

SENATE SUMMARY OF HOUSE AMENDMENTS

**SB 532 By Senator Guillory**

**KEYWORD AND SUMMARY AS RETURNED TO THE SENATE**

COURTS: Creates the Veterans Court Program. (8/1/14)

**SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL**

1. Provides an exception to the Public Records Law for the registration and other records of a treatment facility.
2. Removes reference to a defendant with misdemeanor or felony charges from the definition of "veteran".
3. Clarifies that it is the district attorney who determines that there is reason to believe it is in the best interest of the community and in the interest of justice that a defendant be made eligible for the program.

**DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE**

Guillory

SB No. 532

Proposed law provides that the Legislature of Louisiana recognizes that there is a critical need for criminal justice system programs to assist veterans in order to reduce the incidence of alcohol and drug use, alcohol and drug addiction, and crimes committed by veterans as a result of alcohol and drug use and alcohol and drug addiction. There is also a need for programs to assist veterans with mental health issues, including mental health diagnoses and undiagnosed mental illnesses.

Proposed law provides that the "Veterans Court Program" means a program that has the following essential characteristics:

- (1) The integration of health care, educational, and housing assistance, as well as employment, job training, disability compensation counseling, and other rehabilitative services in the processing of cases in the criminal justice system.
- (2) Early identification and prompt placement of eligible participants in the program, whereby they become program participants.
- (3) The use of nonadversarial approach involving prosecutors and defense attorneys to promote public safety and protect the due process rights of program participants.
- (4) Access to continuum of alcohol, controlled substance, mental health, suicide assessment, intervention, treatment and management, and other related treatment and rehabilitative services.
- (5) Careful monitoring of treatment and services provided to program participants.
- (6) A coordinated strategy to govern program responses to participants' compliance.
- (7) Ongoing judicial interaction with program participants.
- (8) Monitoring and evaluation of program goals and effectiveness.
- (9) Continuing interdisciplinary education to promote effective program planning, implementation, and operations.
- (10) Development of partnerships with public agencies and community organizations, including but not limited to the Louisiana Department of Veterans Affairs, the Louisiana Workforce Commission, the United States Department of Veterans Affairs, and any other state, local, or federal agency or organization that can provide assistance to participants.

Proposed law provides that proof of a defendant's military service be submitted to the court in which the criminal case is pending, and may be in any form the court determines to be appropriate.

Proposed law provides that the court must make a determination on the record in the docketed criminal case that the defendant is an eligible veteran for him to be enrolled as a program participant in a Veterans Court program.

Proposed law provides that each district court by rule may designate as a Veterans Court program one or more divisions of the district court to which veterans are assigned and may establish a probation program to be administered by the presiding judge or judges thereof or by an employee designated by the court.

Proposed law provides that upon receipt of the proposal provided for in proposed law, the court shall advise the defendant that he may be eligible for enrollment in a court-authorized treatment program through the Veterans Court program.

Proposed law provides that if the defendant requests to undergo treatment and is accepted into the Veterans Court program, the defendant will be placed under the program for a period of at least 12 months.

Proposed law provides that during the treatment the defendant may be confined in a treatment facility or, at the discretion of the court, the defendant may be released on a probationary basis for treatment or supervised aftercare in the community.

Proposed law provides that the court may impose any conditions reasonably related to the complete rehabilitation of the defendant.

Proposed law provides that the defendant shall be required to participate in any court-ordered alcohol and drug testing program at his own expense, unless indigent.

Proposed law provides that if the defendant completes the Veterans Court program, and successfully completed all other requirements of his court-ordered probation, the conviction may be set aside and the prosecution dismissed.

Proposed law provides that the defendant has the right to be represented by counsel at all stages of a criminal prosecution and in any court hearing relating to the Veterans Court program.

Proposed law provides that the defendant must agree to the Veterans Court program. If the defendant elects to undergo treatment and participate in the Veterans Court program, the court shall order an examination of the defendant by one of the court's designated licensed treatment programs.

