

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 117 Veterans and Servicemembers

SPONSOR(S): Criminal Justice Subcommittee; Nelson; Abruzzo; Gaetz and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 138

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	Toms	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill creates s. 394.48, F.S., authorizing the chief judge of each judicial circuit to establish a Military Veterans and Servicemembers Court Program (Program) for veterans and servicemembers who are convicted of a criminal offense and who suffer from a mental illness, traumatic brain injury (TBI), or substance abuse disorder as a result of their military service. Under the Program, a judge may sentence such veterans and servicemembers in accordance with ch. 921, F.S. in a manner that appropriately addresses the severity of the mental illness, TBI, or substance abuse disorder through services tailored to the individual needs of the participant. Entry must be based upon the sentencing court's assessment of the defendant's criminal history, military service, substance abuse treatment needs, mental health treatment needs, amenability to the services of the program, the recommendation of the state attorney and the victim, if any, and the defendant's agreement to enter the program.

The bill also creates s. 948.21, F.S., authorizing a court to impose a condition of supervision requiring probationers or community controllees whose crime was committed on or after July 1, 2012, and who is a servicemember or veteran, who suffers from a military service-related mental illness, TBI, or substance abuse disorder, to participate in a treatment program capable of treating the offender. The court must give preference to treatment programs for which the offender is eligible through the United States Department of Veterans Affairs or the Florida Department of Veterans' Affairs.

The bill does not have a significant fiscal impact.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2008, the Florida Department of Veterans' Affairs and the Florida Office of Drug Control issued a paper examining the issue of mental health and substance abuse needs of returning veterans and their families.¹ The study noted that combat medical advances are enabling veterans of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) to survive wounds that would have been fatal in previous conflicts, and thus some are returning with "more complex physical and emotional disorders, such as Traumatic Brain Injuries (TBI) and Post-Traumatic Stress Disorder (PTSD), substance abuse and depression."² The study also estimated that approximately 29,000 returning veterans residing in Florida may suffer from PTSD or some form of major depression.³

A 2008 Rand Center report indicated that preliminary studies showed that 5 to 15 percent of OIF and OEF service members are returning with PTSD, 2 to 10 percent with depression, and an unknown number with TBI.⁴ A person with any of these disorders also has a greater likelihood of experiencing other psychiatric diagnoses than do other persons.⁵

A report by the Center for Mental Health Services National GAINS Center of the federal Substance Abuse and Mental Health Services Administration (SAMHSA) noted that many veterans coming into contact with the criminal justice system may have unmet service needs.⁶ Veterans' courts have been established across the country as some judges have begun to recognize a correlation between the commission of offenses by veterans and substance abuse issues, mental health issues, and cognitive functioning problems.

Veterans' courts have the goal of identifying veterans who would benefit from a treatment program instead of incarceration or other sanctions. They are typically patterned after successful specialty courts such as drug courts and mental health courts. Since 2008, legislation authorizing the establishment of veterans' courts has been adopted or at least considered in California, Colorado, Illinois, Oregon, Texas and Virginia, and has been considered in Connecticut, Minnesota, Nevada, New Mexico, New York and Oklahoma.⁷

Veterans' Courts in Florida

There are several veterans' court and veterans' jail diversion initiatives in Florida.

The veterans' court program in Miami-Dade County is available to veterans who are facing minor drug offenses and do not have a violent or extensive criminal history. In its initial stages, the program has drawn participants from defendants who are already involved with traditional drug court. They receive

¹ 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, http://www.helppromotehope.com/documents/Veterans_Green_Paper.pdf (last visited on January 10, 2012).

² *Id.*

³ *Id.*

⁴ 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 127, at http://www.rand.org/pubs/working_papers/2008/RAND_WR546.pdf (last visited on January 10, 2012).

⁵ *Id.*

⁶ GAINS Center, *Responding to the Needs of Justice-Involved Combat Veterans with Service-Related Trauma and Mental Health Conditions*, August 2008, page 6, at http://gainscenter.samhsa.gov/pdfs/veterans/CVTJS_Report.pdf (last visited on January 10, 2012).

⁷ National Association of Drug Court Professionals website at <http://www.nadcp.org/learn/veterans-treatment-courts/veterans-treatment-court-studies-and-statistics> (last visited on January 10, 2012).

similar treatment, but also are assisted by a United States Department of Veterans Affairs (VA) psychologist and outreach coordinator.⁸

The Palm Beach County veterans' docket began operating in November 2010.⁹ A feature of the program is the assignment of a VA social worker supervisor to act as the court's VA liaison. This VA employee has oversight of screening and case management services for eligible veterans. In addition to receiving any needed mental health and substance abuse treatment, participating veterans also have access to VA programs that address homelessness and unemployment.

