

D R A F T
FOR DISCUSSION ONLY

MODEL VETERANS COURT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
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MODEL VETERANS COURT ACT

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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 **Comment**

5 The Model Veterans Treatment Court Act was drafted in acknowledgment of the fact that
6 veterans and servicemembers have been recognized as sharing cultural experiences that can aide
7 in the rehabilitation process normally found in a traditional drug or mental health treatment
8 courts. Should state legislatures desire to include others who have served their communities in
9 this docket, for example fire fighters and law enforcement personnel, they should feel free to
10 expand the scope of this act to encompass those groups as desired.

11
12 **SECTION 2. DEFINITIONS.** In this [act]:

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

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

16 (3) “Record,” when used as a noun, means information that is inscribed on a tangible
17 medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

18 (4) “Servicemember” means:

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

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

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

25 (6) “Veteran” means a former servicemember, regardless of character of discharge.

26 (7) “Veterans treatment court” means a veterans and servicemembers docket
27 administered under this [act] by a court in this state.

1 **Legislative Note:** *Defense forces referred to in paragraph (4)(B) should be changed to reflect*
2 *whatever name is used to refer to the enacting state's defense forces.*

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 treatment court while fulfilling their active duty service
9 obligations, writing this definition broadly gives courts and defendants latitude to determine
10 the veterans treatment court’s helpfulness in each individual case. This broad definition may
11 also allow the court to partner with Department of Defense medical and counseling providers
12 when allowing the participation of an active duty servicemember in the veterans treatment
13 court.

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 treatment courts.

21
22 The definition of “veterans treatment court” specifically allows courts to adopt a
23 veterans treatment court as a separate docket of an existing court and avoids requiring
24 jurisdictions to set up separate 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 treatment court. When a
28 servicemember is discharged from the military, the Department of Defense (DoD)
29 “characterizes” that member’s service in order to describe how that member served his/her
30 nation. DoD currently uses five main types of characterizations of discharge: Honorable,
31 General (under Honorable conditions), Other Than Honorable (OTH), Bad Conduct Discharge
32 (BCD), and Dishonorable Discharge. There are other types of discharges to include discharges
33 that are neither good nor bad because the member has served such a short time his service cannot
34 be characterized.

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

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

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

33 34 **SECTION 3. POLICY AND PROCEDURE.**

35 (a) A veterans treatment court shall establish in a record the terms and conditions for
36 eligibility, participation, completion of and termination from the veterans treatment court. This
37 record shall be provided to the defendant prior to [entrance/admittance] to the veterans treatment
38 court.

39 (b) Prosecutors shall be involved in the establishment of the veterans treatment court
40 policies and procedures to the fullest extent possible and shall help to establish criteria for

1 eligibility and admission to the veterans treatment court.

2 **SECTION 4. AUTHORIZATION.**

3 (a) A court that has jurisdiction in criminal cases may administer a veterans treatment
4 court for disposition of defendants' cases.

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

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

8 **Comment**

9 This act allows for a wide variety of approaches through which a veterans treatment court
10 may be implemented by local rule, court rules, etc. This act also allows states to determine the
11 court in which implementation may be best accomplished. The act allows for the inclusion of
12 felony misdemeanor offenses in order to give the court the broadest latitude to determine the
13 appropriateness of a defendant's participation in veterans treatment court based upon the other
14 considerations in Section 8 of this act.

15
16 **SECTION 5. COMPONENTS OF VETERANS TREATMENT COURT. A**

17 veterans treatment court shall adopt policies and procedures to obtain the following goals:

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

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

22 (3) identifying eligible defendants early;

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

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

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

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

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

2 (9) continuing interdisciplinary education to promote effective veterans treatment court
3 planning, implementation, and operations; and

4 (10) forging partnerships among the veterans treatment court, the Department of Veterans
5 Affairs, the [appropriate state or local agency], public agencies, and community-based
6 organizations to generate local support and enhance the veterans treatment court's effectiveness.

7 **Comment**

8 In light of the understanding that courts maintain autonomy in the structure of a defendant's
9 participation in order to make the veterans treatment court most effective for all involved, care has
10 been taken to refrain from dictating to courts precisely what a veterans treatment court must
11 include. However, there are some characteristics of veterans treatment court that are widely agreed
12 upon.

13 Section 5 incorporates the National Association of Drug Professionals' Ten Key
14 Components of Drug Courts. These evidence-based, scientifically validated principles are industry
15 best practice standards and they should not be substantively altered.

