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Veterans Treatment Courts

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I. Introduction

108. In the past decade, several states have begun recognizing the special circumstances of returning veterans who suffer from post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) by expanding their judicial systems to accommodate a new therapeutic treatment court — the veterans treatment court. Focusing almost exclusively on criminal defendants who served in the United States military, these courts are relatively new in the therapeutic courts' arena. While their presence continues to grow, these courts are often developed independently of a state statute which leads to varied experiences in different jurisdictions within the same state. This article is intended to briefly discuss the growth of these courts and to introduce the reader to a standardized Model Veterans Treatment Court Act developed by the Uniform Law Commission in 2017 that is recently gaining attention. The Act's purpose was to help standardize the experience in a veterans treatment court for defendants and victims within states and across the country.

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109. In 2008, Judge Robert T. Russell, in Buffalo, New York, formally established the first criminal court docket to specifically provide support and administration to justice-involved veterans. The idea to provide a specialized veterans docket stems from the success of other problem-solving courts which specifically cater to those with afflictions such as drug addiction or mental health problems. Specializing in this type of defendant allows the court to provide more thorough and continuous supervision of rehabilitation instead of mere punitive sentencing.²

110. Veterans suffering from PTSD or TBI may find themselves in legal situations they otherwise might not normally be in due to lack of impulse control, impaired judgement, etc.³ These situations can range from domestic violence, assault, drug use, road rage, and more serious crimes like murder.⁴ Some studies point to combat exposure and the stresses of military service as potential contributing factors leading to veterans having a likelihood of being involved in the justice system.⁵

111. The first veterans treatment court docket in Buffalo was an outgrowth of the experience Judge Russell had with veterans participating in the Drug Treatment Courts and Mental Health Treatment Courts. Judge Russell recognized that “veterans needed a different kind of supervision and support, increased collaboration with law enforcement and the Veterans Administration, and speedy identification and referrals of eligible veterans into treatment.” The Buffalo Veterans Treatment Court also noticed by happenstance that the effect of veterans working at the court had a noticeably positive impact on the defendant/veterans in the justice process.⁶ This observation has led to one of the most unique aspects of the Veterans Treatment Court phenomenon — court-facilitated mentorship by other veterans through the treatment and rehabilitation process.⁷

112. Professor Kristine Huskey of the University of Arizona, a noted expert on veterans treatment courts, has detailed three aspects of veterans treatment courts that make them unique among the problem-solving courts. First, the starting point for entry into

2 Robert T. Russell, *Veterans Treatment Courts*, 31 *TOURO L. REV.* 385, 387 (2015).

3 Stacey-Rae Simcox, Michelle Mattingly & Isis Marrero, *Understanding TBI in Our Nation’s Military and Veterans: Its Occurrence, Identification and Treatment, and Legal Ramifications*, 84 *UMKC L. REV.* 373, 380 (2015).

4 Stacey-Rae Simcox, Leticia Y. Flores, & Mark D. Matthews, *Missing Fire on TBI and PTSD: The Importance of Working with Medical and Mental Health Professionals*, 1–8 *SERVICEMEMBER AND VETERANS RIGHTS* § 8.03 (2017)

5 Kristine A. Huskey, *Reconceptualizing “the Crime” in Veterans Treatment Courts*, 27 *FED. SENT. R.* 178, 180–182 (2015) (citing numerous studies showing linkage between PTSD and behaviors that may lead to misconduct).

6 Robert T. Russell, *Problem-Solving Court: Veterans Treatment Courts*, 31 *TOURO L. REV.* 385, 387 (2015).

7 JUSTICE FOR VETS, *What’s At Stake*, JUSTICEFORVETS.ORG; Benjamin Pomerance, *The Best-Fitting Uniform: Balancing Legislative Standards and Judicial Processes in Veterans Treatment Court*, 18 *WYO. L. REV.* 179, 187 (2018).

this court is the former occupation of the participant, not the condition from which he suffers. Second, veterans participating in the veterans treatment court may suffer not just from substance abuse, but from psychological conditions and physical disability at the same time — comorbidities seen in higher proportions in veterans treatment courts than in other problem-solving courts. Finally, a veterans treatment court “views the misconduct (committed by a veteran) as connected to positive conduct — the defendant’s service to the country. In other words, the defendant’s military service is viewed as having caused the defendant’s criminal charges.”⁸

