

By Senator Detert

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1 A bill to be entitled
2 An act relating to mental health services in the
3 criminal justice system; amending s. 394.47891, F.S.;
4 expanding eligibility criteria for military veterans
5 and servicemembers court programs; creating s.
6 394.47892, F.S.; authorizing the creation of
7 treatment-based mental health court programs; amending
8 s. 910.035, F.S.; defining the term "problem-solving
9 court"; revising the provisions relating to drug-court
10 programs to apply to problem-solving courts; amending
11 s. 916.17, F.S.; authorizing a county court to order
12 the conditional release of a defendant only for the
13 provision of outpatient care and treatment; creating
14 s. 916.185, F.S.; providing legislative findings and
15 intent; defining terms; creating the Forensic Hospital
16 Diversion Pilot Program; requiring the Department of
17 Children and Families to implement a Forensic Hospital
18 Diversion Pilot Program in three specified judicial
19 circuits; providing eligibility for the pilot program;
20 providing legislative intent concerning training;
21 authorizing the department to adopt rules; directing
22 the Office of Program Policy Analysis and Government
23 Accountability to submit a report to the Governor and
24 the Legislature; amending s. 921.0026, F.S.; adding a
25 postadjudicatory treatment-based mental health program
26 and military veterans and servicemembers court program
27 to the list of mitigating circumstances that may be
28 considered in certain sentencing; amending ss. 948.01
29 and 948.06, F.S.; authorizing a court to order certain

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30 defendants to participate in a postadjudicatory mental
31 health court program; amending s. 948.08, F.S.;
32 expanding the definition of the term "veteran" for
33 purposes of eligibility requirements for a pretrial
34 intervention program; amending s. 948.16, F.S.;
35 expanding the definition of the term "veteran" for
36 purposes of eligibility requirements for a misdemeanor
37 pretrial veterans' treatment intervention program;
38 amending s. 948.21, F.S.; authorizing a court to
39 impose certain conditions on certain probationers or
40 community controllees; providing an effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Section 394.47891, Florida Statutes, is amended
45 to read:

46 394.47891 Military veterans and servicemembers court
47 programs.—The chief judge of each judicial circuit may establish
48 a Military Veterans and Servicemembers Court Program under which
49 veterans, as defined in s. 1.01, including veterans who were
50 discharged or released under a general discharge, and
51 servicemembers, as defined in s. 250.01, who are convicted of a
52 criminal offense and who suffer from a military-related mental
53 illness, traumatic brain injury, substance abuse disorder, or
54 psychological problem can be sentenced in accordance with
55 chapter 921 in a manner that appropriately addresses the
56 severity of the mental illness, traumatic brain injury,
57 substance abuse disorder, or psychological problem through
58 services tailored to the individual needs of the participant.

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59 Entry into any Military Veterans and Servicemembers Court
60 Program must be based upon the sentencing court's assessment of
61 the defendant's criminal history, military service, substance
62 abuse treatment needs, mental health treatment needs,
63 amenability to the services of the program, the recommendation
64 of the state attorney and the victim, if any, and the
65 defendant's agreement to enter the program.

66 Section 2. Section 394.47892, Florida Statutes, is created
67 to read:

68 394.47892 Treatment-based mental health court programs.—

69 (1) The chief judge of each judicial circuit may establish,
70 or individual counties may fund, a treatment-based mental health
71 court program under which persons in the justice system assessed
72 with a mental illness are processed in such a manner as to
73 appropriately address the severity of the identified mental
74 illness through treatment services tailored to the individual
75 needs of the participant. It is the intent of the Legislature to
76 encourage the Department of Corrections, the Department of
77 Children and Families, the Department of Juvenile Justice, the
78 Department of Health, the Department of Law Enforcement, the
79 Department of Education, and such agencies, local governments,
80 law enforcement agencies, other interested public or private
81 entities, and individuals to support the creation and
82 establishment of these problem-solving court programs.
83 Participation in the treatment-based mental health court
84 programs does not divest any public or private agency of its
85 responsibility for a child or an adult, but enables these
86 agencies to better meet the needs of the child or the adult
87 through shared responsibilities and resources.

