

D R A F T

FOR DISCUSSION ONLY

**VETERANS COURT ACT**  
**(VETERANS AND SERVICEMEMBERS TREATMENT**  
**COURT ACT)**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAW

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November 20-21, 2015 Drafting Committee Meeting

*With Discussion Notes and Comments*

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November 2, 2015

## **VETERANS COURT ACT**

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# VETERANS [AND SERVICEMEMBERS TREATMENT] COURT ACT

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1                   **VETERANS [AND SERVICEMEMBERS TREATMENT] COURT ACT**

2                   **SECTION 1. SHORT TITLE.** This [act] may be cited as the Veterans [and  
3 Servicemembers Treatment] Court Act.

4   **Discussion Notes**

5                   [The Act is named to cover the broadest swath of those who serve, both active duty and  
6 veteran.]

7  
8                   **SECTION 2. DEFINITIONS.** In this [Act]:

9                   (1) “Armed Forces” means the United States Army, the United States Navy, the United  
10 States Marine Corps, the United States Air Force, or the United States Coast Guard, including  
11 the reserve and Guard components thereof.

12                   (2) “Character of Discharge” means the character assigned to describe the nature of the  
13 veteran’s service in the Armed Forces. These character assignments include Honorable, General  
14 Under Honorable Conditions, Other Than Honorable, Bad Conduct, Dishonorable, and  
15 Dismissal. The General and Other Than Honorable discharges are administrative discharges.  
16 The Bad Conduct and Dishonorable discharges are only administered after conviction by a  
17 Court-Martial. The Dismissal is the only available option to separate an officer of the Armed  
18 Forces at Court-Martial and is functionally the equivalent of a Dishonorable Discharge.

19                   (3) “Discharge” means either:

20                                   (A) retirement from active military, naval, or air service; or

21                                   (B) the satisfactory completion of the period of active military, naval, or  
22 air service for which a person was obligated at the time of entry into such service.

23                   (4) “Servicemember” means either:

24                                   (A) a current member of the active duty component of a branch of the Armed  
25 Forces; or

1 (B) a current member of the National Guard or Reserve components of the Armed  
2 Forces.

3 (5) “Veteran” means either:

4 (A) a former member of the active duty component of a branch of the Armed  
5 Forces; or

6 (B) a former member of the National Guard or Reserve components of the Armed  
7 Forces.

8 (6) “Veterans and Servicemembers Treatment Court” means a court or program with an  
9 immediate and highly structured judicial intervention process for substance abuse treatment,  
10 mental health, or other assessed treatment needs of eligible veteran and servicemember  
11 defendants that brings together substance abuse professionals, mental health professionals,  
12 Department of Veterans Affairs professionals, local social programs and intensive judicial  
13 monitoring in accordance with the nationally recommended key components of drug courts.

14 **Comment**

15 The mission of drug courts is to stop the abuse of alcohol and other drugs and related  
16 criminal activity. Drug courts promote recovery through a coordinated response to offenders  
17 dependent on alcohol and other drugs. The criminal justice system has the unique ability to  
18 influence a person shortly after a significant triggering event such as arrest, and thus persuade or  
19 compel that person to enter and remain in treatment. In order to make the most impact on  
20 defendants in this system, the National Association of Drug Court Professionals has created ten  
21 key principles for the management and implementation of drug court programs that are widely  
22 accepted by drug courts across the nation. These components include:

23  
24 Key Component #1: Drug courts integrate alcohol and other drug treatment services with justice  
25 system case processing.

26  
27 Key Component #2: Using a nonadversarial approach, prosecution and defense counsel promote  
28 public safety while protecting participants’ due process rights.

29  
30 Key Component #3: Eligible participants are identified early and promptly placed in the drug  
31 court program.

32

1 Key Component #4: Drug courts provide access to a continuum of alcohol, drug, and other  
2 related treatment and rehabilitation services.

3  
4 Key Component #5: Abstinence is monitored by frequent alcohol and other drug testing.

5  
6 Key Component #6: A coordinated strategy governs drug court responses to participants'  
7 compliance.

8  
9 Key Component #7: Ongoing judicial interaction with each drug court participant is essential.

10  
11 Key Component #8: Monitoring and evaluation measure the achievement of program goals and  
12 gauge effectiveness.

