veterans Affairs (VA) medical center only one-third of those who were referred to a VA mental health clinic actually attended an appointment. It appears that veterans coming into contact with the criminal justice system may have unmet treatment needs.¹²

In order to meet veterans' treatment needs, the GAINS Center report made the following recommendations relating to the judicial system:

- Offenders should be screened for military service and traumatic experiences. In addition to screening for mental illness and substance abuse, questions should be asked about military service and traumatic experiences;
- Law enforcement, probation and parole officers, and corrections officers should receive training on identifying signs of combat-related trauma and the role of adaptive behaviors in those involved with the justice system;
- Help connect veterans to VA health care services to which they are eligible;
- Expand community-based veteran-specific peer support services; and
- Be prepared to provide mental health, substance use, physical health, employment, and housing needs.¹³

Veterans' Courts Nationwide

Veterans' courts began to receive national recognition with the establishment of a veterans' court in Buffalo, NY. A coalition of professionals led by Judge Robert T. Russell developed Buffalo's Veterans' Court:

"Many veterans are known to have a warrior's mentality and often do not address their treatment needs for physical and psychological health care. Many are homeless, unemployed, helpless, and in despair, suffering from alcohol or drug addiction, and others from serious mental illnesses...Eligible veterans for the court are identified using evidence-based screening and assessments and are then given the option to participate in the program. They have been assessed as having a clinical diagnosis of substance dependency or abuse, a clinical diagnosis of a mental-health disease, or both. These veterans, who are also charged with committing typically nonviolent felony or misdemeanor offenses, are diverted from the traditional criminal court to the specialized veterans' treatment court. The treatment court program provides the veterans with the tools to manage their psychological, dependency, and social issues and to lead productive, law-abiding lives. The mission of veterans' treatment court is to successfully habilitate veterans."¹⁴

According to the National Association of Drug Court Professionals, there are 41 veterans' courts currently operating nationwide.¹⁵

Legislation passed by the various states which have adopted veterans' courts varies in some small ways but generally follow a similar program concept, which includes:

- Employment of the 10 key components of a drug court;¹⁶

¹¹ Id.

¹² Ibid, GAINS, page 6.

¹³ Ibid, GAINS, pages 2-4.

¹⁴ Robert T. Russell, *Veterans Treatment Courts Developing Throughout the Nation*, at <http://www.nadcp.org/sites/default/files/nadcp/Future%20Trend%20Article-Final%202009.pdf> last viewed on September 22, 2010.

¹⁵ NADCP website at <http://www.nadcp.org/learn/veterans-treatment-court-clearinghouse> last viewed on September 22, 2010.

- Successful completion of a veterans' court treatment program may result, if found in the best interest of justice, in dismissal of the criminal case;
- Participation by the veteran must be voluntary;
- The attorney representing the state must consent to the defendant's participation;
- The defendant is a veteran with a diagnosis of mental illness which may include PTSD, TBI, or depression; substance abuse; or a combination thereof;
- Program eligibility is generally limited to non-violent felony and misdemeanor offenders;
- A collaborative team concept that includes members of the judiciary, law enforcement, U. S. Department of Veterans Affairs health and mental health professionals, and case management resources;
- A mentoring component staffed by volunteer veterans who have been trained to act as mentors for program participants and help them through the treatment program; and
- Imposition of fees on offenders to assist in covering program costs.

Veterans' Court Support and Opposition

The American Bar Association's Commission on Homelessness and Poverty has offered a resolution in support of developing veterans' courts. In its accompanying report, the Commission cited the following statistics in support of their position:

- Veterans comprise 9.3 percent of all persons incarcerated;
- Of those veterans incarcerated, 70 percent are in jail for non-violent offenses; and
- Eighty-two percent of veterans in jail are eligible for services from the U. S. Department of Veterans Affairs based on the character of their discharge.¹⁷

In addition, the National District Attorneys Association has endorsed the establishment and funding of veterans' courts and programs citing an obligation to support veterans in a return to sobriety and abiding the law.¹⁸

However, Senate professional staff also found anecdotal evidence in its literature searches and interviews indicating some isolated opposition to veterans' courts. Such opposition generally believed that establishing veterans' courts would create a special class of offenders that might receive unwarranted privilege.

Florida Has Specialty Court Experience

Florida has precedence in the establishment of specialty courts used to problem solve the cases of certain types of offenders. The two principal specialty courts in Florida are drug courts and mental health courts.

