The Commonwealth of Alassachusetts

In the One Hundred and Ninetieth General Court (2017-2018)

SENATE, April 19, 2018

The committee on Ways and Means to whom was referred the Senate Bill relative to veterans' benefits, rights, appreciation, validation and enforcement (Senate, No. 2326),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2454) [This legislation will have an estimated fiscal impact to the Commonwealth of \$800,000 in fiscal year 2019]..

For the committee, Karen E. Spilka

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court (2017-2018)

An Act relative to veterans' benefits, rights, appreciation, validation and enforcement.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- Section 15GGGGGG. The governor shall annually issue a proclamation setting apart the fifth day of April as Gold Star Wives Day and recommending that the day be observed in an appropriate manner by the people, including prominent display of the Gold Star Flag on the property of the State House.

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- Section 15HHHHHH. The governor shall annually issue a proclamation setting apart the last Saturday in September as Gold Star Mothers and Families Day and recommending that the day be observed in an appropriate manner by the people, including prominent display of the Gold Star Flag on the property of the State House.
- SECTION 2. The third paragraph of section 26 of chapter 31 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out the last sentence and inserting in place thereof the following 2 sentences:- Notwithstanding the administrator's right to

require a physician's certificate in the case of a disabled veteran, an appointing authority shall not require, request or accept an individual's military medical record or military personnel service record for the purpose of employment; provided, however, that an appointing authority may require, request or accept the individual's DD-214 form. An appointing authority shall not impose a term or condition on an individual as a condition of obtaining or retaining employment if compliance with the term or condition would require the individual to present the individual's military medical record or military personnel service record as set forth in this paragraph; provided, however, that an appointing authority may impose a term or condition requiring the individual to present the individual's DD-214 form.

SECTION 3. Section 59 of chapter 33 of the General Laws, as so appearing, is hereby amended by striking out, in lines 6 and 7, the words "34 days in any state fiscal year and not exceeding 17" and inserting in place thereof the following figure:- 40.

SECTION 4. Subsection (a) of said section 59 said chapter 33, as so appearing, is hereby amended by adding the following sentence:- For the purposes of this subsection, "day" shall mean any 24-hour period regardless of calendar day.

SECTION 5. Said section 59 of said chapter 33, as so appearing, is hereby further amended by adding the following subsection:-

(f) For the purposes of this section, "base pay for military service" shall not include any housing, incentive, bonus, skills pay, allowance or other stipend or benefit paid to the employee for the employee's military service.

SECTION 6. Chapter 40 of the General Laws is hereby amended by inserting after section $22A\frac{1}{2}$ the following section:-

Section 22¾. (a) A municipality may designate a parking space at the city or town hall for the parking of a veteran in a motor vehicle that is owned and operated by the veteran and that displays a veteran registration plate issued pursuant to section 2 of chapter 90. The parking space shall be available during the normal business hours of the city or town hall for use by such veteran without charge. The municipality shall erect and maintain a sign designating such a parking space that shall bear the words "Veteran Parking Only – this space is reserved for those who have served. Unauthorized Vehicles May Be Removed At The Vehicle Owner's Expense". The parking space shall only be used by a veteran that meets the requirements of this subsection.

(b) A violation of subsection (a) shall be punished by a fine of \$100 and the city or town may provide for the removal of a vehicle in the manner provided in section 22D. The penalty shall not be a surchargeable offense under section 113B of chapter 175.

SECTION 7. Section 5 of chapter 59 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in lines 595, 651, 676, 725, 770 and 842, the word "five" and inserting in place thereof, in each instance, the following figure:- 2.

SECTION 8. Said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out, in lines 817 and 881, the figure "5" and inserting in place thereof, in each instance, the following figure:- 2.

SECTION 9. Said section 5 of said chapter 59 of the General Laws, as so appearing, is hereby further amended by striking out clause Twenty-second G and inserting in place thereof the following clause:-

Twenty-second G. In any city or town that accepts this clause, real estate that is the domicile of a person but is owned by a trustee, conservator or other fiduciary for the person's

benefit if the real estate would be eligible for exemption under clause Twenty-second, Twenty-second A, Twenty-second B, Twenty-second C, Twenty-second D, Twenty-second E or Twenty-second F if the person were the owner of the real estate.

SECTION 10. Section 6B of chapter 115 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

Notwithstanding any general or special law to the contrary, an annuity payment made to a recipient pursuant to this section shall not constitute "income" in an application or formula utilized by the commonwealth or a political subdivision to determine eligibility for a program or service funded or provided by the commonwealth. Notwithstanding the forgoing, such an annuity payment may constitute income if not doing so would, under federal law, prohibit eligibility or otherwise negatively impact the recipient's benefits under the program or service; provided, however, that the commonwealth or a political subdivision shall seek a waiver from any federal law with such an eligibility requirement.