Proposed law provides that the treatment program examiner or district attorney may request that the defendant provide the following information to the court:

- (1) Information regarding prior criminal charges.
- (2) Education, work experience, and training.
- (3) Family history, including residence in the community.
- (4) Medical and mental history, including any psychiatric or psychological treatment or counseling.
- (5) Any other information reasonably related to the success of the treatment program.

Proposed law provides that the designated program shall recommend to the court a preliminary length of stay and level of care for the defendant.

Proposed law provides that in addition to the report submitted by the examiner, the judge and district attorney shall consider the following factors in determining whether the Veterans Court program would be in the interests of justice and of benefit to the defendant and the community:

- (1) The nature of the crime charged and the circumstances surrounding the crime.
- (2) Any special characteristics or circumstances of the defendant.

- (3) Whether the defendant is a first-time offender, and, if the defendant has previously participated in this or a similar program, the degree of success attained.
- (4) Whether there is a probability that the defendant will cooperate with and benefit from probation and treatment through the Veterans Court program.
- (5) Whether the available Veterans Court program is appropriate to meet the needs of the defendant.
- (6) The impact of the defendant's probation and treatment upon the community.
- (7) Recommendations, if any, of the involved law enforcement agency.
- (8) Recommendations, if any, of the victim.
- (9) Provisions for and the likelihood of obtaining restitution from the defendant over the course of his probation.
- (10) Any mitigating circumstances.
- (11) Any other circumstances reasonably related to the individual defendant's case.

Proposed law provides that in order to be eligible for the Veterans Court program, the defendant must satisfy each of the following criteria:

- (1) The defendant cannot have any prior felony convictions for any offenses defined as crimes of violence.
- (2) The crime before the court cannot be a crime of violence.
- (3) Other criminal proceedings alleging commission of a crime of violence cannot be pending against the defendant.
- (4) The crime before the court cannot be a charge of driving under the influence of alcohol or any other drug or drugs that resulted in the death of a person.

Proposed law provides that a defendant previously convicted or adjudicated a delinquent for the offense of simple battery will not be deemed ineligible for the Veterans Court program on the sole basis of such status.

Proposed law provides that the judge will make the final determination of eligibility.

Proposed law provides that a Veterans Court program team or staff may petition the court to reject a referral to the Veterans Court program if the Veterans Court program team or staff deems the defendant to be inappropriate for admission to the Veterans Court program. Additionally, a Veterans Court program team or staff may petition the court for immediate discharge of any individual who fails to comply with Veterans probation program rules and treatment expectations or who refuses to constructively engage in the treatment process.

Proposed law provides that in offering a defendant the opportunity to request treatment, the court will advise the defendant of his legal rights and the legal consequences of his decisions.

Proposed law provides the terms for a plea agreement.

Proposed law provides that to the extent of his financial resources, a defendant who is placed under the supervision of the Veterans Court program may be required to pay a portion of or the entire cost of the treatment program to which he is assigned and the cost of any additional supervision that may be required, as determined by the Veterans Court program.

Proposed law provides that if the probationer does not have the financial resources to pay all the related costs of the probation program, the court may arrange for treatment at a

program funded by the state or Federal government or allow the probationer to perform supervised work in lieu of paying or waive fee.

Proposed law provides that when appropriate, the imposition or execution of sentence will be postponed while the defendant is enrolled in the treatment program. As long as the probationer follows the conditions of his agreement, he will remain on probation. At the conclusion of the period of probation, the district attorney, on advice of the person providing the probationer's treatment and the probation officer, may recommend that the court take one of the following courses of action:

- (1) That the probationer's probation be revoked and the probationer be sentenced because the probationer has not successfully completed the treatment and has violated one or more conditions of probation; or, if already sentenced, that the probation be revoked and the probationer be remanded to the appropriate custodian for service of that sentence.
- (2) That the period of probation be extended so that the probationer may continue the program.
- (3) That the probationer's conviction be set aside and the prosecution dismissed because the probationer has successfully completed all the conditions of his probation and treatment agreement.

Proposed law provides that the district attorney will make the final determination on whether to request revocation, extension, or dismissal.