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88 (2) A defendant is eligible for the treatment-based mental
89 health court program if the court makes a determination of
90 eligibility based on a prior history of a known, serious mental
91 health diagnosis, prior findings of incompetence, or the present
92 observation of serious mental health symptoms. The treatment-
93 based mental health court program may include pretrial
94 diversion, including specific pretrial mental health conditions
95 of release, postadjudicatory conditions of mental health
96 probation or community control, involuntary outpatient placement
97 and treatment, or conditional release under chapter 916. The
98 treatment-based mental health court program must employ
99 principles of therapeutic jurisprudence, including an
100 individualized recovery plan, restitution or mitigation as may
101 be appropriate, the use of multidisciplinary treatment teams,
102 periodic court reviews and representation by counsel, peer
103 support services, and other recovery tools necessary to achieve
104 a stabilized condition and prevent recidivism and rearrest.

105 Section 3. Section 910.035, Florida Statutes, is amended to
106 read:

107 910.035 Transfer from county for plea and sentence or for
108 participation in a problem-solving court.-

109 (1) INDICTMENT OR INFORMATION PENDING.-A defendant arrested
110 or held in a county other than that in which an indictment or
111 information is pending against him or her may state in writing
112 that he or she wishes to plead guilty or nolo contendere, to
113 waive trial in the county in which the indictment or information
114 is pending, and to consent to disposition of the case in the
115 county in which the defendant was arrested or is held, subject
116 to the approval of the prosecuting attorney of the court in

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117 which the indictment or information is pending. Upon receipt of
118 the defendant's statement and the written approval of the
119 prosecuting attorney, the clerk of the court in which the
120 indictment or information is pending shall transmit the papers
121 in the proceeding, or certified copies thereof, to the clerk of
122 the court of competent jurisdiction for the county in which the
123 defendant is held, and the prosecution shall continue in that
124 county upon the information or indictment originally filed. In
125 the event a fine is imposed upon the defendant in that county,
126 two-thirds thereof shall be returned to the county in which the
127 indictment or information was originally filed.

128 (2) INDICTMENT OR INFORMATION NOT PENDING.—A defendant
129 arrested on a warrant issued upon a complaint in a county other
130 than the county of arrest may state in writing that he or she
131 wishes to plead guilty or nolo contendere, to waive trial in the
132 county in which the warrant was issued, and to consent to
133 disposition of the case in the county in which the defendant was
134 arrested, subject to the approval of the prosecuting attorney of
135 the court in which the indictment or information is pending.
136 Upon receipt of the defendant's statement and the written
137 approval of the prosecuting attorney, and upon the filing of an
138 information or the return of an indictment, the clerk of the
139 court from which the warrant was issued shall transmit the
140 papers in the proceeding, or certified copies thereof, to the
141 clerk of the court of competent jurisdiction in the county in
142 which the defendant was arrested, and the prosecution shall
143 continue in that county upon the information or indictment
144 originally filed.

145 (3) EFFECT OF NOT GUILTY PLEA.—If, after the proceeding has

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146 been transferred pursuant to subsection (1) or subsection (2),
 147 the defendant pleads not guilty, the clerk shall return the
 148 papers to the court in which the prosecution was commenced, and
 149 the proceeding shall be restored to the docket of that court.
 150 The defendant's statement that he or she wishes to plead guilty
 151 or nolo contendere shall not be used against the defendant.

152 (4) APPEARANCE IN RESPONSE TO A SUMMONS.—For the purpose of
 153 initiating a transfer under this section, a person who appears
 154 in response to a summons shall be treated as if he or she had
 155 been arrested on a warrant in the county of such appearance.

