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BILL



ANALYSIS

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House Bill 5159 (as passed by the House)
House Bill 5162 (Substitute H-1 as passed by the House)
Sponsor: Representative Wayne Schmidt (H.B. 5159)
Representative Kurt Damrow (H.B. 5162)
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 7-17-12

CONTENT

House Bill 5162 (H-1) would add Chapter 12 to the Revised Judicature Act (RJA) to authorize circuit and district courts to establish veterans treatment courts, which would provide a treatment program for veterans who are substance abusers or mentally ill. The bill would do the following:

- Require a veterans treatment court to comply with the modified version of the 10 key components of drug treatment courts.
- Require a court that adopted a veterans treatment court to enter into a memorandum of understanding with certain parties.
- Require a veterans treatment court to participate in training required by the State Court Administrative Office.
- Provide for participation of veterans from outside of the court's jurisdiction, under certain circumstances.
- Establish requirements for a person's admission to a veterans treatment court, and allow admission of an eligible participant who was subject to discharge and dismissal under another provision of law.

- Require a preadmission screening and period evaluations of veterans treatment court participants.
- Provide for the confidentiality of a statement or other information obtained as result of an individual's participation in preadmission screening or a veterans treatment court program.
- Require the State Police, upon request, to give the court certain information contained in the Law Enforcement Information Network.
- Require a veterans treatment court to accept the guilty plea of an individual admitted to the court, and allow deferral of proceedings.
- Require a veterans treatment court to maintain jurisdiction over a participant until final disposition of the case.
- Specify services that a veterans treatment court would have to provide to a participant.
- Require a participant to pay certain costs and fees, but allow the court to waive all or part of them under certain circumstances.
- Establish requirements for the adjudication and sentencing of participants, or the discharge and dismissal of charges, as applicable.
- Establish data collection and reporting requirements.

- **Authorize the Supreme Court to spend State funds for the establishment and operation of veterans treatment courts, and require the distribution of Federal funds provided to the State for the operation of the courts.**

The bill includes a number of statements of legislative intent that the U.S. Department of Veterans Affairs (VA) should provide certain services, including clinical evaluations of drug and alcohol treatment and mental health services.

House Bill 5159 would amend Chapter 10A (Drug Treatment Courts) of the RJA to require the State Drug Treatment Court Advisory Committee to monitor the effectiveness of veterans treatment courts and present annual recommendations regarding them to the Legislature and Supreme Court. The bill also would add a circuit or district court judge who had presided over a veterans treatment court to the Advisory Committee.

The bills are tie-barred.

House Bill 5162 (H-1)

Establishment of Veterans Treatment Court

The bill would define "veterans treatment court" or "veterans court" as a court adopted or instituted under Chapter 12 that provides a supervised treatment program for individuals who are veterans and who abuse or are dependent upon any controlled substance or alcohol or suffer from a mental illness. "Veteran" would mean any of the following:

- A person who served on active duty in the Armed Forces for a more than 180 days and separated from the Armed Forces in a manner other than a dishonorable discharge.
- A person discharged or released from active duty because of a service-related disability.

- A member of a reserve branch of the Armed Forces at the time he or she was ordered to active duty during a period of war, or in a campaign or expedition for which a campaign badge is authorized, and was released from active duty in a manner other than a dishonorable discharge.

The bill would require that a veterans court to comply with the modified version of the 10 key components of drug treatment courts, as promulgated by the Buffalo Veterans Treatment Court. Those components include all of the following essential characteristics:

- Integration of alcohol, drug treatment, and mental health services with justice system case processing.
- Use of a nonadversarial approach; prosecution and defense counsel promote public safety while protecting participants' due process rights.
- Early and prompt identification and placement of eligible participants in the program.
- Provision of access to a continuum of alcohol, drug, mental health, and related treatment and rehabilitation services.
- Monitoring of abstinence by frequent alcohol and other drug testing.
- A coordinated strategy that governs veterans treatment court response to participants' compliance.
- Ongoing judicial interaction with each veteran is essential.
- Monitoring and evaluation to measure the achievement of program goals and gauge effectiveness.
- Continuing interdisciplinary education promotes effective veterans treatment court planning, implementation, and operations.
- Forging of partnerships among veterans treatment court, Veterans Administration, public agencies, and community-based organizations generates local support and enhances veteran treatment court effectiveness.

