

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/CS/SB 1496 (557820)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Military and Veterans Affairs and Space Committee; and Senator Lee

SUBJECT: Veterans Treatment Courts

DATE: February 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Forbes</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1496 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 with an emphasis on therapeutic treatment over incarceration of mental illness, traumatic brain injury, a substance use disorder, or a psychological problem. Like existing law, the program is open to a servicemember, veteran, and a current or former member of any state National Guard, a current or former defense contractor or military member of a foreign allied country. Similarly, a veteran who has received a less than honorable discharge is eligible to participate.

Conditions of participation are set forth in a written participation agreement. Upon a finding by the court that the participant has successfully completed conditions of the agreement, the charge is disposed of in accordance with the agreement. If a participant fails to successfully comply, the court may modify or revoke participation in the program and the case may revert back to the original court.

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 Veteran's Affairs, public agencies, and community-based organizations.

The bill authorizes the continued operation of existing programs and requires the bill to apply only prospectively to new cases.

This bill is estimated to have a negative indeterminate prison bed impact. See Section V.

The bill is effective July 1, 2020.

II. Present Situation:

Veterans Courts

The first veterans court opened in Buffalo, N.Y. in 2008.¹ Veterans court follows the model of other specialty courts, such as drug court and mental health court whereby the court emphasizes treatment over incarceration.² 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.³ As of June 2016, 461 courts operate veterans court programs across the country.⁴

In Florida, 31 counties operate a veterans court program.⁵ Moreover, veterans court programs operate in 17 of the 20 judicial circuits.⁶ Even in those circuits without a designated program, accommodations are provided to defendants who would otherwise qualify to participate in a veterans court program.⁷

Military Veterans and Servicemembers Court Program

In 2012, the Legislature established the T. Patt Maney Veterans' Treatment Intervention Act.⁸ 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, servicemembers, current or former United States Department of Defense contractors, and current

¹ National Center for State Courts, *Veterans Courts Resource Guide*, available at <https://www.ncsc.org/Topics/Alternative-Dockets/Problem-Solving-Courts/Veterans-Court/Resource-Guide.aspx> (last visited Feb. 4, 2020).

² Public Health Post, *A New Court System to Rehabilitate Veterans*, available at <https://www.publichealthpost.org/research/rehabilitating-veterans-in-the-criminal-justice-system/> (last visited Feb. 4, 2020).

³ Law for Veterans, *Veterans Courts*, available at <https://www.lawforveterans.org/veterans-courts> (last visited Feb. 4, 2020).

⁴ National Center for State Courts, *supra* note 1.

⁵ 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. Email correspondence with Sean Burnfin, Office of State Courts Administrator, Florida Courts (Jan. 21, 2020)(on file with the Senate Committee on Military and Veterans Affairs and Space).

⁶ Office of the State Courts Administrator, *2020 Judicial Impact Statement* (Feb. 5, 2020)(on file with the Senate Committee on Military and Veterans Affairs and Space).

⁷ *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, veteran mentors, and partnerships with providers and the justice system. 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 on a case-by-case basis, provided special services to veterans in conjunction with its adult drug court upon a recommendation from the state attorney.

⁸ Chapter 2012-159, s. 9, L.O.F.; Section 394.47891, F.S.

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.

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.⁹

In 2016, the Legislature expanded the requirement of an honorable discharge to include eligibility for a veteran released under a general discharge.¹⁰ 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.¹¹

Pretrial Intervention Program

Both misdemeanor and felony cases may be processed in a pretrial intervention program of a veterans court. However, a court may deny admission if the defendant has previously entered a court-ordered veterans treatment program.¹² While enrolled in a pretrial intervention program, the defendant fulfills the terms of a written coordinated strategy developed by the veterans' treatment invention team.¹³ 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.¹⁴ 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.¹⁵

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;
- 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 of a child or attempted sexual performance of a child;

⁹ Chapter 2012-159, s. 9, L.O.F.

