

**MODEL VETERANS TREATMENT COURT ACT
AND MODEL VETERANS TREATMENT COURT
RULES***

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SIXTH YEAR
SAN DIEGO, CALIFORNIA
JULY 14 - JULY 20, 2017

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 19, 2017

*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

Legislative Note: The provisions for regulation of Model Veterans Treatment are presented in two formats for enactment-by legislation or court rules. The substantive provisions of each format are identical with the exception of several standard form clauses typically found in legislation. Each state considering adopting the Model Veterans Treatment Court Act or the Model Veterans Treatment Court Rules should review its practices and precedent to first determine whether the substantive provisions are best adopted by court rule or statute. The decision may vary from state to state depending on the allocation of authority between the legislature and the judiciary for regulation of contracts, alternative dispute resolution, and the legal profession. States may also decide to enact part of the substantive provisions by legislation or by court rule. Drafting agencies may need to renumber sections and cross references depending on their decision concerning the appropriate method of enactment.

MODEL VETERANS TREATMENT COURT ACT

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

SECTION 2. DEFINITIONS. In this [act]:

- (1) “Defendant” means a veteran or servicemember charged with a criminal offense.
- (2) “Domestic violence” means conduct as defined in [cite appropriate state statute defining domestic violence].
- (3) “Participant Agreement” means the record required by Section 4(a), which contains the policies and procedures of a veterans treatment court and any specific terms and conditions applicable to the defendant. The term includes a modification under Section 10.
- (4) “Record,” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (5) “Servicemember” means:
 - (A) a member of the active or reserve components of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States; or
 - (B) a member of the National Guard [or state defense forces].
- (6) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

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

(8) “Veteran” means a former servicemember, regardless of the character of the servicemember’s discharge.

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

Legislative Note: Defense forces referred to in paragraph (5)(B) should be changed to the name is used to refer to the enacting state’s defense forces.

SECTION 3. AUTHORIZATION.

(a) A court that has jurisdiction in criminal cases may administer a veterans treatment court.

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

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

SECTION 4. RECORD OF POLICIES AND PROCEDURES.

(a) A veterans treatment court shall create a record of policies and procedures adopted to implement Sections 5 through 12.

(b) A veterans treatment court shall seek input from prosecutors, defense counsel, and other interested persons in developing and adopting its policies and procedures.

SECTION 5. KEY COMPONENTS OF VETERANS TREATMENT COURT.

(a) A veterans treatment court shall adopt policies and procedures to implement the following key components:

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

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

(3) identifying eligible defendants early;

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

(5) monitoring abstinence from alcohol and drugs by frequent testing;

(6) directing a coordinated strategy that responds to each defendant's compliance;

(7) providing ongoing judicial interaction with each defendant;

(8) monitoring and evaluating the achievement of goals;

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

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

(b) In adopting policies and procedures pursuant to this section, the court shall consult nationally recognized best practices related to these components.

SECTION 6. SUPPLEMENTAL COMPONENTS OF VETERANS TREATMENT

COURT.

(a) A veterans treatment court may adopt supplemental policies and procedures to:

(1) refer a defendant with a medical or medication need to an appropriate health care provider;

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

(3) provide a defendant access to a mentor who is a servicemember or a veteran;
and

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

(5) confer with the victim or alleged victim of the domestic-violence offense that serves as the basis for the defendant's participation in the veterans treatment court;

(6) evaluate and assess a defendant charged with a domestic-violence offense and integrate specific counseling as part of the total rehabilitative services offered to the defendant;

(7) monitor a defendant charged with a domestic violence offense to assure compliance with a domestic-violence protection order, no-contact order, and prohibition on weapon possession; and

(8) otherwise assist the veterans treatment court.

(b) In adopting policies and procedures pursuant to this section, the court shall consult nationally recognized best practices related to these components.

SECTION 7. ELIGIBILITY.

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

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

(2) the defendant agrees on the court record to enter the veterans treatment court voluntarily and adhere to a participant agreement;

(3) the defendant's participation in the veterans treatment court would be in the interests of justice and of benefit to the defendant and the community, as determined by:

(i) the prosecutor and the court, with regard to pretrial diversion; or

(ii) the court, with regard to all other matters; and

(4) in all other matters, the court determines that participation in the veterans treatment court would be in the interest of justice and of benefit to the defendant and the community.

(b) In making the determination under subsection (a)(3), the prosecutor and the court shall consider:

(1) the nature and circumstances of the offense charged;

(2) special characteristics or circumstances of the defendant;

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

(4) whether the defendant's needs exceed treatment resources available to the veterans treatment court;

(5) the impact of participation and treatment on the community;

(6) recommendations of any law-enforcement agency involved in investigating or

arresting the defendant;

(7) special characteristics or circumstances of the victim or alleged victim;

(8) subject to subsection (c), recommendations of the victim or alleged victim;

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

(10) mitigating circumstances; and

(11) other circumstances reasonably related to the defendant's case.

(c) In making the determination under subsection (a), the prosecutor and the court shall seek the recommendations of the victim or alleged victim of the domestic violence offense that serves as the basis for the defendant's participation in the veterans treatment court.

SECTION 8. PARTICIPANT AGREEMENT. For a defendant to be admitted to a veterans treatment court, the defendant must sign, and the court must approve, a participant agreement. If admission to the veterans treatment court occurs prior to conviction, the prosecutor must also sign the participant agreement.

SECTION 9. VICTIM OF DOMESTIC VIOLENCE.

