

D R A F T
FOR DISCUSSION ONLY

MODEL VETERANS COURT ACT

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MODEL VETERANS COURT ACT

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ON UNIFORM STATE LAWS

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June 6, 2016

MODEL VETERANS COURT ACT

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1 **MODEL VETERANS COURT ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Model Veterans Court

3 Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Defendant” means a veteran or servicemember charged with a criminal offense.

6 (2) “Domestic violence” means conduct as defined in [cite appropriate state statute
7 defining domestic violence].

8 (3) “Program” means the terms and conditions, including treatment, imposed by a
9 veterans court on an eligible defendant under this [Act].

10 (4) “Record” means information that is inscribed on a tangible medium or that is stored in
11 an electronic or other medium and is retrievable in perceivable form.

12 (5) “Servicemember” means:

13 (A) a current member of the active or reserve component of the Army, Navy, Air
14 Force, Marine Corps, or Coast Guard of the United States; or

15 (B) a current member of the National Guard or state [defense forces].

16 (6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
17 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
18 the United States. The term includes a federally recognized Indian tribe.

19 (7) “Veteran” means a former servicemember, regardless of character of discharge.

20 (8) “Veterans court” means a veterans and servicemembers docket administered under
21 this [act] by a court in this state.

22 (9) “Victim” means an actual or alleged person harmed or potentially harmed by the
23 defendant in an act of domestic violence.

1 **Legislative Note:** *Defense forces referred to in (5)(B) of this section should be changed to reflect*
2 *whatever name is used to refer to the enacting state's defense forces.*
3

4 **Comment**

5

6 The definition of “defendant” includes both veterans and those servicemembers
7 serving on active duty. While it may be difficult for active duty servicemembers to meet the
8 strict requirements of a veterans court program while fulfilling their active duty service
9 obligations, writing this definition broadly gives courts and defendants latitude to determine
10 the veterans court’s helpfulness in each individual case. This broad definition may also allow
11 the court to partner with Department of Defense medical and counseling providers when
12 allowing the participation of an active duty servicemember in the program.
13

14 The definitions of “servicemember” and “veteran” broadly include any person who
15 served in the United States Armed Forces in any of the widely recognized branches of the
16 military or state defense forces. State defense forces are called up periodically for many
17 different missions within the state including disaster relief, riot control, etc. These definitions
18 recognize the service of state defense force members, who may encounter the same types of
19 situations as federal military servicemembers and would likely benefit from the veteran
20 mentorship programs typically implemented in veterans courts.
21

22 The definition of “veterans court” specifically allows courts to adopt a veterans court
23 as a separate docket of an existing court and avoids requiring jurisdictions to set up separate
24 courts for this purpose.
25

26 There is specifically no mention made here of the “character of discharge” a veteran is
27 required to have to be eligible for participation in the veterans court. When a servicemember is
28 discharged from the military, the Department of Defense (DoD) “characterizes” that member’s
29 service in order to describe how that member served his/her nation. DoD currently uses five
30 main types of characterizations of discharge: Honorable, General (under Honorable conditions),
31 Other Than Honorable (OTH), Bad Conduct Discharge (BCD), and Dishonorable Discharge.
32 There are other types of discharges to include discharges that are neither good nor bad because
33 the member has served such a short time his service cannot be characterized.
34

35 Characters of Discharge become important in regards to treatment because the
36 Department of Veterans Affairs (VA) has specific character of discharge requirements for
37 determining which veterans will get access to medical care at the VA Medical Centers (VAMCs)
38 and benefits. The VA requires that a veteran have an “other than dishonorable” discharge to
39 qualify for benefits and health care at the VA. The VA has interpreted this phrase to mean that
40 veterans with Honorable and General discharges are automatically qualified for most benefits
41 including health care and disability benefits. Veterans with an Other Than Honorable discharge
42 are reviewed on a case-by-case basis to determine if their service was “dishonorable.” Veterans
43 with Bad Conduct and Dishonorable Discharges are automatically disqualified. The Other Than
44 Honorable, Bad Conduct, and Dishonorable Discharges are often referred to as “bad paper
45 discharges.”