SECTION 11. Section 8 of said chapter 115, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- If a deceased person's estate has insufficient resources to pay for the cost of the funeral and burial of a deceased person covered by this chapter, the burial agent under section 7 shall expend not more than \$4,000 for the funeral and burial; provided, however, that the cost of the funeral and burial shall be not more than \$5,000.

SECTION 12. The first paragraph of section 25 of chapter 118E of the General Laws, as so appearing, is hereby amended by inserting after clause (4) the following clause:-

(4½) the entire amount of a monthly payment to a veteran or a widowed spouse of a veteran, including pension, aid and attendance and housing benefits, from the United States Department of Veterans Affairs if the veteran or widowed spouse would not have received any payment from the United States Department of Veterans Affairs but for unreimbursed medical expense; and.

SECTION 13. Sections 10 and 11 of Chapter 276A of the General Laws are hereby repealed.

SECTION 14. The General Laws are hereby amended by inserting after chapter 276B the following chapter:-

SS CHAPTER 276C.

DIVERSION FOR VETERANS.

Section 1. (a) The district courts and, in the city of Boston, the municipal court of the city of Boston, shall have jurisdiction to: (i) if the district attorney or attorney general consents, divert prior to arraignment; or (ii) if the district attorney or attorney general does not consent, place on pre-trial probation after arraignment, a veteran who: (1) is on active service in the armed forces of the United States or has a history of military service in the armed forces of the United States; and (2) is charged with an offense against the commonwealth for which a term of imprisonment may be imposed, to place the veteran into an individualized treatment plan. The diversion or placement on pre-trial probation shall be done without regard for the veteran's age.

Such a veteran shall be eligible for diversion or pre-trial probation under this section if the veteran: (i) has not been previously convicted of a violation of a law of the commonwealth, another state or of the United States in any criminal court proceeding after having reached the age of 18 years, except for traffic violations for which no term of imprisonment may have been imposed; (ii) does not have an outstanding warrant, continuance, appeal or criminal case pending before a court of the commonwealth, another state or the United States; and (iii) has a written report pursuant to subsection (d) of section 2 determining that the veteran would benefit from participation in an individualized treatment plan.

(b) A defendant who previously was placed on pre-trial probation pursuant to this chapter shall not be eligible to have a subsequent criminal matter placed on pre-trial probation pursuant to this chapter.

Section 2. (a) A probation officer of a district court or, in the city of Boston, the municipal court of the city of Boston, when gathering information in accordance with section 85 of chapter 276, shall, prior to arraignment of a defendant on a criminal complaint, inquire of the defendant if the defendant is a veteran and use best efforts to establish the defendant's status as a veteran eligible for diversion or pre-trial probation under section 1. If a probation officer or the court reasonably believes that the defendant is a veteran or the defendant self-identifies as a veteran, the probation officer shall inform the defendant of the diversion program for veterans under this chapter.

(b) If, on the scheduled date for the arraignment of a defendant on a criminal complaint, the probation officer or the court reasonably believes that the defendant is a veteran eligible for diversion or pre-trial probation under section 1, the court may offer to continue the case for 30 days for the defendant to be assessed pursuant to subsection (d).

If the defendant accepts the offer of a continuance, the defendant shall notify the court of the acceptance on the scheduled date for arraignment. The court may continue the case for the assessment prior to arraignment with the consent of the district attorney or attorney general. If the district attorney or attorney general moves to arraign the case, the court shall arraign the defendant before continuing the case for assessment.

The court shall not offer to continue the case under this subsection if: (i) the defendant has been charged with an offense pursuant to section 24G, section 24L, section 24V of chapter 90 or section 8A or section 8B of chapter 90B or a second or subsequent offense pursuant to section 24 of chapter 90 or section 8 of chapter 90B or (ii) the court or the commonwealth intends to move, based on dangerousness, for an order of pretrial detention or release on conditions pursuant to section 58A of chapter 276.

- (c) During a 30-day continuance under subsection (b), the probation department shall provide the defendant's information to the United States Department of Veteran Affairs for verification of veteran status and determination of eligibility for veteran's benefits.
- (d) During the 30-day continuance under subsection (b) and if the defendant's veteran status is confirmed, the defendant shall be assessed by an independent licensed clinician of the United States Department of Veterans Affairs or an independent licensed clinician of another state or federal agency who has suitable knowledge of and experience with veterans' affairs. If the independent licensed clinician determines that the defendant has demonstrated symptomatology that is connected to the criminal complaint for which the defendant has been charged and could benefit from participation in an individualized treatment plan designed and

approved by the clinician, the clinician shall provide a written report to the court that shall include such determination and recommendations for an individualized treatment plan.