113. The success record of these courts is still relatively short, but early results are generally optimistic. Justice for Vets, a non-profit organization which has helped to establish over 200 veterans treatment courts and provides training to court staff, reports that the first study of success in these courts found that over 89% of veterans participating in a veterans treatment court “remained arrest-free during their time in the program; experienced better clinical outcomes; and felt more socially connected.”⁹ This is one measurement of success in the process among many which can include attending all appointments; completing all required therapy; reintegration; etc. — all of which are hard to actually gather statistics for and study.¹⁰ However, despite a small amount of objective data to draw from, the overall consensus is that these courts are effective and successful.¹¹ This likely is best demonstrated by the rapid spread of veterans treatment courts across the nation which has grown in the past decade from that spark in Buffalo to over 350 across the country.¹²

114. The VA has joined hands with these courts as well by providing formalized participation in veterans courts through Veterans Justice Outreach Specialists (VJOs).¹³ These VA employees “assist justice involved veterans in accessing available services.” VJOs are often placed in the veterans treatment court to help veterans navigate the process of accessing mental health treatment; getting housing; helping with ancillary legal issues; and accessing veterans’ benefits.¹⁴

8 Kristine A. Huskey, *Justice for Veterans: Does Theory Matter?* 59 ARIZ. L. REV. 697, 706–708 (2017).

9 JUSTICE FOR VETS, *What’s At Stake*, JUSTICEFORVETS.ORG.

10 Julie Marie Baldwin, *Veterans Treatment Courts: Studying Dissemination, Implementation, and Impact of Treatment-Oriented Criminal Courts*, UNIV. OF FLORIDA, 143 and Table A–46 (2013).

11 Phillip Carter, Dr. Jason Dempsey, Katherine Kidder, & Amy Schafer, Center for a New American Security, *Passing the Baton, A Bipartisan Agenda for the Veteran and Military Community*, CNAS.ORG (2015).

12 Kristine A. Huskey, *Justice for Veterans: Does Theory Matter?* 59 ARIZ. L. REV. 697, 709 (2017).

13 US Dept. of Veterans Affairs, PTSD: National PTSD Center, *Keeping Veterans with PTSD out of the Justice System*, PTSD.VA.GOV; Benjamin Pomerance, *The Best-Fitting Uniform: Balancing Legislative Standards and Judicial Processes in Veterans Treatment Courts*, 18 WYO. L. REV. 179, 187 (2018).

14 Kierra Zoellick, *The Role of Veterans Justice Outreach Specialists in Veterans Treatment Courts*, 1 AM. U. SCHOOL OF PUB. AFFAIRS (2016),

115. With this rapid growth has come a non-uniformity in the entry requirements for participation and a wide variance in the administration of these veterans treatment courts. Very few states have laws regarding the establishment of these courts. Many are dockets created in other problem-solving courts and remain off the national radar and thus uncounted in the total number of courts. Some veterans treatment courts are so informal they have no written rules of participation or policies and procedures.¹⁵ Many courts vary in terms of which veterans they will permit to participate in the program. Because the VA will generally only administer care to veterans with certain discharges, some states and courts limit participation to those veterans with qualifying discharges.¹⁶ This saves the courts money allowing them to leverage court-ordered treatment through the VA than through court or state funded programs. Other courts focus on the types of disabilities the veteran suffers and its connection to service.¹⁷ Some courts limit the type of offense permitted on the veterans treatment court docket to misdemeanors, non-violent crimes, or crimes not involving domestic violence.¹⁸

116. The failure to have consistent standards in the administration of veterans treatment court dockets across the country has led to some undesirable results. Benjamin Pomerance, Deputy Director for Program Development in the New York State Division of Veterans' Affairs, notes that without a state statute regarding the nature of these courts, standards can show significant diversion among veterans treatment courts within the same state. He also remarks that the decisions made concerning which veterans should be allowed to participate “involves multiple financial, practical, and ethical considerations from which the public should not be left out” and “impede any desire for a system striving for evenhanded justice to which people have equal access.”¹⁹

II. The Model Veterans Treatment Court Act

117. With an understanding that veterans treatment courts are here to stay for the foreseeable future, and with the concern echoed by Mr. Pomerance that variance amongst veterans treatment courts within the same state could lead to undesirable results, in 2015 the Uniform Law Commission (ULC) formed a committee to draft a model act for

15 Kristine A. Huskey, *Justice for Veterans: Does Theory Matter?* 59 ARIZ. L. REV. 697, 709 (2017).

16 National Conference of Commissioners on Uniform State Laws, MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES, *Comment to § 2*, NADCONFERENCE.ORG. See also for example FLA. STAT. § 1.01(14), 730 ILCS 167/10, MISS. CODE ANN. § 9–25–1.

