

SENATE BILL 3222

By McNally

AN ACT to amend Tennessee Code Annotated, Title 16,
relative to the Veterans Court Treatment Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 16, is amended by adding Sections 2 through 16 as a new chapter thereto.

SECTION 2. This chapter shall be known and may be cited as the "Veterans Court Treatment Act".

SECTION 3. As used in this chapter, unless the context otherwise requires:

(1) "Court" means a veterans court;

(2) "Post-adjudicatory veterans court program" means a program in which the defendant has admitted guilt or has been found guilty and agrees, along with the prosecution, to enter into a veterans court program as part of the defendant's sentence;

(3) "Pre-adjudicatory veterans court program" means a program that allows a defendant, with the consent of the prosecution, to expedite the defendant's criminal case before conviction or before filing of a criminal case and shall require successful completion of a veterans court program;

(4) "Servicemember" means a person who is currently serving in the army, air force, marines, navy, or coast guard on active duty, reserve status or in the national guard;

(5) "VA" means the United States department of veterans affairs;

(6) "Veteran" means a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable;

(7) "Veterans court" means a court or program with an immediate and highly structured judicial intervention process for substance abuse treatment, mental health, or other assessed treatment needs of eligible veteran and servicemember defendants that brings together substance abuse professionals, mental health professionals, VA professionals, local social programs and intensive judicial monitoring; and

(8) "Veterans court professional" means a judge, prosecutor, defense attorney, probation officer, or treatment provider involved with a veterans court program.

SECTION 4. The general assembly recognizes that veterans and servicemembers have provided or are currently providing an invaluable service to our country. In so doing, some may suffer the effects of post traumatic stress disorder, traumatic brain injury, and depression, and may also suffer drug and alcohol dependency, addiction, or co-occurring mental illness and substance abuse problems. Some veterans or servicemembers come into contact with the criminal justice system and are charged with and convicted of felony and misdemeanor offenses. There is a critical need for the criminal justice system to recognize these veterans, provide accountability for their wrongdoing, provide for the safety of the public and provide for the treatment of veterans. It is the intent of the general assembly to create specialized veteran courts with the flexibility necessary to meet the specialized problems faced by veteran and servicemember defendants.

SECTION 5. The goals of veterans courts are to:

(1) Increase cooperation between courts and criminal justice, veterans, mental health and substance abuse systems;

(2) Create a dedicated calendar or a locally developed collaborative court-supervised veterans mental health program that will lead to placement of many offenders who are veterans of the United States military, including those with post-traumatic stress disorder, traumatic brain injury, military sexual trauma, substance

abuse, or any mental health problem stemming from United States military service, in community treatment;

(3) Improve access to necessary services and support;

(4) Reduce recidivism; and

(5) Reduce the involvement of veterans in the criminal justice system and incarceration by making mental health service for veterans available in the least restrictive environment possible while promoting public safety.

SECTION 6. In developing a veterans court docket, the following shall be considered:

(1) The method by which the target population of defendants is identified and referred to veterans court dockets;

(2) The method for assessing defendants who are veterans for serious mental illness and co-occurring disorders;

(3) The criteria that make an defendant eligible to participate in a veterans court, including:

(A) Service in the United States military;

(B) Amenity of the defendant to treatment;

(C) The facts of the case;

(D) Prior criminal history;

(E) United States military service history; and

(F) Mental health and substance abuse treatment history;

(4) The elements of treatment and supervision programs;

(5) Standards for continuing participation in, and successful completion of, a veterans court program;

(6) The need for training from county departments and persons in the community with specialized knowledge about veterans' treatment and service needs, such as the

county health department, county veterans officers, county drug and alcohol department, and the VA;

(7) The need to provide initial and ongoing training on the nature of serious mental illness and on the treatment and supportive services available in the community;

(8) The process to ensure defendants will receive an appropriate level of treatment services with an emphasis on maximizing federally funded services from the VA and the Tennessee department of veterans affairs, as well as county and other local mental health and substance abuse treatment services;

(9) The process for developing or modifying a treatment plan for each defendant, based on a formal assessment of the defendant's mental health, United States military service history, and substance abuse treatment needs. Participation in a veterans court docket shall require defendants to complete a recommended treatment plan and comply with such other terms and conditions that optimize the likelihood the defendant completes the program;

(10) The process for referring cases to the veterans court; and

(11) A defendant's voluntary entry into the veterans court, the right of a defendant to withdraw from the veterans court, and the process for explaining these rights to the defendant.