The bill would allow any circuit court or district court to adopt or institute a veterans treatment court by statute or

court rule, if the court entered into a memorandum of understanding (MOU) with each participating prosecuting attorney, a representative of the criminal defense bar, at least one representative of community treatment providers, at least one representative of veterans service organizations in the circuit or district, and at least one representative of the VA. The MOU would have to include the prosecuting attorney only if the veterans court would include in its program individuals who could be eligible for discharge and dismissal of an offense, a delayed sentence, or a sentence involving deviation from the sentencing guidelines. The MOU also could include other parties considered necessary, such as any other prosecutor in the circuit or district, local law enforcement, the probation department in the circuit or district, the local substance abuse coordinating agency, a domestic violence service provider program that received funding from the State Domestic Violence Prevention and Treatment Board, a representative of the court's local funding unit, and community corrections agencies in the circuit or district. The MOU would have to describe the role of each party, and the conditions for which the MOU would be reviewed and amended.

A court that adopted a veterans treatment court would have to participate in training as required by the State Court Administrative Office (SCAO).

A court that adopted a veterans treatment court could accept participants from any other jurisdiction in Michigan based upon either a participant's residence in the receiving jurisdiction or the unavailability of a veterans court in the jurisdiction where a participant was charged. The transfer could occur at any time during the proceedings, including before adjudication. The receiving court would have jurisdiction to impose sentence, including sanctions, incentives, incarceration, and phase changes. A transfer would not be valid unless it were agreed to by all of the following:

- The defendant or respondent.

- The attorney representing the defendant or respondent.
- The judge of the transferring court and the prosecutor of the case.
- The judge of the receiving veterans treatment court and the prosecutor of a court funding unit of that court.

A veterans treatment court could hire or contract with licensed or accredited treatment providers, in consultation and cooperation with the local substance abuse coordinating agency, and other appropriate people to assist the court in fulfilling its requirements under Chapter 12. These requirements would include an investigation of an individual's background or circumstances, or a clinical evaluation of an individual, before he or she was admitted or permitted to participate in a veterans court.

Admission to Veterans Treatment Court

A veterans treatment court would have to determine whether an individual could be admitted to the court. No individual would have a right to be admitted. An individual would not be eligible if he or she were a violent offender. ("Violent offender" would mean an individual who is currently charged with or has pleaded guilty to an offense involving the death of, or a serious bodily injury to any individual, or criminal sexual conduct in any degree.)

An individual would be eligible for admission if he or she had previously had an offense discharged or dismissed as a result of participation in a veterans treatment court, drug treatment court, or other specialty court, but he or she could not have a subsequent offense discharged or dismissed as a result of participating in the veterans treatment court.

In addition to admission to a veterans treatment court under the RJA, an individual who was eligible for admission under Chapter 12 also could be admitted to a veterans court under either of the following circumstances:

- The individual had been assigned youthful trainee status under the

Holmes Youthful Trainee Act (which allows for discharge and dismissal of certain charges).

- The individual had criminal proceedings deferred and was placed on probation under a specified section of the Public Health Code, the Code of Criminal Procedure, or the Michigan Penal Code, or a substantially similar local ordinance, law of this or another state, or Federal law.

To be eligible for admission, an individual would have to cooperate with and complete a preadmissions screening and evaluation assessment and agree to cooperate with any future evaluation assessment as directed by the court. A preadmission screening and evaluation assessment would have to include a complete review of the person's criminal history and whether he or she had been admitted to, participated in, or was currently participating in a veterans treatment court, drug treatment court, or other specialty court and the results of the individual's participation. A review of the Law Enforcement Information Network (LEIN) would satisfy the requirements of the review unless a further review was warranted. The court could accept other verifiable and reliable information from the prosecution or defense to complete its review and could require the individual to submit a statement as to whether he or she had previously been admitted to a veterans treatment court, drug treatment court, or other specialty court, and the results of the participation.

A preadmission screening also would have to include all of the following:

- A determination of the individual's veteran status, which could be satisfied by a review of the DD form 214, "certificate of release or discharge from active duty".
- An assessment of the risk of danger or harm to the individual, others, or the community.
- A review of the individual's history regarding the use or abuse of any controlled substance or alcohol, and an assessment of whether the

individual abused those substances or was drug- or alcohol-dependent.

- A review of the individual's mental health history.
- A review of any special needs or circumstances that could potentially affect the individual's ability to receive substance abuse treatment and follow the court's orders.

Except as otherwise permitted in the RJA, any statement or other information obtained as a result of an individual's participation in a preadmission screening and evaluation assessment would be confidential and exempt from disclosure under the Freedom of Information Act (FOIA). Except for a statement or information revealing criminal acts other than personal drug use, the information could not be used in a criminal prosecution.