1 It is well documented in the media, congressional reports and investigations, and current
2 lawsuits that the DoD has separated servicemembers from the military for misconduct that
3 resulted from undiagnosed or untreated mental health or brain injury disabilities caused during a
4 veteran’s service. These separations often result in “bad paper discharges” that prevent veterans
5 from receiving health care benefits from the VA, often leaving veterans in these situations
6 completely untreated for disabilities related to their service. In September 2014, Secretary of
7 Defense Chuck Hagel issued guidance that every branch of the military was encouraged to
8 reconsider these poor discharges for veterans from the Vietnam War era who claimed that their
9 misconduct was due to post-traumatic stress. This guidance was issued in recognition of the fact
10 that post-traumatic stress often went undiagnosed and led to misconduct resulting in poor
11 discharges. In 2015, the DoD expanded this review to all veterans with post-traumatic stress and
12 poor discharges. Many of these veterans who suffer from poor discharges now recognized by the
13 DoD to possibly be unwarranted commit crimes that, but for the character of their discharge,
14 would allow them entry into a veteran court program.

15
16 Some veterans courts have chosen to limit veteran participation in the program to those
17 with good characters of service because the VA will participate in providing treatment for the
18 veterans’ disabilities in those cases. While finding resources that may be provided to the
19 defendant at no cost to the court or defendant is certainly a consideration, it seems prudent to
20 allow courts and judges the latitude to determine whether or not a defendant’s situation and the
21 court’s available treatment resources would make participation in such a program successful. A
22 blanket prohibition on veterans with poor discharges seems unwarranted and unnecessarily binds
23 the court in what may otherwise be a compelling case for entry into the veterans court.

24
25 There is no requirement in these definitions that a veteran have combat service in
26 order to be eligible to participate in a veterans court. Allowing all veterans to participate if
27 the court determines that participation is helpful recognizes that some disabilities are not
28 incurred in combat, but may come from other events. For instance, military sexual trauma is
29 now widely recognized and any residual mental health issues or substance abuse disorders
30 related to this event could be permitted entry into the veterans court.

31
32 **SECTION 3. AUTHORIZATION.**

33 (a) A court that has jurisdiction in criminal cases may administer a veterans court for
34 disposition of defendants’ cases.

35 (b) A veterans court may adjudicate misdemeanors and felonies.

36 (c) An eligible defendant under this [act] may be admitted to the veterans court at any
37 stage in a criminal proceeding.

38 **Comment**

39 This act allows for a wide variety of approaches though which a veterans court program

1 may be implemented by local rule, court rules, etc. This act also allows states to determine the
2 court in which implementation may be best accomplished. The act allows for the inclusion of
3 felony misdemeanor offenses in order to give the court the broadest latitude to determine the
4 appropriateness of a defendant's participation in veterans court based upon the other
5 considerations in Section 8 of this act.

6
7 **SECTION 4. COMPONENTS OF PROGRAM.** The components of a program must

8 include:

9 (1) integrating alcohol, drug treatment, and mental health services with justice system
10 case processing;

11 (2) using a nonadversarial approach in which prosecution and defense counsel promote
12 public safety while protecting defendants' due process rights;

13 (3) identifying eligible defendants early;

14 (4) providing access to a continuum of alcohol, drug, mental health, and other related
15 treatment and rehabilitation services;

16 (5) monitoring abstinence by frequent alcohol and drug testing;

17 (6) directing a coordinated strategy that responds to defendants' compliance;

18 (7) providing ongoing judicial interaction with each veteran;

19 (8) monitoring and evaluating the achievement of goals to gauge effectiveness;

20 (9) continuing interdisciplinary education to promote effective veterans court planning,
21 implementation, and operations; and

22 (10) forging partnerships among the veterans court , the Department of Veterans Affairs,
23 the [appropriate state or local agency], public agencies, and community-based organizations to
24 generate local support and enhance program effectiveness.

25 **Comment**

26 In light of the understanding that courts maintain autonomy in the structure of a
27 defendant's participation in order to make the program most effective for all involved, care has

