

Date of Hearing: April 24, 2012

ASSEMBLY COMMITTEE ON VETERANS AFFAIRS
Paul J. Cook, Chair
AB 2611 (Butler) – As Introduced: February 24, 2012

SUMMARY: Authorizes superior courts to implement veterans courts. Specifically, this bill:

- 1) Allows superior courts to develop and to implement veterans courts.
- 2) Makes county participation voluntary.
- 3) Specifies that the objectives of veterans courts are:
 - a) Increased cooperation between the courts, criminal justice, veterans, and substance-abuse systems;
 - b) Creation of a dedicated calendar or a locally developed collaborative court-supervised veterans mental health program or system that will lead to placement of as many mentally ill offenders who are veterans of the United States military, including those with post-traumatic stress disorders, traumatic brain injury, military sexual trauma, substance abuse, or any mental health problem stemming from United States military service, in community treatment, as is feasible and consistent with public safety;
 - c) Improved access to necessary services and support;
 - d) To reduce recidivism; and
 - e) To reduce the involvement of veterans in the criminal justice system and time in jail by making mental health services available in the least restrictive environment possible while promoting public safety.
- 4) States that the veterans court may have the following characteristics:
 - a) Leadership by a superior court judicial officer assigned by the presiding judge;
 - b) Enhanced accountability by combining judicial supervision with rehabilitation service that are rigorously monitored and focused on recovery;
 - c) A problem solving focus;
 - d) A team approach to decision making;
 - e) Integration of social and treatment services;
 - f) Judicial supervision of the treatment process, as appropriate;
 - g) Community outreach efforts; and

- h) Direct interaction between defendant and judicial officer.
- 5) Suggests guidelines for creating veterans courts, including:
- a) One stakeholder should be a veteran who is a criminal justice client and has experience with mental illness;
 - b) The method by which the veterans court ensures that the target population of defendants are identified and referred to the veterans court;
 - c) The method for assessing defendants who are veterans for serious mental illness and co-occurring disorders;
 - d) Eligibility criteria specifying what factors make the defendant eligible to participate in the veterans court, including service in the United States military, the amenability of the defendant to treatment and the facts of the case, as well as prior criminal history, United States military service history, and mental health and substance abuse treatment history;
 - e) The elements of the treatment and supervision programs;
 - f) Standards for continuing participation in, and successful completion of, the veterans court program;
 - g) The need for all service providers and stakeholders to receive initial and ongoing training from county departments and community stakeholders with specialized knowledge about veterans' treatment and service needs, such as the county health department, county veterans officers, county drug and alcohol department, and Veterans Administration partners, and the need to provide initial and ongoing training for designated staff on the nature of serious mental illness and on the treatment and supportive services available in the community;
 - h) The process to ensure defendants will receive the appropriate level of treatment series with emphasis on maximizing federally funded services from the Veterans Administration and the Department of Veterans Affairs, as well as the county and other local mental health and substance abuse treatment services to the extent that resources are available for that purpose, as specified;
 - i) 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 the veterans court shall require defendants to complete the recommended treatment plan, and comply with any other terms and conditions that optimizes the likelihood that the defendant completes the program;
 - j) The process for referring cases to the veterans court; and
 - k) The defendant's voluntary entry into the veterans court, and the process for explaining these rights to the defendant.

- 6) Suggests that each veterans court team, led by a judicial officer, may include a judicial officer to preside over the court, a prosecutor, a public defender, a county mental-health liaison, a substance-abuse liaison, a county veterans-service officer, a probation officer, and a Veterans Administration social worker to assist the court with screening candidates for eligibility and suitability in Veterans Administration funded programs. This team shall determine the frequency of ongoing reviews of the progress of the offender in community treatment in order to ensure the offender adheres to the treatment plan as recommended, remains in treatment, and completes treatment.
- 7) States legislative intent that a veterans court judge should use a variety of options for carrying out the goal to ensure long term public safety by maximizing the opportunities for veterans with psychological war wounds to get timely and appropriate treatment. States legislative intent in enacting this section to augment rather than replace other sections within this code. The judicial officer has a variety of tools available to reach these goals and shall exercise discretion and use all tools available to ensure public safety and assist defendants to successfully complete appropriate treatment for the problems underlying their offenses. Where there are statutory requirements for certain education or counseling programs to be included in the terms of probation, the components of these offense-specific counseling terms shall be incorporated into the treatment programs that are designed to treat the underlying psychological disorders rather than required in lieu of the psychological treatments. This holistic approach ensures that the priority underlying offense is treated and that offense-specific education and counseling aims are met.

