

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 17 Military Veterans Convicted of Criminal Offenses

**SPONSOR(S):** Nelson, Abruzzo and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		De La Paz	Cunningham
2) Justice Appropriations Subcommittee			
3) Health & Human Services Committee			
4) Judiciary Committee			

### SUMMARY ANALYSIS

HB 17 requires a judge to hold a pre-sentencing hearing for a convicted veteran when: (1) the defendant would otherwise be sentenced to county jail or state prison and (2) the defendant alleges that he or she committed the offense because of Post Traumatic Stress Disorder (PTSD), substance abuse, or psychological problems stemming from service with the United States military in a combat theater.

Although the defendant must allege the crime was committed "because of" any of the listed conditions stemming from service in a combat theater, the court's inquiry does not require any finding that the allegation is true or established by the evidence. The purpose of the hearing is to determine whether the defendant:

- Was a member of the United States military who served in combat; and
- Suffers from Post Traumatic Stress Disorder (PTSD), substance abuse, or psychological problems as a result of that service.

Under the bill a judge may place a defendant who satisfies the above criteria on probation or community control and order the defendant to participate in a treatment program. The court must give preference to a treatment program that has had success in treating veterans who suffer from PTSD, substance abuse problems, or psychological problems relating to their military service.

On March 2, 2011, the Criminal Justice Impact Conference determined that this bill would have no impact on the state prison population.

The bill is effective July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The Department of Corrections does not have statistics of how many of the 152,000 offenders on community supervision are military veterans. However, it reports that 6,864 state prison inmates (approximately 6.7% of the total prison population) identified themselves as a military veteran as of December 20, 2010. This claim of veteran status was verified for 1,273 of these inmates by submission of a Certificate of Release or Discharge from Active Duty (Department of Defense Form 214). The types of offenses for which these veterans are incarcerated are reflected in the following table:<sup>1</sup>

Primary Offense	Claimed Veteran Status	%	Verified Veteran Status	%
Murder/Manslaughter	1,079	15.7	353	27.7
Sexual/Lewd Behavior	1,773	25.8	501	39.4
Robbery	593	8.6	97	7.6
Aggravated Battery/Assault, Kidnapping, Other Violent Crimes Against Persons	747	10.9	84	6.6
Burglary	677	9.9	98	7.7
Property Theft/Fraud/Damage	579	8.4	36	2.8
Drugs	860	12.5	62	4.9
Weapons	165	2.4	17	1.3
Other	391	5.7	25	2.0
<b>Total</b>	<b>6,864</b>		<b>1,273</b>	

The above table indicates that the overwhelming majority of veteran inmates in Florida are incarcerated for violent crimes while less than 8% are imprisoned for property and drug offenses. There is no comprehensive data on how many veterans are among the approximately 59,000 persons either serving sentences or awaiting trial or hearing in county jails throughout Florida.

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.<sup>2</sup> 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 and Post-Traumatic Stress Disorder (PTSD),<sup>3</sup> substance abuse and depression."<sup>4</sup> The study also estimated at that time that approximately 29,000 returning veterans residing in Florida may suffer from PTSD or some form of major depression.<sup>5</sup>

<sup>1</sup> Department of Corrections Analysis of House Bill 17 – Military Veterans Convicted of Criminal Offenses, December 21, 2010, p. 1.

<sup>2</sup> 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, p. 5.

<sup>3</sup> According to the National Institute for Mental Health, "Post-Traumatic Stress Disorder," is an anxiety disorder that can develop after exposure to a terrifying event or ordeal in which grave physical harm occurred or was threatened. Traumatic events that may trigger PTSD include violent personal assaults, natural or human-caused disasters, accidents, or military combat.

<sup>4</sup> 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.

<sup>5</sup> *Id.*

A Rand Center report in 2008 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 Traumatic Brain Injury (TBI).<sup>6</sup> A person with any of these disorders also has a greater likelihood of experiencing other psychiatric diagnoses than do other persons.<sup>7</sup>

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 treatment needs.<sup>8</sup>

Since 2008, legislation authorizing the establishment of veterans' courts has been adopted or at least considered in California, Colorado, Texas, Nevada, Illinois, Connecticut, New Mexico, New York, Minnesota, and Oklahoma.<sup>9</sup> The National Association of Drug Court Professionals website indicates that there are veterans' courts in 47 cities or counties nationwide.<sup>10</sup> "Veterans' courts" have the goal of identifying veterans who would benefit from a treatment program instead of incarceration or other sanctions.