(a) If a victim or alleged victim of the domestic violence offense that serves as the basis for the defendant's participation in a veterans treatment court can reasonably be located, the victim or alleged victim must be offered:

(1) referrals to services of domestic-violence providers; and

(2) information on how to report an allegation of an offense committed by the defendant or a violation by the defendant of the participant agreement.

(b) The participation of the defendant in a veterans treatment court does not alter the rights of a victim or alleged victim of domestic violence under other law.

SECTION 10. MODIFICATION OR TERMINATION. If a veterans treatment court determines after a hearing that a defendant has not complied with the participant agreement, the court may modify or terminate the defendant's participation in the veterans treatment court. Modification or termination will be subject to the participant agreement agreed to by the defendant when entering the veterans treatment court.

SECTION 11. COMPLETION OF THE PARTICIPANT AGREEMENT. If the veterans court determines that a defendant has completed the requirements of the participant agreement, the court shall dispose of the charge that served as the basis of participation in the veterans treatment court in accordance with the participant agreement and any applicable plea agreement, court order, or judgment.

SECTION 12. ACCESS TO RECORDS.

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

(b) Any individually-identifiable health information and record pertaining to a defendant in a veterans treatment court undergoing alcohol and drug treatment may be subject to the privacy regulations promulgated under the Health Insurance Portability and Accountability Act, 42 U.S.C. Section 1320d-6, and 45 C.F.R. parts 160, 162, and 164 [and state law that may apply], [as amended].

Legislative Note: In states in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes are incorporated into state law, the phrase should be deleted in subsection (b).

SECTION 13. LIBERAL CONSTRUCTION. This [act] must be liberally construed.

SECTION 14. NO RIGHT TO PARTICIPATE. This [act] does not create a right to participation in a veterans treatment court.

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

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

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

SECTION 17. REPEALS; CONFORMING AMENDMENTS.

- (a)
- (b)
- (c)

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

MODEL VETERANS TREATMENT COURT RULES

RULE 1. SHORT TITLE. These [rules] may be cited as the Model Veterans Treatment Court Rules.

RULE 2. DEFINITIONS. In these [rules]:

- (1) “Defendant” means a veteran or servicemember charged with a criminal offense.
- (2) “Domestic violence” means conduct as defined in [cite appropriate state statute defining domestic violence].
- (3) “Participant agreement” means the record required by Rule 4(a), which contains the policies and procedures of a veterans treatment court and any specific terms and conditions applicable to the defendant. The term includes a modification under Rule 10.
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(b) A veterans treatment court may adjudicate misdemeanors and felonies.

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

RULE 4. RECORD OF POLICIES AND PROCEDURES.

(a) A veterans treatment court shall create a record of policies and procedures adopted to implement Rules 5 through 12].

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

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- (5) monitoring abstinence from alcohol and drugs by frequent testing;
- (6) directing a coordinated strategy that responds to each defendant's compliance;
- (7) providing ongoing judicial interaction with each defendant;
- (8) monitoring and evaluating the achievement of goals;
- (9) continuing interdisciplinary education to promote effective veterans treatment court planning, implementation, and operations; and
- (10) forging partnerships among the veterans treatment court, the United States Department of Veterans Affairs, the [appropriate state or local agency], public agencies, and community-based organizations to generate local support and enhance the effectiveness of the veterans treatment court.

(b) In adopting policies and procedures pursuant to this section, the court shall consult nationally recognized best practices related to these components.

RULE 6. SUPPLEMENTAL COMPONENTS OF VETERANS TREATMENT COURT.

- (a) A veterans treatment court may adopt supplemental policies and procedures to:
- (1) refer a defendant with a medical or medication need to an appropriate health care provider;
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 - (3) provide a defendant access to mentor who is a servicemember or a veteran;

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(6) evaluate and assess a defendant charged with a domestic-violence offense and integrate specific counseling as part of the rehabilitative services offered to the defendant;

(7) monitor a defendant charged with a domestic-violence offense to assure compliance with a domestic-violence protection order, no-contact order, and prohibition on weapon possession; and

(8) otherwise assist the veterans treatment court.

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(ii) the court, with regard to all other matters; and

(4) in all other matters, the court determines that participation in the veterans treatment court would be in the interest of justice and of benefit to the defendant and the community.

(b) In making the determination under subsection (a)(3), the prosecutor and the court shall consider:

- (1) the nature and circumstances of the offense charged;
- (2) special characteristics or circumstances of the defendant;
- (3) the defendant's criminal history and whether the defendant previously has participated in the veterans treatment court or a similar program;
- (4) whether the defendant's needs exceed treatment resources available to the veterans treatment court;
- (5) the impact of participation and treatment on the community;
- (6) recommendations of any law-enforcement agency involved in investigating or arresting the defendant;
- (7) special characteristics or circumstances of the victim or alleged victim;
- (8) subject to subsection (c), recommendations of the victim or alleged victim;
- (9) provision for and the likelihood of obtaining restitution from the defendant over the course of participation;
- (10) mitigating circumstances; and
- (11) other circumstances reasonably related to the defendant's case.

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(a) If a victim or alleged victim of the domestic-violence offense that serves as the basis for the defendant's participation in a veterans treatment court can reasonably be located, the victim or alleged victim must be offered:

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Legislative Note: In states in which the constitution, or other law, does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be deleted in subsection (b).

RULE 13. LIBERAL CONSTRUCTION. These rules must be liberally construed.

RULE 14. NO RIGHT TO PARTICIPATE. [These rules] do not create a right to participate in a veterans treatment court.

RULE 15. EFFECTIVE DATE. These rules take effect....