The court could request that the Michigan Department of State police (MSP) give the court information contained in LEIN pertaining to an individual applicant's criminal history for the purposes of determining his or her admission into the veterans court and general criminal history review. This could include whether the individual had previously been admitted to and participated in a veterans treatment court, drug treatment court, or other specialty court and the results of the participation. The MSP would have to provide the requested information.

Before an individual could be admitted into a veterans treatment court, the court would have to find on the record or place a statement in the court file establishing all of the following:

- The individual was a veteran.
- The individual was dependent upon or abusing drugs or alcohol, or suffered from a mental illness, and was an appropriate candidate for participation in the veterans court.
- The individual understood the consequences of entering the veterans court and agreed to comply with all court orders and requirements of the

court's program and treatment providers.

- The person was not an unwarranted or substantial risk to the safety of the public or any individual, based on the screening and assessment or other information presented to the court.
- The individual was not a violent offender.
- The individual had completed a preadmission screening and evaluation assessment and had agreed to cooperate with any future evaluation assessment as directed by the court.
- The individual met the requirements, if applicable, for deferral and dismissal of charges under another specified statute.
- The terms, conditions, and duration of the agreement between the parties, and the outcome for the participant of the veterans court upon successful completion by the participant or termination of participation.

If an individual being considered for admission to a veterans treatment court were charged in a criminal case, his or her admission would be subject to all of the following conditions:

- The offense or offenses allegedly committed were generally related to the individual's military service, including the abuse, illegal use, or possession of a controlled substance or alcohol, or mental illness that arose as a result of service.
- The individual pleaded guilty to the charge or charges on the record.
- The individual waived the right to a speedy trial, the right to representation by an attorney at veterans court review hearings, and, with the agreement of the prosecutor, the right to a preliminary examination.
- The individual signed a written agreement to participate in the veterans court.

An individual who could be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines could not be admitted to a veterans treatment court

unless the prosecutor first approved the person's admission in conformity with the required MOU.

A person could not be admitted to, or remain in, a veterans treatment court under an agreement that would permit the discharge or dismissal of a traffic offense upon successful completion of the program.

In addition to rights accorded a victim under the Crime Victim's Rights Act, a veterans treatment court would have to allow victims and members of the community to submit a written statement to the court regarding the advisability of admitting an individual into the veterans court.

An individual who waived his or her right to a preliminary examination and pleaded guilty as part of his or her application to a veterans treatment court, and who was not admitted to the court, would have to be allowed to withdraw his or her plea and could be entitled to a preliminary examination.

Program Participation

All of the conditions described below would apply to an individual admitted to a veterans treatment court.

The court would have to accept the guilty plea of an individual admitted to a veterans treatment court based upon having a criminal charge currently filed against him or her.

One of the following, as applicable, would apply to an individual who pleaded guilty to a criminal charge for which he or she was admitted to a veterans treatment court:

- If the person pleaded guilty to an offense that was not a traffic offense and could be eligible for discharge and dismissal under the agreement with the court and prosecutor upon successful completion of the veterans court program, the court could not enter a judgment of guilt.

- If the person pleaded guilty to a traffic offense or another offense but was not eligible for discharge and dismissal, the court would have to enter a judgment of guilt.

Under an agreement with the individual and the prosecutor, the court could either defer further proceedings or proceed to sentencing, as applicable under the agreement, and place the individual on probation or other court supervision in the veterans court program with terms and conditions according to the agreement and as considered necessary by the court.

The veterans court would have to maintain jurisdiction over the participant until final disposition of the case, but not longer than the applicable probation period.

The veterans court would have to cooperate and collaborate with the prosecutor, defense counsel, treatment providers, the local substance abuse coordinating agency for the circuit or district, probation departments, the VA, local veteran service organizations, and, to the extent possible, local law enforcement, the Department of Corrections, and community corrections agencies.

The veterans court could require an individual admitted to it to pay a fee that was reasonably related to the cost to the court for administering the veterans court program. The clerk of the veterans court would have to transmit the fees collected to the treasurer of the local funding unit at the end of each month.

A veterans court could request that the MSP give the court information contained in LEIN pertaining to an individual applicant's criminal history for purposes of determining the person's compliance with all court orders. The MSP would have to provide the requested information.

Provision of Services, Testing, & Records

A veterans court would have to provide an individual admitted to the court with all of the following:

- Consistent, continual, and close monitoring and interaction with the court, treatment providers, probation, and the participant.
- A mentorship relationship with another veteran who could offer the participant support, guidance, and advice.
- Mandatory periodic and random testing for the presence of any controlled substance or alcohol in a participant's blood, urine, or breath using, to the extent practicable, the best available, accepted, and scientifically valid methods.
- Periodic evaluation assessments of the participant's circumstances and progress in the program.
- A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including the possibility of incarceration or confinement.
- Substance abuse treatment services, relapse prevention services, education, and vocational opportunities as appropriate and practicable.
- Mental health treatment services as appropriate and practicable.

