

DRAFT
FOR DISCUSSION ONLY

MODEL VETERANS COURT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
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With Comments

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February 16, 2015

MODEL VETERANS COURT ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

HARRY L. TINDALL, 1300 Post Oak Blvd., Suite 1550, Houston, TX 77056-3081, *Chair*

ROBERT G. BAILEY, University of Missouri-Columbia School of Law, 217 Hulston Hall,
Columbia, MO 65211

JOHN L. CARROLL, Cumberland School of Law, Samford University, 800 Lakeshore Dr.,
Birmingham, AL 35229

W. MICHAEL DUNN, P.O. Box 3701, 1000 Elm St., Manchester, NH 03105

ROGER C. HENDERSON, 5861 N. Paseo Niquel, Tucson, AZ 85718

ELIZABETH KENT, Legislative Division, Department of the Attorney General, 425 Queen St.,
Honolulu, HI 96813

ANNE H. REIGLE, Court of Common Pleas, Kent County Courthouse, 38 The Green, Dover,
DE 19901-3602

JACOB T. RODENBIKER, McKenzie County State's Attorney, 201 5th St. NW, Suite 550,
Watford City, ND 58854

RODNEY W. SATTERWHITE, Midland County Courthouse, 441st District Court, 500 N.
Loraine St., Suite 901, Midland, TX 79701

MICHAEL S. SCHWOYER, Pennsylvania House of Representatives, Room 423, Main Capitol
Bldg., Harrisburg, PA 17120

TERRY L. THURBON, P.O. Box 20286, Juneau, AK 99802

STACEY-RAE SIMCOX, Stetson University College of Law, Gulfport, FL 33707, *Reporter*

EX OFFICIO

RICHARD T. CASSIDY, 100 Main St., P.O. Box 1124, Burlington, VT 05402, *President*

H. LANE KNEEDLER, Office of the Attorney General of Virginia, 900 E. Main St.,
Richmond, VA 23219, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

JAMES PIETSCH, University of Hawaii School of Law, 2515 Dole St., Honolulu, HI 96822-
2350, *ABA Advisor*

EXECUTIVE DIRECTOR

LIZA KARSAI, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

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

7 (2) “Program” means a treatment program ordered by a veterans court.

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

10 [(4) “Servicemember” means:

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

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

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

17 (6) “Veteran” means a former member [,regardless of character of discharge,] of:

18 (A) active or reserve components of the Army, Navy, Air Force, Marine Corps, or
19 Coast Guard of the United States{? **Add merchant marine?**}; or

20 (B) the National Guard or state [defense forces].

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

1 **Legislative Note:** Definition (4) is bracketed as an option for state enactment. Currently states
2 differ on whether to include active servicemembers and the drafting committee opted to leave the
3 issue for each jurisdiction to decide.
4

5 **SECTION 3. AUTHORIZATION.**

6 (a) A [judicial tribunal] that has jurisdiction in criminal cases may administer a veterans
7 court for disposition of cases in which the defendants are veterans [or servicemember].

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

9 (c) If the defendant in a criminal case is a veteran and meets the eligibility criteria for a
10 veterans court, the court may refer the case to the veterans court at any stage in the criminal
11 proceeding.

12 **Comment**

13 This act allows for a wide variety of approaches though with a veterans court program
14 may be implemented by local rule, court rules, etc. This act also allows states to determine the
15 court in which implementation may be best accomplished.
16

17 **SECTION 4. COMPONENTS OF PROGRAM.** The components of a program

18 include:

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

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

23 (3) identifying eligible participants early;

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

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

27 (6) directing a coordinated strategy that responds to participants' compliance;

- 1 (7) providing ongoing judicial interaction with each veteran;
- 2 (8) monitoring and evaluating the achievement of goals to gauge effectiveness;
- 3 (9) continuing interdisciplinary education to promote effective veterans court planning,
- 4 implementation, and operations; and
- 5 (10) forging partnerships among the veterans court, the Department of Veterans Affairs,
- 6 the [appropriate state agency], public agencies, and community-based organizations to generate
- 7 local support and enhance program effectiveness.