1 been taken to refrain from dictating to courts precisely what a veterans treatment program must
2 include. However, there are some characteristics of veterans court programs that are widely
3 agreed upon. Some of the commonly considered components of such a program are discussed
4 here. Veterans court programs are administered with an immediate and highly structured judicial
5 intervention process for substance abuse treatment, mental health, or other assessed treatment
6 needs of eligible veteran and servicemember defendants in order to provide treatment that may
7 influence a person shortly after a significant triggering event such as arrest, and thus persuade or
8 compel that person to enter and remain in treatment. These programs bring together substance
9 abuse professionals, mental health professionals, federal and state VA professionals, local social
10 programs, and intensive judicial monitoring in accordance with the nationally recommended key
11 components of drug and veterans treatment courts. The ten listed attributes of a veterans court
12 program are derived from Justice for Vets and the National Clearinghouse for Veterans
13 Treatment Courts at the National Association of Drug Court Professionals. The veterans court
14 program may maintain a network of substance abuse treatment programs representing a
15 continuum of graduated substance abuse treatment options commensurate with the needs of
16 defendants; these may include programs with the VA, the State, and community-based programs
17 supported and sanctioned by either or both. The veterans court program may also, in its
18 discretion, employ additional services or interventions, as it deems necessary on a case by case
19 basis. The veterans court program may maintain or collaborate with a network of mental health
20 treatment programs and, if it is a co-occurring mental health and substance abuse court program,
21 a network of substance abuse treatment programs representing a continuum of treatment options
22 commensurate with the needs of the defendant and available resources including programs with
23 the VA and the State. The court may, among other appropriate and authorized pre-trial
24 conditions, order the defendant to complete substance abuse treatment in an outpatient, inpatient,
25 residential, or jail-based custodial treatment program, order the defendant to complete mental
26 health counseling in an inpatient or outpatient basis, and comply with healthcare providers'
27 recommendations regarding follow up treatment. In some jurisdictions funding may require a
28 court order in order to secure services.

29
30 **SECTION 5. ENHANCEMENTS TO A PROGRAM.** The components of a veterans
31 court program may include:

32 (1) integrating intervention, treatment, and counseling for a defendant who has been a
33 victim of domestic violence as part of the total rehabilitative services offered to the defendant;

34 (2) evaluating and assessing a defendant charged with domestic violence offenses and
35 integrating specific counseling as part of the total rehabilitative services offered for the
36 defendant;

37 (3) monitoring a defendant charged with domestic violence offenses to assure compliance
38 with domestic violence protection orders, no contact orders, and any requirements that weapons

1 be forfeited;

2 (4) referring a defendant with specific medical and medications needs to appropriate

3 physicians and health care providers;

4 (5) referring a defendant to other available services which may include assistance with

5 housing, employment, nutrition, and education; and

6 (6) providing a defendant access to peers and mentoring services that may aid a defendant

7 in the rehabilitative process.

8 **Comment**

9

10 Section 5 was drafted in order to identify opportunities where a court may find it helpful
11 to add components to its veterans court programs. In particular, attention was paid to offering
12 treatment in domestic violence situations, whether the defendant was a victim or perpetrator of
13 this type of act. The provision discussing mentoring services in the veterans court is an
14 acknowledgment that one of the most attractive and unique aspects of this type of court is the
15 mentoring of a defendant by another veteran.

16

17 **SECTION 6. REMEDIAL NATURE; LIBERAL CONSTRUCTION.** This [act] is

18 remedial in nature and must be liberally construed.

19 **SECTION 7. TERMS AND CONDITIONS.** A veterans court shall establish written

20 terms and conditions for participation in, completion of, and termination of a program. The terms

21 and conditions must include the proposed disposition of or charges on completion of the

22 program.

23 **SECTION 8. ELIGIBILITY AND ADMISSION.**

24 (a) A defendant is eligible to participate in a veterans court if:

25 (1) the defendant demonstrates a willingness to participate in a program;

26 (2) the defendant has been assessed and determined to have a mental health or

27 substance use disorder, or traumatic brain injury;

28 (3) the defendant agrees on the record to voluntarily enter the program and to

1 adhere to the terms and conditions of participation; and

2 (4) the prosecutor determines the program would be in the interests of justice and
3 of benefit to the defendant and the community. In determining whether the program would be in
4 the interests of justice and of benefit to the defendant and the community, the prosecutor shall
5 consider:

6 (A) the nature of the crime charged and the circumstances surrounding the
7 crime;

8 (B) special characteristic or circumstance of the defendant;

9 (C) the defendant's criminal history, and whether the defendant previously
10 has participated in the program or a similar program;

11 (D) the probability that the defendant will cooperate with and benefit from
12 participation and treatment;

13 (E) whether the defendant's needs exceed available treatment resources;

14 (F) the impact of participation and treatment on the community;

15 (G) recommendations of the involved law-enforcement agency;

16 (H) recommendations, special characteristics, or circumstance of the
17 alleged victim, which the prosecutor shall seek in the case of domestic violence;

18 (I) provision for and the likelihood of obtaining restitution from the
19 defendant over the course of participation;

20 (J) mitigating circumstances; and

21 (K) other circumstances reasonably related to the individual defendant's
22 case.

