

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1085 Veterans Treatment Court

SPONSOR(S): Ponder

TIED BILLS: **IDEN./SIM. BILLS:** SB 1496

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|---------|--|
| 1) Criminal Justice Subcommittee | 13 Y, 0 N | Jones | Hall |
| 2) Justice Appropriations Subcommittee | | | |
| 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 veterans, servicemembers, and other eligible individuals 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.

Eligibility for a VTC program is limited to a defendant with a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, and who is a:

- Veteran who was discharged or released under any condition;
- Servicemember;
- Current or former U.S. Department of Defense contractor; or
- Person who is a current or former military member of a foreign allied country.

HB 1085 creates uniform standards and procedures for VTCs. To be eligible for entry into a VTC, a defendant must be charged with a criminal offense and be a:

- Veteran;
- Member of the active or reserve components of the U.S. armed forces;
- Member of the Florida National Guard;
- Contractor for the U.S. Department of Defense; or
- Military member of a foreign allied country.

The chief judge and state attorney have the authority to:

- Decide whether to admit to a VTC a veteran who was dishonorably discharged.
- Issue administrative orders concerning the VTC.

The bill includes special provisions for when a defendant's participation results from a domestic violence charge. The victim must be referred to domestic violence service providers and given information on how to report the participant's violation of the participant agreement or commission of a new offense.

If a defendant in a VTC does not comply with the participant agreement, the court may modify or revoke the defendant's participation. On the other hand, if a participant completes all requirements of the agreement, the court must dispose of the defendant's charge in accordance with the participation agreement.

The bill may have a negative indeterminate impact on state government and appears to have no impact on local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Veterans Treatment Courts

Veterans' treatment courts (VTCs) are problem-solving courts addressing the root causes of criminal behavior.¹ 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.

Current law authorizes the chief judge of each judicial circuit to establish a VTC program to serve the special needs of veterans who were discharged or released under any condition, servicemembers,² current or former U.S. Department of Defense contractors, and individuals who are current or former military members of a foreign allied country who are charged with or convicted of a criminal offense and suffering from a:

- Military-related mental illness;
- Traumatic brain injury;
- Substance abuse disorder; or
- Psychological problem.³

VTCs consider whether an individual's military-related condition can be addressed through an individualized treatment program.⁴ Like drug courts, VTCs implement the following key components⁵ 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.⁶

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.⁷ VTCs involve not only

¹ Florida State Courts, *Problem-Solving Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/> (last visited Jan. 24, 2020).

² 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.

³ S. 394.47891, F.S.

⁴ *Id.*

⁵ S. 397.334(4), F.S.

⁶ See Florida State Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Jan. 24, 2020); 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 Jan. 24, 2020).

⁷ *Id.*

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;
- Veterans Benefit Administration;
- State Department of Veterans Affairs;
- Vet Centers;
- Veterans Service Organizations;
- Department of Labor;
- Volunteer veteran mentors; and
- Other veterans support groups.⁸

As of March 2019, Florida had 31 VTCs in operation.⁹

Eligibility

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

- Veteran, regardless of the manner of discharge or release;
- Servicemember;¹⁰
- Current or former U.S. Department of Defense contractor; or
- Individual who is a current or former military member of a foreign allied country.¹¹

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

- Charged with a misdemeanor¹² or certain felony offenses, pursuant to a pretrial intervention agreement;¹³ or
- Convicted and sentenced, as a condition of probation or community control.¹⁴

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. The strategy is modeled after the 10 therapeutic jurisprudence principles and key components for treatment-based drug court programs.¹⁵

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

⁸ Florida State Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Jan. 24, 2020).

⁹ *Id.*

¹⁰ 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.

¹¹ S. 394.47891, F.S.

¹² S. 948.16(2), F.S., establishes the misdemeanor pretrial veterans' treatment intervention program.

¹³ 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 offenses of a serious nature, including kidnapping, murder, sexual battery, treason, etc.

¹⁴ S. 948.21, F.S.

¹⁵ See s. 948.08(7)(b), F.S. (requiring a coordinated strategy for veterans charged with felonies); s. 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).

arrest record and the plea.¹⁶ 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.¹⁷

Postadjudicatory Participation

Veterans and servicemembers may also qualify for treatment and services as part of a criminal sentence. For crimes committed on or after October 1, 2019, a court may order an eligible participant suffering from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem to complete a treatment program as a condition of probation or community control.¹⁸

Effect of Proposed Changes

HB 1085 creates a statewide standard for operating VTCs. The bill allows a court with criminal jurisdiction to create and administer a VTC, which may adjudicate misdemeanors and felonies. A defendant may enter the VTC at any stage of a criminal proceeding.