SECTION 7. In developing a veterans court program, each veterans court team, led by a judicial officer, may request the assistance of a prosecutor, public defender, county mental health liaison, substance abuse liaison, county veterans service officer, probation officer, or a veterans administration social worker to assist with screening candidates for eligibility and suitability. The veterans court team shall determine the frequency of reviews of the progress of an offender in order to ensure the offender adheres to the treatment plan as recommended and remains in and completes treatment.

SECTION 8.

(a) If a defendant in a general sessions or criminal court is charged with a criminal offense and it is alleged that such defendant committed the offense as a result of post-traumatic stress disorder, traumatic brain injury, substance use disorder, or psychological problems stemming from service in a combat theater in the United States military, the court shall hold a veterans status hearing prior to hearing the matter. The court shall order the defendant to submit to an eligibility screening and an assessment through the VA or the Tennessee department of veterans affairs to determine the defendant's veteran status. The defendant shall bear the burden of proof at the hearing.

(b) The court shall order the defendant to submit to an eligibility screening and mental health and drug and alcohol screening and assessment of the defendant by the VA or by the Tennessee department of veterans affairs. The assessment shall include a risk assessment and be based, in part, upon the availability of treatment resources available to the veterans court. The assessment shall also include recommendations for treatment and shall be reflective of the level of risk of the individual. An assessment does not have to be ordered if the court finds a valid screening or assessment related to the present charge pending against the defendant was completed within the previous sixty (60) days.

(c) If a veterans court concludes that the defendant is an eligible veteran, the court may order the defendant into a local, state, federal, or private nonprofit treatment program as a condition of probation provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists.

(d) In deciding to commit a defendant to a treatment program, the veterans court shall, whenever possible, place the defendant in a treatment program that has a history of successfully treating combat veterans who suffer from post-traumatic stress disorder, traumatic brain injury, substance use disorder, or psychological problems as a result of such service. The

court shall give preference to treatment programs for which the veteran is eligible through the VA or the Tennessee department of veterans affairs.

(e) If a defendant was previously offered admission to a preadjudicatory veterans treatment intervention program at any time prior to trial and the defendant rejected such offer on the record, the court may deny the defendant's admission to such a program.

(f) If a defendant previously entered a court-ordered veterans treatment program but failed to complete it, the court may deny the defendant's admission into the preadjudicatory veterans treatment program.

(g) If a district attorney believes that the facts and circumstances of the case suggest the defendant's involvement in the selling of controlled substances, the court shall hold a preadmission hearing. If the district attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in the selling of controlled substances, the court shall deny the defendant's admission into a preadjudicatory veterans treatment program.

(h) While enrolled in a preadjudicatory veterans treatment program authorized by this chapter, the participant shall be subject to a coordinated strategy developed by a veterans treatment intervention team. The coordinated strategy shall include treatment specific to the needs of veterans. The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include placement in a treatment program offered by a licensed service provider or in a jail-based treatment program or serving a period of incarceration. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a preadjudicatory veterans treatment program or other preadjudicatory intervention program.

(i) At the end of the preadjudicatory intervention period, the court shall consider the recommendation of the district attorney as to disposition of pending charges. The court shall determine, by written finding, whether the defendant has successfully completed the

preadjudicatory veterans treatment program. If the court finds that a defendant has not successfully completed the preadjudicatory veterans treatment program, the court may order the person to continue in education and treatment, which may include treatment programs offered by licensed service providers, or may order that the charges revert to normal channels for prosecution. The court shall dismiss the charges upon a finding that the defendant has successfully completed the preadjudicatory veterans treatment program.

(j) The court shall dismiss with prejudice any original warrant or charge against the defendant after ninety (90) days from the successful completion of the preadjudicatory veterans treatment program. If the prosecution is dismissed with prejudice, jeopardy shall attach and the court shall make an entry to that effect.

SECTION 9. The chief judge of each judicial district may establish a veterans court program. The veterans court may, at the discretion of the presiding judge, be a separate court, a separate court docket or a program of a drug court within the judicial district. At the discretion of the presiding judge, the veterans court program may be operated in one (1) county in the judicial district, and allow veteran defendants from all counties within the judicial district to participate.

SECTION 10.

(a) A defendant may be admitted into a veterans court program only upon the agreement of the prosecutor and the defendant and with the approval of the court.

(b) A defendant shall be excluded from veterans court program if:

(1) The defendant does not demonstrate a willingness to participate in a treatment program;

(2) The defendant has been convicted of a crime against a person within the past ten (10) years, excluding incarceration time, including but not limited to: criminal homicide, rape, aggravated rape, aggravated sexual battery, armed

robbery, aggravated arson, arson, aggravated kidnapping and kidnapping, aggravated battery resulting in great bodily harm or permanent disability, stalking, aggravated stalking, or any offense involving the discharge of a firearm or where occurred serious bodily injury or death to any person; or

(3) The defendant has previously completed or has been discharged from a veterans court program within three (3) years of an offense punishable as a felony or a Class A misdemeanor.