¹⁰ Chapter 2016-127, s. 9, L.O.F.

¹¹ Chapter 2019-61, s. 1, L.O.F.

¹² Sections 948.08(7), F.S., and 948.16(2), F.S.

¹³ Sections 948.08(7)(b), F.S., and 948.16(2)(b), F.S.

¹⁴ Sections 948.08(2)(b), F.S., and 948.16(2)(b), F.S.

¹⁵ Sections 948.08(4), F.S., and 948.16(4), F.S.

- Computer pornography of a minor; transmission of child pornography; or buying or selling of minors; and
- Aggravated assault or stalking.¹⁶

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.¹⁷ 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.¹⁸ The receiving jurisdiction disposes of the case.¹⁹

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.²⁰ 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.²¹

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.²²

Problem-solving Court Reports

A problem-solving court means a specialty drug court, military veterans and servicemembers court, mental health court, community court, or delinquency pretrial intervention court program.²³ 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

¹⁶ Section 948.06(8)(c), F.S.

¹⁷ Section 910.035(5)(a)(and (b)), F.S.

¹⁸ Section 910.035(d), F.S.

¹⁹ Section 910.035(f), F.S.

²⁰ Section 948.21, F.S.; The ability of a veteran released from service under a dishonorable discharge to participate in a treatment program as a condition of probation or community control is only available to an individual who committed his or her crime on or after October 1, 2019 (s. 948.21(3), F.S.).

²¹ Section 948.21(4), F.S.

²² Section 948.06(2)(k)1., F.S.

²³ Section 43.51(2), F.S.

- performance of each court based on outcome measures established by the courts.²⁴

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 the chief judge of each judicial circuit to create a veterans treatment 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 court. If the court determines that the defendant is eligible to participate, his or her case is governed by the terms of an individual participant agreement.

Policies and Procedures of a Veterans Treatment Court

A veterans treatment court must create a record of policies and procedures that specifically include:

- Integrating substance abuse, mental health treatment services, and other treatment into case processing;
- Employing a nonadversarial approach;
- 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 to generate local support and enhance court effectiveness.

The court must consult nationally recognized best practices related to key components in adopting policies and procedures.

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

Eligibility for Participation in a Veterans Treatment Court

To qualify for a veterans treatment court, a defendant must either be a veteran, defined as in s. 1.01 (14), F.S., a person who has served in the military, or a servicemember, defined in s. 250.01, F.S., as an active or former member of any state National Guard, a current or former contractor for the United States Department of Defense; or a current or former military member of a foreign allied country. A veteran released under any type of discharge if otherwise eligible may participate in veterans treatment court.

²⁴ Section 43.51(1), F.S.

To further qualify:

- The defendant must have a mental health condition, traumatic brain injury, substance use disorder, or psychological problem;
- The defendant must agree on the court record to enter the court voluntarily and comply with a participant agreement; and
- The defendant's participation in the court, as determined by 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 court 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, including any recommendations of the victim;
- Prior criminal history and whether the defendant previously participated in a veterans treatment or other similar program;
- Whether the defendant's needs exceed resources available through the court;
- Impact of participation on the community;
- Recommendations of the law enforcement agency involved;
- Provision for and the likelihood of obtaining restitution during participation in the court;
- Any mitigating circumstances; and
- Other reasonably related circumstances.

A veteran or a servicemember does not have a right to participate in a veterans treatment court.

Participant Agreement

Participation in a veterans treatment court requires a defendant to sign and a court to approve a participant agreement. If a court determines that a defendant has fully complied with the agreement, the charge is disposed of in accordance with the participation agreement and any applicable plea agreement, order, or judgment. If the defendant has failed to comply with the agreement, the court may modify or revoke the defendant's participation and the case may revert to the original court.

Veterans Treatment Court for Post-Adjudication Probationer or Community Controllee

The bill provides that for a person who is on probation or community control for a crime committed on or after July 1, 2020, and otherwise qualified to participate in a veterans treatment court, the court may order participation in a treatment program for a mental illness, traumatic brain injury, substance use disorder, or psychological problem.

Existing Military Veterans and Servicemembers Program and Participants

In amending s. 394.47891, F.S., the bill substitutes as the name of the program Veterans Treatment Court for the Military Veterans and Servicemembers Court. Additionally, a program in operation as of June 30, 2020, may continue to operate and is not required to operate under the

provisions of 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 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, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

As this bill authorizes, rather than requires the chief judge 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

According to the Office of the State Courts Administrator (OSCA), creation of a veterans treatment court is discretionary. The impact on judicial and court workload cannot be determined because it is not immediately clear how the provisions of this bill would operate in conjunction with the existing military and servicemembers courts. To the extent the bill

may expand eligibility, it will not have a significant fiscal impact because admission is discretionary and would be governed by existing resources. In addition, OSCA advises that the fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the effects on judicial or court workload resulting from creating and implementing the veterans treatment court program.²⁵

SB 2500, the Senate's General Appropriations Bill for Fiscal Year 2020-2021, includes \$10.8 million in general revenue to fund problem solving courts statewide. This funding also includes \$1.4 million for veterans' treatment intervention programs in several counties.²⁶

Prison Beds Cost

As of March 2019, the state has 31 veterans courts. Per the Department of Corrections (DOC), in Fiscal Year 2018-2019, there were 142 offenders admitted for veterans' treatment intervention. A fiscal impact from an increase in eligible participants to veterans treatment intervention is not quantifiable at this time. However, this bill is estimated to have a negative indeterminate prison bed impact (unquantifiable decrease in prison beds).²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 25, 2020:

The committee substitute:

- Changes the definition of “defendant” to a veteran, servicemember, a current or former member of any state National Guard, a current or former contractor for the

²⁵ The Office of The State Courts Administrator, *2020 Judicial Impact Statement* for SB 1496, (February 5, 2020), p. 4, (on file with Senate Appropriations Subcommittee on Criminal and Civil Justice).

²⁶ SB 2500, General Appropriations Bill, Fiscal Year 2020-2021, Specific Appropriation 3226, p. 391 & 392.

²⁷ February 10, 2020 Conference Results, Criminal Justice Impact Conference, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm> (last visited February 20, 2020).

United States Department of Defense, or a current or former military member of a foreign allied country who has been charged or convicted of a criminal offense.

- Changes the definition of “servicemember” to be as defined in s. 250.01, F.S., and changes the definition of veteran to be as defined in s. 1.01 (14), F.S.
- Provides that a defendant with a mental health disorder is eligible to participate in the program.
- Deletes the requirement for a defendant seeking to participate to submit an application for the court to review.
- Provides that a person who is on probation or community control for a crime committed on or after July 1, 2020, and otherwise qualifies to participate in a veterans treatment court, may participate.
- Provides the act shall only apply prospectively to new cases on or after the effective day of the bill.

CS by Military and Veterans Affairs and Space on February 12, 2020:

This committee substitute:

- Renames as the Veterans Treatment Court Program the existing Military and Servicemembers Court Program;
- Requires the underlying condition of a mental health condition, traumatic brain injury, substance use disorder, or a psychological problem to be military-related;
- Restores equal access to the veterans treatment court for a veteran released under any discharge from service;
- Restores current law by not giving the treatment court adjudicatory authority;
- Restores the role of the court as the sole decider of whether a veteran or servicemember qualifies to participate in a veterans treatment court and requires the court to consider the recommendation of the state attorney;
- Removes duplicative references to the confidentiality of health information records;
- Removes duplicative references to domestic violence cases;
- Grandfathers in existing programs, courts, and participants; and
- Provides conforming cross-references.

B. Amendments:

None.