

D R A F T
FOR DISCUSSION ONLY

MODEL VETERANS COURT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

October 14 -15, 2016 Drafting Committee Meeting

Copyright © 2016
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or Reporter's notes, have not been passed upon by the Uniform Law Commission or the Drafting Committee. They do not necessarily reflect the views of the Commission, its Commissioners, the Drafting Committee, its Members, and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

September 9, 2016

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, 62 Ridge Rd., Concord, NH 03301

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, 2037 Rose Creek Blvd. S., Fargo, ND 58104-6878

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, 202 N. 9th 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

MODEL VETERANS COURT ACT

TABLE OF CONTENTS

| | |
|--|----|
| SECTION 1. SHORT TITLE. | 1 |
| SECTION 2. DEFINITIONS. | 1 |
| SECTION 3. AUTHORIZATION. | 3 |
| SECTION 4. COMPONENTS OF PROGRAM. | 4 |
| SECTION 5. ENHANCEMENTS TO PROGRAM. | 5 |
| SECTION 6. REMEDIAL NATURE; LIBERAL CONSTRUCTION. | 6 |
| SECTION 7. TERMS AND CONDITIONS. | 6 |
| SECTION 8. ELIGIBILITY AND ADMISSION. | 6 |
| SECTION 9. VICTIMS OF DOMESTIC VIOLENCE. | 8 |
| SECTION 10. MODIFICATION OR TERMINATION. | 9 |
| SECTION 11. COMPLETION. | 9 |
| SECTION 12. ACCESS TO RECORDS. | 9 |
| SECTION 13. NO CREATION OF RIGHT. | 10 |
| SECTION 14. UNIFORMITY OF APPLICATION AND CONSTRUCTION. | 10 |
| SECTION 15. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. | 10 |
| [SECTION 16. SEVERABILITY.] | 10 |
| SECTION 17. REPEALS; CONFORMING AMENDMENTS. | 10 |
| SECTION 18. EFFECTIVE DATE. | 10 |

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,” when used as a noun, means information that is inscribed on a tangible
11 medium or that is stored in 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 paragraph (5)(B) 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 The definitions of “servicemember” and “veteran” broadly include any person who
14 served in the United States Armed Forces in any of the widely recognized branches of the
15 military or state defense forces. State defense forces are called up periodically for many
16 different missions within the state including disaster relief, riot control, etc. These definitions
17 recognize the service of state defense force members, who may encounter the same types of
18 situations as federal military servicemembers and would likely benefit from the veteran
19 mentorship programs typically implemented in veterans courts.

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

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

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

42 It is well documented in the media, congressional reports and investigations, and current
43 lawsuits that the DoD has separated servicemembers from the military for misconduct that
44 resulted from undiagnosed or untreated mental health or brain injury disabilities caused during a
45 veteran’s service. These separations often result in “bad paper discharges” that prevent veterans
46 from receiving health care benefits from the VA, often leaving veterans in these situations

1 completely untreated for disabilities related to their service. In September 2014, Secretary of
2 Defense Chuck Hagel issued guidance that every branch of the military was encouraged to
3 reconsider these poor discharges for veterans from the Vietnam War era who claimed that their
4 misconduct was due to post-traumatic stress. This guidance was issued in recognition of the fact
5 that post-traumatic stress often went undiagnosed and led to misconduct resulting in poor
6 discharges. In 2015, the DoD expanded this review to all veterans with post-traumatic stress and
7 poor discharges. Many of these veterans who suffer from poor discharges now recognized by the
8 DoD to possibly be unwarranted commit crimes that, but for the character of their discharge,
9 would allow them entry into a veteran court program.

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

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

24 **SECTION 3. AUTHORIZATION.**

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

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

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

31 **Comment**

32 This act allows for a wide variety of approaches through which a veterans court program
33 may be implemented by local rule, court rules, etc. This act also allows states to determine the
34 court in which implementation may be best accomplished. The act allows for the inclusion of
35 felony misdemeanor offenses in order to give the court the broadest latitude to determine the
36 appropriateness of a defendant's participation in veterans court based upon the other
37 considerations in Section 8 of this act.

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

23
24 **SECTION 5. ENHANCEMENTS TO PROGRAM.** The components of a veterans
25 court program may include:

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

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

31 (3) monitoring a defendant charged with domestic violence offenses to assure compliance
32 with domestic violence protection orders, no contact orders, and any requirements that weapons
33 be forfeited;

34 (4) conferring with the victim of domestic violence, where appropriate, to evaluate the
35 defendant's compliance with any court order.

1 (5) referring a defendant with specific medical and medications needs to appropriate
2 physicians and health care providers;

3 (6) referring a defendant to other available services which may include assistance with
4 housing, employment, nutrition, and education;

5 (7) providing a defendant access to peers and mentoring services that may aid the
6 defendant in the rehabilitative process; and

7 (8) other components that will assist the program.

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 in a
20 record terms and conditions for participation in, completion of, and termination of a program.
21 The terms and conditions must include the proposed disposition of 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.*

9

10

Comment

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

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

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

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

SECTION 9. VICTIMS OF DOMESTIC VIOLENCE. As part of a program, a victim of a domestic violence crimes committed by the defendant must be:

- (1) referred to or offered counseling on an individual basis;
- (2) provided resource information to report further allegations of crimes committed by the defendant or violations by the defendant of the terms and conditions of the program.

35

Comment

36

37

Special attention was given in the act to victims of domestic violence in recognition of the fact that for many veterans, the family members are the support network that deal intimately

1 with mental health, substance abuse, and brain injury conditions. Providing support to these
2 victims may be crucial to maintaining stability in a defendant's life while providing treatment.

3
4 **SECTION 10. MODIFICATION OR TERMINATION.** If the veterans court

5 determines that a defendant has not complied with a program, the veterans court may modify or
6 terminate the defendant's participation in the program subject to the terms and conditions agreed
7 to by the defendant when entering the program. On notification of termination, the defendant
8 may request a hearing.

9 **SECTION 11. COMPLETION.**

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

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

17 **SECTION 12. ACCESS TO RECORDS.**

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

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

24 **Comment**

25 42 U.S.C. Section 290dd-2 and 42 Code of Federal Regulations, Part 2 regulate
26 disclosure of and access to information regarding patients who have applied for or received any

1 alcohol or drug abuse-related services, including assessment, diagnosis, counseling, group
2 counseling, treatment, or referral for treatment, from a covered program.

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

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

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

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

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

20
21 **SECTION 17. REPEALS; CONFORMING AMENDMENTS.**

22 (a)

23 (b)

24 (c)

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