

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1265 Court-Ordered Treatment Programs

**SPONSOR(S):** Criminal Justice Subcommittee, Ponder

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Jones	Hall
2) Justice Appropriations Subcommittee	12 Y, 0 N	Smith	Gusky
3) Judiciary Committee			

### SUMMARY ANALYSIS

In 2012, the Florida Legislature created veterans' treatment courts (VTCs), which are problem-solving courts addressing the root causes of criminal behavior. Modeled after drug court treatment programs, VTCs divert eligible veterans and servicemembers into treatment programs for military-related conditions or war-related trauma. VTCs seek input from local prosecutors, defense counsel, and other community stakeholders. They also benefit from resources from the U.S. Department of Veterans Affairs to provide treatment and other services to veterans and servicemembers.

Under current law, eligibility for a VTC program is limited to defendants with a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, who are:

- Honorably discharged;
- Generally discharged; or
- Active duty.

CS/HB 1265 expands eligibility for VTCs to individuals who are current or former:

- U.S. Department of Defense contractors.
- Military members of a foreign allied country.

A U.S. Department of Defense contractor is included as eligible for VTCs because such a person may experience war-related trauma similar to that experienced by military members. The bill does not define "foreign allied country," and a definition of such does not appear elsewhere in Florida law. Presumably, a person seeking acceptance into a VTC under this provision would have to demonstrate he or she is a current or former military member of a country allied with the United States.

The fiscal impact of the bill on state and local governments is indeterminate. See Fiscal Comments.

The bill provides an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Veterans' treatment courts (VTCs) are problem-solving courts addressing the root causes of criminal behavior.<sup>1</sup> Modeled after drug court treatment programs, VTCs divert eligible veterans and servicemembers into treatment programs for military-related conditions or war-related trauma, including:

- Post-traumatic stress disorder;
- Mental illness;
- Traumatic brain injury; and
- Substance abuse.

In 2012, the Florida Legislature passed the T. Patt Maney Veterans' Treatment Intervention Act (Act),<sup>2</sup> which created VTCs.<sup>3</sup> Specifically, the Act authorizes the chief judge of each judicial circuit to establish a VTC program to serve the special needs of eligible veterans<sup>4</sup> and active duty servicemembers<sup>5</sup> who are:

- Suffering from a military-related condition, such as mental illness, traumatic brain injury, or substance abuse; and
- Charged with or convicted of a criminal offense.<sup>6</sup>

VTCs consider whether an individual's military-related condition can be addressed through an individualized treatment program.<sup>7</sup> Like drug courts, VTCs implement the following key components<sup>8</sup> when addressing individual's needs:

- Integrating alcohol, drug treatment, and mental health services into justice system case processing;
- Nonadversarial approach;
- Early identification of eligible participants;
- Continuum of services;
- Alcohol and drug testing;
- Coordinating strategies for responses to participant compliance;
- Ongoing judicial interaction;
- Monitoring and evaluating program effectiveness;
- Interdisciplinary education; and
- Partnerships with stakeholders.<sup>9</sup>

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<sup>1</sup> FLA. STATE COURTS, *Problem-Solving Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/> (last visited Mar. 26, 2019).

<sup>2</sup> CS/CS/SB 922 (ch. 2012-159, Laws of Fla.).

<sup>3</sup> FLA. STATE COURTS, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Mar. 26, 2019).

<sup>4</sup> S. 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions.

<sup>5</sup> S. 250.01(19), F.S., defines a servicemember as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces.

<sup>6</sup> S. 394.47891, F.S.

<sup>7</sup> S. 394.47891, F.S.

<sup>8</sup> S. 397.334(4), F.S.

<sup>9</sup> See FLA. STATE COURTS, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Mar. 26, 2019); JUSTICE FOR VETS, *The Ten Key Components of Veterans Treatment Courts*, <https://justiceforvets.org/wp-content/uploads/2017/02/The-Ten-Key-Components-of-Veterans-Treatment-Courts.pdf> (last visited Mar. 26, 2019).

VTCs are uniquely able to leverage resources available from the U.S. Department of Veterans Affairs to provide treatment and other services to veterans and servicemembers.<sup>10</sup> VTCs involve not only cooperation among traditional partners found in drug courts, such as the judge, state attorney, public defender, case manager, treatment provider, probation, and law enforcement, but also cooperation with the:

- Veterans Health Administration (VHA);
- Veterans Benefit Administration;
- State Department of Veterans Affairs;
- Vet Centers;
- Veterans Service Organizations;
- Department of Labor;
- Volunteer veteran mentors; and
- Other veterans support groups.<sup>11</sup>

According to the State Court Administrator's Office of Court Improvement, as of July 2018, there were 30 VTCs in Florida.<sup>12</sup> Additionally, the Office of Court Improvement reports that in 2016, Florida's VTCs admitted 1,090 participants and graduated 640.<sup>13</sup>

### Eligibility

Under current law, to be eligible to participate in the VTC, the defendant must suffer a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, and be:

- An honorably discharged veteran;<sup>14</sup>
- A generally discharged veteran;<sup>15</sup> or
- An active duty servicemember.<sup>16</sup>

Diversion to a VTC program may occur either before trial or at sentencing.<sup>17</sup> An eligible individual may participate after being:

- Charged with a misdemeanor<sup>18</sup> or certain felony offenses, pursuant to a pretrial intervention agreement;<sup>19</sup> or
- Convicted and sentenced, as a condition of probation or community control.<sup>20</sup>

### *Pretrial Intervention Participation*

After a criminal arrest, rather than being prosecuted, an eligible veteran may be diverted to a pretrial intervention program. Before placing a veteran in a pretrial intervention program, a veterans' treatment intervention team must develop an individualized, coordinated strategy for the veteran. The team must present the coordinated strategy to the veteran in writing before he or she agrees to enter the program.

