

SENATE No. 2454

The Commonwealth of Massachusetts

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:

1 SECTION 1. Chapter 6 of the General Laws is hereby amended by inserting after section
2 15FFFFFF the following 2 sections:-

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

7 Section 15HHHHHH. The governor shall annually issue a proclamation setting apart the
8 last Saturday in September as Gold Star Mothers and Families Day and recommending that the
9 day be observed in an appropriate manner by the people, including prominent display of the Gold
10 Star Flag on the property of the State House.

11 SECTION 2. The third paragraph of section 26 of chapter 31 of the General Laws, as
12 appearing in the 2016 Official Edition, is hereby amended by striking out the last sentence and
13 inserting in place thereof the following 2 sentences:- Notwithstanding the administrator's right to

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

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

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

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

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

34 SECTION 6. Chapter 40 of the General Laws is hereby amended by inserting after
35 section 22A½ the following section:-

36 Section 22³/₄. (a) A municipality may designate a parking space at the city or town hall
37 for the parking of a veteran in a motor vehicle that is owned and operated by the veteran and that
38 displays a veteran registration plate issued pursuant to section 2 of chapter 90. The parking space
39 shall be available during the normal business hours of the city or town hall for use by such
40 veteran without charge. The municipality shall erect and maintain a sign designating such a
41 parking space that shall bear the words “Veteran Parking Only – this space is reserved for those
42 who have served. Unauthorized Vehicles May Be Removed At The Vehicle Owner's Expense”.
43 The parking space shall only be used by a veteran that meets the requirements of this subsection.

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

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

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

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

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

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

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

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

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

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

79 (4½) the entire amount of a monthly payment to a veteran or a widowed spouse of a
80 veteran, including pension, aid and attendance and housing benefits, from the United States
81 Department of Veterans Affairs if the veteran or widowed spouse would not have received any
82 payment from the United States Department of Veterans Affairs but for unreimbursed medical
83 expense; and.

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

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

88 CHAPTER 276C.

89 DIVERSION FOR VETERANS.

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

98 Such a veteran shall be eligible for diversion or pre-trial probation under this section if
99 the veteran: (i) has not been previously convicted of a violation of a law of the commonwealth,

100 another state or of the United States in any criminal court proceeding after having reached the
101 age of 18 years, except for traffic violations for which no term of imprisonment may have been
102 imposed; (ii) does not have an outstanding warrant, continuance, appeal or criminal case pending
103 before a court of the commonwealth, another state or the United States; and (iii) has a written
104 report pursuant to subsection (d) of section 2 determining that the veteran would benefit from
105 participation in an individualized treatment plan.

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

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

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

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

126 The court shall not offer to continue the case under this subsection if: (i) the defendant
127 has been charged with an offense pursuant to section 24G, section 24L, section 24V of chapter
128 90 or section 8A or section 8B of chapter 90B or a second or subsequent offense pursuant to
129 section 24 of chapter 90 or section 8 of chapter 90B or (ii) the court or the commonwealth
130 intends to move, based on dangerousness, for an order of pretrial detention or release on
131 conditions pursuant to section 58A of chapter 276.

132 (c) During a 30-day continuance under subsection (b), the probation department shall
133 provide the defendant's information to the United States Department of Veteran Affairs for
134 verification of veteran status and determination of eligibility for veteran's benefits.

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

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

144 (e) The court may extend a continuance under this section for an additional 30 days upon
145 a showing of good cause.

146 Section 3. (a) If, after a continuance pursuant to section 2, the court determines that the
147 defendant is not a veteran eligible for diversion or pre-trial probation under section 1, the
148 defendant's case shall proceed on the original charges as provided by law.

149 (b) If, after a continuance under section 2, the court determines that the defendant: (i) is a
150 veteran eligible for diversion or pre-trial probation under section 1 and (ii) would benefit from
151 participation in an individualized treatment plan recommended pursuant to subsection (d) of
152 section 2, the court may place the defendant on pre-trial probation for not more than 1 year and
153 order that the defendant participate in the recommended individualized treatment plan.

154 (c) Unless otherwise ordered by the court, the independent clinician providing treatment
155 to the defendant shall submit to the court a report concerning the defendant's participation in the
156 individualized treatment plan every 90 days during the period in which the defendant's case is
157 continued pre-arraignment or the defendant is placed on pre-trial probation under subsection (b).
158 If the independent clinician providing treatment has reason to believe that the defendant is non-
159 compliant with the individualized treatment plan, the independent clinician shall promptly report
160 such belief to the court.

161 (d) If, at the conclusion of the period set for pre-trial probation under subsection (b), the
162 court determines that an additional period of pre-trial probation is necessary, it may extend and

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

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

171 (e) The court shall not place a defendant on pre-trial probation under subsection (b)
172 unless the defendant consents in writing to the terms and conditions of the pre-trial probation and
173 knowingly executes a waiver of the right to a speedy trial.

174 (f) If a defendant is charged with a subsequent criminal offense in any jurisdiction during
175 pre-trial probation under this section, the court shall issue whatever process is necessary to bring
176 the defendant before the court and the district attorney or attorney general may proceed on the
177 original charges as provided by law.

178 (g) If there is reason to believe the defendant has failed to comply with or complete any
179 part of the individualized treatment plan during the pre-trial probation, the court shall, on its own
180 or at the request of the district attorney or attorney general, issue such process as is necessary to
181 bring the defendant before the court. If, after inquiry, the court finds that the defendant has failed
182 to comply with or complete the individualized treatment plan, the court may terminate the pre-
183 trial probation and the district attorney or attorney general may proceed on the original charges

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

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

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

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

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

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

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