17 See for example FLA. STAT. § 394.47891, MCLS § 600.1204, NEV. REV. STAT. ANN. § 176A.285, TEX. GOV'T CODE § 124.002 (2018).

18 See for example O.C.G.A. § 15–1–17(B)(3), 730 ILCS 167/20, LA. R.S. § 14:2; LA. R.S. § 13:5366.

19 Benjamin Pomerance, *The Best-Fitting Uniform: Balancing Legislative Standards and Judicial Processes in Veterans Treatment Courts*, 18 WYO. L. REV. 179, 187, 202, 208 (2018).

veterans treatment courts. The ULC, the nation's oldest state-governmental association, consists of attorneys and judges appointed by the governor of each state, who meet to draft uniform laws on various subjects for the individual state legislatures to review and enact.²⁰ With the participation of several stakeholder representatives and expert advisors to include the American Bar Association, Professor Kristine Huskey, Justice for Vets, the National Center for States Courts, The National Association of Drug Court Professionals, various Veterans Service Organizations, and other non-profits that advocate for veterans and their families, the Model Veterans Treatment Court Act was completed in the summer of 2017.²¹ The Act includes a set of Court Rules in recognition of the fact that many of these courts operate in the absence of legislation.

118. The Model Veterans Treatment Court Act (hereinafter “the Act”) attempts to address and standardize the areas of variance in veterans treatment courts across the country, while still allowing the individual judges to administer their courts as they see fit. It was also drafted in a manner which allows the greatest number of eligible veterans to access them.²²

119. To participate in the veterans treatment court program, veterans must have a mental-health condition, traumatic brain injury, or substance use disorder. Recognizing the problems surrounding bad discharges due to PTSD and TBI induced behavior, the Act permits veterans with any character of discharge to participate in the veterans treatment court program. The Act also recognizes that not all disabilities veterans suffer may be incurred in combat, and thus does not limit these courts to combat veterans. The Act also does not require that the disabilities the veteran suffers from be caused by his service, because most veterans would be permitted access to other problem-solving courts that may not be able to achieve the level of benefit or success veterans receive from the veteran specific program.²³

120. The broad language allowing large numbers of veterans to participate in the veterans treatment court is balanced by giving permissive power to the court (and prosecutor, in cases of pretrial diversion) to allow a “defendant’s participation in the veterans treatment court (if it) would be in the interests of justice and of benefit of the defendant and the community.”²⁴ The Act requires the judge (and prosecutor) to consider the na-

20 Benjamin Pomerance, *The Best-Fitting Uniform: Balancing Legislative Standards and Judicial Processes in Veterans Treatment Courts*, 18 WYO. L. REV. 179, 187, 202, 208 (2018).

21 Uniform Law Commission, *A Few Facts About the Model Veterans Treatment Court Act and Model Veterans Treatment Court Rules*, UNIFORMLAWS.ORG (2017).

22 Uniform Law Commission, *A Few Facts About the Model Veterans Treatment Court Act and Model Veterans Treatment Court Rules*, UNIFORMLAWS.ORG (2017).

23 National Conference of Commissioners on Uniform State Laws, MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES, *Comment to §§ 2 and 7*, NADCONFERENCE.ORG.

24 National Conference of Commissioners on Uniform State Laws, MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES, *Comment to § 7(a)(3)*, NADCONFERENCE.ORG.

ture of the offenses charged; the defendant's previous criminal history and his special circumstances; the defendant's treatment needs; the impact on the community; law enforcement recommendations; and other circumstances.²⁵ Additionally, the Act requires the court to consult with the victim of domestic violence specifically and obtain their recommendation concerning participation.²⁶ These considerations allow courts to exclude veterans who are inappropriate for participation in the veterans treatment court program under a set of documented standards contained within the Act.