156 (5) TRANSFERS FOR PARTICIPATION IN A PROBLEM-SOLVING
 157 COURT.—As used in this subsection, the term “problem-solving
 158 court” means a drug court pursuant to s. 948.01, s. 948.06, s.
 159 948.08, s. 948.16, or s. 948.20; a veterans’ court pursuant to
 160 s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or a mental
 161 health court pursuant to s. 394.47892. A ~~Any~~ person eligible for
 162 participation in a problem-solving drug court treatment program
 163 pursuant to s. 948.08(6) may be eligible to have the case
 164 transferred to a county other than that in which the charge
 165 arose if the problem-solving drug court program agrees and these
 166 procedures if the following conditions are followed met:

167 (a) The authorized representative of the problem-solving
 168 drug court program of the county requesting to transfer the case
 169 shall consult with the authorized representative of the problem-
 170 solving drug court program in the county to which transfer is
 171 desired.

172 (b) If approval for transfer is received from all parties,
 173 the trial court must shall accept, in the case of a pretrial
 174 problem-solving court, a plea of nolo contendere and enter a

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175 transfer order directing the clerk to transfer the case to the
176 county that ~~which~~ has accepted the defendant into its problem-
177 solving drug court program.

178 (c) The transfer order must ~~shall~~ include a copy of the
179 probable cause affidavit, in the case of a pretrial problem-
180 solving court; any charging or sentencing documents in the case;
181 all reports, witness statements, test results, evidence lists,
182 and other documents in the case; the defendant's mailing address
183 and phone number; and the defendant's written consent to abide
184 by the rules and procedures of the receiving county's problem-
185 solving drug court program.

186 (d) After the transfer takes place, the clerk shall set the
187 matter for a hearing before the problem-solving drug court
188 program judge and the court shall ensure the defendant's entry
189 into the problem-solving drug court program.

190 (e) Upon successful completion of the problem-solving drug
191 court program, the jurisdiction to which the case has been
192 transferred shall dispose of the case ~~pursuant to s. 948.08(6)~~.
193 If the defendant does not complete the problem-solving drug
194 court program successfully, the jurisdiction to which the case
195 has been transferred shall dispose of the case within the
196 guidelines of the Criminal Punishment Code.

197 Section 4. Subsections (1) and (2) of section 916.17,
198 Florida Statutes, are amended to read:

199 916.17 Conditional release.—

200 (1) Except for an inmate currently serving a prison
201 sentence, the committing court may order a conditional release
202 of any defendant in lieu of an involuntary commitment to a
203 facility pursuant to s. 916.13 or s. 916.15 based upon an

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204 approved plan for providing appropriate outpatient care and
205 treatment. A county court may order the conditional release of a
206 defendant only for purposes of the provision of outpatient care
207 and treatment. Upon a recommendation that outpatient treatment
208 of the defendant is appropriate, a written plan for outpatient
209 treatment, including recommendations from qualified
210 professionals, must be filed with the court, with copies to all
211 parties. Such a plan may also be submitted by the defendant and
212 filed with the court with copies to all parties. The plan shall
213 include:

214 (a) Special provisions for residential care or adequate
215 supervision of the defendant.

216 (b) Provisions for outpatient mental health services.

217 (c) If appropriate, recommendations for auxiliary services
218 such as vocational training, educational services, or special
219 medical care.

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221 In its order of conditional release, the court shall specify the
222 conditions of release based upon the release plan and shall
223 direct the appropriate agencies or persons to submit periodic
224 reports to the court regarding the defendant's compliance with
225 the conditions of the release and progress in treatment, with
226 copies to all parties.

227 (2) Upon the filing of an affidavit or statement under oath
228 by any person that the defendant has failed to comply with the
229 conditions of release, that the defendant's condition has
230 deteriorated to the point that inpatient care is required, or
231 that the release conditions should be modified, the court shall
232 hold a hearing within 7 days after receipt of the affidavit or

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233 statement under oath. After the hearing, the court may modify
234 the release conditions. The court may also order that any the
235 defendant who is charged with a felony be returned to the
236 department if it is found, after the appointment and report of
237 experts, that the person meets the criteria for involuntary
238 commitment under s. 916.13 or s. 916.15.