8 **Comment**

9 Veterans court programs are administered with an immediate and highly structured
10 judicial intervention process for substance abuse treatment, mental health, or other assessed
11 treatment needs of eligible veteran [and servicemember defendants] in order to provide treatment
12 that may influence a person shortly after a significant triggering event such as arrest, and thus
13 persuade or compel that person to enter and remain in treatment. These programs bring together
14 substance abuse professionals, mental health professionals, federal and state Department of
15 Veterans Affairs professionals, local social programs, and intensive judicial monitoring in
16 accordance with the nationally recommended key components of drug and veterans treatment
17 courts. The ten listed attributes of a veterans court program are derived from Justice for Vets and
18 the National Clearinghouse for Veterans Treatment Courts at the National Association of Drug
19 Court Professionals.

20
21 **SECTION 5. REMEDIAL NATURE; LIBERAL CONSTRUCTION.** This [act] is
22 remedial in nature and must be liberally construed.

23 **SECTION 6. LOCAL POLICIES AND GUIDELINES.** A veterans court may adopt,
24 in a record, policies and guidelines to administer this [act]. A veterans court may establish
25 written criteria that define the successful completion of the program.

26 **SECTION 7. ELIGIBILITY FOR PROGRAM.**

27 (a) A veteran [and a servicemember] is eligible for a program if the defendant and
28 prosecutor agree to referral to the program and the court approves the referral.

29 (b) In this subsection, “crime of violence” includes first degree murder, second degree

1 murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal
2 sexual assault, armed robbery, aggravated arson, arson, aggravated kidnapping and kidnapping,
3 aggravated battery resulting in great bodily harm or permanent disability, aggravated stalking,
4 stalking, and an offense in which serious bodily injury or death to a person occurs. A defendant
5 is ineligible to participate in a veterans court if:

- 6 (1) the defendant is charged with a crime of violence;
- 7 (2) the defendant previously has been convicted of a crime of violence; or
- 8 (3) the defendant does not demonstrate willingness to participate in a treatment
9 program.

10 (c) If the defendant is charged with a crime of [domestic violence], the prosecutor shall
11 solicit the victim's opinion regarding the defendant's participation in the program.

12 (d) In determining whether the program would be in the interests of justice and of benefit
13 to the defendant and the community, the court and the prosecutor may consider:

- 14 (1) the nature of the crime charged and the circumstances surrounding the crime;
- 15 (2) any special characteristic or circumstance of the defendant;
- 16 (3) whether the defendant is a first-time offender, and, if the defendant
17 previously has participated in this or a similar program, the degree of success attained;
- 18 (4) the probability that the defendant will cooperate with and benefit from
19 probation and treatment through the program;
- 20 (5) whether the available program is appropriate to meet the needs of the
21 defendant;
- 22 (6) the impact of probation and treatment on the community;
- 23 (7) any recommendations of the involved law-enforcement agency;

1 (8) any recommendations of the alleged victim;

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

4 (10) mitigating circumstances; and

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

6 **Legislative Note:** States should change to the terminology found in subsection (b)(1) of Section 7
7 to mirror their own penal codes.

8
9 **SECTION 8. ADMISSION TO PROGRAM.**

10 (a) When a veterans court refers a defendant to a program:

11 (1) the court shall order mental-health and drug- and-alcohol screening and
12 assessment of the defendant; and

13 (2) the defendant must agree on the record to voluntarily enter the program and to
14 adhere to the terms and conditions of the program.

15 (b) The court or [prosecutor] may require the defendant to provide to the court:

16 (1) information regarding prior criminal charges;

17 (2) education, work experience, and training;

18 (3) family history, including residence in the community;

19 (4) medical and mental history, including psychiatric or psychological treatment
20 or counseling; and

21 (5) other information reasonably related to the likelihood of success of the
22 treatment program.