In April 2011, the Okaloosa County Commission approved creation of a veterans' court for the county that is expected to begin operation in 2012. Although there is currently no formal veterans' court, many cases of veterans in the county are already being referred to a court docket with special knowledge of veterans and veterans' issues. To determine eligibility, offenders are asked at initial booking if they have ever served in the military and what type of discharge they received. 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.

The 12th Judicial Circuit (DeSoto, Sarasota and Manatee Counties) has established a program called "Courts Assisting Veterans." While not a true veterans' court, it seeks to achieve similar goals through the use of existing programs, including referral of veterans to existing drug and mental health courts.¹⁰

In October, 2009, the Department of Children and Families Mental Health Program Office (department) was awarded over \$1.8 million from SAMHSA over the next five years to provide services and support for Florida's returning veterans who served in Iraq and Afghanistan and who suffer from PTSD and other behavioral health disorders. The department describes the grant and the project as follows:

The project will redesign the state's response to the needs of veterans and their family members by helping returning veterans learn to cope with the trauma of war and the adjustments of coming home and avoiding unnecessary involvement with the criminal justice system. Florida's project is based on a foundation of evidence-based screening, assessment, treatment and recovery practices. The grant will enable the Department to implement two veteran's jail diversion pilot projects for 240 veterans over the next five years. This grant will expand the Department's existing jail diversion programs by identifying veterans who have an initial contact with the criminal justice system, helping them enroll in Veteran's Administration benefits for those who are eligible, providing trauma-related treatment services, linking them with support services in their community, and providing specialized peer support services. Additionally, this grant enables the Department to include family members as recipients of services. One unique aspect of this grant is Florida's creation and implementation of a new state-level Veteran Peer Support Specialist credential, possible through the Department's ongoing partnership with the Florida Certification Board. Certification of trained veterans will professionalize what we know works - trained veterans who've been there helping other returning veterans adjust to their home and community. In the first year, the grant from the federal Substance Abuse and Mental Health Services Administration (SAMHSA) will provide DCF with \$268,849. Hillsborough County is one of two sites that will launch Florida's Jail Diversion and Trauma Recovery Program. The location of the other pilot project has not yet been determined.¹¹

⁸ "Miami-Dade starts specialized drug court for military veterans," May 4, 2011, <http://vetlawyers.com/vetblog/index.php/2011/05/miami-dade-starts-specialized-drug-court-for-military-veterans/> (last visited on January 10, 2012).

⁹ The Veteran's Docket was established by Administrative Order No. 4.905-11/10 of the Fifteenth Judicial Circuit for Palm Beach County, which can be downloaded from <http://15thcircuit.co.palm-beach.fl.us/web/guest/adminorders/series4> (last visited on January 10, 2012).

¹⁰ Courts Assisting Veterans, 12th Judicial Circuit, <http://12circuit.state.fl.us/ProgramsServices.aspx> (last visited on January 10, 2012).

¹¹ Florida Department of Children and Families' description of the Veterans Jail Diversion Grant at <http://www.dcf.state.fl.us/programs/samh/mentalhealth/consumerfamilyaffairs/currinitiatives.shtml> (last visited on January 10, 2012).

Terms and Conditions of Probation

Probation is a form of community supervision requiring specified contacts with parole and probation officers and compliance with court-ordered conditions of supervision.¹² When someone is sentenced to probation, the court determines the terms and conditions of his or her supervision.¹³ Section 948.03, F.S., sets forth standard conditions of supervision that a court may impose on offenders sentenced probation. These include conditions such as a requirement that the offender report to the probation and parole supervisors as directed, permit such supervisors to visit him or her at his or her home or elsewhere, work faithfully at suitable employment insofar as may be possible, remain within a specified place, submit written monthly reports, abide by the laws of the state, etc.¹⁴ In addition to the standard conditions of supervision, the court can impose any other special condition of supervision it considers proper (e.g., a condition requiring an offender to participate in treatment).¹⁵

Effect of the Bill

The bill creates s. 394.48, F.S., entitled “Military veterans and servicemembers court programs.” The bill authorizes the chief judge of each judicial circuit to establish a Military Veterans and Servicemembers Court Program (Program) under which veterans¹⁶ and servicemembers¹⁷ who are convicted of a criminal offense and who suffer from a mental illness, TBI, or substance abuse disorder as a result of their military service can be sentenced in accordance with ch. 921, F.S. in a manner that appropriately addresses the severity of the mental illness, TBI, or substance abuse disorder through services tailored to the individual needs of the participant.