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<sup>10</sup> *Id.*

<sup>11</sup> FLA. STATE COURTS, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Mar. 26, 2019).

<sup>12</sup> FLA. STATE COURTS, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Mar. 26, 2019).

<sup>13</sup> *Id.*

<sup>14</sup> S. 1.01(14), F.S.

<sup>15</sup> S. 948.21(2), F.S.

<sup>16</sup> S. 250.01(19), F.S.

<sup>17</sup> See notes 14, 15, and 16 and accompanying text, *infra*.

<sup>18</sup> S. 948.16(2), F.S., establishes the misdemeanor pretrial veterans' treatment intervention program.

<sup>19</sup> S. 948.08(7), F.S., authorizes a court to consider veterans charged with a non-disqualifying felony for a pretrial veterans' treatment intervention program. Disqualifying felonies are listed in s. 948.06(8)(c), F.S., and include 19 disqualifying offenses of a serious nature, including kidnapping, murder, sexual battery, treason, etc.

<sup>20</sup> S. 948.21, F.S.

The strategy is modeled after the 10 therapeutic jurisprudence principles and key components for treatment-based drug court programs.<sup>21</sup>

If a defendant agrees to participate in the pretrial intervention program, the court retains jurisdiction for the program term. At the end of the program, the court considers recommendations by the state attorney and the program administrator. If the veteran successfully completes the treatment program, the court must dismiss the criminal charges and the veteran may petition the court to expunge the arrest record and the plea.<sup>22</sup> If the veteran does not successfully complete the program, the court can order the veteran to continue education and treatment or authorize the state attorney to proceed with prosecution.<sup>23</sup>

### *Postadjudicatory Participation*

Veterans and servicemembers may also qualify for treatment and services as part of a criminal sentence. For crimes committed on or after July 1, 2012, a court may order a veteran or servicemember suffering from a military-related mental illness, traumatic brain injury, or substance abuse disorder to complete a mental health or substance abuse treatment program as a condition of probation or community control.<sup>24</sup>

### **Effect of Proposed Changes**

CS/HB 1265 expands eligibility for VTCs to individuals who are current or former:

- U.S. Department of Defense contractors.
- Military members of a foreign allied country.

A U.S. Department of Defense contractor is included as eligible for VTCs because such a person may experience war-related trauma similar to that experienced by military members.

The bill does not define "foreign allied country," and a definition of such does not appear elsewhere in Florida law. Presumably, a person seeking acceptance into a VTC under this provision would have to demonstrate he or she is a current or former military member of a country allied with the United States.

The bill provides an effective date of July 1, 2019.

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 394.47891, F.S., relating to military veterans and servicemembers court programs.

**Section 2:** Amends s. 948.08, F.S., relating to pretrial intervention program.

**Section 3:** Amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program; misdemeanor pretrial veterans' treatment intervention program; misdemeanor pretrial mental health court program.

**Section 4:** Amends s. 948.21, F.S., relating to condition of probation or community control; military servicemembers and veterans.

**Section 5:** Provides an effective date of July 1, 2019.

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<sup>21</sup> See s. 948.08(7)(b), F.S. (requiring a coordinated strategy for veterans charged with felonies); section 948.16(2)(b), F.S. (requiring a coordinated strategy for veterans charged with misdemeanors); s. 397.334(4), F.S. (requiring treatment based court programs to include therapeutic jurisprudence principles and components recognized by the United States Department of Justice and adopted by the Florida Supreme Court Treatment-based Drug Court Steering Committee).

<sup>22</sup> Ss. 948.16(2)(b) and 948.08(7)(b), F.S.

<sup>23</sup> S. 948.08(7)(b)-(c), F.S.

<sup>24</sup> S. 948.21, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The fiscal impact of this legislation on state and local governments is indeterminate due to the unavailability of data needed to quantifiably establish the increase in judicial time and workload as a result of expanding veterans court eligibility. However, any increase in judicial time and workload is expected to be managed within existing resources.<sup>25</sup>

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

Not applicable.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>25</sup> Office of the State Courts Administrator, *2019 Judicial Impact Statement – SB 910*, February 28, 2019, on file with the House Justice Appropriations Subcommittee.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 26, 2019, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Changed the eligibility requirements for a VTC by:
  - Expanding eligibility to U.S. Department of Defense contractors and current or former military members of a foreign allied country.
  - Removing from VTC eligibility veterans not honorably or generally discharged.
- Removed provisions requiring detailed procedures for VTCs.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.