EXISTING LAW:

- 1) Provides that in the case of any person convicted of a criminal offense who would otherwise be sentenced to county jail or state prison and who alleges that he or she committed the offense as a result of post-traumatic stress disorder (PTSD), substance abuse, or psychological problems stemming from service in a combat theater in the United States military, the court shall, prior to sentencing, hold a hearing to determine whether the defendant was a member of the military forces of the United States who served in combat and shall assess whether the defendant suffers from PTSD, substance abuse, or psychological problems as a result of that service. [Penal Code Section 1170.9(a).]
- 2) States that if the court concludes that a defendant convicted of a criminal offense was a member of the military forces of the United States suffering from PTSD, substance abuse, or psychological problems stemming from service in a combat theater and if the defendant is otherwise eligible for probation and the court places the defendant on probation, the court may order the defendant into a local; state; federal; or private, non-profit treatment program for a period not to exceed that which the defendant would have served in state prison or county jail, provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists. [Penal Code Section 1170.9(b).]
- 3) Obligates counties to provide mental health treatment services to members of the military forces of the United States suffering from PTSD, substance abuse, or psychological problems stemming from service in a combat theater only to the extent that resources are available for that purpose. If mental health treatment services are ordered by the court, the county mental health agency shall coordinate appropriate referral of the defendant to the county veterans-service officer. The county mental health agency shall not be responsible for providing

services outside its traditional scope of services. An order shall be made referring a defendant to a county mental health agency only if that agency has agreed to accept responsibility for the treatment of the defendant. [Penal Code Section 1170.9(c).]

FISCAL EFFECT: Unknown

COMMENTS: Army Major Evan R. Seamone, Judge Advocate, writes, in *Military Law Review*, Volume 208, Summer 2011:

After ten years of sustained combat operations, a legal system has emerged in response to the special needs of servicemembers who have sustained Posttraumatic Stress Disorder (PTSD) and other unseen injuries in combat. Recognizing that these wounded warriors experience symptoms that often manifest in criminal conduct, this justice system incorporates advanced “problem-solving” strategies in its sentencing practices. It provides offenders with a second chance to escape the disabilities of a conviction by dismissing or expunging their charges upon successful completion of a demanding treatment program. (Page 2)

... the civilian justice system has developed VTCs as a “problem-solving” approach, which targets the mental condition underlying the veteran’s criminal conduct through an interdisciplinary treatment team. In January of 2011, President Barack Obama recommended expansion of VTCs because of their tremendous value in addressing the “unique needs” of returning veterans with PTSD and Traumatic Brain Injury (TBI). In February, Admiral Michael Mullen, then-Chairman of the Joint Chiefs of Staff, observed that VTCs “are having a significant impact across the country.” He further noted, “I have seen these courts make a real difference, giving our veterans a second chance, and significantly improving their quality of life.” (Page 12)

The military justice system lacks parallel structures to veterans treatment courts. Major Seamone recommends certain changes to the military justice system and its practices, stating:

At a time when both the Commander-in-Chief and a Chairman of the Joint Chiefs of Staff have endorsed VTCs, military justice practitioners should consider the ways in which these programs promote individualized sentencing, protect society, and honor the sacrifices of wounded warriors with unseen injuries.

California is home to more veterans than any other state. This legislation, while permissive, sends a clear policy message that the state endorses and encourages the further development of VTCs and seeks to be a leader in this area. This policy position is, as noted above, aligned with that of President Obama, the Commander in Chief of the United States with that expressed by the former Chairman of the Joint Chiefs of Staff. This bill, AB 2611, also received a letter of support from the Office of the Deputy Assistant Secretary of Defense (Military Community and Family Policy), “VTCs show great promise to help afflicted Service members transition back to their communities and families in a healthful and productive manner. The policy in AB 2611 encompasses many of the best practices and principles found in effectively operating VTCs ... in California and other states.”

Governor's Veto Message: In his veto message on AB 201 (Butler), of this current Legislative Session, the Governor stated, “This measure would authorize superior courts to establish

dedicated programs to serve eligible veterans of the United States military. While the provisions of this bill are well-intended, they create a clear expectation that our courts--already struggling with painful budget cuts--will establish a new program.

"Given current budgetary constraints, the decision to adopt this kind of program--something already within the courts' authority--is better left to the sound discretion of the judiciary."

REGISTERED SUPPORT / OPPOSITION:

Support

American Legion – Department of California (Co-Sponsor)
AMVETS, Department of California (Co-Sponsor)
California Association of County Veteran Service Officers (Co-Sponsor)
California State Commanders Veterans Council (Co-Sponsor)
Vietnam Veterans of American, Council of California (Co-Sponsor)
California Psychiatric Association
Legal Services for Prisoners with Children
National Association of Social Workers
Office of the Deputy Assistant Secretary of Defense
California State Sheriffs' Association

Opposition

None at this time.

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