The bill requires entry into a Program to be based upon the sentencing court’s assessment of the defendant’s criminal history, military service, substance abuse treatment needs, mental health treatment needs, amenability to the services of the program, the recommendation of the state attorney and the victim, if any, and the defendant’s agreement to enter the program.

The bill also creates s. 948.21, F.S., entitled “Condition of probation or community control; military service members and veterans.” The bill authorizes a court to impose a condition of supervision requiring probationers or community controllees whose crime was committed on or after July 1, 2012, and who is a servicemember or veteran, who suffers from a military service-related mental illness, TBI, or substance abuse disorder, to participate in a treatment program capable of treating the offender’s mental illness, TBI, or substance abuse disorder. The bill requires the court to give preference to treatment programs for which the probationer or community controllee is eligible through the United States Department of Veterans Affairs or the Florida Department of Veterans’ Affairs.

The bill provides that the Department of Corrections is not required to spend state funds on the implementation of this bill.

¹² Section 948.001(8), F.S.

¹³ Section 948.03, F.S.

¹⁴ *Id.*

¹⁵ Section 948.03(2), F.S.

¹⁶ The bill defines the term “veteran” in accordance with s. 1.01(14), F.S., as a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges. To receive benefits as a wartime veteran, a veteran must have served in a campaign or expedition for which a campaign badge has been authorized or a veteran must have served during one of the following periods of wartime service: Spanish-American War: April 21, 1898, to July 4, 1902, and including the Philippine Insurrection and the Boxer Rebellion; Mexican Border Period: May 9, 1916, to April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto; World War I: April 6, 1917, to November 11, 1918; extended to April 1, 1920, for those veterans who served in Russia; also extended through July 1, 1921, for those veterans who served after November 11, 1918, and before July 2, 1921, provided such veterans had at least 1 day of service between April 5, 1917, and November 12, 1918; World War II: December 7, 1941, to December 31, 1946; Korean Conflict: June 27, 1950, to January 31, 1955; Vietnam Era: February 28, 1961, to May 7, 1975; Persian Gulf War: August 2, 1990, to January 2, 1992; Operation Enduring Freedom: October 7, 2001, and ending on the date thereafter prescribed by presidential proclamation or by law; or Operation Iraqi Freedom: March 19, 2003, and ending on the date thereafter prescribed by presidential proclamation or by law.

¹⁷ The bill defines the term “servicemember” in accordance with s.250.01(19), F.S., as any person serving as a member of the U.S. Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.

B. SECTION DIRECTORY:

Section 1. Entitles the act, the "T. Patt Maney Military Veterans and Servicemembers Court Act."

Section 2. Creates s. 394.48, F.S., relating to military veterans and servicemembers court programs.

Section 3. Creates s. 948.21, F.S., relating to condition of probation or community control; military service members and veterans.

Section 4. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "fiscal comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has determined that this bill will have no impact on state prison beds.

The bill provides that the Department of Corrections is not required to spend state funds to implement the requirements of the bill. Therefore, the bill does not have a fiscal impact on the Department of Corrections.

The Office of State Courts Administrator anticipates an increase in workload because the bill will require judicial effort to become familiar with veterans' treatment options, and additional hearing time to determine if defendants qualify for programs.¹⁸ The Office of State Courts Administrator has determined the cost of the increase in workload can be absorbed within existing means.¹⁹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹⁸ Office of State Courts Administrator, 2012 Judicial Impact Statement, HB 117, September 26, 2011

¹⁹ E-mail from Eric Maclure, Director of Community and Intergovernmental Relations, Office of State Courts Administrator, January 25, 2012; On file with Justice Appropriations Subcommittee staff

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Authorizes the chief judge of each judicial circuit to establish a Military Veterans and Servicemembers Court Program; and
- Authorizes a judge to impose a condition of supervision requiring specified veterans and servicemembers to participate in a treatment program capable of treating the offender's mental illness, TBI, or substance abuse disorder.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

On January 30, 2012, the Justice Appropriations Subcommittee adopted an amendment and reported the bill favorable as a committee substitute. The amendment provides that the Department of Corrections is not required to spend state funds to implement the requirements of the bill.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.