The Brandon Act: When Powerful Advocacy Results in Uninformed Policy

Nick Grant

Embedded Mental Health Officer (Clinical Psychologist), U.S. Navy

The Brandon Act is a law that directed the development of a self-initiated referral process via the chain of command for service members to obtain a mental health evaluation when they make such a request to their commanding officer or a supervisor in the rank of E-5 or higher. It aims to reduce the stigma around seeking mental health support within the military and places responsibility on the command for supporting requests for mental health evaluation. The legislation was included in the National Defense Authorization Act (NDAA) for Fiscal Year 2022 and signed into law by President Biden on December 27, 2021. It is named after Petty Officer 3rd Class Brandon Caserta who died via suicide in 2018.

The Brandon Act is an example of powerful advocacy that was championed by Brandon's parents, Teri and Patrick Caserta. In the summer of 2019, Teri and Patrick made their first trip to Capitol Hill for scheduled meetings with members of Congress. They also went office to office in an attempt to foster additional support for their initial proposal of legislation that would create a safe word for service members to use within their commands to ask for help. BrandonAct.org indicates that the initial proposal aimed to offer a pathway for service members to ask for help not only for mental health but across several areas including suicide, hurting others, any type of sexual misconduct, bullying, hazing, stress, depression, anxiety, domestic violence, physical or mental abuse, alcoholism, drugs, eating disorders, divorce, financial problems, gambling problems, personality disorders, or "anything."

Teri and Patrick continued their lobbying efforts even with the additional challenge of the COVID-19 pandemic. In June 2021, they worked with various supportive politicians and advocacy organizations to hold a vigil honoring Brandon's life and rallying support for the Brandon Act in Washington, DC. Representative Seth Moulton (D-MA) signed on initially in 2019 as the lead sponsor in the U.S. House of Representatives and continued to support the bill over time, including assisting in support of its inclusion in the House version of the 2021 NDAA and signing on yet again to be its lead sponsor for the 2022 NDAA when it did not make it into the final 2021 bill. The Casertas continued their tireless efforts to build support, and in 2021—after nearly being left out—their lobbying paid off and the Brandon Act was included in the final approved 2022 NDAA.

In summary, the law:

1. Enables service members to request a referral for a mental health evaluation for any reason from their commanding officer or a supervisor in the rank of E-5 or higher.

2. Requires the commanding officer or supervisor to make the referral as soon as is practical.

3. Attempts to reduce stigma by treating referrals for mental health evaluation similar to referrals for any other medical service, and protect the confidentially of the service member to the maximum extent as is practical in line with the Health Insurance Portability and Accountability Act of 1996.

4. Prioritizes precautions for safety occur before the mental health evaluation if a service member makes a request for referral based on concern of threat of harm to self or others. Additionally, in these cases, the commanding officer or supervisor is required to inform the provider of the circumstances and observations that led to the request for the referral and to the commanding officer or supervisor's actions to make the referral.

5. Requires annual training put out by each military Secretary that informs service members how to recognize individuals who may "require" mental health evaluation based on acute danger to self or others as judged by their behavior or observable mental state.

What is included in the Brandon Act is full of good intentions. Service members serve their country and should have access to mental health support. Commanding officers and leaders within the military should be focused on those they lead and attuned to the lives of their service members. Commands are like communities. They should prioritize building supportive climates and being responsible for supporting each member's personal growth and well-being just as much as their professional development and advancement. Intrusive leadership is effective for a reason after all. Additionally, safety should always be prioritized if there is a concern for the threat of harm to any service member, and required annual training may be something most just rush through but can be a helpful approach for an educational campaign.

What is also apparent about the Brandon Act is that, in its final form, it seems to have been developed by lawmaking mental health enthusiasts rather than mental health experts who have the training, experience, and cultural competency to serve a population of active-duty service members. Mental health has become a viral topic and this has only been amplified since the COVID-19 pandemic forced the world into new experiences they did not believe they were prepared for. This is in part due to limited understanding of mental health as it is such a broad topic ranging from daily emotional processes, both positive and negative, and experiences of non-clinical anxiety to cases of people living with conditions categorized as serious mental illness. It is sometimes also complicated by the common but unhelpful practice of self-diagnosing and the desires of some to label or classify their experiences with clinical terminology made more readily available by social media. A Navy psychologist recently posted, "Mental health stigma is progressing but mental health education is not keeping pace."