Some veterans who have committed criminal offenses may be eligible for treatment services provided and funded by the United States Department of Veterans Affairs (VA). An American Bar Association (ABA) study indicates that 82 percent of veterans in jail nationwide are eligible for services from the VA based on the character of their discharge.<sup>11</sup>

#### Veterans Courts in Florida

Currently, there are some veterans' court and veterans' jail diversion initiatives around the state. Okaloosa County has begun referring veterans' cases to a court docket with special knowledge of veterans and veterans' issues. This was established through the cooperation of the local State 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 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. Access to VA treatment facilities is sought for eligible veterans in the program.

Palm Beach County started a veterans' court program in December 2010. A feature of the program is 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. This is compatible with the VA's national Veteran's Justice Outreach Initiative that will assign staff and trained volunteer resources to facilitate veterans' court programs.<sup>12</sup>

In October 2009, the Department of Children and Families Mental Health Program Office was awarded over \$1.8 million from SAMHSA over the next five years to provide services and support for Florida's

---

<sup>6</sup> 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, p. xxi. A "Traumatic Brain Injury" occurs when an external force traumatically injures the brain.

<sup>7</sup> *Id.* at 127.

<sup>8</sup> GAINS Center, *Responding to the Needs of Justice-Involved Combat Veterans with Service-Related Trauma and Mental Health Conditions*, August 2008, page 6, at [www.gainscenter.samhsa.gov/pdfs/veterans/CVTJS\\_Report.pdf](http://www.gainscenter.samhsa.gov/pdfs/veterans/CVTJS_Report.pdf). The observation was based upon information provided by the VA.

<sup>9</sup> Interim Report 2011-131, Veterans' Courts, Florida Senate Committee on Military Affairs and Domestic Security, October 2011, p. 1.

<sup>10</sup> National Association of Drug Court Professionals website at <http://www.nadcp.org/JusticeForVets>.

<sup>11</sup> ABA Commission on Homelessness and Poverty, Resolution 105A, February 10, 2010 at

[http://www.americanbar.org/content/dam/aba/migrated/homeless/PublicDocuments/ABA\\_Policy\\_on\\_Vets\\_Treatment\\_Courts\\_FINAL.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/homeless/PublicDocuments/ABA_Policy_on_Vets_Treatment_Courts_FINAL.authcheckdam.pdf),

<sup>12</sup> The Veteran's Justice Outreach Initiative website is <http://www.va.gov/HOMELESS/VJO.asp>.

returning veterans who served in Iraq and Afghanistan and who suffer with PTSD and other behavioral health disorders.<sup>13</sup>

### The Prison Diversion Program

Florida currently has a program to divert offenders who would otherwise be sentenced to prison by authorizing a judge to sentence a defendant to a non-state prison sanction if the following conditions are met:

- The offender's primary offense is a felony of the third degree.
- The offender's total sentence points score, as provided in s. 921.0024, F.S., is not more than 48 points, or the offender's total sentence points score is 54 points and 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new violation of law.
- The offender has not been convicted or previously convicted of a forcible felony as defined in s. 776.08, F.S., but excluding any third degree felony violation under Chapter 810, F.S.
- The offender's primary offense does not require a minimum mandatory sentence.

If the court elects to sentence a defendant under the prison diversion program the court must sentence the offender to a term of probation, community control, or community supervision with mandatory participation in a prison diversion program of the Department of Corrections if such program is funded and exists in the judicial circuit in which the offender is sentenced.<sup>14</sup> The prison diversion programs are designed to meet the unique needs of each judicial circuit and of the offender population of that circuit. The program may require residential, nonresidential, or day-reporting requirements; substance abuse treatment; employment; restitution; academic or vocational opportunities; or community service work.<sup>15</sup>

### Contrast to the Drug Courts Program

By way of comparison, s. 397.334, F.S., authorizes the establishment of drug courts that divert eligible persons to county-funded treatment programs in lieu of state prison. The drug courts program is available to a person whose prison sentence is 18 months or less, whose crime was a "non-violent felony,"<sup>16</sup> who is amenable to treatment, and who is otherwise qualified under s. 397.334(3), F.S. To be otherwise qualified under s. 397.334(4), F.S., entry into the program must be based on the sentencing judge's assessment of the defendant's criminal history, substance abuse screening outcome, amenability to the services, the total sentence points, the recommendation of the State Attorney and the victim (if any), and the defendant's agreement to enter the program.<sup>17</sup>

## **Effect of Proposed Changes**

### Veteran Status Hearing

HB 17 requires a judge to hold a pre-sentencing hearing for a convicted veteran when: (1) the defendant would otherwise be sentenced to county jail or state prison<sup>18</sup> and (2) the defendant alleges that he or she committed the offense because of PTSD, substance abuse, or psychological problems stemming from service with the United States military in a combat theater.

---

<sup>13</sup> Florida Department of Children and Families' description of the Veterans Jail Diversion Grant can be viewed at <http://www.dcf.state.fl.us/programs/samh/mentalhealth/consumerfamilyaffairs/currinitatives.shtml>.

<sup>14</sup> This program was created in 2009 and established two pilot programs. One in Pinellas and Pasco counties (6th Judicial Circuit) and the other Hillsborough county (13th Judicial Circuit). The Legislature appropriated 1.4 million over the last two years to the Department of Corrections for the programs. In December 2010, the Office of Program Policy Analysis and Government Accountability (OPPAGA) reported that the program in the 13th Judicial Circuit is fully operational, but is serving many offenders whose sentencing scores suggest they were not prison-bound. The program in the 6th Judicial Circuit ceased operation in August 2010 due to a lack of referrals. HB 7127 is currently pending before the House and expands eligibility criteria for the program.

<sup>15</sup> Section 921.00241, F.S.

<sup>16</sup> For purposes of the program a "nonviolent felony" means a third degree felony violation of Chapter 810, F.S., (relating to burglary and trespass), or any felony that is not a forcible felony as defined in s. 776.08, F.S.

<sup>17</sup> Section 397.334(3)(a), F.S.

<sup>18</sup> Although the bill specifically uses the term "state correctional system," it is clear from the intent and context of the bill that what is contemplated is a state prison sentence.

Although the defendant must allege the crime was committed "because of" any of the listed conditions stemming from service in a combat theater, the court's inquiry does not require any finding that the allegation is true or established by the evidence. In other words, the court need not find a nexus between the commission of the crime and the fact that the veteran suffers from any of the specific conditions. Instead the purpose of the hearing is to determine whether the defendant:

- Was a member of the United States military who served in combat; and
- Suffers from PTSD, substance abuse, or psychological problems as a result of that service.

The term "psychological problems" is not defined. If the court determines that the defendant satisfies both of the above criteria, the defendant is eligible for probation or community control and the court may place the defendant on probation or community control. As a condition of community supervision, the court can order the defendant to participate in a local, state, federal, or private non-profit treatment program, for a period that is no more than the length of time which they would have been incarcerated. In order for the court to exercise this option, the defendant must agree to participate and the court must determine that there is an appropriate treatment program. The court must give preference to a treatment program that has had success in treating veterans who suffer from PTSD, substance abuse problems, or psychological problems relating to their military service.

#### The Criminal Punishment Code and HB 17

With respect to felony level offenses, HB 17 seeks to provide a mechanism for courts to sentence veterans who have been convicted of crimes and who meet specified criteria from being sentenced under the Criminal Punishment Code (Code). The Code establishes the sentencing range for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart"<sup>19</sup> from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. The points are added in order to determine the "lowest permissible sentence" for the offense.