239 Section 5. Section 916.185, Florida Statutes, is created to
240 read:

241 916.185 Forensic Hospital Diversion Pilot Program.—

242 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
243 that many jail inmates who have serious mental illnesses and who
244 are committed to state forensic mental health treatment
245 facilities for restoration of competency to proceed could be
246 served more effectively and at less cost in community-based
247 alternative programs. The Legislature further finds that many
248 people who have serious mental illnesses and who have been
249 discharged from state forensic mental health treatment
250 facilities could avoid recidivism in the criminal justice and
251 forensic mental health systems if they received specialized
252 treatment in the community. Therefore, it is the intent of the
253 Legislature to create the Forensic Hospital Diversion Pilot
254 Program to serve individuals who have mental illnesses or co-
255 occurring mental illnesses and substance use disorders and who
256 are admitted to or are at risk of entering state forensic mental
257 health treatment facilities, prisons, jails, or state civil
258 mental health treatment facilities.

259 (2) DEFINITIONS.—As used in this section, the term:

260 (a) "Best practices" means treatment services that
261 incorporate the most effective and acceptable interventions

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262 available in the care and treatment of individuals who are
263 diagnosed as having mental illnesses or co-occurring mental
264 illnesses and substance use disorders.

265 (b) "Community forensic system" means the community mental
266 health and substance use forensic treatment system, including
267 the comprehensive set of services and supports provided to
268 individuals involved in or at risk of becoming involved in the
269 criminal justice system.

270 (c) "Evidence-based practices" means interventions and
271 strategies that, based on the best available empirical research,
272 demonstrate effective and efficient outcomes in the care and
273 treatment of individuals who are diagnosed as having mental
274 illnesses or co-occurring mental illnesses and substance use
275 disorders.

276 (3) CREATION.—There is created a Forensic Hospital
277 Diversion Pilot Program to provide, when appropriate,
278 competency-restoration and community-reintegration services in
279 locked residential treatment facilities, based on considerations
280 of public safety, the needs of the individual, and available
281 resources.

282 (a) The department shall implement a Forensic Hospital
283 Diversion Pilot Program in Escambia, Hillsborough, and Miami-
284 Dade Counties, in conjunction with the First Judicial Circuit,
285 the Thirteenth Judicial Circuit, and the Eleventh Judicial
286 Circuit, respectively, which shall be modeled after the Miami-
287 Dade Forensic Alternative Center, taking into account local
288 needs and resources.

289 (b) In creating and implementing the program, the
290 department shall include a comprehensive continuum of care and

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291 services that use evidence-based practices and best practices to
292 treat people who have mental health and co-occurring substance
293 use disorders.

294 (c) The department and the respective judicial circuits
295 shall implement this section within available resources. The
296 department may reallocate resources from forensic mental health
297 programs or other adult mental health programs serving
298 individuals involved in the criminal justice system.

299 (4) ELIGIBILITY.—Participation in the Forensic Hospital
300 Diversion Pilot Program is limited to persons who:

301 (a) Are 18 years of age or older;

302 (b) Are charged with a felony of the second degree or a
303 felony of the third degree;

304 (c) Do not have a significant history of violent criminal
305 offenses;

306 (d) Have been adjudicated incompetent to proceed to trial
307 or not guilty by reason of insanity under this part;

308 (e) Meet public safety and treatment criteria established
309 by the department for placement in a community setting; and

310 (f) Would be admitted to a state mental health treatment
311 facility if not for the availability of the Forensic Hospital
312 Diversion Pilot Program.

313 (5) TRAINING.—The Legislature encourages the Florida
314 Supreme Court, in consultation and cooperation with the Supreme
315 Court Mental Health and Substance Abuse Committee, to develop
316 educational training for judges in the pilot program areas on
317 the community forensic system.

318 (6) RULEMAKING.—The department may adopt rules under ss.
319 120.536(1) and 120.54 to administer this section.

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320 (7) REPORT.—The Office of Program Policy Analysis and
321 Government Accountability shall review and evaluate the Forensic
322 Hospital Diversion Pilot Program and submit a report to the
323 Governor, the President of the Senate, and the Speaker of the
324 House of Representatives by December 31, 2016. The report shall
325 examine the efficiency and cost-effectiveness of providing
326 forensic mental health services in secure, outpatient,
327 community-based settings. In addition, the report shall examine
328 the impact of the Forensic Hospital Diversion Pilot Program on
329 public health and safety.

