

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1085 Veterans Treatment Court

**SPONSOR(S):** Judiciary Committee, Ponder

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Jones	Hall
2) Justice Appropriations Subcommittee	11 Y, 0 N	Smith	Gusky
3) Judiciary Committee	15 Y, 0 N, As CS	Jones	Luczynski

### 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
- Current or former military member of a foreign allied country.

CS/HB 1085 creates uniform standards and procedures for VTCs. Under the bill, there is no requirement that the defendant's mental illness, traumatic brain injury, substance abuse disorder, or psychological problem must be military-related. Instead, the bill gives discretion to the state attorney and court to make such admission decisions on a case-by-case basis.

The chief judge may issue administrative orders concerning the VTC. The chief judge and state attorney also have the authority to decide whether to admit dishonorably discharged veterans to a VTC.

If a defendant in a VTC does not comply with his or her 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 agreement.

The bill clarifies that a Military Veterans and Servicemembers Court in operation as of June 30, 2020, may continue in operation but must comply with the bill's terms. The bill does not affect the rights or responsibilities of a person participating in such a court at the time the bill becomes effective.

The bill may have an indeterminate impact on state and local governments, to the extent that the provisions in the bill increase court-related workload in counties with existing VTCs.

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.<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.

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,<sup>2</sup> 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.<sup>3</sup>

VTCs consider whether an individual's military-related condition can be addressed through an individualized treatment program.<sup>4</sup> Like drug courts, VTCs implement the following key components<sup>5</sup> when addressing an 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>6</sup>

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<sup>1</sup> Florida State Courts, *Problem-Solving Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/> (last visited Feb. 18, 2020).

<sup>2</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>3</sup> S. 394.47891, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> S. 397.334(4), F.S.

<sup>6</sup> See Florida State Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Feb. 18, 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 Feb. 18, 2020).

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>7</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;
- The Veterans Benefit Administration;
- The State Department of Veterans Affairs;
- Vet Centers;
- Veterans Service Organizations;
- The Department of Labor;
- Volunteer veteran mentors; and
- Other veterans support groups.<sup>8</sup>

As of March 2019, Florida had 31 VTCs in operation.<sup>9</sup>

### Eligibility

To be eligible to participate in a 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;
- Current or former U.S. Department of Defense contractor; or
- Individual who is a current or former military member of a foreign allied country.<sup>10</sup>

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

- Charged with a misdemeanor<sup>11</sup> or certain felony offenses, pursuant to a pretrial intervention agreement;<sup>12</sup> or
- Convicted and sentenced, as a condition of probation or community control.<sup>13</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. The strategy is modeled after the 10 therapeutic jurisprudence principles and key components for treatment-based drug court programs.<sup>14</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

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<sup>7</sup> *Id.*

<sup>8</sup> Florida State Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Feb. 18, 2020).

<sup>9</sup> *Id.*

<sup>10</sup> S. 394.47891, F.S.

<sup>11</sup> S. 948.16(2), F.S., establishes the misdemeanor pretrial veterans' treatment intervention program.

<sup>12</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 offenses of a serious nature, including kidnapping, murder, sexual battery, treason, etc.

<sup>13</sup> S. 948.21, F.S.

<sup>14</sup> 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.<sup>15</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>16</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 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.<sup>17</sup>

### **Effect of Proposed Changes**

CS/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;
- Current or former contractor for the U.S. Department of Defense; or
- Current or former military member of a foreign allied country.

Moreover, the defendant must:

- Have a mental health condition, traumatic brain injury, substance use disorder, or psychological problem;
- Agree to enter the program voluntarily;
- Sign a participant agreement, which must be approved by the court, and if admission is sought pretrial, must also be signed by the state attorney; 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.

There is no requirement that the defendant's mental illness, traumatic brain injury, substance abuse disorder, or psychological problem must be military-related. Instead, the bill gives discretion to the state attorney and court to make such admission decisions on a case-by-case basis.

If a defendant seeks to participate in a VTC, he or she must submit an application to the state attorney. The state attorney and court must review each application 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 able 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.

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<sup>15</sup> Ss. 948.16(2)(b) and 948.08(7)(b), F.S.

<sup>16</sup> S. 948.08(7)(b)-(c), F.S.

<sup>17</sup> S. 948.21, F.S.

The chief judge and state attorney of the circuit have exclusive authority to determine whether to admit veterans who have been dishonorably discharged. Additionally, the chief judge may issue administrative orders concerning the VTC.

A VTC must:

- Create a record of its policies and procedures;
- Seek input from the state attorney and other interested persons;
- Consult nationally-recognized best practices for VTCs; and
- 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;
  - 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, education, or driver license reinstatement; and
- Otherwise encouraging participation in a VTC.

If, after a hearing, the VTC determines a defendant has not complied with the participant agreement, the court may modify or revoke the defendant's participation. On the other hand, if a defendant 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 clarifies that a court may impose VTC treatment for a probationer or community controllee who commits a crime on or after July 1, 2020, and who is qualified to participate in a VTC.

The bill ensures that a Military Veterans and Servicemembers Court in operation as of June 30, 2020, may continue in operation when the bill becomes effective but must comply with the terms of the bill. The bill does not affect the rights or responsibilities of a person participating in such a court at the time the bill becomes effective. 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:** Amends s. 394.47891, F.S., relating to Military Veterans and servicemembers court programs.

**Section 2:** Amends s. 43.51, F.S., relating to problem-solving court reports.

**Section 3:** Amends s. 910.035, F.S., relating to transfer from county for plea, sentence, or participation in a problem-solving court.

**Section 4:** Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

**Section 5:** Amends s. 948.08, F.S., relating to pretrial intervention program.

**Section 6:** 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 7:** Amends s. 948.21, F.S., relating to condition of probation or community control; military servicemembers and veterans.

**Section 8:** Creates an unnumbered section to provide for applicability to Military Veterans and Servicemembers Court Programs in operation as of June 30, 2020.

**Section 9:** Provides an effective date of July 1, 2020.

## 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 an indeterminate impact on state expenditures to the extent that the requirements increase court related workload in counties with existing VTCs.

### 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 an indeterminate impact on local expenditures to the extent that the requirements increase Clerk workload in counties with existing VTCs.

### 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 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**

On February 18, 2020, the Judiciary Committee adopted a proposed committee substitute with an amendment and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed in that the committee substitute:

- Moved the proposed veterans treatment court (VTC) language to chapter 394.
- Provided that former U.S. Department of Defense contractors and former military members of a foreign allied country are eligible for VTCs.
- Clarified that only the judge may issue administrative orders for a VTC.
- Provided that a VTC may adopt procedures to refer veterans for assistance with housing, employment, and driver license reinstatement.
- Clarified that a defendant participating in a VTC when the bill is enacted keeps any rights and responsibilities that he or she had before the bill's enactment.
- Removed unnecessary language relating to the confidentiality of records and procedures for victims of domestic violence.
- Made other technical, clarifying, conforming, and stylistic changes.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.