- (e) The court may extend a continuance under this section for an additional 30 days upon a showing of good cause.
- Section 3. (a) If, after a continuance pursuant to section 2, the court determines that the defendant is not a veteran eligible for diversion or pre-trial probation under section 1, the defendant's case shall proceed on the original charges as provided by law.
- (b) If, after a continuance under section 2, the court determines that the defendant: (i) is a veteran eligible for diversion or pre-trial probation under section 1 and (ii) would benefit from participation in an individualized treatment plan recommended pursuant to subsection (d) of section 2, the court may place the defendant on pre-trial probation for not more than 1 year and order that the defendant participate in the recommended individualized treatment plan.
- (c) Unless otherwise ordered by the court, the independent clinician providing treatment to the defendant shall submit to the court a report concerning the defendant's participation in the individualized treatment plan every 90 days during the period in which the defendant's case is continued pre-arraignment or the defendant is placed on pre-trial probation under subsection (b). If the independent clinician providing treatment has reason to believe that the defendant is non-compliant with the individualized treatment plan, the independent clinician shall promptly report such belief to the court.
- (d) If, at the conclusion of the period set for pre-trial probation under subsection (b), the court determines that an additional period of pre-trial probation is necessary, it may extend and

amend any terms of the defendant's pre-trial probation; provided, however, that the total amount of time of the pre-trial probation does not exceed 18 months.

If, at the conclusion of the period set for pre-trial probation under said subsection (b), the court determines, based on representations from the independent clinician providing treatment, that the defendant has successfully completed the individualized treatment plan, the court shall dismiss the original charges pending against the defendant; provided, however, that the court shall not so determine until after argument from counsel for both parties and the opportunity for any victim to address the court.

- (e) The court shall not place a defendant on pre-trial probation under subsection (b) unless the defendant consents in writing to the terms and conditions of the pre-trial probation and knowingly executes a waiver of the right to a speedy trial.
- (f) If a defendant is charged with a subsequent criminal offense in any jurisdiction during pre-trial probation under this section, the court shall issue whatever process is necessary to bring the defendant before the court and the district attorney or attorney general may proceed on the original charges as provided by law.
- (g) If there is reason to believe the defendant has failed to comply with or complete any part of the individualized treatment plan during the pre-trial probation, the court shall, on its own or at the request of the district attorney or attorney general, issue such process as is necessary to bring the defendant before the court. If, after inquiry, the court finds that the defendant has failed to comply with or complete the individualized treatment plan, the court may terminate the pre-trial probation and the district attorney or attorney general may proceed on the original charges

as provided by law or the court may refer the veteran to a special session of the court working with veterans.

Section 4. Nothing in this chapter shall limit the availability of diversion to a defendant pursuant to chapter 276A nor limit the eligibility of a defendant to participate in a community-based restorative justice program pursuant to chapter 276B.

SECTION 15. Section 16 of chapter 130 of the acts of 2005 is hereby amended by striking out subsection (d), inserted by section 4 of chapter 167 of the acts of 2005, and inserting in place thereof following subsection:-

(d) If a person died while in active service, a sum of \$1,000 shall be paid in the manner provided by subsection (c) in addition to any other amount the person would have been eligible to receive pursuant to subsection (a).

SECTION 16. The executive office of health and human services, in conjunction with the department of veterans' services and the center for health information and analysis, shall conduct a study on the transportation of veterans in emergency medical situations to facilities that are not facilities of the United States Department of Veterans Affairs. For the purposes of this section, "veteran" shall mean a veteran who is receives benefits under the TRICARE program, as defined in 10 U.S.C. 1072(7).

The study shall: (i) identify, after seeking consultation with the United States Department of Veterans Affairs, reimbursement guidelines for ambulance services for transportation of veterans to facilities that are not facilities of the United States Department of Veterans Affairs in emergency medical situations; (ii) identify gaps in reimbursement payments where the commonwealth may be eligible for payments to health care facilities or for ambulance services;

(iii) determine the associated costs and the reimbursements that are available to veterans when transported to facilities that are not facilities of the United States Department of Veterans Affairs; and (iv) recommend potential notification procedures by medical facilities to advise veterans regarding the process of seeking state or federal medical reimbursements. The office shall submit a report on the study to the clerks of the senate and house, the chairs of the joint committee on veterans and federal affairs, the chairs of the joint committee on health care financing and the senate and house committees on ways and means not later than March 1, 2019.