



VETERANS TREATMENT COURTS BEST PRACTICE ELEMENTS

SUBJECT:

States can facilitate the development of Veterans Treatment Courts, or VTCs, through legislation that supplements existing drug and mental health court statutes.

PRINCIPLES:

In addition to an opportunity to reduce veteran recidivism and potential costs of incarceration to the community, the Department of Defense views VTCs as an option to reduce potential suicides. DoD advocates states promote VTCs that focus on treatment, are not governed by policies that limit participation and are accessible to largest extent possible.

- Focus on treatment
 - Coordinated with state and federal Veterans Affairs, 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
 - Includes mentoring sessions with other veterans
 - Uses the potential of having all qualifying charges reduced or dismissed, including where appropriate, more serious charges as an incentive to complete treatment
- Selection — open to the extent possible
 - Open to veterans and members of the military services including active duty, National Guard and Reserve Components
 - Not limited to just veterans and service members who have had combat experience
 - Based on criteria that prudently considers service discharge and prohibited offenses to optimize treatment opportunity for the veteran, as well as to ensure the safety of the veteran's family and the community
 - Selected by a team of court members including prosecuting and defense attorneys
- State court systems and VTC accessibility
 - Have overarching statute or court policy encouraging jurisdictions to establish VTCs
 - Have courts or plans for courts covering major metropolitan centers
 - Allow cross-jurisdictional authority to maximize opportunities for veterans to participate and to take full advantage of available treatment services

EXAMPLES:

Several states have an established statute to authorize the judiciary to establish municipal, district and circuit VTCs. Some of these states have modified existing drug court statute to include provisions for VTCs or have developed legislation specifically for VTCs; whereas, others have developed broad enabling legislation that anticipates the state court system developing more specific policies:

- Legislation that describes the desired principles for VTCs includes the following:
 - VTCs focused on treatment:

- Illinois HB 5214, Section 30 (2010) specifies VTCs coordinate with state and federal Veterans Affairs, veteran service organizations, community-based service providers and local agencies:

“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.

- Michigan HB 5162, Section 1207 (2012) provides for mentorship, among other support, to emphasize treatment:

(1) A veterans treatment court shall provide an individual admitted to the court with all of the following:

(a) Consistent, continual and close monitoring and interaction with the court, treatment providers, probation and the participant.

(b) A mentorship relationship with another veteran who can offer the participant support, guidance and advice. It is the intent of the legislature that, where practicable, the assigned mentor should be as similar to the individual as possible in terms of age, gender, branch of service, military rank and period of military service.

(c) Mandatory periodic and random testing for the presence of any controlled substance or alcohol in a participant’s blood, urine or breath, using, to the extent practicable, the best available, accepted and scientifically valid methods.

(d) Periodic evaluation assessments of the participant’s circumstances and progress in the program.

(e) A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including, but not limited to, the possibility of incarceration or confinement.

(f) Substance abuse treatment services, relapse prevention services, education and vocational opportunities as appropriate and practicable. It is the intent of the legislature that, where practicable, these services shall be provided by the VA.

(g) Mental health treatment services as appropriate and practicable. It is the intent of the legislature that, where practicable, these services shall be provided by the VA.

- Illinois HB 5214, Section 35 (2010) allows the court to reduce or dismiss all qualifying charges as an incentive to complete the treatment:

(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 — open to the extent possible

- Illinois HB 5214, Section 5 (2010) provides a statement concerning broad eligibility:

Purposes. The General Assembly recognizes that veterans and active, Reserve Component and National Guard service members 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 service members 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 service member courts or programs with the necessary flexibility to meet the specialized problems faced by these veteran and service member 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 injury¹ to another person

(b) Is classified as a Class A or B felony and involved physical injury² to another person

(c) Is described in ORS 163.365, 163.375, 163.395, 163.405, 163.408, 163.411 or 163.427³

(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.

¹ "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).

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

³ Sections refer to sexual offenses.

– State court system and VTC accessibility

- Illinois HB 5214, Section 15 (2010)) provides cross-jurisdictional authority to maximize opportunities:

“Authorization. The Chief Judge of each judicial circuit may establish a Veterans and Servicemembers 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 service member defendants from all counties within the Circuit to participate.

- Michigan HB 5162, Section 1201 (2012) provides similar cross-jurisdictional authority:

“(4) A court that has adopted a veterans treatment court under this section may accept participants from any other jurisdiction in this state based upon either the residence of the participant in the receiving jurisdiction or the unavailability of a veterans treatment court in the jurisdiction where the participant is charged. The transfer can occur at any time during the proceedings, including, but not limited to, prior to adjudication. The receiving court shall have jurisdiction to impose sentence, including, but not limited to, sanctions, incentives, incarceration and phase changes.

A transfer under this subsection is not valid unless it is agreed to by all of the following:

(a) The defendant or respondent

(b) The attorney representing the defendant or respondent

(c) The judge of the transferring court and the prosecutor of the case

(d) The judge of the receiving veterans treatment court and the prosecutor of a court funding unit of the veterans treatment court

- Enabling legislation:

- Maine LD 1698 provides the Chief Justice broad authority:

433. Veterans treatment courts:

1. Definition. As used in this section, unless the context otherwise indicates, "veterans treatment court" means a specialized sentencing docket in select criminal cases in which the defendant is a veteran or member of the United States Armed Forces to enable veterans agencies and social services agencies to provide treatment for that defendant. The court does not provide treatment but contracts or collaborates with experienced and expert treatment providers.

2. Chief Justice may establish. The Chief Justice of the Supreme Judicial Court may establish veterans treatment courts for veterans and members of the United States Armed Forces. The Supreme Judicial Court may adopt administrative orders and court rules of practice and procedure as necessary.

3. Federal funding; contracts; cooperative agreements. The State Court Administrator, district attorneys, the Department of the Attorney General, the Department of Corrections, the Department of Defense, Veterans and Emergency

Management, the Department of Public Safety, the Department of Health and Human Services and private service agencies may seek federal funding as it becomes available for the establishment, maintenance and expansion of veterans treatment courts and for the provision by participating agencies of treatment to participating veterans. The Administrative Office of the Courts may enter into contracts and cooperative agreements with the departments and agencies to provide treatment and other social services to participants. The departments and agencies shall collaborate and, to the extent possible, provide financial and other assistance to the judicial branch in order to establish and maintain veterans treatment courts.

- Colorado provides similar statutory authority in Colorado HB 1104 (2010):

SECTION 2. 13-3-101, Colorado Revised Statutes, is amended by the addition of a new subsection to read: 13-3-101. State Court Administrator. (9) The state court administrator is authorized to seek federal funding as it becomes available on behalf of the state court system for the establishment, maintenance or expansion of veterans' treatment courts.

SECTION 3. Part 1 of article 5 of title 13, Colorado revised statutes, is amended by the addition of a new section to read: 13-5-144. Chief Judge — Veterans Treatment Court Authority. The chief judge of a judicial district may establish an appropriate program for the treatment of veterans and members of the military.