330 Section 6. Paragraph (m) of subsection (2) of section
331 921.0026, Florida Statutes, is amended to read:

332 921.0026 Mitigating circumstances.—This section applies to
333 any felony offense, except any capital felony, committed on or
334 after October 1, 1998.

335 (2) Mitigating circumstances under which a departure from
336 the lowest permissible sentence is reasonably justified include,
337 but are not limited to:

338 (m) The defendant's offense is a nonviolent felony, the
339 defendant's Criminal Punishment Code scoresheet total sentence
340 points under s. 921.0024 are 60 points or fewer, and the court
341 determines that the defendant is amenable to the services of a
342 postadjudicatory treatment-based drug court program; a
343 postadjudicatory treatment-based mental health court program; or
344 a postadjudicatory treatment-based military veterans and
345 servicemembers court program; and is otherwise qualified to
346 participate in the program as part of the sentence. For purposes
347 of this paragraph, the term "nonviolent felony" has the same
348 meaning as provided in s. 948.08(6).

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349 Section 7. Subsection (8) is added to section 948.01,
350 Florida Statutes, to read:

351 948.01 When court may place defendant on probation or into
352 community control.—

353 (8) (a) Notwithstanding s. 921.0024 and effective for
354 offenses committed on or after July 1, 2015, the sentencing
355 court may place the defendant into a postadjudicatory treatment-
356 based mental health court program if the defendant's Criminal
357 Punishment Code scoresheet total sentence points under s.
358 921.0024 are 60 points or fewer, the offense is a nonviolent
359 felony, the defendant is amenable to mental health treatment,
360 and the defendant is otherwise qualified under s. 394.47892(2).
361 The satisfactory completion of the program must be a condition
362 of the defendant's probation or community control. As used in
363 this subsection, the term "nonviolent felony" means a third
364 degree felony violation under chapter 810 or any other felony
365 offense that is not a forcible felony as defined in s. 776.08.

366 (b) The defendant must be fully advised of the purpose of
367 the program, and the defendant must agree to enter the program.
368 The original sentencing court shall relinquish jurisdiction of
369 the defendant's case to the postadjudicatory treatment-based
370 mental health court program until the defendant is no longer
371 active in the program, the case is returned to the sentencing
372 court due to the defendant's termination from the program for
373 failure to comply with the terms thereof, or the defendant's
374 sentence is completed.

375 (c) The Department of Corrections is authorized to
376 designate mental health probation officers to support
377 individuals under the supervision of the mental health court.

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378 Section 8. Paragraph (j) is added to subsection (2) of
379 section 948.06, Florida Statutes, to read:

380 948.06 Violation of probation or community control;
381 revocation; modification; continuance; failure to pay
382 restitution or cost of supervision.—

383 (2)

384 (j) 1. Notwithstanding s. 921.0024 and effective for
385 offenses committed on or after July 1, 2015, the court may order
386 the defendant to successfully complete a postadjudicatory
387 treatment-based mental health court program if:

388 a. The court finds or the offender admits that the offender
389 has violated his or her community control or probation;

390 b. The offender has 60 or fewer total sentence points after
391 including points for the violation on his or her Criminal
392 Punishment Code scoresheet under s. 921.0024;

393 c. The underlying offense is a nonviolent felony;

394 d. The court determines that the offender is amenable to
395 the services of a postadjudicatory treatment-based mental health
396 court program;

397 e. The court has explained the purpose of the program to
398 the offender and the offender has agreed to participate; and

399 f. The offender is otherwise qualified to participate in
400 the program under s. 394.47892(2).

401 2. After the court orders the modification of community
402 control or probation, the original sentencing court shall
403 relinquish jurisdiction of the offender's case to the
404 postadjudicatory treatment-based mental health court program
405 until the offender is no longer active in the program, the case
406 is returned to the sentencing court due to the offender's

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407 termination from the program for failure to comply with the
408 terms thereof, or the offender's sentence is completed.

