

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7023 PCB CRM 21-01 Veterans Treatment Court Programs
SPONSOR(S): Judiciary Committee, Criminal Justice & Public Safety Subcommittee, Byrd and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/CS/SB 764

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|------------------|---------|--|
| Orig. Comm.: Criminal Justice & Public Safety Subcommittee | 17 Y, 0 N | Padgett | Hall |
| 1) Judiciary Committee | 21 Y, 0 N, As CS | Padgett | Kramer |

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 7023 amends s. 394.47891, F.S., to create uniform standards and procedures for VTCs. The bill allows a court with criminal jurisdiction to create and administer a VTC, which may adjudicate both felony and misdemeanor offenses.

To be eligible to participate in a VTC, a servicemember or veteran must:

- Have a service-related mental health condition, traumatic brain injury, substance use disorder, psychological problem, or have experienced military sexual trauma; and
- Show that his or her participation is in the interest of justice and to his or her benefit and the benefit of the community, as determined by the state attorney in consultation with the court.

If a defendant seeks to participate in a VTC, he or she must submit an application to the state attorney. The state attorney, in consultation with the court, must review each application and determine if the applicant is eligible based on an extensive list of factors, including the nature and circumstances of the criminal offense, the defendant's criminal history, the defendant's previous participation in a VTC, whether the VTC can meet the defendant's needs, and recommendations from law enforcement. A defendant may enter the VTC at any stage of a criminal proceeding.

The bill amends s. 948.21, F.S., to clarify that a Military Veterans and Servicemembers Court in operation as of June 30, 2021, 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, 2021.

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

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

- Charged with a misdemeanor⁴ or certain felony offenses, pursuant to a pretrial intervention agreement;⁵ or
- Convicted and sentenced, as a condition of probation or community control.⁶

VTCs consider whether an individual's military-related condition can be addressed through an individualized treatment program.⁷ Like drug courts, VTCs implement the following key components⁸ 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;

¹ Florida State Courts, *Problem-Solving Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/> (last visited Mar. 29, 2021).

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

⁵ 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 serious crimes such as murder, kidnapping, robbery, carjacking, sexual battery, lewd and lascivious battery, aggravated battery, aggravated stalking, aggravated assault, etc.

⁶ S. 948.21, F.S.

⁷ *Id.*

⁸ S. 397.334(4), F.S.

- Monitoring and evaluating program effectiveness;
- Interdisciplinary education; and
- Partnerships with stakeholders.⁹

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.¹⁰ 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.¹¹

As of September 2020, Florida had 31 VTCs in operation.¹²

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 ten therapeutic jurisprudence principles and key components for treatment-based drug court programs.¹³

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.¹⁴ 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.¹⁵

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

⁹ See Florida State Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Mar. 29, 2021); 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. 29, 2021).

¹⁰ *Id.*

¹¹ Florida State Courts, *Veterans Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Veterans-Courts> (last visited Mar. 29, 2021).

¹² *Id.*

¹³ 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).

¹⁴ Ss. 948.16(2)(b) and 948.08(7)(b), F.S.

¹⁵ S. 948.08(7)(b)–(c), F.S.

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.¹⁶

Effect of Proposed Changes

CS/HB 7023 amends s. 394.47891, F.S., to create a statewide standard for operating VTCs. The bill allows a court with criminal jurisdiction to create and administer a VTC, which may adjudicate both felony and misdemeanor offenses. 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, defined as a person who has served in the armed forces; or
- A servicemember, defined as a:
 - Member of the active or reserve components of the U.S. Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard;
 - 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 service-related mental health condition, traumatic brain injury, substance use disorder, psychological problem, or have experienced military sexual trauma; and
- Show that his or her participation is in the interest of justice and to his or her benefit and the benefit of the community, as determined by the state attorney in consultation with the court.

The bill defines “military sexual trauma” as psychological trauma that results from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the servicemember or veteran was serving on active duty, active duty for training, or inactive duty training.

If a defendant seeks to participate in a VTC, he or she must submit an application to the state attorney. The state attorney must review each application and, in consultation with the court, determine if the applicant is eligible, based on the following factors:

- The nature and circumstances of the offense charged;
- The defendant's and victim's or alleged 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 arresting or 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 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:

¹⁶ S. 948.21, F.S.

- The integration and provision of substance abuse and mental health treatment;
- A nonadversarial approach;
- Early identification of eligible defendants;
- Monitoring for abstinence 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.

The bill amends s. 948.21, F.S., to clarify that a court may impose participation in a VTC for a probationer or community controllee who commits a crime on or after July 1, 2021, 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, 2021, may continue operating, but must comply with the requirements 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, 2021.

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, 2021.

Section 9: Provides an effective date of July 1, 2021.

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:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority the counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 9, 2021, the Criminal Justice & Public Safety Subcommittee adopted one amendment and reported the committee bill favorably. The amendment:

- Required the state attorney to consult with the court when determining if a defendant meets the criteria for entry into a VTC program.

On March 29, 2021, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Defined military sexual trauma;

- Expanded eligibility, both pretrial and posttrial, for a VTC program to include a defendant who has experienced military sexual trauma; and
- Removed the exclusion for VTC eligibility for a defendant who committed a misdemeanor criminal traffic offense.

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