16 In 1997, the National Association of Drug Court Professionals published *Defining Drug*
17 *Courts: The Ten Key Components*. These ten key components quickly became the framework for
18 drug courts and other problem-solving courts. Over the past two decades, research now confirms
19 that how well drug courts accomplish their goals depends upon how faithfully they adhere to the
20 Ten Key Components. See SHANNON M. CAREY, ET AL., NPC RESEARCH, EXPLORING THE KEY
21 COMPONENTS OF DRUG COURTS: A COMPARATIVE STUDY OF 18 ADULT DRUG COURTS ON
22 PRACTICES, OUTCOMES AND COSTS (2008), available at [http://www.ncjrs.gov/pdffiles1/nij/grants](http://www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf)
23 [/223853.pdf](http://www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf).

24 Many states with drug court legislation directly reference and incorporate verbatim the
25 evidence-based and scientifically validated Ten Key Components. See, e.g., ALA. CODE §12-23A-
26 2; FLA. STAT. § 397.334; 705 ILL. COMP. STAT. 410/10; MICH. COMP. LAWS § 600.1060; NEB. CT.
27 R. § 6-1207; N.H. REV. STAT. § 490-G:2; S.D. COD. LAWS § 16-22-5.1; TENN. CODE ANN. § 16-
28 6-103; W. VA. CODE § 62-15-2. If not explicitly referenced in the enabling laws, all states
29 incorporate the Ten Key Components into their drug court policies, procedures, and guidelines.
30 Numerous courts have expressly relied on the Ten Key Components in developing drug court
31 jurisprudence. See, e.g., *Lawson v. State*, 969 So. 2d 222 (Fla. 2007); *State v. Leukel*, 979 So. 2d
32 292 (Fla. Ct. App. 2008); *Mullin v. Jenne*, 890 So. 2d 543 (Fla. Ct. App. 2005); *People v. Flick*,
33 2015 Ill. App. (5th) 130903-U (2015); *State v. Plouffe*, 329 P.3d 1255 (Mont. 2014); *State v.*
34 *Bullplume*, 305 P.3d 753 (Mont. 2013). In *Plouffe*, the court referred to the Ten Key Components
35 as the "premier authority on the goals and practice guidelines of treatment courts..." 329 P.3d at
36 1261.

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

26
27 **SECTION 6. ENHANCEMENTS TO VETERANS TREATMENT COURT. A**

28 veterans treatment court may adopt policies and procedures to obtain the following goals:

29 (1) referring a defendant with medical and medication needs to appropriate physicians
30 and health care providers;

31 (2) referring a defendant to other available services which may include assistance with
32 housing, employment, nutrition, and education;

33 (3) providing a defendant access to veteran mentors that may aid the defendant; and

34 (4) integrating intervention, treatment, and counseling for a defendant who has been a
35 victim of domestic violence, sexual trauma, child abuse, or other trauma as part of the total
36 rehabilitative services offered to the defendant;

1 (5) conferring with the victim of domestic violence, where appropriate, to evaluate the
2 defendant's compliance with any court order;

3 (6) evaluating and assessing a defendant charged with domestic violence offenses and
4 integrating specific counseling as part of the total rehabilitative services offered for the
5 defendant;

6 (7) monitoring a defendant charged with domestic violence offenses to assure compliance
7 with domestic violence protection orders, no contact orders, and any requirements that weapons
8 be forfeited; and

9 (8) other components that will assist the veterans treatment court.

10 **Comment**

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

19
20 **SECTION 7. ELIGIBILITY.** A defendant is eligible to participate in a veterans
21 treatment court if:

22 (1) the defendant has a mental health or substance use condition, or traumatic brain
23 injury;

24 (2) the defendant agrees on the record to voluntarily enter the veterans treatment court
25 and to adhere to the terms and conditions of participation; and

26 (3) the prosecutor shall determine with regard to pretrial diversion, and the court shall
27 determine with regard to post conviction cases, that participation in the veterans treatment court
28 would be in the interests of justice and of benefit to the defendant and the community. The

1 following factors shall be considered to determine if participation in the veterans treatment court
2 would be in the interests of justice and of benefit to the defendant and the community:

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

4 (B) special characteristics or circumstances of the defendant;

5 (C) the defendant's criminal history, and whether the defendant previously has
6 participated in the veterans treatment court or a similar program;

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

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

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

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

12 (H) special characteristics or circumstances of the alleged victim;

13 (I) recommendations of the alleged victim, which shall be sought in the case of
14 domestic violence;

15 (J) provision for and the likelihood of obtaining restitution from the defendant
16 over the course of participation;

17 (K) mitigating circumstances; and

18 (L) other circumstances reasonably related to the individual defendant's case.