13  
14 Key Component #9: Continuing interdisciplinary education promotes effective drug court  
15 planning, implementation, and operations.

16  
17 Key Component #10: Forging partnerships among drug courts, public agencies, and community-  
18 based organizations generates local support and enhances drug court program effectiveness.

19  
20 *Legislative Note: Not all available definitions were used in this version of the Act. Should the*  
21 *committee wish to restrict the eligibility of participants in the Veterans and Servicemembers*  
22 *Treatment Court program the addition definitions provided in Appendix C may be helpful.*  
23

24 **SECTION 3. REMEDIAL NATURE OF ACT; LIBERAL CONSTRUCTION.**

25 Legislature recognizes that veterans and currently serving servicemembers of the Active,  
26 Reserve, and National Guard components have provided or are currently providing an invaluable  
27 service to our country. In so doing, some may suffer the effects of, including but not limited to,  
28 post-traumatic stress disorder, traumatic brain injury, depression and may also suffer drug and  
29 alcohol dependency or addiction and co-occurring mental illness and substance abuse problems.  
30 As a result of this, some veterans or active duty servicemembers come into contact with the  
31 criminal justice system and are charged with felony or misdemeanor offenses. There is a critical  
32 need for the criminal justice system to recognize these veterans, provide accountability for their  
33 wrongdoing, provide for the safety of the public and provide for the treatment of our veterans. It  
34 is the intent of the Legislature to create specialized Veteran and Servicemember Treatment  
35 Courts or programs with the necessary flexibility to meet the specialized problems faced by these

1 veteran and servicemember defendants. Accordingly this act is remedial in nature and shall be  
2 liberally construed to protect a vulnerable class of individuals.

3           **SECTION 4. AUTHORIZATION.** Any court that has jurisdiction over criminal cases  
4 may establish a Veterans and Servicemembers Treatment Court program to provide an  
5 alternative to the traditional judicial system for disposition of cases in which the defendant is a  
6 veteran or servicemember. The Veterans and Servicemembers Treatment Court may, at the  
7 discretion of the circuit court judge, be a separate court program or a component of an existing  
8 drug court program. At the discretion of the circuit court judge, the Veterans and  
9 Servicemembers Treatment Court may be operated in one county within the circuit court district,  
10 and allow veteran participants from all counties within the circuit court district to participate.

11   **Discussion Notes**

12           This broad authorization allows the State courts to house and administer the Veterans and  
13 Servicemembers Treatment Court in the manner that is most appropriate to that jurisdiction.  
14

15           **SECTION 5. ELIGIBILITY FOR SERVICES.**

16           (a) Veterans, regardless of their character of discharge, and currently serving  
17 servicemembers are eligible for Veterans and Servicemembers Treatment Court, provided the  
18 following:

19                           (1) The defendant must agree to the Veterans and Servicemembers Treatment  
20 Court program.

21                           (2) A defendant, who is eligible for probation based on the nature of the crime  
22 convicted of and in consideration of his or her criminal background, if any, may be admitted into  
23 a Veterans and Servicemembers Treatment Court program only upon the agreement of the  
24 prosecutor and the defendant and with the approval of the Court.

25                           (3) In order to determine if the Veterans and Servicemembers Treatment Court

1 program is suitable for the defendant, the Court or district attorney may request that the  
2 defendant provide the following information to the Court:

- 3 (A) information regarding prior criminal charges;
- 4 (B) education, work experience, and training;
- 5 (C) family history, including residence in the community;
- 6 (D) medical and mental history, including any psychiatric or psychological  
7 treatment or counseling; and
- 8 (E) any other information reasonably related to the success of the  
9 treatment program.

10 (4) In addition to other factors, the Court and prosecutor may consider the  
11 following factors in determining whether the Veterans and Servicemembers Treatment Court  
12 program would be in the interest of justice and of benefit to the defendant and the community:

- 13 (A) the nature of the crime charged and the circumstances surrounding the  
14 crime;
- 15 (B) any special characteristics or circumstances of the defendant;
- 16 (C) whether the defendant is a first-time offender, and, if the defendant has  
17 previously participated in this or a similar program, the degree of success attained;
- 18 (D) whether there is a probability that the defendant will cooperate with  
19 and benefit from probation and treatment through the Veterans Court program;
- 20 (E) whether the available Veterans Court program is appropriate to meet  
21 the needs of the defendant;
- 22 (F) the impact of the defendant's probation and treatment upon the  
23 community;



1 (G) recommendations, if any, of the involved law enforcement agency;

2 (H) recommendations, if any, of the victim;

3 (I) provisions for and the likelihood of obtaining restitution from the  
4 defendant over the course of his probation;

5 (J) any mitigating circumstances; and

6 (K) any other circumstances reasonably related to the individual  
7 defendant's case.