23 (b) The defendant, prosecutor, and veterans court must sign a record acknowledging the

1 terms and conditions of participation in a program. The veterans court shall order the defendant
2 to be admitted into the veterans court if the defendant is eligible and the defendant's participation
3 would be in the interests of justice and of benefit to the defendant and the community.

4 ***Legislative Note:*** *In determining if a defendant is eligible for this program, the prosecutor may*
5 *require the defendant to divulge information regarding prior criminal charges; education, work*
6 *experience, and training; family history, including residence in the community; medical and*
7 *mental history, including psychiatric or psychological treatment or counseling; and other*
8 *information reasonably related to the likelihood of success of the treatment program.*

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Comment

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SECTION 9. VICTIMS OF DOMESTIC VIOLENCE. As part of a program, a

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victim of a domestic violence crimes committed by the defendant must be:

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(1) referred to or offered counseling on an individual basis;

35

(2) provided resource information to report further allegations of crimes committed by

36

the defendant or violations by the defendant of the terms and conditions of the program.

1 **Comment**

2 Special attention was given in the act to victims of domestic violence in recognition of
3 the fact that for many veterans, the family members are the support network that deal intimately
4 with mental health, substance abuse, and brain injury conditions. Providing support to these
5 victims may be crucial to maintaining stability in a defendant's life while providing treatment.
6

7 **SECTION 10. MODIFICATION OR TERMINATION.** If the veterans court
8 determines that a defendant has not complied with a program, the veterans court may modify or
9 terminate the defendant's participation in the program subject to the terms and conditions agreed
10 to by the defendant. On notification of termination, the defendant may request a hearing.

11 **SECTION 11. COMPLETION.**

12 (a) If a defendant in veterans court successfully completes a program at any stage of the
13 proceedings, the charge that served as the basis of participation in the program must be disposed
14 of in accordance with the conditions under which the defendant entered the program. If the
15 defendant successfully completes the program as part of a sentence, the veterans court may
16 reduce or modify the sentence.

17 (b) This [act] does not permit a veterans court to impose, modify, or reduce a sentence
18 below the minimum sentence required by law.

19 **SECTION 12. ACCESS TO RECORDS.**

20 (a) A statement or record made by a defendant in a veterans court is subject to 42 U.S.C.
21 Section 290dd-2, and 42 C.F.R. Part 2, regarding confidentiality.

22 (b) Any individually-identifiable health information and record pertaining to a defendant
23 in a veterans court undergoing alcohol and drug treatment is subject to the privacy regulations
24 promulgated under the Health Insurance Portability and Accountability Act, 45 C.F.R. parts 160,
25 162, and 164 [and state law that may apply].

1 **Comment**

2 42 U.S.C. Section 290dd-2 and 42 Code of Federal Regulations, Part 2 regulate
3 disclosure of and access to information regarding patients who have applied for or received any
4 alcohol or drug abuse-related services, including assessment, diagnosis, counseling, group
5 counseling, treatment, or referral for treatment, from a covered program.

6 **SECTION 13. NO CREATION OF RIGHT.** This [act] does not create a right to
7 treatment in or admission to a program.

8 **SECTION 14. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
9 applying and construing this uniform [act], consideration must be given to the need to promote
10 uniformity of the law with respect to its subject matter among states that enact it.

11 **SECTION 15. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
12 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic
13 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
14 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
15 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
16 Section 7003(b).

17 **[SECTION 16. SEVERABILITY.** If any provision of this [act] or its application to
18 any person or circumstance is held invalid, the invalidity does not affect other provisions or
19 applications of this [act] which can be given effect without the invalid provision or application,
20 and to this end the provisions of this [act] are severable.]

21 *Legislative Note: Include this section only if the jurisdiction lacks a general severability statute*
22 *or a decision by the highest court of the jurisdiction stating a general rule of severability.*
23

24 **SECTION 17. REPEALS; CONFORMING AMENDMENTS.**

25 (a)

26 (b)

27 (c)

1 **SECTION 18. EFFECTIVE DATE.** This [act] takes effect....