23 **SECTION 9. COMPLETION.**

24 (a) If a defendant in veterans court successfully completes the program at any stage of the
25 proceedings, the charge that served as the basis of referral to the program must be disposed of in

1 accordance with conditions under which the defendant entered the program. If the defendant
2 successfully completes the program as part of a sentence, the court may reduce or modify the
3 sentence.

4 (b) This [act] does not permit a judge to impose, modify, or reduce a sentence below the
5 minimum sentence required by law.

6 **SECTION 10. NONCOMPLIANCE.**

7 (a) If a defendant does not complete the program or violates a term or condition of the
8 program, the prosecutor may move for a hearing to determine whether the defendant may remain
9 in the program.

10 (b) If, after hearing under subsection (a), the veterans court determines that the defendant
11 has not completed the program or has violated a term or condition of the program, the court may
12 modify or terminate defendant's participation in the program.

13 (c) In a hearing under subsection (a), the burden of proof is the burden of proof required
14 to revoke probation.

15 **SECTION 11. ACCESS TO RECORDS.**

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

18 (b) Any individually-identifiable health information and record pertaining to a defendant
19 in a veterans court undergoing alcohol and drug treatment is subject to the privacy regulations
20 promulgated under the Health Insurance Portability and Accountability Act and [state law that
21 may apply].

22 (c) Evidence produced or offered in a veterans court proceeding is not discoverable by a
23 third party unless an independent basis exists for the discovery of the evidence.

1 **Comment**

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

6 **SECTION 12. SUBSTANCE ABUSE TREATMENT AND MENTAL HEALTH**
7 **COUNSELING.**

8 (a) Except as set forth in subsection (b), a veterans court may order a mental health or
9 drug or alcohol screening and assessment. The screening and assessment must include:

10 (1) a risk assessment;

11 (2) be based, in part, on the availability of treatment resources;

12 (3) include recommendations for treatment of the conditions that indicate a need
13 for treatment under the monitoring of the court; and

14 (4) be reflective of a level of risk assessed for the individual seeking admission.

15 (b) An assessment under subsection (a) need not be ordered if the court finds a valid
16 screening or assessment related to the present charge was completed within the previous 60 days.

17 **Comment**

18 The veterans court program may maintain a network of substance abuse treatment
19 programs representing a continuum of graduated substance abuse treatment options
20 commensurate with the needs of defendants; these shall include programs with the United States
21 Department of Veterans Affairs (DVA), the State, and community-based programs supported
22 and sanctioned by either or both. The veterans court program may also, in its discretion, employ
23 additional services or interventions, as it deems necessary on a case by case basis. The veterans
24 court program may maintain or collaborate with a network of mental health treatment programs
25 and, if it is a co-occurring mental health and substance abuse court program, a network of
26 substance abuse treatment programs representing a continuum of treatment options
27 commensurate with the needs of the defendant and available resources including programs with
28 the DVA and the State. The court may, among other appropriate and authorized pre-trial
29 conditions, order the defendant to complete substance abuse treatment in an outpatient, inpatient,
30 residential, or jail-based custodial treatment program, order the defendant to complete mental
31 health counseling in an inpatient or outpatient basis, and comply with healthcare providers'
32 recommendations regarding follow up treatment.
33

1 **SECTION 13. FEES.** A veterans court may require a defendant who is placed in a
2 program to pay a portion of or the entire cost of the program and the cost of additional
3 supervision that may be required.

4 **[SECTION 14. FUNDING.** A veterans court may accept grants, donations, and other
5 proceeds from outside sources to support programs. Grants, donations, and other proceeds must
6 be retained by the court for expenses and must be accounted for under law of this state other than
7 this [act].]

8 **SECTION 15. NO CREATION OF RIGHT.** This [act] does not confer a right to
9 treatment in or admission to a program.

10 **SECTION 16. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
11 applying and construing this uniform [act], consideration must be given to the need to promote
12 uniformity of the law with respect to its subject matter among states that enact it.

13 **SECTION 17. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
14 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic
15 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
16 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
17 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
18 Section 7003(b).

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

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

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

2 (a)

3 (b)

4 (c)

5 **SECTION 20. EFFECTIVE DATE.** This [act] takes effect....