The provisions of HB 17 apply when a veteran convicted of a crime "would otherwise be sentenced to" incarceration in a county jail or state prison. However, the bill also provides that, for defendants who are veterans meeting the established criteria, "*if the defendant is otherwise eligible for probation and community control,*" the court may place the defendant on probation or community control and order the defendant into a treatment program. Under the Code, defendants scoring a prison sentence are not eligible for placement on probation or community control in lieu of the prescribed state prison sentence. Absent scoring a nonstate prison sanction, a judge may sentence someone who would otherwise receive a prison sentence under the Code to probation or community control only by imposing a sentence that is a downward departure from the lowest permissible sentence.

A judge cannot impose a downward departure sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure."<sup>20</sup> The imposition of a downward departure sentence is subject to appellate review.<sup>21</sup> Mitigating circumstances which may reasonably justify a downward departure sentence include but are not limited to:

- The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.
- The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.
- The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024, F.S., are 52 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence.<sup>22</sup>

---

<sup>19</sup> Section 921.0022, F.S.

<sup>20</sup> Downward departure sentences are prohibited, however, when the offense is subject to a minimum mandatory prison sentence.

<sup>21</sup> Section 921.0026(1), F.S.

<sup>22</sup> Section 921.0026(2), F.S. This is a partial list of mitigating circumstances specifically listed in the statute.

HB 17 is silent as to whether the new section of statute would operate within the bounds of a judge considering a downward departure sentence when authorized by the Code, or whether it is independent of it. If the bill is construed to operate independently of the sentencing structure of the Code, then the section will operate in a manner which not is patterned after current mechanisms to impose sentences that avoid incarceration in state prison in order to place defendants into appropriate treatment programs. Unlike the current drug court program and prison diversion program, which are restricted to lower level non-forcible felons, HB 17 does not establish any qualifying or disqualifying factors relating to the type of offense charged, the prior designation of the offender as statutorily defined repeat offender, or other legal status of the defendant. Under HB 17, all felony offenses, except capital felonies, are within the scope of inclusion into the veterans' court program.<sup>23</sup> It is unclear whether offenses subject to minimum mandatory prison sentences, such as 10-20-Life, would also be included in the program.<sup>24</sup> Unlike downward departure sentences imposed pursuant to the s. 926.0026, F.S., HB 17 does not expressly authorize a state's right to appeal from a sentence imposed under its provisions.

#### Credit For Time Served

Under HB 17, a veteran who is ordered into a residential treatment program as a result of the hearing will earn sentence credits for the time he or she actually serves in the treatment program. These credits would be applied to reduce any remaining sentence in the event that the veteran is committed to jail or prison as a result of violating the terms of community supervision. Under current law, an offender cannot receive credit against prison sentence for any time served in a treatment or rehabilitation program when the defendant violates the terms of that community supervision.<sup>25</sup>

Current law allows a court to require an offender to participate in treatment programs as a special condition of probation or community control. However, HB 17 (1) awards sentencing credit for time that the offender who is a veteran spends in an inpatient treatment program without requiring successful compliance with terms of supervision; and (2) requires the court to give preference to placing the offender who is a veteran into a treatment program that has a history of dealing with veterans' issues.

#### B. SECTION DIRECTORY:

Section 1. Creates s. 921.00242, F.S., relating to convicted military veterans; posttraumatic stress disorder, substance abuse, or psychological problems from service; treatment services.

Section 2. Provides an effective date of July 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

See Fiscal Comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

---

<sup>23</sup> Section 948.01(1), F.S., specifically disqualifies persons convicted of capital felonies from eligibility for probation.

<sup>24</sup> Section 775.087, F.S.

<sup>25</sup> See *State v. Cregan*, 908 So.2d 387 (Fla. 2005).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would have an impact on the private sector to the extent that participants are diverted from incarceration into private treatment programs.

D. FISCAL COMMENTS:

On March 2, 2011, the Criminal Justice Impact Conference determined that the bill would have no impact on the state prison population. If the bill diverts some defendants from incarceration to community-based treatment programs, in those instances where the defendant is eligible for veteran's services, it is anticipated that the cost of such programming would be provided by the Veterans Administration.

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 17 provides that the veteran must claim that he or she performed military service in a combat theater but requires the court to determine whether the defendant served in combat. These are not equivalent terms and there is some ambiguity as to what type of service is required.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**