121. The Act also formalizes portions of the process, recognizing that the informality of a number of veterans treatment courts can be troublesome. It requires that a veteran agree on the record to formally participate in the veterans treatment court program²⁷ and that a participant agreement be signed by all relevant parties and approved by the court.²⁸ To ensure due process considerations are protected, the Act also requires a hearing if the court considers modifying or terminating the defendant's participation in the veterans treatment court due to his failure to comply with court-ordered treatment.²⁹ The court is also required to adopt policies and procedures implementing the key components of a veterans treatment court, which include (among other things) integrating treatment services; using a non-adversarial approach; monitoring defendant participation; and forging partnerships.³⁰ These ten key components are recognized by Justice for Vets as the key components of a veterans treatment court and incorporate the National Association of Drug Court Professionals' Ten Key Components of Drug Courts. The key components are "evidenced-based, scientifically validated principles (and) are industry best practice standards."³¹ These policies and procedures must be written down and provided to the defendant so that he knows both the expectations and his rights in this process.³² The Act is drafted to allow courts to maintain maximum autonomy in

25 National Conference of Commissioners on Uniform State Laws, MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES, *Comment to § 7(b)*, NADCONFERENCE.ORG.

26 National Conference of Commissioners on Uniform State Laws, MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES, *Comment to § 7(b)(8) and (c)*, NADCONFERENCE.ORG.

27 National Conference of Commissioners on Uniform State Laws, MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES, *Comment to § 7(a)(2)*, NADCONFERENCE.ORG.

28 National Conference of Commissioners on Uniform State Laws, MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES, *Comment to § 8*, NADCONFERENCE.ORG.

29 National Conference of Commissioners on Uniform State Laws, MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES, *Comment to § 10*, NADCONFERENCE.ORG.

30 National Conference of Commissioners on Uniform State Laws, MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES, *Comment to § 5(a)*, NADCONFERENCE.ORG.

31 National Conference of Commissioners on Uniform State Laws, MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES, *Comment to § 5* NADCONFERENCE.ORG.

32 National Conference of Commissioners on Uniform State Laws, MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES, *Comment to § 4(a)*, NADCONFERENCE.ORG.

their implementation and administration of the guidance provided.³³

122. The Act was carefully written to allow special attention to be paid to victims of domestic violence whose alleged attackers are participating veterans. Often, spouses and family members are the first (and potentially only) people to feel the brunt of a veteran's mental health or substance use symptoms. They are also a suffering veteran's primary emotional and familial support. If these family members are not receiving the services they need, the likelihood they will be able to help the recovering veteran is reduced dramatically. Therefore, the Act requires that victims of domestic abuse perpetrated by a veteran participating in the veterans treatment court be offered referrals to counseling services and be given specific information on how to report the veteran's non-compliance with the participant agreement.³⁴

III. Conclusion

123. The Model Veterans Treatment Court Act has already been introduced as a bill in West Virginia and Florida³⁵ and has been discussed and considered by various organizations and conferences.³⁶ Additionally, the President signed Public Law 115-240 into law in September 2018 in order to fund more VJO positions for specific placement in veterans treatment court settings.³⁷ In January 2019, a House Bill was also proposed to provide grants from the Department of Justice to help develop and maintain veterans treatment courts.³⁸ The interest of legislatures and other stakeholders in this new area of veterans law is bound to gain momentum as more veterans are sent to serve in conflicts overseas and return home from military service. The courts, advocates, prosecutors and defense counsel involved in the creation, growth, and implementation of these programs are truly pioneers in the greatest sense following in the footsteps of Judge Russell who let common sense and keen observation help guide the legal system into life-changing and groundbreaking directions.

33 National Conference of Commissioners on Uniform State Laws, MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES, *Comment to § 5*, NADCONFERENCE.ORG.

34 National Conference of Commissioners on Uniform State Laws, MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES, *Comment to § 9*, NADCONFERENCE.ORG.

35 *Model Veterans Treatment Court Act*, W. Va. House Bill 2389, Section 51, Article 12 (2018); *Court Ordered Treatment Programs*, FL CS/HB 1265 (2019). *Model Veterans Treatment Court Act and Model Veterans Treatment Court Rules: Legislative Tracking*, UNIFORM LAW COMMISSION (2019).

36 See for example Wounded Warrior Project: *Statement for the Record*, VETERANS.SENATE.GOV (2017); *Stanford University: Veterans Treatment Conference*, STANFORD.LAW.SCHOOL.

37 Public Law 115-240, [VETERANS TREATMENT COURT IMPROVEMENT ACT OF 2018](http://VETERANS.TREATMENT.COURT.IMPROVEMENT.ACT.OF.2018), 115th Congress.

38 H.R. 886, [VETERAN TREATMENT COURT COORDINATION ACT OF 2019](http://VETERAN.TREATMENT.COURT.COORDINATION.ACT.OF.2019), 116th Congress.