While the Brandon Act aims to improve the experience of service members seeking mental health evaluations and requires commands to take some responsibility in this process, it appears to not have taken into account the military mental health systems, existing and developing efforts within those systems to support service members, or how mental health supports are already integrated throughout the military. The very notion that any person should have a mental health evaluation, which is a clinical evaluation, upon request and "on any basis" is antithetical to evidence-based clinical mental health practice and decision-making, lends itself to over-pathologizing stress and normal emotional experiences, and weaponizes mental health within the military. Although each person can be an expert in their own lived experience, not everyone is capable of judging if clinical evaluation is warranted. For example, sending a service member whose first relationship just ended to a psychiatrist or clinical psychologist is poor clinical resource management; under the Brandon Act, this is now required if requested. Had the bill focused more narrowly on acute mental health evaluations in the emergency department, in cases of concerns of threat of harm to self or others, it may have been more conducive to the military healthcare system, and quite simply made more sense.

As it stands, the law undermines existing mental health programs and processes in the military and is likely to further cripple military mental health systems, driving away providers who wish to both provide care to service members and work in a functioning healthcare system. Pushing people towards mental health evaluations with military mental health providers threatens to delay access to care across the system, and ignores the targeted care model that focuses on connecting service members with the appropriate level of mental health care or supportive resources as is used in many areas of the military. For example, in April 2023 the Defense Health Agency deployed the DHA Targeted Care Pilot specifically aimed at connecting service members with the care level they need, rather than assuming all concerns rise to the level of clinical concern or intervention. When publicly highlighted, military mental health is commonly identified as notorious for issues related to access to care, staffing concerns, and the often-misunderstood fitness for duty assessment component of this work. A common proposed solution is often the need for more mental health clinicians in the military; however, if the military mental health system and its existing providers were better trusted and supported, expansion of targeted care would likely address such issues. The truth is the majority of the active-duty military population do not experience a diagnosable mental health condition. That being said, most people could benefit from additional support but those supports come from existing non-medical mental health resources such as chaplains, the Military & Family Life Counselor program, Military OneSource, and the Military Family Readiness System. Military mental health systems are commonly inundated with referrals, with wait times at military treatment facilities averaging 4-6 weeks. The Brandon Act will exacerbate this issue and undermine current efforts to connect people to an appropriate level of support in a timely manner.

Although the required annual training component of the Brandon Act has yet to be developed and implemented, there is already much confusion about what this law does and how service members can use it. Recently one military psychologist shared that he is now required to attend non-judicial punishment hearings due to a trend of service members believing they can invoke the Brandon Act and request a mental health evaluation right then and there. Another military psychologist shared that they have experienced service members thinking that the Brandon Acts entitles them to self-prescribe whatever sort of care or treatment they want, and do not understand that the bill focuses on evaluation alone. A third military psychologist recently shared that after a service member was told their request for a "second opinion" was not warranted since they had been evaluated by over 10 military mental health providers who all concurred on their diagnosis and fitness for duty determination, the member proclaimed, "What is the Brandon Act even for then?!?" The annual training, if developed adequately, is certain to be of benefit. However, it remains to be seen how the expectation that a layperson will be able to judge when another service member would "require" a mental health evaluation.

In summary, the death of Brandon Caserta was truly a tragic loss. The work of his parents, Teri and Patrick, to lobby for the Brandon Act to be passed into law is both commendable and an exceptional example of highly effective advocacy. The inclusion of the bill in the 2022 NDAA is truly a testament to their dedication and love of their son. The way the bill itself was developed by lawmakers leaves many questions open regard-

ing if and how the military mental health system and its experts were consulted and included in its development. There is cause for concern that this will be another example of a policy that does harm rather than amplify the system and supports in place for service members based on what has been observed so far. Suicide prevention efforts are a necessary requirement for the human experience and the stronger the evidence base is for those efforts, the more effective they will be in preventing the loss of life.

Author Note

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