COMMITTEE REPORT

May 29, 2013

**H. 3014**

Introduced by Reps. J.E. Smith, Bernstein, M.S. McLeod, McEachern, Weeks, Hart and Gilliard

S. Printed 5/29/13--S.

Read the first time April 23, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3014) to amend the Code of Laws of South Carolina, 1976, by adding Chapter 29 to Title 14 so as to enact the “Veterans Treatment Court Program Act”, to require, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 2, by striking line 29, in Section 14-29-30, as contained in SECTION 1, and inserting therein the following:

/ funds. Each circuit solicitor that accepts state funding for the /

Amend the bill further, as and if amended, page 3, by striking lines 6-8, in Section 14-29-40(B)(4) as contained in SECTION 1, and inserting therein the following:

/ (4) receive an allowance for mileage, subsistence, and per diem paid by the solicitor's office when engaged in the exercise of duties as a veterans treatment court judge; /

Amend the bill further, as and if amended, page 3, by striking line 15, in Section 14-29-40(B)(7) as contained in SECTION 1, and inserting therein the following:

/ (7) receive training provided for this service by organizations which offer this type of training; and /

Amend the bill further, as and if amended, page 3, by striking line 36, in Section 14-29-40(C)(5) as contained in SECTION 1, and inserting therein the following:

/ solicitor, a certified or licensed drug and alcohol counselor, a veterans affairs counselor, /

Amend the bill further, as and if amended, page 8, by striking lines 1-19, in Sections 14-29-70(A) and (B), as contained in SECTION 1, and inserting therein the following:

/ Section 14‑29‑70. (A) The transfer of an offender from the custody and jurisdiction of the circuit court to custody and jurisdiction of the veterans treatment court must be made by issue of a written order from the circuit court in response to the approval of the application by the veterans treatment court. This order must provide for the deferment of the offender’s sentence pending the conclusion of the veterans treatment court program. The veterans treatment court then shall control and be responsible for the custody of the offender upon entry of the circuit court’s order.

(B) Where a person fails to successfully complete the program and is consequently dismissed from the program, the veterans treatment court must transfer custody of the person to the circuit court for the imposition of the sentence. A court may not reduce a sentence for time spent participating in a veterans treatment court program and other conditions of the sentence. /

Renumber sections to conform.

Amend title to conform.

C. BRADLEY HUTTO for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

A Cost to the General Fund (See Below)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Judicial Department

The department indicates that this bill will have a fiscal impact on the General Fund of the State, but due to the lack of empirical data on the volume of veterans seeking and granted admission to the program in each circuit and the overall uncertainty as to the number of Solicitors that will establish veteran treatment courts, the department is unable to provide and accurate estimate as to the overall cost. The department did state that since the judge must reside in the judicial district where he serves, the travel costs would be minimized.

The Commission on Indigent Defense

The commission indicates that this bill will have a fiscal impact on the General Fund of the State, but due to the lack of specific funding for the Public Defenders Offices in each of the 16 Circuits and the unknown volume of veterans seeking and granted admission to the program in each circuit, the commission is unable to provide an accurate estimate as to the overall cost.

The Prosecution Coordination Commission

It is unknown what the statewide fiscal impact would be for this bill. Currently, there are only 3 Veterans Court Programs in Richland County, Charleston County and Greenville County. The Charleston and Greenville Programs are both divisions of their Drug Court Programs. Some Circuits may be able to absorb the cost of establishing and running a Veterans Court Program but some Circuits may require a part-time Veterans Court Administrator to supervise and coordinate the program.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 29 TO TITLE 14 SO AS TO ENACT THE “VETERANS TREATMENT COURT PROGRAM ACT”, TO REQUIRE THE CREATION AND ADMINISTRATION OF A VETERANS TREATMENT COURT PROGRAM IN EACH JUDICIAL CIRCUIT BY THE ATTORNEY GENERAL, TO PROVIDE FOR THE APPOINTMENT, POWERS, AND DUTIES OF A VETERANS TREATMENT COURT JUDGE, AND TO PROVIDE FOR REQUIREMENTS FOR AN OFFENDER TO QUALIFY FOR ADMISSION TO A VETERANS TREATMENT COURT PROGRAM.