8 (5) The judge shall make the final determination of eligibility. If the judge  
9 determines that the defendant is not qualified for enrollment, the judge may state for the record  
10 the reasons for that determination; and

11 (b) The Veterans and Servicemembers Treatment Court may adjudicate both  
12 misdemeanor crimes and felonies, limited by the provisions regarding violent crimes discussed  
13 in subsection (c) of this section.

14 **Discussion Notes**

15 Part A of the eligibility requirements allows the broadest swath of participants to take  
16 advantage of the counseling and rehabilitation aspects of the Veterans and Servicemembers  
17 Treatment Court. This version of the Act does not discriminate by character of discharge of the  
18 veteran. Nor does it discriminate between those currently serving and those with veteran status.  
19

20 Part B of the eligibility requirements makes clear that the defendant and prosecutor must  
21 both agree, but the Court is the final arbiter of the defendant's participation.  
22

23 Part C allows the Court to take into account a number of factors regarding the  
24 defendant's background when considering the defendant as a participant to give the Court the  
25 broadest leeway.  
26

27 Part D allows the Court to consider a number of factor's regarding the possibility of the  
28 veteran's successful participation in the program before allowing the veteran to participate.  
29

30 (c) A defendant shall be excluded from a Veterans and Servicemembers Treatment Court  
31 program if any one of the following circumstances applies:

1 (1) the crime for consideration before the Veterans and Servicemembers  
2 Treatment Court is a crime of violence including but not limited to: first degree murder, second  
3 degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault,  
4 criminal sexual assault, armed robbery, aggravated arson, arson, aggravated kidnapping and  
5 kidnapping, aggravated battery resulting in great bodily harm or permanent disability, stalking,  
6 aggravated stalking, or any offense where serious bodily injury or death to any person occurred;

7 (2) the defendant has previously been convicted of a crime of violence as outlined  
8 in paragraph (1) of this subsection;

9 (3) the defendant does not demonstrate a willingness to participate in a treatment  
10 program;

11 (4) the crime for which the defendant has been convicted is non-probationable; or

12 (5) the sentence imposed on the defendant, whether the result of a plea or a  
13 finding of guilt, renders the defendant ineligible for probation.

14 **Discussion Notes**

15 The second part of Section 5 is meant to outline which types of defendants will not be  
16 permitted to participate. This Act is drafted to exclude defendants with previous convictions for  
17 violent crimes regardless of how long ago the conviction occurred. The definition of violent  
18 crimes is broadly written to include most of the crimes considered by most of the jurisdictions.

19  
20 **SECTION 6. PROCEDURE.** The following procedural rules shall apply to cases  
21 under consideration for referral in the Veterans and Servicemembers Treatment Court and for  
22 cases referred to the Veterans and Servicemembers Treatment Court.

23 (1) In any criminal case in which a defendant is a veteran and the defendant meets the  
24 eligibility criteria for the Veterans and Servicemembers Treatment Court, the Court may refer the  
25 case to the Veterans and Servicemembers Treatment Court:

26 (A) prior to the entry of the sentence;

1 (B) as part of a sentence in a case; or

2 (C) upon consideration of a petition to revoke probation.

3 (2) If the Veterans and Servicemembers Treatment Court participant successfully  
4 completes his or her assigned program prior to the entry of judgment, the case against the  
5 Veterans and Servicemembers Treatment Court participant may be dismissed by the prosecuting  
6 attorney. If the Veterans and Servicemembers Treatment Court participant successfully  
7 completes his or her assigned program as part of a sentence imposed by the Court, the sentence  
8 of the Veterans and Servicemembers Treatment Court may be reduced or modified.