Any statement or other information obtained as a result of participate in assessment, treatment, or testing while in a veterans court would be confidential and exempt from disclosure under FOIA. Except for a statement or information that revealed criminal acts other than, or inconsistent with, personal drug use, the information could not be used in a criminal prosecution.

Continued Participation

To continue to participate in and successfully complete a veterans court program, an individual would have to do all of the following:

- Pay all court-ordered fines and costs, including minimum State costs.
- Pay the veterans treatment court fee.
- Pay all court-ordered restitution.
- Pay all crime victims' rights assessments.

- Comply with all court orders, subject to sanctions within the court's discretion if violated.
- Meet with a member of a veterans service organization or a county veteran counselor to discuss available veterans benefit programs for which the individual could qualify.

The veterans court would have to be notified if the participant were accused of a new crime, and the judge would have to consider whether to terminate participation in the program. If the participant were convicted of a felony for an offense that occurred after he or she was admitted to the veteran court, the judge would have to terminate his or her participation.

The court would have to require that a participant pay all fines, costs, the fee, restitution, and assessments and pay all, or make substantial contributions toward paying costs of the treatment and the veterans court program services provided, including the costs of urinalysis and other testing or counseling. If the court determined that the payment would be a substantial hardship for the person or would interfere with his or her substance abuse or mental health treatment, the court could waive all or part of those fines, fees, or costs of treatment.

Completion

Upon a person's completion of, or termination from, the veterans treatment court program, the court would have to find on the record or place a written statement in the court file as to whether the person completed the program successfully or whether his or her participation was terminated and the reason for termination.

If a participant successfully completed probation or other court supervision and his or her proceedings were deferred, or if the participant were sentenced as provided in the bill, the court would have to comply with the agreement made with the participant upon admission into the veterans court.

If an individual were participating in a veterans court under another section of law allowing deferral and dismissal provision, the court would have to proceed under the applicable section of law. A person could not receive more than one discharge or dismissal under this provision.

Except as otherwise provided, the court, with the agreement of the prosecutor and in conformity with the MOU, could discharge and dismiss proceedings against an individual who met all of the following criteria:

- He or she had participated in a veterans court for the first time.
- The individual had successfully completed the terms and conditions of the program.
- He or she was not required by law to be sentenced to a correctional facility for the crimes to which he or she had pleaded guilty.
- The individual was not currently charged with and had not pleaded guilty to a traffic offense.
- The person had not previously been subject to more than one assignment to the status of youthful trainee or the dismissal of criminal proceedings under other statutory sections allowing deferral and dismissal.

The court could grant a discharge and dismissal of a domestic violence offense only if all of the following circumstances applied:

- The individual had not previously had proceedings discharged and dismissed under the Code of Criminal Procedure for a domestic violence offense.
- The domestic violence offense was eligible to be discharged and dismissed under the Code of Criminal Procedure.
- The individual fulfilled the terms and conditions imposed under the Code of Criminal Procedure, and the discharge and dismissal of proceedings were processed and reported under the Code.

A discharge and dismissal under Chapter 12 would be without adjudication of guilt and would not be a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There could not be more than one discharge and dismissal under Chapter 12 for an individual. The court would have to send a record of the discharge and dismissal to the MSP's Criminal Justice Information Center, and the MSP would have to enter that information into LEIN with an indication of participation by the individual in a veterans treatment court. All records of the proceedings regarding the individual's participation would be closed to public inspection and exempt from public disclosure under FOIA. Those records, however, would be open to courts, the Department of Corrections, law enforcement personnel, and prosecutors only for use in the performance of their duties or to determine whether an employee had violated conditions of employment or whether an applicant met criteria for employment. The records and identifications division of the MSP would have to retain a nonpublic record of an arrest and the discharge and dismissal.

Except as otherwise provided for discharge and dismissal, if an individual successfully completed probation or other court supervision, the court would have to do the following:

- Enter an adjudication of guilt, if the court had not already entered an adjudication of guilt or responsibility.
- Proceed to sentencing, if the court had not already sentenced the individual.
- Send a record of the conviction and sentence or the finding or adjudication of responsibility and disposition to the Criminal Justice Information Center, and have the MSP enter that information into LEIN with an indication of successful participation in a veterans court.