409 Section 9. Paragraph (a) of subsection (7) of section
410 948.08, Florida Statutes, is amended to read:

411 948.08 Pretrial intervention program.—

412 (7) (a) Notwithstanding any provision of this section, a
413 person who is charged with a felony, other than a felony listed
414 in s. 948.06(8) (c), and identified as a veteran, as defined in
415 s. 1.01, including a veteran who was discharged or released
416 under a general discharge, or servicemember, as defined in s.
417 250.01, who suffers from a military service-related mental
418 illness, traumatic brain injury, substance abuse disorder, or
419 psychological problem, is eligible for voluntary admission into
420 a pretrial veterans' treatment intervention program approved by
421 the chief judge of the circuit, upon motion of either party or
422 the court's own motion, except:

423 1. If a defendant was previously offered admission to a
424 pretrial veterans' treatment intervention program at any time
425 before trial and the defendant rejected that offer on the
426 record, the court may deny the defendant's admission to such a
427 program.

428 2. If a defendant previously entered a court-ordered
429 veterans' treatment program, the court may deny the defendant's
430 admission into the pretrial veterans' treatment program.

431 Section 10. Paragraph (a) of subsection (2) of section
432 948.16, Florida Statutes, is amended to read:

433 948.16 Misdemeanor pretrial substance abuse education and
434 treatment intervention program; misdemeanor pretrial veterans'
435 treatment intervention program.—

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436 (2) (a) A veteran, as defined in s. 1.01, including a
437 veteran who was discharged or released under a general
438 discharge, or servicemember, as defined in s. 250.01, who
439 suffers from a military service-related mental illness,
440 traumatic brain injury, substance abuse disorder, or
441 psychological problem, and who is charged with a misdemeanor is
442 eligible for voluntary admission into a misdemeanor pretrial
443 veterans' treatment intervention program approved by the chief
444 judge of the circuit, for a period based on the program's
445 requirements and the treatment plan for the offender, upon
446 motion of either party or the court's own motion. However, the
447 court may deny the defendant admission into a misdemeanor
448 pretrial veterans' treatment intervention program if the
449 defendant has previously entered a court-ordered veterans'
450 treatment program.

451 Section 11. Section 948.21, Florida Statutes, is amended to
452 read:

453 948.21 Condition of probation or community control;
454 military servicemembers and veterans.—

455 (1) Effective for a probationer or community controllee
456 whose crime was committed on or after July 1, 2012, and who is a
457 veteran, as defined in s. 1.01, or servicemember, as defined in
458 s. 250.01, who suffers from a military service-related mental
459 illness, traumatic brain injury, substance abuse disorder, or
460 psychological problem, the court may, in addition to any other
461 conditions imposed, impose a condition requiring the probationer
462 or community controllee to participate in a treatment program
463 capable of treating the probationer or community controllee's
464 mental illness, traumatic brain injury, substance abuse

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465 disorder, or psychological problem.

466 (2) Effective for a probationer or community controllee
467 whose crime was committed on or after July 1, 2015, and who is a
468 veteran, as defined in s. 1.01, including a veteran who was
469 discharged or released under a general discharge, or a
470 servicemember, as defined in s. 250.01, who suffers from a
471 military service-related mental illness, traumatic brain injury,
472 substance abuse disorder, or psychological problem, the court
473 may impose, in addition to any other conditions imposed, a
474 condition requiring the probationer or community controllee to
475 participate in a treatment program established to treat the
476 probationer or community controllee's mental illness, traumatic
477 brain injury, substance abuse disorder, or psychological
478 problem.

479 (3) The court shall give preference to treatment programs
480 for which the probationer or community controllee is eligible
481 through the United States Department of Veterans Affairs or the
482 Florida Department of Veterans' Affairs. The Department of
483 Corrections is not required to spend state funds to implement
484 this section.

485 Section 12. This act shall take effect July 1, 2015.