Section 397.334, Florida Statutes (F.S.), authorizes the establishment of drug courts. Counties are authorized to fund treatment-based programs under which persons in the justice system assessed with a substance abuse problem may receive treatment services tailored to the individual needs of the participant in lieu of adjudication.

The treatment-based drug court programs shall include therapeutic jurisprudence principles and adhere to the following 10 key components, recognized by the Drug Courts Program Office of the Office of Justice Programs of the United States Department of Justice and adopted by the Florida Supreme Court Treatment-Based Drug Court Steering Committee:

- Drug court programs integrate alcohol and other drug treatment services with justice system case processing.
- Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.

¹⁶ These 10 key components can be found in s. 397.334, F.S., relating to the establishment of drug courts in Florida and are listed in this report's section entitled "Florida Has Specialty Court Experience."

¹⁷ ABA Commission on Homelessness and Poverty, Resolution 105A, February 10, 2010 at http://www.nadcp.org/sites/default/files/nadcp/ABA%20Policy%20on%20Veterans%20Treatment%20Courts%20Approved%20by%20the%20ABA%20House%20of%20Delegates%202-10%20_2_.pdf last viewed on September 22, 2010.

¹⁸ National District Attorney's Association Resolution 26b at http://www.nadcp.org/sites/default/files/nadcp/NDAA%20Endorsement_0.pdf last viewed on September 22, 2010.

- Eligible participants are identified early and promptly placed in the drug court program.
- Drug court programs provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- Abstinence is monitored by frequent testing for alcohol and other drugs.
- A coordinated strategy governs drug court program responses to participants' compliance.
- Ongoing judicial interaction with each drug court program participant is essential.
- Monitoring and evaluation measure the achievement of program goals and gauge program effectiveness.
- Continuing interdisciplinary education promotes effective drug court program planning, implementation, and operations.
- Forging partnerships among drug court programs, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.¹⁹

Treatment-based drug court programs may include pretrial intervention programs, treatment-based drug court programs authorized in chapter 39, F.S., post-adjudicatory programs, and review of the status of compliance or noncompliance of sentenced offenders through a treatment-based drug court program. While enrolled in a treatment-based drug court program, the participant is subject to a coordinated strategy developed by a drug court team. The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider or in a jail-based treatment program or serving a period of secure detention under chapter 985, F.S., if a child or a period of incarceration within the time limits established for contempt of court if an adult. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.²⁰

Section 394.658, F.S., establishes the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program. This program calls for a 1-year planning grant and a 3-year implementation or expansion grant to identify and treat individuals who have mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders who are in or at risk of entering the criminal or juvenile justice systems.

The implementation or expansion grants may support programs and diversions initiatives that include but are not limited to:

- Mental health courts;
- Diversion programs;
- Alternative prosecution and sentencing programs;
- Crisis intervention teams;
- Treatment accountability services;
- Specialized training for criminal justice, juvenile justice, and treatment services professionals;
- Service delivery of collateral services such as housing, transitional housing, and supported employment; and
- Reentry services to create or expand mental health and substance abuse services and supports for affected persons.²¹

Florida's Current Initiatives Establishing Veterans' Courts and Jail Diversion Programs

Senate professional staff found evidence of emerging veterans' court or jail diversion initiatives at several locations around the state.

Okaloosa County, by informal local agreement, has begun referring veterans' cases to a court docket that has special knowledge of veterans and veterans' issues. This has been possible through the cooperation of the local State's Attorney's Office, the court, and local treatment professionals. To determine eligibility, offenders are asked at initial booking if they have ever served in the military and, if so, what type of discharge they received.

¹⁹ Section 397.334 (4), F.S.

²⁰ Section 397.334 (5), F.S.

²¹ Section 394.658 (1)(b), F.S.

Veterans are further asked if they will sign a release in order to share information with the VA. Further screening is conducted through the Pre-Trial Services Office, and the program uses drug court case managers to monitor participants. Access to VA treatment facilities is being sought for eligible veterans in the program.

The bulk of Okaloosa County veterans' cases involve substance abuse, related domestic violence, and some theft related cases including worthless check charges that may be related to lost cognitive ability to do math. To date two individuals have successfully completed the program. Successful completion is defined as completion of a treatment program and avoiding additional legal problems.