19 **SECTION 8. PARTICIPATION AGREEMENT.** The defendant, prosecutor, and

20 veterans treatment court must sign a record acknowledging the terms and conditions of

21 participation in the veterans treatment court . The veterans treatment court shall order the

22 defendant to be admitted into the veterans treatment court if the defendant is eligible and the

23 defendant's participation would be in the interests of justice and of benefit to the defendant and

1 the community.

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

8

9

Comment

10

11 This act does not require that the mental health or substance use condition, or traumatic
12 brain injury making a defendant eligible for participation in veterans treatment court be directly
13 caused by a defendant's service. This is done in recognition of the fact that many veterans
14 suffering from these conditions would likely be entitled to entry in the other therapeutic courts,
15 but would most directly benefit from participating in the veteran specific mentor programs and
16 focus of a veterans treatment court in order to multiply the probability of success. Placing less
17 requirements on entry to the veterans treatment court allows courts a wide latitude in determining
18 what is best for victims and defendants on a case-by-case basis.

19

20 There is also no requirement that the mental health or substance use condition, or
21 traumatic brain injury have actually caused the crime being considered by the court for the
22 reasons discussed above.

23

24 Requiring the approval of the prosecutor to allow entry into the veterans treatment court
25 allows the state to ensure that crimes or defendants the state feels are inappropriate for
26 therapeutic diversion are prosecuted in the normal course. Prosecutors and courts in this act are
27 encouraged to determine the recommendations of alleged victims, but are required to solicit this
28 information from a victim of domestic violence before recommending a defendant's participation
29 in the veterans treatment court.

30

31 **SECTION 9. VICTIMS OF DOMESTIC VIOLENCE.** As part of veterans treatment
32 court, a victim of a domestic violence crimes committed by the defendant must be:

33 (1) provided information concerning available counseling services on an individual basis;

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

35 the defendant or violations by the defendant of the terms and conditions of defendant's

36 participation in the veterans treatment court.

37

Comment

38 Special attention was given in the act to victims of domestic violence in recognition of

1 the fact that for many veterans, the family members are the support network that deal intimately
2 with mental health, substance use, and brain injury conditions. Providing support to these
3 victims may be crucial to maintaining stability in a defendant’s life while providing treatment.
4

5 **SECTION 10. MODIFICATION OR TERMINATION.** If a veterans treatment court,
6 after hearing, determines that a defendant has not complied with the terms and conditions of
7 defendant’s participation in veterans treatment court, the court may modify or terminate the
8 defendant’s participation. Modification or termination will be subject to the terms and
9 conditions agreed to by the defendant when entering the veterans treatment court.

10 **SECTION 11. COMPLETION.** Upon successful completion of the terms and
11 conditions of defendant’s participation in veterans treatment court, the charge that served as the
12 basis of participation in the program must be disposed of in accordance with the terms and
13 conditions under which the defendant entered veterans treatment court.

14 **SECTION 12. ACCESS TO RECORDS.**

15 (a) A statement or record made by a defendant in a veterans treatment court is subject to
16 42 U.S.C. Section 290dd-2, and 42 C.F.R. Part 2, as may be amended, regarding confidentiality.

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

21 **Comment**

22 42 U.S.C. Section 290dd-2 and 42 Code of Federal Regulations, Part 2 regulate
23 disclosure of and access to information regarding patients who have applied for or received any
24 alcohol or drug use-related services, including assessment, diagnosis, counseling, group
25 counseling, treatment, or referral for treatment, from a covered program.

26 **SECTION 13. REMEDIAL NATURE; LIBERAL CONSTRUCTION.** This [act] is
27 remedial in nature and must be liberally construed.

1 **SECTION 14. NO CREATION OF RIGHT.** This [act] does not create a right to
2 treatment in or admission to a veterans treatment court.

3 **SECTION 15. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
4 applying and construing this uniform [act], consideration must be given to the need to promote
5 uniformity of the law with respect to its subject matter among states that enact it.

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

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

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

18
19 **SECTION 18. REPEALS; CONFORMING AMENDMENTS.**

20 (a)

21 (b)

22 (c)

23 **SECTION 19. EFFECTIVE DATE.** This [act] takes effect....