Whereas, researchers have shown that a significant number of members of the United States Armed Forces who have served in Iraq and Afghanistan will suffer, as a result of their military service, mental health injuries, such as post-traumatic stress disorder, depression, anxiety and acute stress, and injuries that affect brain function, such as traumatic brain injury; and

Whereas, while the vast majority of returning members of the United States Armed Forces do not have contact with the criminal justice system, and most veterans and members of the United States Armed Forces are well-adjusted, contributing members of society, psychiatrists and law enforcement officials agree that combat-related injuries have led to instances of criminality; and

Whereas, as a grateful State, we must continue to honor the military service of our men and women by providing them with an alternative to incarceration when feasible, permitting them instead to obtain proper treatment for mental health and substance abuse problems that have resulted from military service. Now, therefore,

SECTION 1. Title 14 of the 1976 Code is amended by adding:

“CHAPTER 29

Veterans Treatment Program

Section 14‑29‑10. This Chapter may be cited as the ‘Veterans Treatment Court Program Act’.

Section 14‑29‑20. The General Assembly recognizes the success of various other states’ veterans court initiatives in rehabilitating certain nonviolent offenders who are veterans of a military conflict in which the United States military is or has been involved. The purpose of this chapter is to divert qualifying nonviolent military veteran offenders away from the criminal justice system and into appropriate treatment programs, thereby reserving prison space for violent criminals and others for whom incarceration is the only reasonable alternative. This chapter intends to set standards and procedures to facilitate the creation and continuation of these programs across the State, while leaving local jurisdictions the flexibility to tailor individual programs to local needs.

Section 14‑29‑30. Each circuit solicitor may establish a veterans treatment court program subject to the availability of funds. Each circuit solicitor that receives state funding for the implementation of a veterans treatment court program must establish and administer at least one veterans treatment court program for the circuit within one hundred eighty days of receipt of funding. The circuit solicitor must administer the program and ensure that all eligible persons are permitted to apply for admission to the program.

Section 14‑29‑40. (A) The Chief Justice shall appoint judges of the veterans treatment court upon the recommendation of the circuit solicitor for that judicial circuit.

(B) A veterans treatment court judge must:

(1) be a member in good standing with the South Carolina Bar or a member, active or retired, of the Unified Judicial System;

(2) serve at the pleasure of the Chief Justice for a term of two years and may be reappointed;

(3) receive no salary for his service as a veterans treatment court judge and must serve as a veterans treatment court judge on a voluntary basis;

(4) receive an allowance for mileage, subsistence, and per diem when engaged in the exercise of his duties as a veterans treatment court judge;

(5) be exempt during his term from Rule 608, South Carolina Appellate Court Rules, relating to the appointment of lawyers for indigents;

(6) enjoy in a veterans treatment court proceeding or action the same privileges, immunities, and protections from civil liability as a circuit court judge;

(7) receive training provided for this service; and

(8) reside in the judicial circuit where he serves.

(C) A veterans treatment court judge shall preside subject to the Code of Judicial Conduct with the goal of instilling discipline, promoting rehabilitation, and encouraging participants’ successful completion of the veterans treatment court program. A veterans treatment court judge has the authority of a circuit court judge acting in probation matters, including, among other things, the authority to:

(1) maintain order and decorum in all proceedings, including use of the contempt power;

(2) issue an order of acceptance of a participant in the program and an order of dismissal from the program;

(3) impose by written order a sanction dismissing a participant from the veterans treatment court program or incarcerating him for failing to meet a condition, requirement, or goal ordered by the veterans treatment court;

(4) issue to a participant a certificate indicating his successful completion of the veterans treatment court program;

(5) order conditions or requirements of a rehabilitation plan for a participant, developed after consultation with the circuit solicitor, a drug or alcohol counselor, a veterans affairs counselor, or other professionals the veterans treatment court judge considers beneficial, with the conditions and requirements to include school, education, vocational training, work, drug or alcohol testing, counseling, reporting, treatment, curfew, monitoring, restitution, community service, anger management, or other measures the judge considers appropriate; and

(6) take action he considers necessary to carry out the veterans treatment court’s functions provided in this chapter.