For a person who was terminated from the program or who failed to complete it successfully, the court would have to enter an adjudication of guilt if the entering of an adjudication were deferred

under Chapter 12. The court then would have to proceed to sentencing or disposition for the original charges to which the person pleaded guilty before admission to the veterans court. Upon sentencing or disposition, the court would have to send a record of the sentence or disposition and the individual's unsuccessful participation to the Criminal Justice Information Center. The MSP would have to enter that information into LEIN, with an indication that the individual unsuccessfully participated in a veterans court.

Evaluation & Funding

Each veterans treatment court would have to collect and provide data on each individual applicant and participant and the entire program, as required by the SCAO.

Where practicable, the Supreme Court would have the authority to spend State funds for the establishment and operation of veterans treatment courts. Federal funds provided to the State for the operation of veterans courts would have to be distributed by the Department of Community Health or the appropriate State agency as otherwise provided by law. Nothing in this provision would prevent a local unit or circuit or district court from spending funds for the establishment and operation of a veterans court.

The State Treasurer could receive money or other assets from any source for deposit into the appropriate State fund or funds for the purposes of funding the establishment and operation of veterans courts.

Each veterans court would have to report quarterly to the SCAO on the funds received and spent by the court, in a manner prescribed by the SCAO.

The State Drug Treatment Court Advisory Committee created under Chapter 10A would have to monitor the effectiveness of veterans courts and the availability of funding, and present annual recommendations to the Legislature and

Supreme Court regarding statutory changes pertaining to veterans courts.

House Bill 5159

Chapter 10A of the RJA provides for the establishment of drug treatment courts, including creation of the State Drug Treatment Court Advisory Committee within the Legislative Council. The Advisory Committee must monitor the effectiveness of drug treatment courts and the availability of funding for them. It also must present annual recommendations to the Legislature and Supreme Court regarding proposed statutory changes pertaining to drug treatment courts.

Under the bill, the Advisory Committee also would have to monitor the effectiveness of veterans treatment courts and the availability of funding for them. It also would have to present annual recommendations to the Legislature and Supreme Court regarding proposed statutory changes pertaining to veterans courts.

The Advisory Committee consists of the State Court Administrator, or his or her designee, and 16 members appointed jointly by the Senate Majority Leader and the Speaker of the House. The Act specifies requirements for the appointed members. Under the bill, the Majority Leader and Speaker jointly would have to appoint 17 members, including a circuit or district court judge who had presided over a veterans treatment court.

MCL 600.1082 (H.B. 5159) Proposed MCL 600.1200-600.1212 (H.B. 5162)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 5159

The bill would have no fiscal impact on State or local government.

House Bill 5162 (H-1)

The bill would have an indeterminate fiscal impact on State and local government. The State of Michigan currently has five Veterans' Courts and at least one more is in the development process. By establishing a uniform framework for Veterans' Courts, the bill could result in expansion beyond the current participants. However, the bill would not explicitly create or fund any additional Veterans' Courts, so it is also possible that there would be no fiscal impact on either State or local government. Whether additional Veterans' Courts were created would depend on the willingness of local court judges and prosecutors to take the initiative to do so; many local jurisdictions that have chosen to begin programs so far have a special interest in veterans, either because the local area has a high concentration of veterans, or because the judges or prosecutors are veterans themselves.

Currently, the funding for Veterans' Courts comes from a variety of sources, but no funding currently comes from State resources. Generally, local courts provide their employees' time as an in-kind contribution to the program operations. However, some courts have set up a 501(c)(3) account to attempt to gain additional funding via grants or private sources. Once a veteran who has committed a crime becomes involved in the Veterans' Court process, the U.S. Department of Veterans Affairs generally covers the cost of services such as substance abuse treatment, health care, and job training. In most cases, veterans were already eligible for many of these resources, but had not taken advantage of them or been properly connected; the administrative processes within the Veterans' Courts ensures that the connection is made. To the extent that they have the financial capability, some veterans in the programs also pay fees that cover the cost of their own drug testing or other services. Another key component of the structure of the programs is volunteers' making in-kind

contributions of their time. Perhaps the most vital of these volunteers are other veterans who offer to serve as mentors to their peers.

The bill would authorize the State Court Administrative Office to provide grants to support Veterans' Courts as the SCAO does to support other specialty courts such as drug courts and mental health courts; however, whether such grants (and thereby fiscal costs to the State) would occur is likely contingent on future appropriations. Any potential expansion of the programs could generate long term savings due to diverting individuals from prison and reducing the chances of recidivism. There have been no specific studies of the effectiveness of Veterans' Courts, but similar specialty and therapeutic courts (such as drug courts and mental health courts) have been demonstrated to be effective in reducing recidivism and thereby reducing the jail and prison populations.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.