

## VETERANS TREATMENT COURTS BEST PRACTICE ELEMENTS

**SUBJECT:** States can facilitate the development of Veterans Treatment Courts (VTCs) through legislation that supplements existing drug and mental health court statutes.

**PRINCIPLES:** The principles below promote a framework within which courts have the flexibility to develop constructive models that work best for them locally to achieve positive outcomes:

- Participants have protections:
  - Are selected by a team of court members including prosecuting and defense attorneys;
  - Participation is voluntary and their constitutional rights are retained;
  - Have all qualifying charges reduced or dismissed, including where appropriate, more serious charges, commensurate with completion of appropriate treatment and services. Where charges are dismissed, public access to the record is limited, where appropriate as provided by state or local law, including expunging records.
  
- Selection is open to the extent possible:
  - Are allowed cross jurisdictional authority to maximize opportunities for veterans to participate and to take full advantage of available treatment services;
  - Open to veterans and members of the Military Services: Active Duty, Guard and Reserve;
  - Not limited to veterans/Service members who have had combat experience; and
  - Based on criteria that prudently consider service discharge and prohibited offenses to optimize treatment opportunity for the veteran, as well as ensure the safety of the veteran’s family and the community.
  
- VTCs have jurisdictional flexibility and are focused on treatment:
  - Coordinate with state and Federal VA, veteran service organizations, community-based service providers, and local agencies to assess the needs of and provide veterans with appropriate housing, treatment, services, job training, and benefits; and
  - Include mentoring sessions with other veterans.

### EXAMPLES:

- Participants have protections:
  - Illinois HB 5214 (2010) (Public Law 096-0924) illustrates some of the protections articulated above:
    - Selected by a team of court members: *Section 20(a) A defendant may be admitted into a Veterans and Service members Court program only upon the agreement of the prosecutor and the defendant and with the approval of the Court.*
    - Have all qualifying charges reduced or dismissed: *Section 35(b) Upon successful completion of the terms and conditions of the program, the Court may dismiss the original charges against the defendant or successfully terminate the defendant's sentence or otherwise discharge him or her from any further proceedings against him or her in the original prosecution.*

- Selection is open to the extent possible:
  - Illinois HB 5214 (2010) (Public Law 096-0924) provides cross jurisdictional authority to maximize opportunities:
    - *Section 15. Authorization. The Chief Judge of each judicial circuit may establish a Veterans and Service members Court program including a format under which it operates under this Act. The Veterans and Servicemembers Court may, at the discretion of the Chief Judge, be a separate court or a program of a drug court within the Circuit. At the discretion of the Chief Judge, the Veterans and Servicemembers Court program may be operated in one county in the Circuit, and allow veteran and servicemember defendants from all counties within the Circuit to participate.*
  - Illinois HB 5214 (2010) (Public Law 096-0924) provides a statement concerning broad eligibility:
    - *Section 5. Purposes. The General Assembly recognizes that veterans and active, Reserve and National Guard servicemembers have provided or are currently providing an invaluable service to our country. In so doing, some may suffer the effects of, including but not limited to, post traumatic stress disorder, traumatic brain injury, depression and may also suffer drug and alcohol dependency or addiction and co-occurring mental illness and substance abuse problems. As a result of this, some veterans or active duty servicemembers come into contact with the criminal justice system and are charged with felony or misdemeanor offenses. There is a critical need for the criminal justice system to recognize these veterans, provide accountability for their wrongdoing, provide for the safety of the public and provide for the treatment of our veterans. It is the intent of the General Assembly to create specialized veteran and servicemember courts or programs with the necessary flexibility to meet the specialized problems faced by these veteran and servicemember defendants.*
  - Oregon SB 999 provides a succinct list of criminal infractions that would preclude an individual from participation (diversion in the text below):
    - (3) *In determining whether diversion of a defendant who is a service member is in the interests of justice and of benefit to the defendant and the community, the district attorney shall consider all of the factors listed in subsection (2) of this section, including the nature of the offense, except that diversion may not be offered if the offense:*
      - (a) *Involved serious physical injury<sup>1</sup> to another person;*
      - (b) *Is classified as a Class A or B felony and involved physical injury<sup>2</sup> to another person;*
      - (c) *Is described in ORS 163.365, 163.375, 163.395, 163.405, 163.408, 163.411 or 163.427<sup>3</sup>; or*

---

<sup>1</sup> "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ. (ORS 161.015)

<sup>2</sup> "Physical injury" means impairment of physical condition or substantial pain. (ORS 161.015)

<sup>3</sup> Sections refer to sexual offenses

*(d) Involved domestic violence as defined in ORS 135.230 and at the time the offense was committed, the defendant was subject to a protective order in favor of the victim of the offense.*

– VTCs are focused on treatment:

- Illinois HB 5214 (2010) (Public Law 096-0924) Coordinate with state and Federal VA, veteran service organizations, community-based service providers, and local agencies:

- *Section 30. Mental health and substance abuse treatment.*

- (a) The Veterans and Servicemembers Court program may maintain a network of substance abuse treatment programs representing a continuum of graduated substance abuse treatment options commensurate with the needs of defendants; these shall include programs with the VA, IDVA, the State of Illinois and community-based programs supported and sanctioned by either or both.*

- (b) Any substance abuse treatment program to which defendants are referred must meet all of the rules and governing programs in Parts 2030 and 2060 of Title 77 of the Illinois Administrative Code.*

- (c) The Veterans and Servicemembers Court program may, in its discretion, employ additional services or interventions, as it deems necessary on a case by case basis.*

- (d) The Veterans and Servicemembers Court program may maintain or collaborate with a network of mental health treatment programs and, if it is a co-occurring mental health and substance abuse court program, a network of substance abuse treatment programs representing a continuum of treatment options commensurate with the needs of the defendant and available resources including programs with the VA, the IDVA and the State of Illinois.*