9 (3) The Court shall inform the defendant that if the defendant fails to meet the conditions  
10 of the Veterans and Servicemembers Treatment Court program, eligibility to participate in the  
11 program may be revoked and the defendant may be sentenced or the prosecution continued for  
12 the crime charged.

13 (4) Each Veterans and Servicemembers Treatment Court program shall adopt written  
14 policies and guidelines for the implementation of the program in accordance with this Act. Each  
15 Veterans and Servicemembers Treatment Court program shall also establish written criteria that  
16 define the successful completion of the program.

17 (5) Any statement made by a Veterans and Servicemembers Treatment Court participant  
18 as part of participation in such Court, or any report made by the staff of the Court or program  
19 connected to the Court, regarding a participant's mental health shall not be admissible as  
20 evidence against the participant in any legal proceeding or prosecution; provided, however, that  
21 if the participant violates the conditions of his or her participation in the program or is terminated  
22 from the Veterans and Servicemembers Treatment Court, the reasons for the violation or  
23 termination may be considered in sanctioning, sentencing, or otherwise disposing of the

1 participant's case.

2 (6) Nothing contained in this statute shall be construed to permit a judge to impose,  
3 modify, or reduce a sentence below the minimum sentence required by law.

4 (7) Notwithstanding any provision of law to the contrary, Veterans and Servicemembers  
5 Treatment Court program staff shall be provided, upon request, with access to all records  
6 relevant to the treatment of the Veterans and Servicemembers Treatment Court participant from  
7 any state or local government agency, except records declared confidential by the appropriate  
8 state statute to which access may be obtained pursuant to the appropriate state information  
9 release statute. All records and the contents thereof shall be treated as confidential, shall not be  
10 disclosed to any person outside of the Veterans and Servicemembers Treatment Court, and shall  
11 not be subject to the state's freedom of information act statute or subject to subpoena, discovery,  
12 or introduction into evidence in any civil or criminal proceeding. Such records and the contents  
13 thereof must be maintained by the Veterans and Servicemembers Treatment Court and  
14 originating court in a confidential file not available to the public.

15 **Discussion Notes**

16 Section 6 has been drafted to give the Court the widest latitude possible to gather  
17 information necessary regarding the defendant's treatments, establish rules in accordance with  
18 this Act and the resources locally available to the Court, and to adjudicate these cases at various  
19 points in the judicial process.

20  
21 **SECTION 7. SUBSTANCE ABUSE TREATMENT AND MENTAL HEALTH**  
22 **COUNSELING.**

23 (a) The Court shall order the defendant to submit to an eligibility screening and mental  
24 health and drug/alcohol screening and assessment of the defendant by the VA or the State  
25 program that provides assessment services for the Courts. The assessment shall include a risks  
26 assessment and be based, in part, upon the known availability of treatment resources available to

1 the Veterans and Servicemembers Treatment Court. The assessment shall also include  
2 recommendations for treatment of the conditions which are indicating a need for treatment under  
3 the monitoring of the Court and be reflective of a level of risk assessed for the individual seeking  
4 admission. An assessment need not be ordered if the Court finds a valid screening and/or  
5 assessment related to the present charge pending against the defendant has been completed  
6 within the previous 60 days.

7 (b) The Veterans and Servicemembers Treatment Court program may maintain a network  
8 of substance abuse treatment programs representing a continuum of graduated substance abuse  
9 treatment options commensurate with the needs of defendants; these shall include programs with  
10 the VA, the State, and community-based programs supported and sanctioned by either or both.

11 (c) The Veterans and Servicemembers Treatment Court program may, in its discretion,  
12 employ additional services or interventions, as it deems necessary on a case by case basis.

13 (d) The Veterans and Servicemembers Treatment Court program may maintain or  
14 collaborate with a network of mental health treatment programs and, if it is a co-occurring  
15 mental health and substance abuse court program, a network of substance abuse treatment  
16 programs representing a continuum of treatment options commensurate with the needs of the  
17 defendant and available resources including programs with the VA and the State.

18 (e) The defendant shall execute a written agreement with the Court as to his or her  
19 participation in the program and shall agree to all of the terms and conditions of the program,  
20 including but not limited to the possibility of sanctions or incarceration for failing to abide or  
21 comply with the terms of the program.