Proposed law provides that if an individual who has enrolled in a program violates any of the conditions of his probation or his treatment agreement or appears to be performing unsatisfactorily in the assigned program, or if it appears that the probationer is not benefitting from education, treatment, or rehabilitation, the treatment supervisor, probation officer, or the district attorney may move the court for a hearing to determine if the probationer should remain in the program or whether the probation should be revoked and the probationer removed from the program and sentenced or ordered to serve any sentence previously imposed.

Proposed law provides that if the court finds that the probationer has violated a condition of his probation or a provision of his probation agreement and that the probationer should be removed from the probation program, then the court may revoke the probation and sentence the individual in accordance with his guilty plea or, if the individual has been sentenced and the sentence suspended, order the individual to begin serving the sentence.

Proposed law provides that if a defendant who has been admitted to the probation program fails to complete the program and is thereafter sentenced to jail time for the offense, he will be entitled to credit for the time served.

Proposed law provides that at any time and for any appropriate reason, the probationer, his probation officer, the district attorney, or his treatment provider may petition the court to reconsider, suspend, or modify its order for rehabilitation or treatment concerning that probationer.

Proposed law provides that the burden of proof at all such hearings will be the same burden of proof required to revoke probation.

Proposed law provides that the appropriate treatment program will report certain specified changes regarding the probationer to the district attorney.

Proposed law provides that upon successful completion of the Veterans Court program and its terms and conditions, the judge, after receiving the recommendation from the district attorney, may vacate the judgment of conviction and dismiss the criminal proceedings against the probationer or may discharge the defendant from probation.

Proposed law provides that discharge and dismissal under proposed law will have the same effect as acquittal, except that the conviction may be considered in order to provide the basis for subsequent prosecution of the party as a multiple offender and will be considered as an offense for the purposes of any other law or laws relating to cumulation of offenses.

Proposed law provides that nothing contained in proposed law will confer a right or an expectation of a right to treatment for a defendant or offender within the criminal justice system.

Proposed law provides that each defendant will contribute to the cost of any treatment received in the Veterans Court program based upon guidelines developed by the Veterans Court probation program. Any and all fees may be waived at the discretion of the court.

Proposed law provides that each judicial district that establishes a Veterans Court program will adopt written policies and guidelines for the implementation of a probation program and specifies guidelines to be included.

Proposed law provides that each Veterans Court program will develop a method of evaluation so that its effectiveness can be measured. These evaluations will be compiled annually and transmitted to the judicial administrator of the Supreme Court of Louisiana.

Proposed law provides that except as otherwise provided for by law, the registration and other records of a treatment facility are confidential and will not be disclosed to any person not connected with the treatment facility or the Veterans Court program and district attorney without the consent of the patient. Proposed law provides an exception from the Public Records Law for such records.

Proposed law provides that the provisions of proposed law will not restrict the use of patients' records for the purpose of research into the cause and treatment of alcoholism and drug addiction and mental health illnesses, provided that such information will not be published in a way that discloses the patient's name and identifying information.

Proposed law provides that no statement, or any information procured therefrom, with respect to the specific offenses with which the defendant is charged, which is made to any probation officer or program treatment worker subsequent to the granting of probation, will be admissible in any civil or criminal action or proceeding, except a Veterans Court program revocation proceeding.

Proposed law provides that a record of the fact that an individual has participated in a Veterans Court program will be sent to the office of the attorney general and will be made available upon request to any district attorney for the purpose of determining if an individual has previously participated in a Veterans Court program.

Proposed law provides that the present law that prohibits the court from suspending or deferring the imposition of sentences for violations of the Uniform Controlled Dangerous Substances Law will not apply to prosecutions in Veterans Court probation programs as authorized by this Chapter.

Proposed law provides that the minimum mandatory sentence provided for in third and fourth offense DWI laws which otherwise would be imposed without benefit of probation, parole, or suspension of sentence, may be suspended if the offender is prosecuted in a Veterans Court program pursuant to proposed law.

Proposed law provides a list of additional documents that may be used to verify veteran status.

(Amends R.S. 44:4.1(B)(6); Adds R.S. 13:5361-5367)

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Thomas L. Tyler  
Deputy Chief of Staff