Palm Beach County is in the process of establishing a veterans' court that is expected to be operating by December, 2010. One feature of Palm Beach County's program is the assignment of a VA social worker supervisor to act as the court's VA liaison. This VA employee will have oversight of screening and case management services for eligible veterans. Veterans who are eligible will also have access to VA programs that address homelessness and unemployment as well as mental health and substance abuse treatment. The VA appears to be supportive of this concept nationwide and also appears willing to assign staff resources to facilitate veterans' court programs.

The Department of Children and Families is administering a federal grant for the Hillsborough County Veterans Jail Diversion Trauma Recovery Project. The project's mission is to identify veterans involved in the criminal justice system who are experiencing trauma related difficulties and who can be appropriately diverted to the necessary behavioral health and other support services that will enable them to live successfully in their communities.²²

The project's community partners include:

- Northside Mental Health Center;
- James A. Haley Veteran's Medical Center;
- Hillsborough County Sheriff's Office (Jail);
- Hillsborough County Health and Social Services;
- Various local community mental health treatment providers;
- University of South Florida, Florida Mental Health Institute, Department of Mental Health Law and Policy;
- Florida Department of Children and Families;
- Homeless Coalition of Hillsborough County;
- National Alliance on Mental Illness;
- Public Defender's Office of Hillsborough County;
- 13th Judicial Circuit Court; and
- Hillsborough County Public Safety Coordinating Council.²³

Evaluating the Efficacy of Veterans' Courts

It is difficult to evaluate the efficacy of veterans' courts at this time because they have been operating for a relatively short time. However, since they have much in common with older, more established drug courts, some comparisons can likely be made.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) conducted a review of drug courts in Florida and made the following observations and findings:

- There are two principal types of drug courts for adult offenders. One type is a pre-trial diversion drug court for first time offenders. The other type is a post-adjudicatory drug court for non-violent offenders who typically have prior convictions;
- National research has shown that drug courts can reduce the future criminal activities of offenders;

²² Florida Department of Children and Families, Jail Diversion and Trauma Recovery-Priority to Veterans Grant Strategic Plan Fall 2010.

²³ Id.

- Effective drug court programs can help reduce prison admissions and state costs;
- Over a three-year follow-up period, offenders who successfully completed post-adjudicatory drug courts in Florida were 80 percent less likely to go to prison than the matched comparison group; and
- While drug court graduates have lower recidivism rates, only half of post adjudicatory drug court participants complete the program, and many non-completers are sentenced to prison.²⁴

It should be noted that one significant feature that most veterans' courts possess and drug courts lack is a trained cadre of volunteer veterans who act as mentors to veterans' courts participants. The Hillsborough County Veterans Jail Diversion Trauma Recovery Project, in addition, is seeking to develop a state-wide certification for veteran peer specialists.

Findings and/or Conclusions

Senate professional staff makes the following findings:

- Veterans are not overrepresented in the justice system;
- Veterans, particularly those returning from Operations Enduring Freedom and Iraqi Freedom, are exhibiting significant numbers of cases of post traumatic stress disorder, traumatic brain injury, depression, substance use or abuse, or co-occurrence of these conditions;
- Behaviors that were an asset in a combat theater can lead to undesirable involvement with the criminal justice system in a veteran's post-service civilian life;
- Veterans who do find themselves involved in the justice system often present mental health and substance use and abuse conditions or loss of cognitive function ability that can be treated;
- Veterans' courts are being established nationwide as a means of channeling veterans in the justice system into treatment programs in an effort to preclude further justice system involvement;
- Veterans' courts are using previously established drug and mental health courts as a model;
- Veterans' courts have an advantage over drug and mental health courts in that the majority of veterans who have committed criminal offenses are likely eligible for treatment services provided and funded by the U. S. Department of Veterans Affairs;
- Other specialty courts similar to veterans' courts such as drug courts have been successful in habilitating individuals out of the criminal justice system and reducing incarceration costs to governments; and
- Programs are beginning to emerge in Florida which is leading to the establishment of veterans' courts and jail diversion for veterans.

Options and/or Recommendations

Senate professional staff recommends that the Legislature consider providing for at least two pilot projects to evaluate the efficacy of veterans' courts. The two emerging projects in Palm Beach and Okaloosa counties would be good candidates that the Legislature could sanction and subsequently evaluate with little or no additional cost. Such evaluation may be used to determine if veterans' courts programs should be established statewide.

²⁴ OPPAGA, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, Report No. 09-13, March 2009.