

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 1170

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Bradley

SUBJECT: Problem-solving Courts

DATE: April 21, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1170 authorizes cases in a veterans' court or a mental health court to be transferred to another county. The bill also defines the term "problem-solving court" to include drug courts, veterans' courts, and mental health courts.

This bill does not have a discernable fiscal impact.

**II. Present Situation:**

**Transfer of Criminal Cases between Counties**

Florida law authorizes the transfer of a criminal case between counties when:

- 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 plead 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.<sup>1</sup>

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<sup>1</sup> 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).

- An indictment or information is not pending and a defendant is arrested on a warrant issued in a county other than the county of arrest and requests in writing that he or she wishes to plead 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 order<sup>2</sup> 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.<sup>3</sup>

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. 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.<sup>4</sup>

### **National Use of Veterans' Courts**

A 2012 national survey found that 71 percent of participants in veterans' courts experienced trauma while serving in the military. More recently, in 2014 a veterans' court report found that 46 percent of participants were diagnosed with substance abuse and mental health problems.<sup>5</sup>

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."<sup>6</sup>

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.<sup>7</sup>

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<sup>2</sup> 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. s. 910.035(5)(c), F.S.

<sup>3</sup> Section 910.035(1), (2), and (5), F.S.

<sup>4</sup> Section 948.08(6)(c), F.S.

<sup>5</sup> Office of Program Policy Analysis & Government Accountability, Research Memorandum, *State-Funded Veterans' Courts in Florida*, pg. 1 (Jan. 30, 2015).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

### ***Veterans' Courts in Florida***

In 2012 the Legislature passed the “T. Patt Maney Veterans’ Treatment Intervention Act” which recognized veterans’ courts in Florida.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

As of January 2015, there were 21 veterans’ courts in 20 Florida counties.<sup>11</sup> Seven courts received funding from state general revenue. From July 2013 to October 2014, 45 participants graduated from the state-funded courts and 62 percent of the participants in state-funded veterans’ courts had a dual diagnosis of mental health issues and substance abuse.<sup>12</sup>

### **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.<sup>13</sup>

A defendant is eligible for release to a pretrial intervention if the defendant:

- Receives approval from the administrator of the pretrial intervention program, the victim, the state attorney, and the judge who presided at the initial first appearance of the defendant;
- Voluntarily agreed to the program; and
- Knowingly and intelligently waived his or her right to a speedy trial for the term of his or her diversion.<sup>14</sup>

The criminal charges against the defendant remain pending while he or she is in a pretrial intervention program and for 90 days after the defendant is released from the program.<sup>15</sup> The pending criminal charges can resume at any time if the program administrator or the state attorney find that the defendant is not fulfilling his or her obligations under the program or if the

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<sup>8</sup> Chapter 2012-159, L.O.F.

<sup>9</sup> 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.

<sup>10</sup> Section 394.47891, F.S.

<sup>11</sup> *Supra* note 5 at p. 2 and 8. In FY 2014-15, Alachua, Clay, Duval, Okaloosa, Orange, Pasco, and Pinellas counties received state general revenue funding to operate veterans’ courts. 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.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> A misdemeanor is punishable by up to 1 year term in a county jail and up to a \$500 to a \$1,000 fine. ss. 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)-(d), F.S.

<sup>14</sup> Section 948.08(2), F.S.

<sup>15</sup> Section 948.08(3), F.S.

public interest requires. The defendant does not have the right to a public defender unless the defendant's release is revoked and subject to incarceration if convicted.<sup>16</sup> If the defendant successfully completes the program, the program administrator may recommend that charges be dismissed without prejudice.<sup>17</sup>

The purpose of a pretrial intervention program is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, and medical and psychological treatment as appropriate.<sup>18</sup>

### ***Pretrial Veterans' Treatment Intervention Program***

To be eligible to participate in a pretrial veterans' treatment intervention program, veterans can be charged with misdemeanors<sup>19</sup> or felonies.<sup>20</sup> However, veterans cannot 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;
- Burglary or attempted burglary;
- Aggravated assault;
- Aggravated stalking; and
- Treason.<sup>21</sup>

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 10 therapeutic jurisprudence principles and key components for treatment-based drug court programs.<sup>22</sup>

Eligible veterans who successfully complete the diversion program may petition the court to expunge the arrest record of the dismissed charges under s. 943.0585, F.S.<sup>23</sup>

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<sup>16</sup> Section 948.08(4), F.S.

<sup>17</sup> Section 948.08(5), F.S. If a case is dismissed without prejudice, the case can be refiled at a later time.

<sup>18</sup> Section 948.08(1), F.S.

<sup>19</sup> Section 948.16 (2)(a), F.S., establishes the misdemeanor pretrial veterans' treatment intervention program.

<sup>20</sup> Section 948.08(7)(a), F.S., authorizes courts to consider veterans charged with non-disqualifying felonies for pretrial veterans' treatment intervention programs.

<sup>21</sup> Section 948.06(8)(c), F.S.

<sup>22</sup> Sections 948.08(7)(b) and 948.16(2)(b), F.S. 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.

<sup>23</sup> Section 948.08(7)(b), F.S.

### ***Post-adjudication Treatment Programs***

Veterans and servicemembers 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.<sup>24</sup>

### **Mental Health Courts**

Florida law does not recognize the specialty court of a mental health court. However, while not codified in statute, many judicial circuits have created what are often referred to as “mental health courts.” Mental health courts are diversionary programs for persons diagnosed with a severe mental illness or developmental disability.

### **III. Effect of Proposed Changes:**

This bill enables veterans’ courts and mental health courts to transfer cases to other counties.

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 allows any person eligible for participation in a problem-solving court to request to have their case transferred another county. The court can request for a case to be transferred to another county as well. The court representative and the representative from the problem-solving court in the other county must agree to the transfer. If there is an agreement to transfer a case to another county, the court must enter a transfer order directing the clerk to transfer the case to the county which has accepted the defendant into the problem-solving court.

The bill specifies that 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 also requires, when transferring a postadjudicatory problem-solving court case, the transfer order to include a copy of the charging documents in the case; the final disposition; all reports, test results, and other documents in the case; the defendant’s mailing address and telephone number; and the defendant’s written consent to abide by the rules and procedures of the receiving county’s problem-solving court.

The bill is effective on July 1, 2015.

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<sup>24</sup> Section 948.21, F.S.

**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:**

The 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.

The Office of the State Courts Administrator expects no judicial or court workload impact from this bill as cases would be transferred and no net additional cases would be generated. Additional orders of transfer and completion of necessary paperwork resulting from the bill may have a minimal fiscal impact on expenditures.<sup>25</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>25</sup> Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 10, 2015) (on file with the Senate Judiciary Committee).

**VIII. Statutes Affected:**

This bill substantially amends section 910.035 of the Florida Statutes.

**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 Fiscal Policy on April 20, 2015:**

As recommended by the Appropriations Subcommittee on Criminal and Civil Justice, the committee substitute:

- Makes technical changes to the bill.
- Requires specific information to be included in the transfer order when transferring a problem-solving court case to another county.

- B. **Amendments:**

None.