Section 14‑29‑50. (A) A person seeking admission to the veterans treatment court program:

(1) must execute a veterans treatment court agreement specified in this chapter;

(2) must receive approval of the circuit solicitor;

(3) may not have been previously admitted to a veterans treatment court program;

(4) may have no prior conviction or pending charges for:

(a) a violent crime as defined in Section 16‑1‑60;

(b) an offense for which the offender was placed on the sex offender registry pursuant to Section 23‑3‑430;

(c) the offense of lynching in the first degree pursuant to Section 16‑3‑210 or lynching in the second degree pursuant to Section 16‑3‑220;

(d) the common law offense of assault and battery of a high and aggravated nature;

(e) the offense of carjacking pursuant to Section 16‑3‑1075;

(f) the offense of harassment or stalking pursuant to Article 17, Chapter 3, Title 16; or

(g) the offense of causing great bodily injury or death by operating a vehicle while under the influence of drugs or alcohol pursuant to Section 56‑5‑2945; and

(5) must have an active sentence of thirty days or more for a nonviolent crime not exempted pursuant to item (4).

(B) A veterans treatment court agreement required in subsection (A) may serve as the offender’s application for admission to a veterans treatment court program and jurisdiction, and shall include:

(1) sufficient proof that the offender is a veteran or current member of the United States Armed Forces, including the Reserves or National Guard;

(2) sufficient proof that the offender suffers from a brain injury, mental illness, or mental disorder, including post‑traumatic stress disorder;

(3) an acknowledgement by the offender that his application is voluntary and freely entered into;

(4) an agreement that, if accepted, he will comply with all conditions, rules and requirements imposed upon him in the veterans treatment court program, including a rehabilitation plan;

(5) an acknowledgement that, if accepted, he may be dismissed from the program at the discretion of the veterans treatment court judge and consequently transferred to the circuit court for commencement of his entire original sentence, without reduction;

(6) an acknowledgement and agreement that he has no right to appeal or enjoin a decision of the veterans treatment court judge;

(7) an acknowledgement and agreement that the post‑conviction relief procedures do not apply to the veterans treatment court program, and a relinquishment of all rights to post‑conviction relief;

(8) an agreement to cooperate fully with those involved in his rehabilitation plan and to comply with the requirements and conditions of the plan, including the submission to analysis, testing, treatment, counseling, evaluation, and providing complete personal, health, and family information, and executing releases to accomplish the provision of this information;

(9) an agreement to bear, subject to his ability to pay, the costs of analysis, testing, treatment, counseling, or evaluation in a rehabilitation plan prescribed in the program, and an agreement that funds paid by the participant or on his behalf during the course of the veterans treatment court program may not be refundable in any event, including his dismissal from the program;

(10) a general explanation of the purpose and concept of the veterans treatment court program;

(11) a statement of the offender’s knowing, willing, and full consent and submission to the authority of the veterans treatment court and its process;

(12) the signature of the offender and, if any, his counsel; and

(13) other statements, acknowledgements, or agreements the circuit solicitor may consider appropriate.

(C) In determining whether to accept an offender for admission to the veterans treatment court program, the circuit solicitor shall consider, among other things:

(1) the veterans treatment court agreement presented by the offender;

(2) the nature of the offense for which the offender was convicted in circuit court;

(3) the offender’s prior criminal history;

(4) the offender’s prior substance abuse history;

(5) the likelihood that the offender successfully will complete the program;

(6) the risk and danger posed to the community by the offender’s remaining at large;

(7) the benefits likely resulting to the community and this State from the offender’s acceptance into the program, including cost savings, public service or private employment, enhancement of the offender’s ability to pay restitution, support or comfort of his family, and the decreased likelihood of future criminal activity;

(8) the benefits likely resulting to the offender upon his being accepted into the program, including drug or alcohol rehabilitation, education, training, family support, discipline, employment, physical and mental health, and the opportunity for a productive life;

(9) a positive recommendation or statement from the victim, the victim’s family, law enforcement, or the community, the recommendation after screening by a qualified person selected by the solicitor or provided by a state, county, or municipal agency to determine the mental health or drug or alcohol dependence of the applicant and his likelihood of successful completion of a rehabilitation plan prescribed in this program;

(10) the risk and danger posed to the victim or victim’s family by the offender remaining at large; and

(11) other circumstances or matters the veterans treatment court judge may consider appropriate.