22 (f) The Court may, among other appropriate and authorized pre-trial conditions, order the  
23 defendant to complete substance abuse treatment in an outpatient, inpatient, residential, or jail-

1 based custodial treatment program, order the defendant to complete mental health counseling in  
2 an inpatient or outpatient basis, and comply with physicians' recommendation regarding  
3 medications and all follow up treatment.

4 (g) Nothing contained in this Act shall confer a right or an expectation of a right to  
5 treatment for a defendant or offender within the criminal justice system.

#### 6 **Discussion Notes**

7 Section 7 is written broadly to give the Court the latitude to work with the treatment  
8 program coordinators in determining the appropriate treatment and testing for a veteran. It is  
9 possible to put in this section specific lengths of program, specific counseling and testing  
10 requirements, etc. Section 103 which references the "10 Key Components of Drug Court" is a  
11 recognition of the importance of these factors without requiring specific measures from  
12 individual Courts.

#### 13 **SECTION 8. VIOLATION, TERMINATION, AND DISCHARGE.**

14 (a) If the defendant's treatment supervisor, probation officer, or the prosecutor believes  
15 that the defendant is not able to complete the assigned program or has violated the terms of  
16 his/her agreement, that party may move the Court for a hearing to determine if the individual  
17 should remain in the program.

18 (b) If the Court finds from the evidence presented, including but not limited to the reports  
19 or proffers of proof,

- 20 (1) the defendant is not performing satisfactorily in the assigned program;
- 21 (2) the defendant is not benefitting from education, treatment, or rehabilitation;
- 22 (3) the defendant has engaged in criminal conduct rendering him or her unsuitable  
23 for the program; or
- 24 (4) the defendant has otherwise violated the terms and conditions of the program  
25 or his or her sentence or is for any reason unable to participate; the Court may impose reasonable  
26 sanctions under prior written agreement of the defendant, including but not limited to  
27

1 imprisonment or dismissal of the defendant from the program. Additionally, the Court may  
2 reinstate criminal proceedings against the defendant; revoke the probation and sentence the  
3 individual in accordance with his guilty plea; if the individual has been sentenced and the  
4 sentence suspended, order the individual to begin serving the sentence; or proceed under the  
5 appropriate State code for a violation of probation, conditional discharge, or supervision hearing.

6 (c) At any time and for any appropriate reason, the probationer, his probation officer, the  
7 district attorney, or his treatment provider may petition the Court to reconsider, suspend, or  
8 modify its order for rehabilitation or treatment concerning that probationer.

9 (d) The burden of proof at all such hearings shall be the burden of proof required to  
10 revoke probation as provided by law.

11 **SECTION 9. FEES.**

12 (a) To the extent of his financial resources, a defendant who is placed under the  
13 supervision of the Veterans and Servicemembers Treatment Court program may be required to  
14 pay a portion of or the entire cost of the treatment program to which he is assigned and the cost  
15 of any additional supervision that may be required, as determined by the Court. If the probationer  
16 does not have the financial resources to pay all the related costs of the probation program:

17 (1) the Court, to the extent practicable, shall arrange for the probationer to be  
18 assigned to a treatment program funded by the State or federal government; and

19 (2) the Court, with the recommendation of the treatment program, may order the  
20 probationer to perform supervised work for the benefit of the community in lieu of paying all or  
21 a part of the costs relating to his treatment and supervision. The work must be performed for and  
22 under the supervising authority of a town, city, county, or other political subdivision or agency of  
23 the State or a charitable organization that renders service to the community or its residents.

1 (b) Notwithstanding subsection (a) of this section, fees may be waived at the discretion of  
2 the Court.

3 **SECTION 10. FUNDING.** The Court shall have the authority to accept grants,  
4 donations, and other proceeds from outside sources for the purpose of supporting the Veterans  
5 and Servicemembers Treatment Court. Any such grants, donations, or proceeds must be retained  
6 by the Veterans and Servicemembers Treatment Court for expenses and must be accounted for  
7 under the requirements of the appropriate state statute.

8 **SECTION 11. 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 12. 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 13. SEVERABILITY.** If any provision of this [act] or its application to any  
18 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



1           **SECTION 14. REPEALS; CONFORMING AMENDMENTS.**

2           (a) ....

3           (b) ....

4           (c) ....

5           **SECTION 15. EFFECTIVE DATE.** This [act] takes effect....