SECTION 11.

(a) The judge shall inform the defendant that if the defendant fails to meet the conditions of the veterans court program, eligibility to participate in the program may be revoked and the defendant may be sentenced or the prosecution continued for the criminal offense charged.

(b) The defendant shall execute a written agreement with the court as to the defendant's participation in the program and shall agree to all of the terms and conditions of the program, including the possibility of sanctions or incarceration for failing to abide or comply with the terms of the program.

(c) The court may order the defendant to complete substance abuse treatment in an outpatient, inpatient, residential, or jail-based custodial treatment program, order the defendant to complete mental health counseling in an inpatient or outpatient basis, comply with physicians' recommendation regarding medications and all follow up treatment. The conditions subject to treatment may include post-traumatic stress disorder, traumatic brain injury and depression.

SECTION 12.

(a) The veterans court program may maintain a network of substance abuse treatment programs representing a continuum of graduated substance abuse treatment

options commensurate with the needs of defendants. Such substance abuse treatment programs shall include programs administered by the VA, by the state of Tennessee and by community-based programs.

(b) Any substance abuse treatment program to which defendants are referred shall be by a licensed provider.

(c) The veterans court program may, in its discretion, employ additional services or interventions, as it deems necessary on a case by case basis.

(d) The veterans court program may maintain or collaborate with a network of mental health treatment programs and, if it is a co-occurring mental health and substance abuse court program, a network of substance abuse treatment programs representing a continuum of treatment options commensurate with the needs of the defendant and available resources.

SECTION 13.

(a) A veterans court may impose reasonable sanctions pursuant to a written agreement by the defendant, including dismissal of the defendant from the program and the reinstatement of criminal proceedings against the defendant if such court finds that:

- (1) The defendant is not performing satisfactorily in the assigned program;
- (2) The defendant is not benefitting from education, treatment, or rehabilitation;
- (3) The defendant has engaged in criminal conduct rendering the defendant

unsuitable for the program; or

(4) The defendant has otherwise violated the terms and conditions of the program or his or her sentence or is for any reason unable to participate.

(b) Upon successful completion of the terms and conditions of the program, the court may dismiss the original charges against the defendant, terminate the defendant's sentence or otherwise discharge the defendant from any further proceedings in the original prosecution.

SECTION 14.

(a) The clerks of all courts of general sessions, circuit and criminal courts and municipal courts exercising the jurisdiction of courts of general sessions shall collect the sum of twenty-five dollars (\$25.00) from any person who:

- (1) Enters a plea of guilty;
- (2) Enters a plea of nolo contendere;
- (3) Is adjudicated at trial; or
- (4) Enters a plea pursuant to any of the diversionary sentencing statutes to any criminal offense.

(b) The assessment in subsection (a) shall be subject to § 8-21-401 and shall be in addition to all other taxes, costs and fines. The first five dollars (\$5.00) of each such assessment shall be paid to the clerks of the court imposing assessment for the purposes of administering this chapter. The remainder of the assessments shall be deposited by the clerk of the collecting court into a dedicated county fund. The fund shall not revert to the county general fund at the end of the fiscal year, but shall remain for the purposes set out in this chapter. The money shall be used by the county exclusively for the creation and maintenance of state veterans courts as provided in this chapter. In the event no veterans court operates in the judicial district, the remainder of the funds from that county shall be remitted annually in full to the state of Tennessee to be placed in a veterans court resources fund to be administered by the department of finance and administration, office of the criminal justice programs, in accordance with Section 15. The comptroller's regular audit of a local government shall also include the dedicated county fund established by this section.

(c) The funds collected from this assessment shall be dedicated to the administration and operation of veterans courts. Judges who wish to serve on veterans courts may apply for funds for training and continuing education on issues relevant to veterans.

SECTION 15. The assessment collected and remitted to the state shall be placed in a veterans court fund for the purposes of funding veterans court operations. The office of criminal justice programs in the department of finance and administration shall administer the money in the veterans court fund. Any unspent money shall not be transferred or placed to the credit of the general revenue fund of the state at the end of each year, but shall remain deposited to the credit of the veterans court fund for future allocation.

SECTION 16. Nothing in this chapter shall confer a right or an expectation of a right to treatment for an offender within the criminal justice system.

SECTION 17. This act shall take effect July 1, 2012, the public welfare requiring it.