(D) The veterans treatment court’s acceptance of the offender as a participant must be presented to the circuit court. The circuit court, in its discretion, may order the transfer of the offender to the custody and jurisdiction of the veterans treatment court for commencement of the veterans treatment court program. The circuit court shall provide in its order that the participant must be returned to the circuit court for final disposition, as provided in this chapter, upon his successful completion of the program or his dismissal from the program.

(E) Notice must be provided to all victims pursuant to the Victims’ Bill of Rights.

Section 14‑29‑60. (A) When establishing a veterans treatment court program, the circuit solicitor:

(1) may address the particular requirements and circumstances of the circuit. The procedure is subject to and consistent with the uniform procedures provided in this chapter, including:

(a) a veterans treatment court program must be at least twelve months in duration but no more than eighteen months in duration for a participant, although the program may be extended for a maximum of six additional months by the veterans treatment court;

(b) a veterans treatment court session must be held in a courtroom assigned by the appropriate court official or another place the veterans treatment court judge considers appropriate and where proper decorum, safety, and efficiency must be maintained;

(c) a veterans treatment court session must be held at a time and place that will promote the maximum convenience and attendance of associated parties, especially a participating offender and his family, and, absent an agreement to the contrary, should be held on a weekday and commencing no earlier than 5:30 p.m.; and

(d) a veterans treatment court program may require the presence of a person necessary for the efficient operation of a veterans treatment court session;

(2) shall designate in his office a person to serve as his veterans treatment court administrator to supervise and coordinate the implementation of the program. These duties shall include the scheduling of the hearings, notification of the persons involved, maintenance and safeguarding of all records and orders associated with the program, filing of all orders and other appropriate documents with the appropriate clerk of court, and the production of a report required by this chapter; and

(3) through his designated administrator, shall supervise and coordinate the selection of counselors or other professionals to analyze, test, treat, and evaluate an applicant or participant contemplated in this chapter, and at least annually shall report to the South Carolina Commission on Prosecution Coordination information regarding funds expended by the circuit solicitor for these purposes.

(B) The South Carolina Commission on Prosecution Coordination shall assist the circuit solicitor and veterans treatment court in establishing a uniform system of procedures, statistics, and processes as set forth in this chapter, collecting reports it prescribes from the circuit administrator in order to measure the progress and operations of the veterans treatment courts, and annually issuing a comprehensive report of its findings and recommendations no later than sixty days following the end of the fiscal year.

(C) The Supreme Court may propose and adopt rules for the veterans treatment court program in the same manner as it proposes and promulgates rules for other courts in the Unified Judicial System.

Section 14‑29‑70. (A) The transfer of an offender from the custody and jurisdiction of the circuit court to custody and jurisdiction of the veterans treatment court must be made by issue of a written order from the circuit court in response to the approval of the application by the veterans treatment court. This order must provide for the suspension of the offender’s sentence pending the conclusion of the veterans treatment court program. The veterans treatment court then shall control and be responsible for the custody of the offender upon entry of the circuit court’s order.

(B) A veterans treatment court judge must transfer to the circuit court custody of a person who successfully completes the program, and the circuit court must immediately release the successful participant from his sentence. Where a person fails to successfully complete the program and is consequently dismissed from the program, the veterans treatment court must transfer custody of the person to the circuit court for commencement of the sentence interrupted by the veterans treatment court program. A court may not reduce a sentence for time spent participating in a veterans treatment court program and other conditions of the sentence.

(C) The constitutional notice requirements of the Victims’ Bill of Rights apply to a transfer, completion, or failure pursuant to this section.

Section 14-29-80. Nothing contained in this chapter affects the operation or establishment of juvenile drug courts in South Carolina.

Section 14-29-90. The General Assembly shall appropriate funds annually to an account to be maintained by the Supreme Court for the payment of mileage, subsistence, and per diem for veterans treatment court judges as provided by this chapter.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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