To be eligible for entry into a VTC, a defendant must be charged with a criminal offense and must be a:

- Veteran;
- Member of the active or reserve components of the U.S. armed forces;
- Member of the Florida National Guard;
- Contractor for the U.S. Department of Defense; or
- Military member of a foreign allied country.

Moreover, the defendant must:

- Have a mental health condition, traumatic brain injury, or substance use disorder;
- Agree to enter the program voluntarily;
- Sign a participant agreement, which must be approved by the court, and if admission is sought before conviction, must also be signed by the prosecutor; and
- Show that his or her participation is in the interest of justice and of benefit to the defendant and the community, as determined by:
 - The state attorney, with regard to pretrial diversion; or
 - The court, in any other situation.

If a defense attorney chooses to have a case heard in a VTC, he or she must submit an application to the state attorney. The state attorney and court must review each application for admission and determine if the applicant is eligible, based on the following factors:

- The offense charged;
- The defendant's and victim's special characteristics and circumstances;
- The defendant's criminal history;
- Whether the defendant previously participated in a VTC;
- Whether the VTC is unable to provide for the defendant's needs;
- Whether the community will benefit from the defendant's participation;
- Any recommendations from the victim or law enforcement agency investigating the defendant;
- The defendant's ability to pay restitution;
- Mitigating circumstances; and
- Other circumstances related to the defendant's case.

The chief judge and state attorney of the circuit:

- May issue administrative orders concerning the VTC.
- Have sole authority to determine whether to admit a veteran who has been dishonorably discharged.

¹⁶ Ss. 948.16(2)(b) and 948.08(7)(b), F.S.

¹⁷ S. 948.08(7)(b)-(c), F.S.

¹⁸ S. 948.21, F.S.

A VTC must:

- Seek input from the state attorneys and other interested persons;
- Consult nationally-recognized best practices for VTCs; and
- Adopt written policies and procedures to implement:
 - The integration and provision of substance abuse and mental health treatment;
 - A nonadversarial approach;
 - Early identification of eligible defendants;
 - Monitoring of alcohol and drug use;
 - Ongoing judicial interaction;
 - The monitoring and evaluation of each defendant's achievement of program goals; and
 - Partnerships among VTCs, federal and state veterans agencies, and community-based organizations.

A VTC's written policies and procedures may include provisions for:

- Referring a defendant to a health care provider or to assistance for housing, employment, nutrition, mentoring, or education;
- Referring a defendant who is a victim of domestic violence, sexual trauma, child abuse, or other trauma to appropriate rehabilitative services;
- Conferring with a victim of domestic violence when a domestic violence charge forms the basis for the defendant's court participation;
- Specific counseling and monitoring for a defendant charged with domestic violence; and
- Otherwise encouraging participation in a VTC.

The bill includes special provisions for when a defendant is participating in a VTC program due to a domestic violence charge. In such case, if the victim can be reasonably located, he or she must be:

- Consulted as to his or her recommendation;
- Referred to domestic violence service providers; and
- Given information on how to report any violation of the participant agreement or commission of a new offense.

If, after a hearing, the VTC determines a participant has not complied with the participant agreement, the court may modify or revoke the defendant's participation. On the other hand, if a participant completes all requirements of the participant agreement, the court must dispose of the charge in accordance with the participant agreement and any applicable plea agreement, court order, or judgment.

The bill requires a VTC to create a record of its policies and procedures. However, the bill protects sensitive health information from becoming a part of that record by exempting from the definition of "record" any:

- Record submitted by a defendant that is subject to the confidentiality requirements under 42 U.S.C. s. 290dd-2,¹⁹ and 45 C.F.R. part 2.²⁰
- Individually identifiable health information.
- Record pertaining to a defendant receiving substance abuse treatment in a VTC which is subject to certain state and federal privacy statutes and regulations.

The bill must be liberally construed but does not create a right to participate in a VTC.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Creates s. 26.58, F.S., relating to Florida Veterans Treatment Court Act.

Section 2: Provides an effective date of July 1, 2020.

¹⁹ This provision pertains to the confidentiality of records under federal law.

²⁰ This provision pertains to the confidentiality of substance use disorder patient records under federal regulations.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill does not require the creation of a VTC. However, it does require all VTCs to meet certain requirements, which may have a negative indeterminate impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill does not require the creation of a VTC. However, it does require all VTCs to meet certain requirements, which may have a negative indeterminate impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires veterans treatment courts currently in existence to comply with certain standards. However, an exemption may apply because the fiscal impact may be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES