

2019 HOUSE JUDICIARY

HB 1518

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1518
1/29/2019
31697

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to criminal defendants who are veterans or who are currently serving in the armed forces.

Minutes:

Attachments 1,2 3,4

Chairman Koppelman: Opened the hearing on HB 1518.

Rep. Schneider: Introduced the bill. (Attachment 1 & 2) Read testimony. Stopped 6:00

Chairman K. Koppelman: The bill you referred to in what was your fiscal note?

Rep. Schneider: The Senate seemed to be put off on which direction to go.

Chairman K. Koppelman: The model act has not come forward?

Rep. Schneider: That study that did not happen would have assisted in being implemented in veteran's court.

Chairman K. Koppelman: With respect to veteran's courts; do you have comments on that?

Rep. Schneider: There are statistics and people following me will have more information. The veteran's courts do work. Instead of expanding judicial resources and addresses their frustration with not having permanent outcomes from the judicial system.

Jim Nelson, Legislative Director, North Dakota Veterans Legislative Counsel:
(Attachment 3) (10:00-14:00)

Rep. McWilliams: How many veterans in ND are involved in criminal activities?

Jim Nelson: I can find out.

Chairman K. Koppelman: Has this been an effective system?

Jim Nelson: Based on the national wide it is very positive.

Chairman K. Koppelman: What degree does the VA get involved?

Lonnie Wangen, Veterans Administration: Discussed an incident that happened and ended well.

We did discuss a veteran's court. We did do a long study and in 2011, I brought a bill forward that put v on the driver's license. We provided training.

We did come out with a good program to work with and it's not there 100%. We can identify that person as a veteran. We can equip the courts and the jailers by asking if they have ever served in the military and from there we can expand on that have you ever been through traumatic experience or what not? The main thing is to get in contact with the VA.

Using the laws that are in place; if identify someone that is involved we work with the Justice system. We then meet with their prosecuting defendant and attorney if possible. We prepare a pretrial diversion the veteran will come in an agree with the crime. We are going to allow them to get the help they need. The defense attorney gets a win and we assist the veteran and identify their problem.

ND has a pier to pier missing. The cost has already been the big issue. The attorneys are **not asking whether they are a veteran or not.**

Chairman K. Koppelman: Do you interface with the drug courts?

Lonnie Wangen: Not normally because we can take them into the federal VA and they will treat for drugs and alcohol. They do those first and then the PTSD to get their mind straight. That does not cost the tax payers and it is not quite as filled up.

General Robert Becklund, Deputy Adjutant General, ND National Guard:
(Attachment #4)

Oppositon: None

Neutral: None

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1518
1/29/2019
31745

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to criminal defendants who are veterans or who are currently serving in the armed forces.

Minutes:

Attachment 1

Chairman Koppelman: Opened the hearing on HB 1518.

Rep. McWilliams: I would like to prepare an amendment. I would like to see integrating that into our existing drug court so that we are not making a separate court.

Chairman K. Koppelman: The study could entertain not making a separate court. The study shall consider the option of something along those lines.

Rep. Rick Becker: Everyone no matter what their experience is entitled to equal treatment under law. Why would we not have law enforcement and first responders and emergency room workers? I think like so many things it is commendable and I think it takes us down a wrong path.

Rep. Paur: I asked the library how many service men actually see combat duty? A lot of it is support staff. I think it is too vague.

Chairman K. Koppelman: **Rep. McWilliams** moved to add an amendment.
(Attachment 1) **Rep. Roers Jones** seconded.

Voice vote was taken on the Amendment. Voice vote carries.

Rep. Roers Jones made motion for Do Pass on HB 1518 as amended. **Rep. McWilliams** seconded the motion.

Rep. Rick Becker: My concern is in establishing a parallel separate court and it being not an equal application of the law. What are the arguments to mitigate my concern?

Rep. Roers Jones: During some of the research I have done on drug courts. There are a number of different discrepancies that are available across the regions and the US.

Rep. Rick Becker: We think the VA will help somehow? This is unfortunately a bad law. Every time we try to do something special for special people we take away the true intent.

Chairman K. Koppelman: This is a call for a study.

Rep. Rick Becker: There is a national push to establish veteran's courts.

Rep. Jones: We should make our court system better as a whole.

Rep. Satrom: I am not reading that much into this bill. However, is there special information that the judge might be able to use it.

Rep. Bob Paulson: The VA is already doing this. It seems to make this somewhat unnecessary.

Rep. Simons: They are doing this already.

Rep. Vetter: The other courts they have are based on a particular type of crime. If we are going to have courts for classes of people.

Rep. McWilliams: Veterans have these particular issues.

Chairman K. Koppelman: Any of these studies; when we pass these this does not mandate the study. Even if we do pass this it may not happen.

Rep. Roers Jones: The reason these specialty courts are growing is we are trying to solve the issues of people and they are successful. I think there are a lot of benefits we are overlooking.

Rep. Rick Becker: We don't treat people the same when they go through the system.

Chairman K. Koppelman: One of the testimonials said "we broke them, let us help fix them".

Rep. Magrum: I talked to Jim Nelson and he told me they didn't even know about this bill. They decided to come and support it.

Roll Call Vote was taken. Yes 5 No 9 Absent 0

Chairman Koppelman: That motion fails. What are the wishes for the committee?

Rep. McWilliams: Made a motion for a Do Not Pass as amended.

Seconded by **Rep. Becker.**

Rep. Buffalo: What are your solutions for your veterans?

Rep. Bob Paulson: 24 years as a navy pilot. Flew in country. The VA in ND is exceptional.

Chairman K. Koppelman: We do have some active member of that group in the session.

Rep. Paur: **Rep. Larry Klemin** is a Vietnam Veteran.

Rep. Satrom: The VA is doing a great job.

Rep. Buffalo: My dad isn't on drugs just PTSD.

Chairman K. Koppelman: We could do is turn this into a study for how veterans issues could be better addressed by our court system.

Rep. Simons: Watching court three cases came to mind; Iraq veteran was treated With leniency, the VA hospital, the attorneys **are** really doing this. Keeping This in the court system. I don't see a lot of abuse of this.

Rep. Satrom: Are our people cooperating to get things done? Are we using best practices?

Roll Call Vote taken Yes 10 No 4 Absent 0

Rep. Becker is the **Carrier.**

Closed.

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Adopted by the Judiciary Committee

January 29, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1518

Page 1, line 24, after "system" insert "and whether the courts could be integrated into other specialty courts existing within the state"

Renumber accordingly

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1518

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Letter, add + whether 190380, 0001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. McWilliams Seconded By Rep. Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Correct

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO.

HB 1518

House Judiciary

Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
 Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Roers Jones Seconded By Rep. McWilliams

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman		✓	Rep. Buffalo	✓	
Vice Chairman Karls		✓	Rep. Karla Rose Hanson	✓	
Rep. Becker		✓			
Rep. Terry Jones		✓			
Rep. Magrum		✓			
Rep. McWilliams	✓				
Rep. B. Paulson		✓			
Rep. Paur		✓			
Rep. Roers Jones	✓				
Rep. Satrom	✓				
Rep. Simons		✓			
Rep. Vetter		✓			

Total (Yes) 5 No 9

Absent 0

Floor Assignment Lip

If the vote is on an amendment, briefly indicate intent:

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO.
HB1518

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. McWilliams Seconded By Rep. Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Buffalo		✓
Vice Chairman Karls	✓		Rep. Karla Rose Hanson		✓
Rep. Becker	✓				
Rep. Terry Jones	✓				
Rep. Magrum	✓				
Rep. McWilliams	✓				
Rep. B. Paulson	✓				
Rep. Paur	✓				
Rep. Roers Jones		✓			
Rep. Satrom		✓			
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Becker

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1518: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1518 was placed on the Sixth order on the calendar.

Page 1, line 24, after "system" insert "and whether the courts could be integrated into other specialty courts existing within the state"

Renumber accordingly

2019 TESTIMONY

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Presentation of House Bill 1518

Veterans Court Study

House Judiciary Committee--Chairman Kim Koppelman

January 29, 2019

Rep. Mary Schneider

Thank you Chairman Koppelman and Members of the Committee for the opportunity to present and talk with you about HD 1518, a Veterans Court study.

Veterans Court can change and reclaim lives of some pretty important people who have served their country and sometimes suffered the consequences of that service and sacrifice. For those veterans who are currently in, or entering, the criminal justice system, a veterans court can be a critical tool in restoring them as active and contributing members of their communities and their families. The court is a collaboration of the prosecutor, defense counsel, the judge, the Department of Veterans Affairs, Veterans Service Officers, and a variety of community treatment and support organizations.

Veterans Courts can address a variety of issues that adversely impact veterans encountering the justice system:

- Post-Traumatic Stress Disorder (PTSD)
- Traumatic Brain Injury (TBI)
- Depression
- Anger issues
- Alcohol abuse
- Drug abuse

Although some of those problems are common to many who enter the justice system, there is a culture and camaraderie, a structure and servicemen's orientation, that veterans respond to and is responsive to vets, that results in high degrees of success and low recidivism rates.

Veterans courts can operate in a variety of ways, with certain commonalities and a myriad of options. A study will explore the best fit for North Dakota Veterans utilizing some key components:

1. Integrating alcohol-treatment, drug-treatment, and mental-health services with justice-system case processing;
2. Using a non-adversarial approach in which prosecution and defense counsel promote public safety while protecting due-process rights of defendants;
3. Early identification of eligible defendants;
4. Providing access to a continuum of alcohol-treatment, drug-treatment, mental-health treatment, and other related treatment and rehabilitation services;
5. Monitoring defendants for abstinence from alcohol and drugs by frequent testing;
6. Directing a coordinated strategy that responds to each defendant's compliance;
7. Providing ongoing judicial interaction with each defendant;
8. Monitoring and evaluating the achievement of goals;
9. Continuing interdisciplinary education to promote effective veterans treatment court planning, implementation, and operations; and
10. Forging partnerships among the veterans treatment court, the Department of Veterans Affairs, the state and its service agencies, and community-based organizations to generate local support and enhance the effectiveness of the court.

At the end of the process, the successful veteran will have services, supports and a second chance, with a clean record and a fresh start. That's a good thing to do for those who've served our country.

Many of you on this committee have seen this court creature before. In 2015, HB 1106, which would have implemented a veterans court came before you. It passed your Committee 9-0-4, went on to pass the House and was amended to a study in the Senate. It passed the Senate as the Legislative Management Study request you have before you, but, unfortunately, was not approved by Legislative Management. So, what's different now?

In 2017 the National Conference of Commissioners on Uniform State Laws passed the "Model Veterans Treatment Court Act and Model Veterans Treatment Court Rules. That document, which I've shared with you provides a guide to answer questions and concerns about the who, what, why and how of veterans courts. It is a major leap forward -- a map to our destination. It is a perfect foundation for a study. It has provided choices of who, what, why and how; we just need a study to add the where and when.

We can, through a legislative study, bring together the right people to make the right choices, to make the right plan, to target the right resources and put forth the right legislation to make a veterans treatment court a reality. And that approach can turn around the lives of a lot of men and women which will expand our workforce, help heal fractured families and make our communities healthier, happier and safer.

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Others who follow me will give you statistics and support, and this model act and I will be happy to answer questions about how this might work.

Select Language



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Veteran Courts

Veterans Court

Veterans Court is a collaborative process that includes the prosecutor, defense counsel, Judge, the Department of Veteran Affairs and other community based support organizations. The goal of Veterans Court is to rehabilitate and restore veterans as active, contributing members of their community.

The Veterans Court program focuses on veterans who are currently in, or entering, the Criminal Justice System. The Court creates and supervises treatment plans to address the underlying causes of the veterans behavior and substance abuse issues. Issues commonly addressed by the treatment programs include:

- Post-Traumatic Stress Disorder
- Traumatic Brain Injury
- Anger issues
- Domestic Violence
- Alcohol abuse
- Drug Abuse

By focusing on the root problems that contribute to involvement with the criminal justice system and providing specific rehabilitation programs, the Veterans Court provides an opportunity for the veteran to return to the community in a more advantageous and beneficial manner.

Eligibility

Each Veterans Court is going to be operated differently depending on the needs of the individual jurisdiction. Veterans with cases in jurisdictions without a Veterans Court will have to address their case within the court in that jurisdiction and will not be eligible for Veterans Court. Each Veterans Court establishes its own eligibility rules but, in general, a veteran must request to be placed in the Veterans Court program. The prosecutor, defense counsel and the Judge must all agree that Veterans Court is the appropriate forum for the management of the case. The veteran remains

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eligible for Veterans Court by making satisfactory progress in their court ordered treatment program and by complying with the other Veterans Court requirements. It is important to remember, no veteran has a "right" to have their case assigned to Veterans Court. Once in Veterans Court, the veteran must continuously "earn" the privilege of remaining in Veterans Court by complying with all the Court's requirements.

Process

Eligible veterans may participate in the court by voluntarily requesting their case be transferred to Veterans Court which meets as a separate court docket. The prosecutor and the defense counsel evaluate each case and must agree that the case is appropriate for Veterans Court. The case is then presented to the Judge for final approval. The Department of Veterans Affairs Veterans Justice Outreach specialist then verifies the veterans eligibility for veteran's benefits and conducts an initial assessment of the veteran's treatment requirements. The veteran, if eligible for VA benefits, is then directed to the local VA medical facility for a more in-depth assessment. It is from this assessment the parties agree upon a treatment plan for presentation to the Judge. Upon approval of the plan by the Judge, the veteran begins the treatment programs called for in the plan.

Progress in the treatment program is closely monitored by the Court. Non-compliance with the treatment program can lead to sanctions which may include incarceration, community service, and reprimand by the Judge. In cases of continuous non-compliance, a veteran may be removed from Veterans Court. The favorable terms of any plea agreement may be revoked and a sentence imposed.

Upon successful completion of the Veteran Court program, diversion eligible veterans may have their cases dismissed. Veterans on probation may have their probation successfully terminated.

Veterans in Veterans Court can expect to be subjected to more frequent reviews by the court to monitor the veteran's progress in their treatment programs. Veterans making satisfactory progress will be recognized by the Court and offered words of encouragement. Veterans not making satisfactory progress may expect words of encouragement of an entirely different nature and sanctions may be imposed.

Successful completion of the Veterans Court program will be marked by "graduation" from the program.

Helping Those Who Serve : Veterans Treatment Courts Foster Rehabilitation and Reduce Recidivism for Offending Combat Veterans

JILLIAN M. CAVANAUGH*

ABSTRACT

"Wars [are] the most intense and destructive of human enterprises [that] traumatize and damage minds and bodies"¹ Many combat veterans return home from Operation Enduring Freedom and Operation Iraqi Freedom suffering from post-traumatic stress disorder, traumatic brain injuries, mental disease, or mental disorders—injuries that they sustained during their deployments. Returning veterans are finding themselves in trouble with the criminal justice system because the injuries that they suffered while on deployment have been linked to substance abuse, domestic violence and other criminal activity. A new type of specialty court, the veterans treatment court, works with the Department of Veterans Affairs and local authorities in a collaborative "team" effort to rehabilitate these veterans and reduce their risk of recidivism by treating the underlying causes of their criminal behavior. So far, the outcomes have been positive and veterans are getting the help they need to get their lives back on track.

* First Lieutenant, U.S. Army JAG Corps; admitted to the Massachusetts Bar in 2010; J.D., New England School of Law (2010); B.A., English, summa cum laude, Merrimack College (2005). First, I would like to thank my family for supporting me for the past eight years while I worked to accomplish my goals and begin my career. Thank you, also, to all of the men and women, past and present, who have served in the U.S. Armed Forces. Your courage and service to our country are the cornerstones of our freedom. Most importantly, I would like to extend my sincerest thanks to Victor Hansen, LTC (Ret.), U.S. Army JAG Corps for all of his help with this Note and his never-ending support.

¹ C.B. SCRIGNAR, POST-TRAUMATIC STRESS DISORDER: DIAGNOSIS, TREATMENT, AND LEGAL ISSUES 2 (Bruno Press 2d ed. 1988) (1984).

NORTH DAKOTA SENATE

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COMMITTEES:

Education
Government and Veterans Affairs

Good Morning Chairman Koppleman and members of the House Judiciary Committee. For the record, my name is Richard Marcellais, Senator from District 9, Rolette County I am here today to introduce House Bill 1518.

House Bill 1518 relating to a legislative management study of issues relating to criminal defendants who are veterans or who are currently serving in the armed forces.

Many military veterans return from their tours of duty with mental and physical health issues. Some veterans witness extreme violence, rape and crimes against children while serving overseas. Past and current veteran events put strain on veterans in the form of physical injuries, traumatic brain injuries and post-traumatic stress disorder (PTSD). As a result these veterans may turn to prescription drugs and illegal substances to alleviate mental or physical pain.

Thank You very much for the opportunity to appear in support of HB 1518. If there are any questions, I will try and answer them.

North Dakota Association of County and Tribal Veterans Service Officers
Legislative Testimony regarding HB 1518 Veterans and Military Justice Study

Good morning Mr. Chairman and honorable members of the committee, I am Dan Thorstad, Veterans Service Officer for Cass County. Thank you for allowing me to speak on behalf of the North Dakota Association of County and Tribal Veterans Service Officers.

A little background on the association.

The association's mission is:

- To cultivate a professional culture within its membership
- To assist in the establishment, maintenance, and perpetuation of County and Tribal Veterans Service Offices
- And the continuing education and staffing of these offices as prescribed by law under the Statutes of the State of North Dakota

Membership in this association constitutes 52 of the 53 Counties and all 4 Tribal Nations. The association has been officially recognized by the North Dakota Department of Veterans Affairs and the National Association of County Veteran Service Officers.

The first Veterans Treatment Court was started in 2008 when Judge Robert Russell recognized that veteran defendants were more responsive in an environment where one judge handles the cases of numerous veterans and addresses them during the same court session, restoring some of the structure and camaraderie found in the military but often lost on the home front.

Modeled after adult drug and mental health treatment courts, a Veterans Treatment Court has an interdisciplinary team made up of prosecution, defense, treatment providers, law enforcement, VA Veteran Justice Outreach Specialist, along with a Veterans Service Officer, Veteran mentors, Veteran Organizations, and others all working toward the same goal: to help each veteran achieve recovery and get their lives back on track. The team receives specialized training that makes them more familiar than most court professionals with the unique services available to veterans. One judge is assigned who better understands the issues that a veteran may be struggling with, such as substance addiction, Post-Traumatic Stress Disorder, Traumatic Brain Injury, and military sexual trauma. It

allows a collaborative approach and “one-stop shopping” to ensure each veteran receives the personalized services he or she has earned and needs to succeed.

Currently there are 334 courts in 43 states. South Dakota has 2, Montana has 3, and Minnesota has 12, including one in Moorhead.

Why do we need a Veterans Treatment Court? 1 in 5 of the almost 2.5 million men and women who served in operations in Iraq and Afghanistan suffer from PTSD or major depression. 1 in 6 suffer from substance abuse. 1 in 4 women and 1 in 100 men have experienced Military Sexual Trauma. Veterans in the justice system average SEVEN prior arrests. 20% have spent more than a year in jail.

A Veterans Treatment Court is only offered to those veterans charged with non-violent crimes who are in need of mental health or substance abuse treatment. Veterans who choose treatment court are assessed by a mental health care provider, most times through the VA as they are the experts in the unique mental health issues that veterans experience. The provider decides what the Veteran's treatment needs are and most will receive treatment through the VA network. Failure to meet the requirements of the program could resort to such things as community service, fines, jail time, or re-arrest back through the legal system.

The recidivism rate for successful graduates is less than 2%. Veterans Treatment Courts have been endorsed by all the Veterans Organizations, the American Bar Association, American Judges Association, National District Attorneys Association, National Sheriff's Association, and the National Institute of Corrections to name a few.

ND guard and reserve members could also be beneficiaries of the court. Since 9/11, over 5,000 members have deployed in support of the Global War on Terrorism.

This is our opportunity to begin the process of helping those whose lives have forever been changed because of their selfless service to this country and state. This legislation is a good start to bringing Veterans Treatment Courts to North Dakota and the ND Association of County and Tribal Veterans Service Officers implores this committee to recommend passage of this legislation and demonstrate to North Dakota's veterans and military service members the seriousness in which it takes the health and well-being of those who have sacrificed so much. Thank you.

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**MODEL VETERANS TREATMENT COURT ACT
AND
MODEL VETERANS TREATMENT COURT RULES**

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SIXTH YEAR
SAN DIEGO, CALIFORNIA
JULY 14 - JULY 20, 2017

WITH PREFATORY NOTE AND COMMENTS

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

ABOUT ULC

The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 126th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up-to-date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

DRAFTING COMMITTEE ON MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES

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

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COURT ACT AND MODEL**

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**VETERANS TREATMENT
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MODEL VETERANS TREATMENT COURT ACT AND MODEL VETERANS TREATMENT COURT RULES

Prefatory Note

The purpose of this act/rules is to reflect the best principles and practices of veterans treatment courts around our nation. Several states have enacted statutes for such courts, while others have created such courts by local rules. Recognizing the wide variety of how such courts are created and operated, this act makes no attempt to prescribe the method of creating such courts. Courts are typically created by state statute, statewide court rule, and by local rules. This act/rules sets forth what the drafting committee determined to be the best and most principled policies for such veterans treatment courts.

The Buffalo Veterans Treatment Court in Buffalo, New York is generally credited with establishing the first court for handling veterans cases. This was in 2011. Since that time the recognition of the concept has spread to other jurisdictions. Gradually support for such courts came from the American Bar Association, the U.S. Department of Veterans Affairs, and numerous advocacy groups. The Uniform Law Commission approved a drafting committee for this project in 2015. Professor Stacey-Rae Simcox, of Stetson University College of Law was selected as Reporter for the Act. The Drafting Committee met four times to produce the act. The first reading of the act before the conference of commissioners was in 2016 and the second reading for final approval took place in 2017. Numerous observers were present at the drafting sessions with full privileges for participation in the drafting process.

Several policy issues must be addressed in creating a veterans treatment court. Those issues are:

1. Who is a veteran? The drafting committee selected the broadest possible definition of anyone who served in the armed services. See Section 2, subsections 5 and 8.
2. What type of discharge is required to be eligible for veterans treatment court services? Some states require an honorable discharge, some states require a discharge other than dishonorable, and other states apparently have no requirement. The drafting committee selected the broadest possible definition and the type of discharge does not matter. See Section 2, subsection 8.
3. Must the offense before the veterans treatment court be combat related? No. Early veterans treatment courts required a combat related offense, but that has been generally abandoned. See Section 3.
4. Which veterans are eligible for the veterans treatment court's services? The veteran must suffer from "a mental-health condition, traumatic brain injury, or substance use disorder." See Section 7(a)(1).

5. Who will be the gatekeeper on determining whether the veteran can participate in the veterans treatment court services? The court and the prosecutor must agree to the veteran's participation. See Section 7(a)(3).
6. How does the veteran know what the agreement requires of the veteran and what are the consequences of non-compliance? See Section 8.
7. If the veteran fails to comply with the participation agreement, who determines the punishment? The court makes that determination. See Section 7(a)(3)(ii).
8. Are victims of domestic violence informed of the proceedings and allowed to be heard? Yes. See Section 9.
9. Are the records confidential? Yes. See Section 9.
10. Does the creation of a veterans treatment court in one county of a state entitle a veteran to demand a veterans treatment court in another county? No. See Section 14.

The Model Veterans Treatment Court Act/Rules provides states with a sensible alternative to the usual criminal process and allows a veteran to have a second chance to become a contributing member of our society.

***Legislative Note:** The provisions for model veterans treatment courts are presented in two formats for enactment—by legislation or court rules. The substantive provisions of each format are identical with the exception of several standard form clauses typically found in legislation. Each state considering adopting the Model Veterans Treatment Court Act or the Model Veterans Treatment Court Rules should review its practices and precedent to first determine whether the substantive provisions are best adopted by court rule or statute. The decision may vary from state to state depending on the allocation of authority between the legislature and the judiciary over contracts, alternative dispute resolution, and the legal profession. A state may also decide to establish part of the substantive provisions by legislation and part by court rule. A state may need to renumber sections and cross references depending on the chosen method of establishment.*

MODEL VETERANS TREATMENT COURT ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Model Veterans Treatment Court Act.

Comment

The Model Veterans Treatment Court Act was drafted in acknowledgment of the fact that veterans and servicemembers have been recognized as having a shared culture that can aid in the rehabilitation process normally found in a traditional drug or mental health treatment court. Should state legislatures desire to include others who have served their communities in this docket, for example fire fighters and law enforcement personnel, they should feel free to expand the scope of this act to encompass those groups as desired.

Some jurisdictions choose to refer to these courts as veterans courts, while others refer to the court as a veterans treatment court. In recognition of the fact that the overarching concern of these courts is treatment for veteran defendants suffering from mental health conditions, substance use disorders, and traumatic brain injuries, the title for this act was drafted accordingly.

SECTION 2. DEFINITIONS. In this [act]:

- (1) “Defendant” means a veteran or servicemember charged with a criminal offense.
- (2) “Domestic violence” means conduct defined in [cite appropriate state statute defining domestic violence].

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- (3) “Participant agreement” means the record, required by Section 4(a), of the policies and procedures of a veterans treatment court and any specific terms and conditions applicable to the defendant. The term includes a modification under Section 10.
- (4) “Record,” except as otherwise provided in Section (7)(a)(2), means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (5) “Servicemember” means:
- (A) a member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard, of the United States; or
 - (B) a member of the National Guard of the United States; or
 - (C) a member of [state defense forces].
- (6) “Sign” means, with present intent to authenticate or adopt a record:
- (A) to execute or adopt a tangible symbol; or
 - (B) to attach to or logically associate with the record an electronic symbol, sound, or process.
- (7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.
- (8) “Veteran” means a former servicemember, regardless of the character of the servicemember’s discharge.
- (9) “Veterans treatment court” means a veterans and servicemembers [docket] [calendar] administered under this [act] by a court of this state.

Legislative Note: “Defense forces” in paragraph (5)(B) should be changed to the name used to refer to the enacting state’s defense forces.

Comment

The definition of “defendant” includes both veterans and those servicemembers serving on active duty. While it may be difficult for active duty servicemembers to meet the strict requirements of a veterans treatment court while fulfilling their active duty service obligations, writing this definition broadly gives courts and defendants latitude to determine the veterans treatment court’s helpfulness in each individual case. This broad definition may also allow the court to partner with Department of Defense (DoD) medical and counseling providers when allowing the participation of an active duty servicemember in the veterans treatment court.

The definition of “participant agreement” was drafted with the understanding that often defendants may be admitted to a veterans treatment court based upon plea agreements, court orders, or judgments regarding the disposition of defendant’s charges upon successful completion of veterans treatment court. Pursuant to a specific veterans treatment court policies and procedures, these agreements, court orders, or judgments may be included in the participant agreement itself, or may be ancillary to the participant agreement. Because the method of disposing of charges will vary, “participant agreement” is defined in a manner that does not constrain individual jurisdictions regarding disposition.

The definitions of “servicemember” and “veteran” broadly include any person who served in the United States Armed Forces in any of the widely recognized branches of the military or state defense forces. State defense forces are called upon periodically for many different missions within the state including disaster relief, riot control, and the like. These definitions recognize the service of state defense force members, who may encounter the same types of situations as federal military servicemembers and would likely benefit from the veteran mentorship programs typically implemented in veterans treatment courts.

The definition of “veterans treatment court” specifically allows courts to adopt a veterans treatment court as a separate docket, calendar, or similar term used in local practice, of an existing court and avoids requiring jurisdictions to set up separate courts for this purpose.

There is specifically no mention made here of the “character of discharge” a veteran is required to have to be eligible for participation in the veterans treatment court. When a servicemember is discharged from the military, the DoD “characterizes” that member’s service in order to describe how that member served his/her nation. DoD currently uses five main types of characterizations of discharge: Honorable, General (under Honorable conditions), Other Than Honorable, Bad Conduct Discharge, and Dishonorable Discharge. There are other types of discharges to include discharges that cannot be characterized because the member has served such a short time.

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

It is well documented in the media, congressional reports and investigations, and current lawsuits that the DoD has separated servicemembers from the military for misconduct that resulted from undiagnosed or untreated mental health conditions or brain injury disabilities caused during a veteran’s service. These separations often result in bad paper discharges that prevent veterans from receiving health care benefits from the VA, often leaving veterans in these situations completely untreated for disabilities related to their service. Many of the veterans who suffer from bad paper discharges commit crimes that, but for the character of their discharge, would allow them entry into a veterans treatment court. In December 2016, Congress recognized the conundrum of bad paper discharges in the passage of Public Law 114-328, Section 535 amending Section 1553(d) of title 10, United States Code. This provision now requires DoD to liberally reconsider bad paper discharges where post-traumatic stress or traumatic brain injury may have led to the misconduct resulting in the discharge in certain instances. This recognition that many bad paper discharges may have been affected by mental health conditions or brain injuries was supported by many of America’s Veterans Service Organizations. In addition, the American Bar Association resolved in 2017 that barriers preventing veterans’ access to treatment and other services should be removed if at all possible.

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

There is no requirement in these definitions that a veteran have combat service in order to be eligible to participate in a veterans treatment court. Allowing all veterans to participate if the court determines that participation is helpful recognizes that some disabilities are not incurred in combat, but may come from other events. For instance, military sexual trauma, which refers to instances of sexual assault or repeated sexual harassment perpetrated

upon a servicemember, is now widely recognized and any residual mental health conditions or substance use disorders related to this event could be permitted entry into the veterans treatment court.

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SECTION 3. AUTHORIZATION.

- (a) A court with jurisdiction in criminal cases may administer a veterans treatment court.
- (b) A veterans treatment court may adjudicate misdemeanors and felonies.
- (c) A defendant eligible to participate in a veterans treatment court under Section 7(a) may be admitted to the veterans treatment court at any stage in a criminal proceeding.

Comment

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

SECTION 4. RECORD OF POLICIES AND PROCEDURES.

- (a) A veterans treatment court shall create a record of policies and procedures adopted to implement Sections 5 through 12.
- (b) A veterans treatment court shall seek input from prosecution and defense counsel and other interested persons in developing and adopting policies and procedures to implement Sections 5 through 12.

Comment

Section 4(b) was drafted in order to reflect what has become a best practices standard for treatment courts when creating policies and procedures. The National Association of Drug Court Professionals Adult Drug Court Best Practice Standards Volume II (2015) suggests that in order to develop fair and effective policies and procedures for the program, interested parties should participate in the creation of a local court's policies and procedures. Interested parties comprise representatives from all partner agencies involved in the implementation of treatment courts including, but not limited to, a judge or judicial officer, program coordinator, prosecutor, defense counsel representative, treatment representative, community supervision officer, and law enforcement officer.

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SECTION 5. KEY COMPONENTS OF VETERANS TREATMENT COURT.

(a) A veterans treatment court shall adopt policies and procedures to implement the following key components:

- (1) integrating alcohol-treatment, drug-treatment, and mental-health services with justice-system case processing;
- (2) using a nonadversarial approach in which prosecution and defense counsel promote public safety while protecting due-process rights of defendants;
- (3) early identification of eligible defendants;
- (4) providing access to a continuum of alcohol-treatment, drug-treatment, mentalhealth treatment, and other related treatment and rehabilitation services;
- (5) monitoring defendants for abstinence from alcohol and drugs by frequent testing;
- (6) directing a coordinated strategy that responds to each defendant's compliance;
- (7) providing ongoing judicial interaction with each defendant;
- (8) monitoring and evaluating the achievement of goals;
- (9) continuing interdisciplinary education to promote effective veterans treatment court planning, implementation, and operations; and
- (10) forging partnerships among the veterans treatment court, the United States Department of Veterans Affairs, the [appropriate state or local agency], public agencies, and community-based organizations to generate local support and enhance the effectiveness of the veterans treatment court.

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(b) In adopting policies and procedures under this section, the court shall consult nationally recognized best practices related to the key components.

Comment

In light of the understanding that courts maintain autonomy in the structure of a defendant's participation in order to make the veterans treatment court most effective for all involved, care has been taken to refrain from dictating to courts precisely what a veterans treatment court must include. However, there are some characteristics of veterans treatment court that are widely agreed upon.

Section 5 incorporates the National Association of Drug Court Professionals' Ten Key Components of Drug Courts. These evidence-based, scientifically validated principles are industry best practice standards and they should not be substantively altered.

In 1997, the National Association of Drug Court Professionals published *Defining Drug Courts: The Ten Key Components*. These ten key components quickly became the framework for drug courts and other problem-solving courts. Over the past two decades, research now confirms that drug courts are more likely to accomplish their goals by faithfully adhering to the Ten Key Components. See SHANNON M. CAREY, ET AL., NPC RESEARCH, EXPLORING THE KEY COMPONENTS OF DRUG COURTS: A COMPARATIVE STUDY OF 18 ADULT DRUG COURTS ON PRACTICES, OUTCOMES AND COSTS (2008), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf>.

Many states with drug court legislation directly reference and incorporate verbatim the evidence-based and scientifically validated Ten Key Components. See, e.g., ALA. CODE §12-23A2; FLA. STAT. § 397.334; 705 ILL. COMP. STAT. 410/10; MICH. COMP. LAWS § 600.1060; NEB. CT. R. § 6-1207; N.H. REV. STAT. § 490-G:2; S.D. COD. LAWS § 16-22-5.1; TENN. CODE ANN. § 166-103; W. VA. CODE § 62-15-2. If not explicitly referenced in the enabling laws, all states incorporate the Ten Key Components into their drug court policies, procedures, and guidelines. Numerous courts have expressly relied on the Ten Key Components in developing drug court jurisprudence. See, e.g., *Lawson v. State*, 969 So. 2d 222 (Fla. 2007); *State v. Leukel*, 979 So. 2d 292 (Fla. Ct. App. 2008); *Mullin v. Jenne*, 890 So. 2d 543 (Fla. Ct. App. 2005); *People v. Flick*, 2015 Ill. App. (5th) 130903-U (2015); *State v. Plouffe*, 329 P.3d 1255 (Mont. 2014); *State v. Bullplume*, 305 P.3d 753 (Mont. 2013). In *Plouffe*, the court referred to the Ten Key Components as the "premier authority on the goals and practice guidelines of treatment courts..." 329 P.3d at 1261.

Veterans treatment courts are administered with an immediate and highly structured judicial intervention process for substance use disorder, mental health conditions, or other assessed treatment needs of eligible veteran and servicemember defendants in order to provide treatment that may influence a person shortly after a significant triggering event such as arrest, and thus persuade or compel that person to enter and remain in treatment. Veterans treatment

courts bring together substance use disorder professionals, mental health professionals, federal and state VA professionals, local social programs, and intensive judicial monitoring in accordance with the nationally recommended key components of drug and veterans treatment courts.

The veterans treatment court may refer to a network of substance use disorder treatment programs representing a continuum of graduated substance use disorder treatment options commensurate with the needs of defendants; these may include programs with the VA, the state, and community-based programs supported and sanctioned by either or both. The veterans treatment court may also, in its discretion, employ additional services or interventions, as it deems necessary on a case by case basis. The veterans treatment court may refer to or collaborate with a network of mental health treatment programs and, if it is a co-occurring mental health and substance use disorder court program, a network of substance use disorder treatment programs representing a continuum of treatment options commensurate with the needs of the defendant and available resources including programs with the VA and the state. The court may, among other appropriate and authorized pre-trial conditions, order the defendant to complete substance use disorder treatment in an outpatient, inpatient, residential, or jail-based custodial treatment program, order the defendant to complete mental health counseling in an inpatient or outpatient basis, and comply with healthcare providers' recommendations regarding follow up treatment. In some jurisdictions funding may require a court order in order to secure services.

SECTION 6. SUPPLEMENTAL POLICIES AND PROCEDURES OF VETERANS TREATMENT COURT.

- (a) A veterans treatment court may adopt supplemental policies and procedures to:
 - (1) refer a defendant with a medical or medication need to an appropriate healthcare provider;
 - (2) refer a defendant to other available services, which may include assistance with housing, employment, nutrition, and education;
 - (3) provide a defendant access to a mentor who is a servicemember or veteran;
 - (4) integrate intervention, treatment, and counseling, as part of the rehabilitative services offered to a defendant who has been a victim of domestic violence, sexual trauma, child abuse, or other trauma;

- (5) confer with the victim or alleged victim of the domestic violence offense that serves as the basis for the defendant's participation in the veterans treatment court;
- (6) evaluate and assess a defendant charged with a domestic violence offense and integrate specific counseling as part of the total rehabilitative services for the defendant;
- (7) monitor a defendant charged with a domestic violence offense to assure compliance with a domestic violence protection order, no-contact order, and prohibition on weapon possession; and
- (8) otherwise assist the veterans treatment court.

(b) In adopting policies and procedures under this section, the court shall consult nationally recognized best practices related to these components.

Comment

Section 6 was drafted in order to identify opportunities where a court may find it helpful to add components to its veterans treatment court. In particular, attention was paid to offering treatment in domestic violence situations, whether the defendant was a victim or perpetrator of this type of act.

The provision discussing mentoring services in the veterans treatment court is an acknowledgment that one of the most attractive and unique aspects of this type of court is the mentoring of a defendant by another veteran or servicemember with whom there is a shared culture. These mentors volunteer their time and energy to assist their fellow veterans through engagement, encouragement, and empowerment. In addition to mentors, defendants may be assisted by peers who in addition to being a veteran or servicemember have personally experienced any of the following: substance use disorder; mental health condition; traumatic brain injury; incarceration; or homelessness; and may have received specific training as an adjunct to treatment such as leading a group session.

SECTION 7. ELIGIBILITY.

- (a) A defendant is eligible to participate in a veterans treatment court if:

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(1) the defendant has a mental-health condition, traumatic brain injury, or substance use disorder;

(2) the defendant agrees on the court record to enter the veterans treatment court voluntarily and adhere to a participant agreement; and

(3) the defendant's participation in the veterans treatment court would be in the interest of justice and of benefit to the defendant and the community, as determined by:

(A) the prosecutor and the court, with regard to pretrial diversion; or

(B) the court, with regard to all other matters.

(b) In making the determination under subsection (a)(3), the prosecutor and the court shall consider:

(1) the nature and circumstances of the offense charged;

(2) special characteristics or circumstances of the defendant;

(3) the defendant's criminal history and whether the defendant previously participated in a veterans treatment court or a similar program;

(4) whether the defendant's needs exceed treatment resources available to the veterans treatment court;

(5) the impact on the community of the defendant's participation and treatment in the veterans treatment court;

(6) recommendations of any law-enforcement agency involved in investigating or arresting the defendant;

(7) special characteristics or circumstances of the victim or alleged victim;

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(8) subject to subsection (c), a recommendation of the victim or alleged victim;

(9) provision for and the likelihood of obtaining restitution from the defendant

over the course of participation in the veterans treatment court;

(10) mitigating circumstances; and

(11) other circumstances reasonably related to the defendant's case. (c) In

making the determination under subsections (a) and (b) in a case in which a

domestic violence offense serves as the basis for the defendant's participation in

the veterans treatment court, the prosecutor and the court shall seek the

recommendation of the victim or alleged victim of the offense.

Comment

This act does not require that the mental health condition, substance use disorder, or traumatic brain injury making a defendant eligible for participation in veterans treatment 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 treatment court in order to multiply the probability of success. Placing less requirements on entry to the veterans treatment 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 condition, 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 treatment 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 and courts in this act are encouraged to determine the recommendations 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 treatment court.

This act uses the term "substance use disorder" to describe a defendant's diagnosed conditions regarding the misuse of or dependence upon substances both legal and illegal, to include alcohol. The term "substance use disorder" has been used for some time by substance use professionals and is the most accurate description endorsed by the U.S. Department of Health

and Human Services Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment. SAMHSA recognizes that when discussing substance use disorders, words can be powerful by encouraging and supporting or, on the other hand, isolating and shaming. Recognizing this power, SAMHSA proposes that the use of the term "substance use disorder" is helpful because it encompasses a range of severity levels, from problem use to dependence and addiction. This usage of "substance use disorder" in this act reflects this recognition.

In determining if a defendant is eligible for the veterans treatment court, the prosecutor or court may require the defendant to divulge information regarding prior criminal charges; education, work experience, and training; family history, including residence in the community; medical and mental history, including psychiatric or psychological treatment or counseling; and other information reasonably related to the likelihood of success of the treatment program.

SECTION 8. PARTICIPANT AGREEMENT. For a defendant to be admitted to a veterans treatment court, the defendant must sign, and the court must approve, a participant agreement. If admission to the veterans treatment court occurs before conviction, the prosecutor also must sign the participant agreement.

SECTION 9. VICTIM OF DOMESTIC VIOLENCE.

(a) If a victim or alleged victim of a domestic violence offense that serves as the basis for the defendant's participation in a veterans treatment court can reasonably be located, the victim or alleged victim must be offered:

- (1) referrals to services of domestic violence providers; and
- (2) information on how to report an allegation of:

(A) an offense committed by the defendant; or

(B) a violation by the defendant of the participant agreement.

(b) The participation of the defendant in a veterans treatment court does not alter the rights of a victim or alleged victim of domestic violence under law of this state other than this [act].

Comment

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

This act recognizes that victims of crimes are entitled to rights that vary from state to state. These rights may dictate notice given to the victim regarding a defendant's participation in court programs or treatment, information regarding a defendant's release from incarceration, referral to various agencies and services, and a plethora of other matters. Because it would be impossible to capture all of these rights in this act, the act was written to reinforce that a defendant's participation in a veterans treatment court does not abrogate a victim's rights in any way.

SECTION 10. MODIFICATION OR TERMINATION. If a veterans treatment court determines after a hearing that a defendant has not complied with the defendant's participant agreement, the court may modify or terminate the defendant's participation in the veterans treatment court. Modification or termination is subject to the participant agreement.

SECTION 11. COMPLETION OF THE PARTICIPANT AGREEMENT. If the veterans treatment court determines that a defendant has completed the requirements of the defendant's participant agreement, the court shall dispose of the charge that served as the basis of participation in the veterans treatment court in accordance with the defendant's participant agreement and any applicable plea agreement, court order, or judgment.

SECTION 12. ACCESS TO RECORDS.

- (a) A statement made or record submitted by a defendant in a veterans treatment court may be subject to 42 U.S.C. Section 290dd-2[, as amended] and 42 C.F.R. Part 2[, as amended,] regarding confidentiality.
- (b) Any individually-identifiable health information or record pertaining to a defendant in a veterans treatment court undergoing alcohol or drug treatment may be subject to the privacy

regulations promulgated under the Health Insurance Portability and Accountability Act, 42

U.S.C. Section 1320d-6[,as amended] and 45 C.F.R. Parts 160, 162, and 164 [, as amended] [, and state law that applies].

***Legislative Note:** In states in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes or regulations are incorporated into state law, the phrase should be deleted in this section.*

Comment

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

SECTION 13. LIBERAL CONSTRUCTION. This [act] must be liberally construed.

SECTION 14. NO RIGHT TO PARTICIPATE. This [act] does not create a right to participation in a veterans treatment court.

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

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

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

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SECTION 17. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

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

MODEL VETERANS TREATMENT COURT RULES

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RULE 1. SHORT TITLE. These [rules] may be cited as the Model Veterans

Treatment Court Rules.

Comment

The Model Veterans Treatment Court Act was drafted in acknowledgment of the fact that veterans and servicemembers have been recognized as having a shared culture that can aid in the rehabilitation process normally found in a traditional drug or mental health treatment court. Should state legislatures desire to include others who have served their communities in this docket, for example fire fighters and law enforcement personnel, they should feel free to expand the scope of this act to encompass those groups as desired.

Some jurisdictions choose to refer to these courts as veterans courts, while others refer to the court as a veterans treatment court. In recognition of the fact that the overarching concern of these courts is treatment for veteran defendants suffering from mental health conditions, substance use disorders, and traumatic brain injuries, the title for this act was drafted accordingly.

RULE 2. DEFINITIONS. In these [rules]:

- (1) “Defendant” means a veteran or servicemember charged with a criminal offense.
- (2) “Domestic violence” means conduct defined in [cite appropriate state statute defining domestic violence].
- (3) “Participant agreement” means the record, required by Rule 4(a), of the policies and procedures of a veterans treatment court and any specific terms and conditions applicable to the defendant. The term includes a modification under Rule 10.
- (4) “Record,” except as otherwise provided in Rule (7)(a)(2), means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (5) “Servicemember” means:
 - (A) a member of the active or reserve components of the Army, Navy, Air Force,

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Marine Corps, or Coast Guard of the United States; or

(B) a member of the National Guard of the United States; or

(C) a member of [state defense forces].

(6) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

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

(8) “Veteran” means a former servicemember, regardless of the character of the servicemember’s discharge.

(9) “Veterans treatment court” means a veterans and servicemembers [docket] [calendar] administered under this [act] by a court of this state.

Legislative Note: “Defense forces” in paragraph (5)(B) should be changed to the name used to refer to the enacting state’s defense forces.

Comment

The definition of “defendant” includes both veterans and those servicemembers serving on active duty. While it may be difficult for active duty servicemembers to meet the strict requirements of a veterans treatment court while fulfilling their active duty service obligations, writing this definition broadly gives courts and defendants latitude to determine the veterans treatment court’s helpfulness in each individual case. This broad definition may also allow the court to partner with Department of Defense (DoD) medical and counseling providers when allowing the participation of an active duty servicemember in the veterans treatment court.

The definition of “participant agreement” was drafted with the understanding that often defendants may be admitted to a veterans treatment court based upon plea agreements, court orders, or judgments regarding the disposition of defendant’s charges upon successful

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completion of veterans treatment court. Pursuant to a specific veterans treatment court policies and procedures, these agreements, court orders, or judgments may be included in the participant agreement itself, or may be ancillary to the participant agreement. Because the method of disposing of charges will vary, "participant agreement" is defined in a manner that does not constrain individual jurisdictions regarding disposition.

The definitions of "servicemember" and "veteran" broadly include any person who served in the United States Armed Forces in any of the widely recognized branches of the military or state defense forces. State defense forces are called upon periodically for many different missions within the state including disaster relief, riot control, and the like. These definitions recognize the service of state defense force members, who may encounter the same types of situations as federal military servicemembers and would likely benefit from the veteran mentorship programs typically implemented in veterans treatment courts.

The definition of "veterans treatment court" specifically allows courts to adopt a veterans treatment court as a separate docket, calendar, or similar term used in local practice, of an existing court and avoids requiring jurisdictions to set up separate courts for this purpose.

There is specifically no mention made here of the "character of discharge" a veteran is required to have to be eligible for participation in the veterans treatment court. When a servicemember is discharged from the military, the DoD "characterizes" that member's service in order to describe how that member served his/her nation. DoD currently uses five main types of characterizations of discharge: Honorable, General (under Honorable conditions), Other Than Honorable, Bad Conduct Discharge, and Dishonorable Discharge. There are other types of discharges to include discharges that cannot be characterized because the member has served such a short time.

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

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

situations completely untreated for disabilities related to their service. Many of the veterans who suffer from bad paper discharges commit crimes that, but for the character of their discharge, would allow them entry into a veterans treatment court. In December 2016, Congress recognized the conundrum of bad paper discharges in the passage of Public Law 114-328, Section 535 amending Section 1553(d) of title 10, United States Code. This provision now requires DoD to liberally reconsider bad paper discharges where post-traumatic stress or traumatic brain injury may have led to the misconduct resulting in the discharge in certain instances. This recognition that many bad paper discharges may have been affected by mental health conditions or brain injuries was supported by many of America's Veterans Service Organizations. In addition, the American Bar Association resolved in 2017 that barriers preventing veterans' access to treatment and other services should be removed if at all possible.

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

There is no requirement in these definitions that a veteran have combat service in order to be eligible to participate in a veterans treatment court. Allowing all veterans to participate if the court determines that participation is helpful recognizes that some disabilities are not incurred in combat, but may come from other events. For instance, military sexual trauma, which refers to instances of sexual assault or repeated sexual harassment perpetrated upon a servicemember, is now widely recognized and any residual mental health conditions or substance use disorders related to this event could be permitted entry into the veterans treatment court.

RULE 3. AUTHORIZATION.

(a) A court with jurisdiction in a criminal case may administer a veterans treatment court.

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

(c) A defendant eligible to participate in a veterans treatment court under Rule 7(a) may be admitted to the veterans treatment court at any stage in a criminal proceeding.

Comment

This act allows for a wide variety of approaches through which a veterans treatment court may be implemented by local and court rules. This act also allows states to determine the court in which implementation may be best accomplished. The act allows for the inclusion of felony and misdemeanor offenses in order to give the court the broadest latitude to determine the appropriateness of a defendant's participation in veterans treatment court based upon the other considerations in Rule 8 of these rules.

RULE 4. RECORD OF POLICIES AND PROCEDURES.

- (a) A veterans treatment court shall create a record of policies and procedures adopted to implement Rules 5 through 12].
- (b) A veterans treatment court shall seek input from prosecution and defense counsel and other interested persons in developing and adopting policies and procedures to implement Rules 5 through 12.

Comment

Rule 4(b) was drafted in order to reflect what has become a best practices standard for treatment courts when creating policies and procedures. The National Association of Drug Court Professionals Adult Drug Court Best Practice Standards Volume II (2015) suggests that in order to develop fair and effective policies and procedures for the program, interested parties should participate in the creation of a local court's policies and procedures. Interested parties comprise representatives from all partner agencies involved in the implementation of treatment courts including, but not limited to, a judge or judicial officer, program coordinator, prosecutor, defense counsel representative, treatment representative, community supervision officer, and law enforcement officer.

RULE 5. KEY COMPONENTS OF VETERANS TREATMENT COURT.

- (a) A veterans treatment court shall adopt policies and procedures to implement the following key components:
 - (1) integrating alcohol-treatment drug-treatment, and mental-health services with justice-system case processing;

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- (2) using a nonadversarial approach in which prosecution and defense counsel promote public safety while protecting due-process rights of defendants;
 - (3) early identification of eligible defendant;
 - (4) providing access to a continuum of alcohol-treatment, drug-treatment, mentalhealth treatment, and other related treatment and rehabilitation services;
 - (5) monitoring defendants for abstinence from alcohol and drugs by frequent testing;
 - (6) directing a coordinated strategy that responds to each defendant's compliance;
 - (7) providing ongoing judicial interaction with each defendant;
 - (8) monitoring and evaluating the achievement of goals;
 - (9) continuing interdisciplinary education to promote effective veterans treatment court planning, implementation, and operations; and
 - (10) forging partnerships among the veterans treatment court, the United States Department of Veterans Affairs, the [appropriate state or local agency], public agencies, and community-based organizations to generate local support and enhance the effectiveness of the veterans treatment court.
- (b) In adopting policies and procedures under this rule, the court shall consult nationally recognized best practices related to the key components.

Comment

In light of the understanding that courts maintain autonomy in the structure of a defendant's participation in order to make the veterans treatment court most effective for all involved, care has been taken to refrain from dictating to courts precisely what a veterans treatment court must include. However, there are some characteristics of veterans treatment court that are widely agreed upon.

Rule 5 incorporates the National Association of Drug Court Professionals' Ten Key Components of Drug Courts. These evidence-based, scientifically validated principles are industry best practice standards and they should not be substantively altered.

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In 1997, the National Association of Drug Court Professionals published *Defining Drug Courts: The Ten Key Components*. These ten key components quickly became the framework for drug courts and other problem-solving courts. Over the past two decades, research now confirms that drug courts are more likely to accomplish their goals by faithfully adhering to the Ten Key Components. See SHANNON M. CAREY, ET AL., NPC RESEARCH, EXPLORING THE KEY COMPONENTS OF DRUG COURTS: A COMPARATIVE STUDY OF 18 ADULT DRUG COURTS ON PRACTICES, OUTCOMES AND COSTS (2008), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf>.

Many states with drug court legislation directly reference and incorporate verbatim the evidence-based and scientifically validated Ten Key Components. See, e.g., ALA. CODE §12-23A2; FLA. STAT. § 397.334; 705 ILL. COMP. STAT. 410/10; MICH. COMP. LAWS § 600.1060; NEB. CT.

R. § 6-1207; N.H. REV. STAT. § 490-G:2; S.D. COD. LAWS § 16-22-5.1; TENN. CODE ANN. § 166-103; W. VA. CODE § 62-15-2. If not explicitly referenced in the enabling laws, all states incorporate the Ten Key Components into their drug court policies, procedures, and guidelines. Numerous courts have expressly relied on the Ten Key Components in developing drug court jurisprudence. See, e.g., *Lawson v. State*, 969 So. 2d 222 (Fla. 2007); *State v. Leukel*, 979 So. 2d 292 (Fla. Ct. App. 2008); *Mullin v. Jenne*, 890 So. 2d 543 (Fla. Ct. App. 2005); *People v. Flick*, 2015 Ill. App. (5th) 130903-U (2015); *State v. Plouffe*, 329 P.3d 1255 (Mont. 2014); *State v. Bullplume*, 305 P.3d 753 (Mont. 2013). In *Plouffe*, the court referred to the Ten Key Components as the “premier authority on the goals and practice guidelines of treatment courts...” 329 P.3d at 1261.

Veterans treatment courts are administered with an immediate and highly structured judicial intervention process for substance use disorder, mental health conditions, or other assessed treatment needs of eligible veteran and servicemember defendants in order to provide treatment that may influence a person shortly after a significant triggering event such as arrest, and thus persuade or compel that person to enter and remain in treatment. Veterans treatment courts bring together substance use disorder professionals, mental health professionals, federal and state VA professionals, local social programs, and intensive judicial monitoring in accordance with the nationally recommended key components of drug and veterans treatment courts.

The veterans treatment court may refer to a network of substance use disorder treatment programs representing a continuum of graduated substance use disorder treatment options commensurate with the needs of defendants; these may include programs with the VA, the state, and community-based programs supported and sanctioned by either or both. The veterans treatment court may also, in its discretion, employ additional services or interventions, as it deems necessary on a case by case basis. The veterans treatment court may refer to or collaborate with a network of mental health treatment programs and, if it is a co-occurring mental health and substance use disorder court program, a network of substance use disorder treatment programs

representing a continuum of treatment options commensurate with the needs of the defendant and available resources including programs with the VA and the state. The court may, among other appropriate and authorized pre-trial conditions, order the defendant to complete substance use disorder treatment in an outpatient, inpatient, residential, or jail-based custodial treatment program, order the defendant to complete mental health counseling in an inpatient or outpatient basis, and comply with healthcare providers' recommendations regarding follow up treatment. In some jurisdictions funding may require a court order in order to secure services.

RULE 6. SUPPLEMENTAL POLICIES AND PROCEDURES OF VETERANS

TREATMENT COURT.

- (a) A veterans treatment court may adopt supplemental policies and procedures to:
- (1) refer a defendant with a medical or medication need to an appropriate health-care provider;
 - (2) refer a defendant to other available services, which may include assistance with housing, employment, nutrition, and education;
 - (3) provide a defendant access to mentor who is a servicemember or veteran;
 - (4) integrate intervention, treatment, and counseling, as part of the rehabilitative services offered to a defendant who has been a victim of domestic violence, sexual trauma, child abuse, or other trauma;
 - (5) confer with the victim or alleged victim of the domestic violence offense that serves as the basis for the defendant's participation in the veterans treatment court;
 - (6) evaluate and assess a defendant charged with a domestic violence offense and integrate specific counseling as part of the rehabilitative services for the defendant;
 - (7) monitor a defendant charged with a domestic violence offense to assure compliance with a domestic violence protection order, no-contact order, and prohibition on weapon possession; and
 - (8) otherwise assist the veterans treatment court.

(b) In adopting policies and procedures under this rule, the court shall consult nationally recognized best practices related to these components.

Comment

Rule 6 was drafted in order to identify opportunities where a court may find it helpful to add components to its veterans treatment court. In particular, attention was paid to offering treatment in domestic violence situations, whether the defendant was a victim or perpetrator of this type of act.

The provision discussing mentoring services in the veterans treatment court is an acknowledgment that one of the most attractive and unique aspects of this type of court is the mentoring of a defendant by another veteran or servicemember with whom there is a shared culture. These mentors volunteer their time and energy to assist their fellow veterans through engagement, encouragement, and empowerment. In addition to mentors, defendants may be assisted by peers who in addition to being a veteran or servicemember have personally experienced any of the following: substance use disorder; mental health condition; traumatic brain injury; incarceration; or homelessness; and may have received specific training as an adjunct to treatment such as leading a group session.

RULE 7. ELIGIBILITY.

(a) A defendant is eligible to participate in a veterans treatment court if:

- (1) the defendant has a mental-health condition, traumatic brain injury, or substance use disorder;
- (2) the defendant agrees on the court record to enter the veterans treatment court voluntarily and adhere to a participant agreement;
- (3) the defendant's participation in the veterans treatment court would be in the interests of justice and of benefit to the defendant and the community, as determined by:

(A) the prosecutor and the court, with regard to pretrial diversion;

or

(B) the court, with regard to all other matters.

(b) In making the determination under subsection (a)(3), the prosecutor and the court shall consider:

- (1) the nature and circumstances of the offense charged;
 - (2) special characteristics or circumstances of the defendant;
 - (3) the defendant's criminal history and whether the defendant previously has participated in a veterans treatment court or a similar program;
 - (4) whether the defendant's needs exceed treatment resources available to the veterans treatment court;
 - (5) the impact on the community of the defendant's participation and treatment in the veterans treatment court;
 - (6) recommendations of any law-enforcement agency involved in investigating or arresting the defendant;
 - (7) special characteristics or circumstances of the victim or alleged victim;
 - (8) subject to subsection (c), a recommendation of the victim or alleged victim;
 - (9) provision for and the likelihood of obtaining restitution from the defendant over the course of participation in the veterans treatment court;
 - (10) mitigating circumstances; and
 - (11) other circumstances reasonably related to the defendant's case.
- (c) In making the determination under subsection (a) and (b) in a case in which a domestic violence offense serves as the basis for the defendant's participation in the veterans treatment court, the prosecutor and the court shall seek the recommendation of the victim or alleged victim of the offense.

Comment

This act does not require that the mental health condition, substance use disorder, or traumatic brain injury making a defendant eligible for participation in veterans treatment 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 treatment court in order to multiply the probability of success. Placing less requirements on entry to the veterans treatment court allows courts a wide latitude in determining what is best for victims and defendants on a case-by-case basis. Consider discussing alcohol as a substance as a part of this comment.

There is also no requirement that the mental health condition, 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 treatment 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 and courts in this act are encouraged to determine the recommendations 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 treatment court.

This act uses the term "substance use disorder" to describe a defendant's diagnosed conditions regarding the misuse of or dependence upon substances both legal and illegal, to include alcohol. The term "substance use disorder" has been used for some time by substance use professionals and is the most accurate description endorsed by the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment. SAMHSA recognizes that when discussing substance use disorders, words can be powerful by encouraging and supporting or, on the other hand, isolating and shaming. Recognizing this power, SAMHSA proposes that the use of the term "substance use disorder" is helpful because it encompasses a range of severity levels, from problem use to dependence and addiction. This use of "substance use disorder" in this act reflects this recognition.

In determining if a defendant is eligible for the veterans treatment court, the prosecutor or court may require the defendant to divulge information regarding prior criminal charges; education, work experience, and training; family history, including residence in the community; medical and mental history, including psychiatric or psychological treatment or counseling; and other information reasonably related to the likelihood of success of the treatment program.

RULE 8. PARTICIPANT AGREEMENT. For a defendant to be admitted to a veterans treatment court, the defendant must sign, and the court must approve, a participant agreement. If admission to the veterans treatment court occurs before conviction, the prosecutor must also sign the participant agreement.

RULE 9. VICTIM OF DOMESTIC VIOLENCE.

(a) If a victim or alleged victim of a domestic violence offense that serves as the basis for the defendant's participation in a veterans treatment court can reasonably be located, the victim or alleged victim must be offered:

(1) referrals to services of domestic violence providers; and

(2) information on how to report an allegation of:

(A) an offense committed by the defendant; or

(B) a violation by the defendant of the participant agreement.

(b) The participation of the defendant in a veterans treatment court does not alter the rights of a victim or alleged victim of domestic violence under law of this state other than this [act].

Comment

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

This act recognizes that victims of crimes are entitled to rights that vary from state to state. These rights may dictate notice given to the victim regarding a defendant's participation in court programs or treatment, information regarding a defendant's release from incarceration, referral to various agencies and services, and a plethora of other matters. Because it would be impossible to capture all of these rights in this act, the act was written to reinforce that a defendant's participation in a veterans treatment court does not abrogate a victim's rights in any way.

RULE 10. MODIFICATION OR TERMINATION. If a veterans treatment court determines after a hearing that a defendant has not complied with the defendant's participant agreement, the court may modify or terminate the defendant's participation in the veterans treatment court. Modification or termination is subject to the participant agreement.

RULE 11. COMPLETION OF THE PARTICIPANT AGREEMENT. If the

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veterans treatment court determines that a defendant has completed the requirements of the defendant's participant agreement, the court shall dispose of the charge that served as the basis of participation in the veterans treatment court in accordance with the defendant's participant agreement and any applicable plea agreement, court order, or judgment.

RULE 12. ACCESS TO RECORDS.

(a) A statement made or record submitted by a defendant in a veterans treatment court may be subject to 42 U.S.C. Section 290dd-2, and 42 C.F.R. Part 2[, as amended,] regarding confidentiality.

(b) Any individually-identifiable health information or record pertaining to a defendant in a veterans treatment court undergoing alcohol or drug treatment may be subject to the privacy regulations promulgated under the Health Insurance Portability and Accountability Act, 42 U.S.C. Section 1320d-6[, as amended] and 45 C.F.R. Parts 160, 162, and 164[, as amended][, and state law that applies].

***Legislative Note:** In states in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes or regulations are incorporated into state law, the phrase should be deleted in this section.*

Comment

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

RULE 13. LIBERAL CONSTRUCTION. These rules must be liberally construed.

RULE 14. NO RIGHT TO PARTICIPATE. [These rules] do not create a right to participate in a veterans treatment court.

RULE 15. EFFECTIVE DATE. These rules take effect

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HB 1518—Veterans Criminal Justice Study

When veterans return from combat, some turn to drugs and alcohol to cope with their experiences on the battlefield. Sadly, too many veterans end up in the criminal justice system as a result of their service.

Dealing with veterans who break the law can be complicated. They should still be held responsible for any crimes they commit. But sometimes there are underlying factors, like PTSD or substance abuse, that come into play. To address those issues, some parts of the country are setting up special courts for veterans. There are hundreds of these courts now. Veterans Treatment Courts give our veterans the opportunity to live a sober and stable life while restoring their military honor and their commitment to family and community.

Judge Robert Russell, presiding judge of the Buffalo Drug Court and Buffalo Mental Health Court, in Buffalo New York, created the nation's first Veterans Treatment Court in 2008 in response to the growing number of veterans appearing on his dockets who were addicted to drugs and/or alcohol and/or suffering from mental illness.

The veteran's court model is based on drug treatment and/or mental health treatment courts. Substance abuse or mental health treatment is offered as an alternative to incarceration. Typically, veteran mentors assist with the programs.

The bonds of military service run deep. Veterans have many shared experiences not common among civilians. Research suggests that traditional community services may not be adequately suited to meet the distinct needs of veterans in the criminal justice system.

In Veterans Treatment Courts, those who served in our nation's Armed Forces go through the treatment court process with their fellow veterans and are connected to the federal, state and local services that are uniquely designed for the distinct needs that arise from military service. Participants receive the treatment and other services they require to get back on track and lead constructive lives, yet they are also held accountable by the judge for meeting their obligations to society, themselves and their families. Participants are regularly and randomly tested for alcohol/drug use, are required to appear frequently in court for the

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judge to assess their progress, and immediately receive rewards for doing well and sanctions for not living up to their obligations.

In 2016 the U.S. Department of Veterans Affairs counted 461 veteran focused court programs throughout the United States. Of those 461 programs, 116 were created in 2015 alone illustrating the need for these programs. That same year The Department of Justice provided over \$4 million in grants to veteran's courts.

Justice For Vets, The National Clearinghouse for Veterans Treatment Courts is 501 (c)(3) non-profit professional service organization, and is the lead organization in the nation implementing, advocating and influencing public policy for Veterans Treatment Courts.

The North Dakota Veterans Legislative Council strongly supports this study and asks this committee for a do pass.

TESTIMONY OF
BRIGADIER GENERAL ROBERT BECKLUND
THE DEPUTY ADJUTANT GENERAL
BEFORE THE
JUDICIARY COMMITTEE
29 JANUARY 2019
HOUSE BILL 1518

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Good morning Mr. Chairman, members of the committee, I am Brigadier General Robert Becklund, The Deputy Adjutant General for the North Dakota National Guard. I am here today to testify in support of House Bill 1518.

After over 17 years of war, our veterans continue to deal with the wounds, both visible and invisible, such as Post Traumatic Stress (PTSD) and Traumatic Brain Injury (TBI). Without assistance many of these service members and veterans self-medicate with alcohol or drugs, which all too often results in contact with the criminal justice system. According to North Dakota data, an average of 76 veterans receive service from the Veterans Justice Outreach Office at the Fargo Veterans Administration. Of those 63% report Mental Health (MH) issues and 50% report Substance Abuse (SA) issues. Across the United States, it is estimated that 20 veterans die by suicide each day. In North Dakota veterans make up 9% of our adult population and over the nine year period from 2008-2016 accounted for nearly 18% of the suicides in North Dakota.

To address some of the issues that veterans face, several states have established Veterans Courts. The purpose of these courts is to assist veterans struggling with behavioral health issues by redirecting them off their destructive path in the justice system and into treatment or other services. While this bill does not establish a Veterans Court, the study it proposes may lead to the ability to recognize someone as a veteran and the possibility to offer options outside of it the criminal justice system. This will also compliment other related efforts in North Dakota including educating judges, lawyers, law enforcement, corrections officers and service providers on the connection between service-connected behavioral health issues and criminal behavior.

We have seen successes. In Colorado, there is less criminal recidivism in veterans who have been diverted away from the criminal justice system in their Veterans Courts. In North Dakota, a service member suffering from a combination of PTSD and TBI in 2010 took law enforcement on a high speed chase down Highway 85 with a vehicle full of weapons. He wanted to die and he asked the officers to shoot him. Through the combined efforts of the police, the courts, the state's attorney, the defense counsel, the Veterans Administration, NDDVA, and others, who recognized that his service-connected behavioral health issues were at the heart of his criminal behavior, this veteran went to treatment instead of prison.

We need to continually evaluate the needs and issues related to all veterans in our state and this bill would do just that, so we see this as a positive step forward in service to our veterans. I ask for your support for this bill and would be glad to answer any questions you may have.

TESTIMONY OF
BRIGADIER GENERAL ROBERT BECKLUND
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NORTH DAKOTA MILITARY

data book

Fall 2018



ND Cares

ndcares.org

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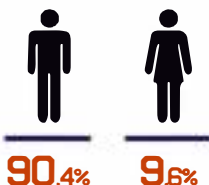
There are **51,677 VETERANS** in North Dakota

WHICH IS



of the state's
adult population

GENDER

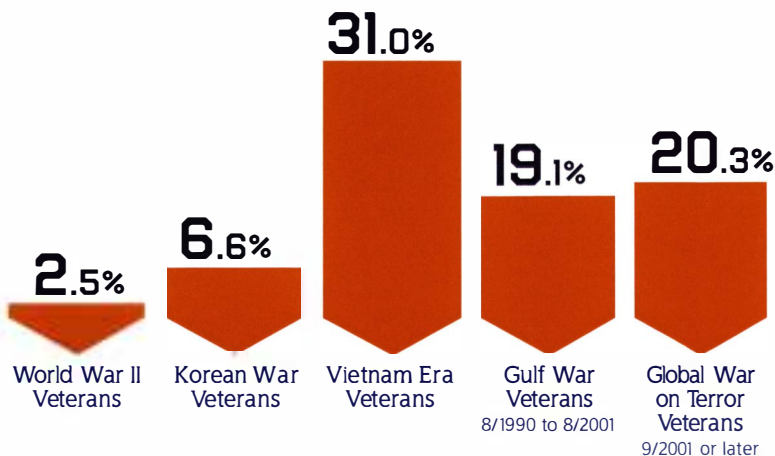


AGE



PERIOD OF SERVICE

of North Dakota Veterans



NOTE: 20.5% of ND Veterans are from periods of service other than depicted above.

Sources:

North Dakota Veterans, U.S. Census Bureau 2012-2016 American Community Survey 5 Year Estimate
https://www.va.gov/vetdata/Veteran_Population.asp

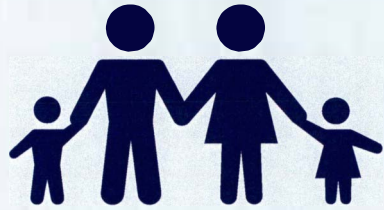
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MARRIAGE & CHILDREN

Nationally **50%**
of Department of Defense military
members are reported as married.



40.6%
of the total military
force in the nation has
children.



Note: Children include minor dependents age 20 or younger or dependents age 22 and younger enrolled as full-time students.

AGE OF MILITARY CHILDREN



0-5 years
37.8%



6-11 years
31.6%



12-18 years
23.8%



19-22 years
6.8%

This information depicts the distribution of Active Duty and Selected Reserve children by age group. Across the DoD, there are 1,715,519 military children.

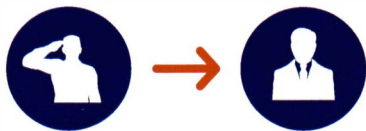
Note: Children ages 21 to 22 must be enrolled as full-time students in order to qualify as dependents, percentages may not total to 100 due to rounding

Source:

2016 Demographics, Profile of the Military Community, Department of Defense, United States of America, [http://download.militaryonesource.mil/2038/MOS/Reports/2016 Demographics Report.pdf](http://download.militaryonesource.mil/2038/MOS/Reports/2016%20Demographics%20Report.pdf)

EMPLOYMENT

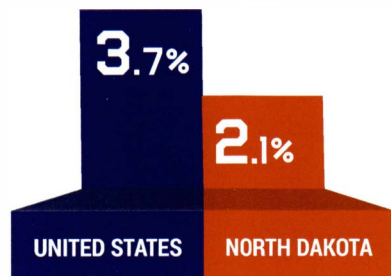
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Although experience shows that Veterans generally enjoy a favorable employment rate in the nation's job market, many Veterans initially find it difficult to compete successfully in the labor market.

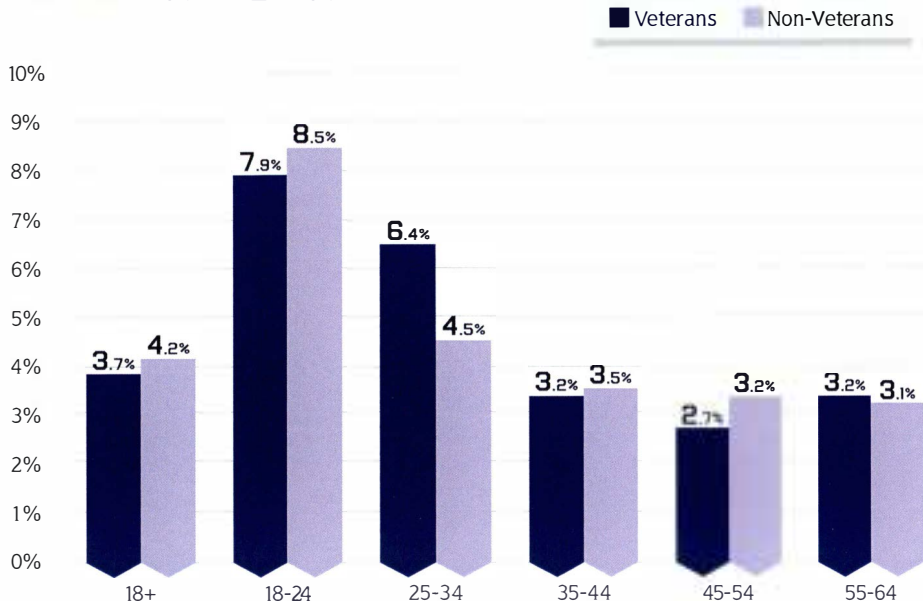
UNEMPLOYMENT RATE OF VETERANS

(age 18 and older)



Bureau of Labor Statistics, 2017 annual average

UNITED STATES VETERAN UNEMPLOYMENT PERCENTAGE BY AGE GROUP



2017 Veteran Employment Update (Current Population Survey (CPS)), Veteran Employment Training Service; U.S. Department of Labor

HOMELESSNESS

698

**ND VETERANS
SERVICED**

8%

Females

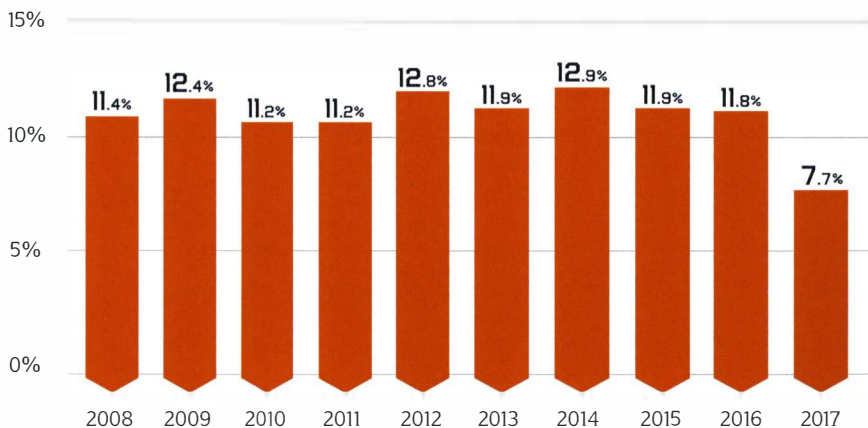
92%

Males

According to Housing and Urban Development (HUD), a "homeless individual" is an individual who lacks a fixed, regular, and adequate nighttime residence which includes temporary housing shelters.

Five year average, ND Homeless Management Information System (HMIS), 2018

PERCENTAGE OF HOMELESS INDIVIDUALS RECEIVING SERVICES IN NORTH DAKOTA WHO ARE VETERANS



ND Homeless Management Information System, data prepared on October 24th, 2018.

IN NORTH DAKOTA, HOMELESS VETERANS...



36% have disabilities



14% have a chronic health condition



35% have mental illness



71% are age 45 or older



23% have drug and alcohol abuse issues



14% have children

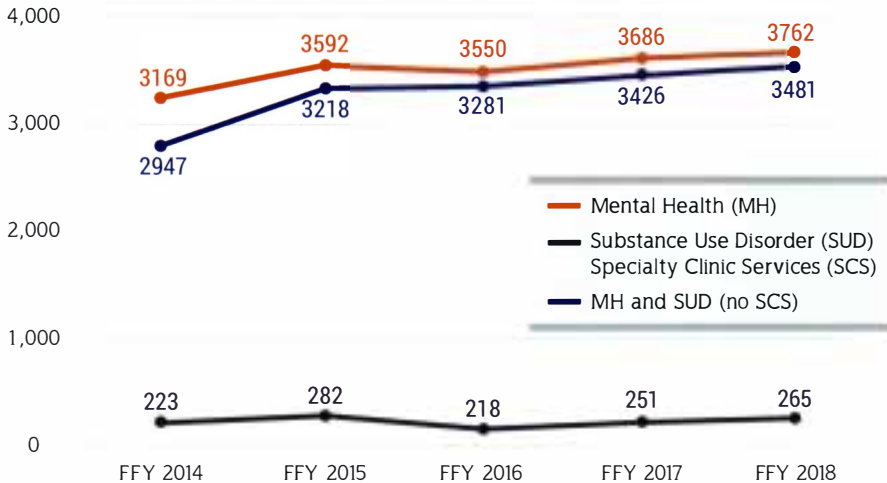
Five year average, ND Homeless Management Information System, data prepared on October 24th, 2018

BEHAVIORAL HEALTH

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VETERANS ADMINISTRATION (VA) FARGO

Number of Veterans who received behavioral health services from Veterans health in North Dakota

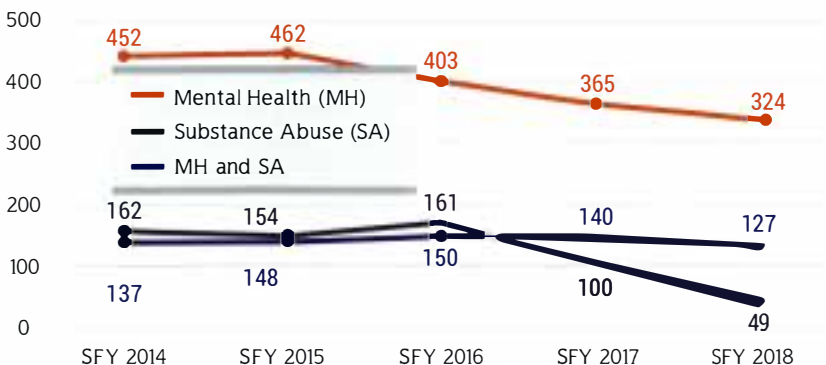


U.S. Department of Veterans Affairs, Fargo VA Health Care System Mental Health Services

For the purposes of VA health benefits and services, a person who served in the active military service and who was discharged or released under conditions other than dishonorable is a Veteran.

ND HUMAN SERVICE CENTERS

Number of individuals who are veterans or served in the military who received behavioral health services from the Human Service Centers in North Dakota.



ND Department of Human Services, Statewide Field Services Administration



Yearly, on average **669** Veterans or individuals who served in the military are treated in the ND Human Service Centers. Of those, 60% received mental health services.

ND Department of Human Services; Statewide Field Services Administration; 2014-2018 data

FFY - Federal Fiscal Year SFY - State Fiscal Year

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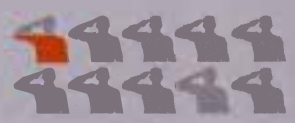


Yearly, on average,
76 VETERANS
receive services from the
Veterans Justice Outreach
(VJO) Office, Fargo VA.

63% report MH issues

50% report SA issues

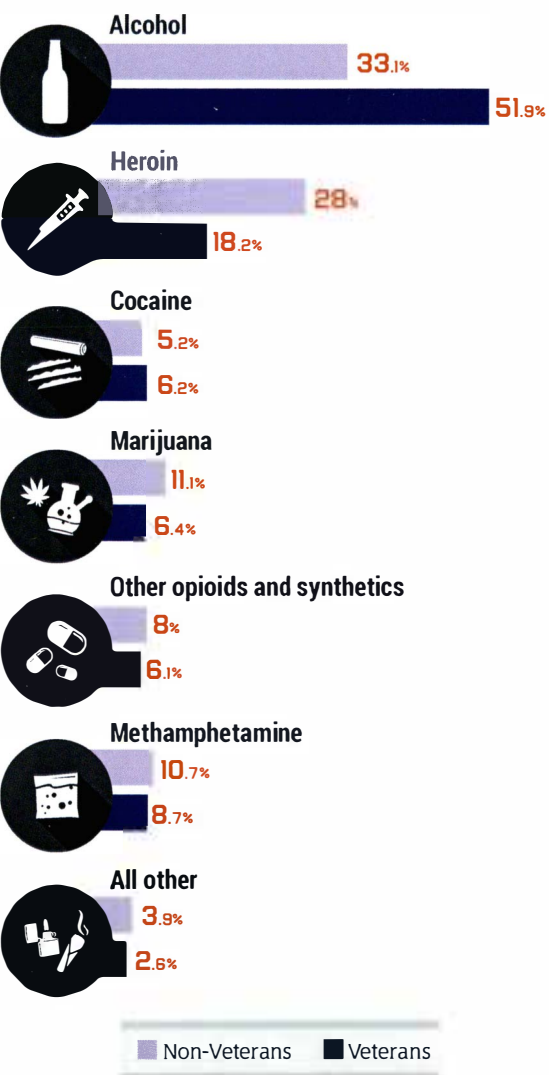
HOMES via VACO (2008 thru 2014),
Veterans Justice Outreach Program
Coordinator, Fargo VA Health
Care System, received on
November 16th, 2018



6.6%
of the North Dakota
Veteran population
reported having a
substance use disorder.

US Department of Veterans
Affairs; Fargo VA Health
Care System; Mental Health
Services and ND
Department of Human
Services; Statewide Field
Services Administration;
2014-2018 data

NATIONAL ADMISSIONS TO SUBSTANCE ABUSE TREATMENT BY VETERAN STATUS AND PRIMARY SUBSTANCE OF ABUSE



Substance Abuse and Mental Health Services Administration, Center
for Behavioral Health Statistics and Quality Treatment Episode Data
Set (TEDS) 2016. Admissions to and Discharges from Publicly
Funded Substance Use Treatment. Rockville, MD: Substance Abuse
and Mental Health Services Administration, 2018

SUICIDE

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Since the Global War on Terrorism began, more North Dakota National Guard members have died by suicide than in combat.



Veterans accounted for 14% of suicides nationwide though they make up only **8%** of the U.S. population. Nationally, Veteran suicide rates for the age group 18-34 rose by **11.4%**, from 2015 to 2016.

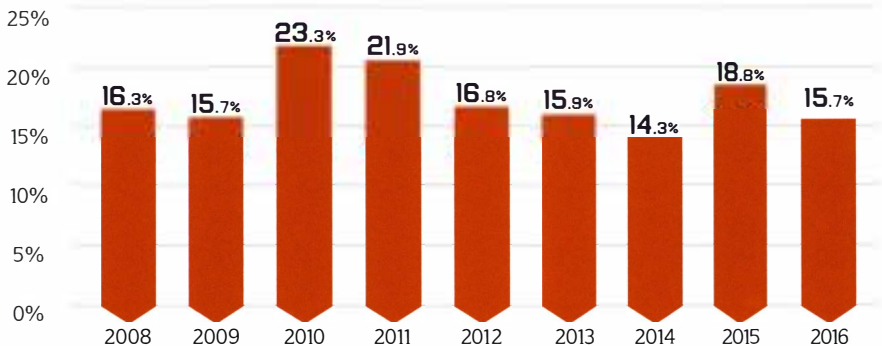
More Young veterans Committing Suicide, VA Data Show, Ben Kelsing, September 26th 2018, <https://www.wsj.com/article>



Recent estimates suggest that **20 VETERANS** may die by suicide each day.

VA Release National Suicide Data Report for 2005-2016, U.S. Department of Veterans Affairs, New Falls, dated September 26, 2018

ND INDIVIDUALS WHO LOST THEIR LIVES TO SUICIDE WHO WERE OF VETERAN STATUS



Vital Records, ND Department of Health

The causes of suicide are complex and may be the result of multiple factors, including mental illness, substance abuse, painful losses, exposure to violence, and social isolation.

The most critical risk factors for suicide are prior suicide attempts, mood disorders (such as depression), alcohol and drug use, and access to lethal means.

TRAUMATIC BRAIN INJURY

A Traumatic Brain Injury (TBI) is caused by a

BUMP

BLOW

JOLT

to the head or a penetrating head injury that disrupts the normal function of the brain.

Individuals with TBI are at an increased risk of depression, anxiety, and involvement with the criminal justice setting and suicide.

E J Shiroma, F L Ferguson, E E Pickel, et al. Prevalence of traumatic brain injury in an offender population: a meta-analysis. *J Correctional Health Care*. 16 (2) (2010), pp. 147-159.

Prevalence of and Risk Factors for Anxiety and Depressive Disorders after Traumatic Brain Injury: A Systematic Review. Annemieke C. Scholten, Juanita A. Haagsma, Maryse C. Chossen, Miranda Doff, Ed F. van Beeck, and Suzanne Folmer. *Journal of Neurotrauma*. Nov 2016, ahead of print. Caution.

<http://doi.org/10.1089/neu.2015.4252> Published in Volume 33 Issue 22 November 15, 2016.

Madsen T, Erlangsen A, Orlovskaya S, Mofaddi R, Nordentoft M, Benros ME. Association Between Traumatic Brain Injury and Risk of Suicide. *JAMA*. 2018;320(6):580-588. doi:10.1001/jama.2018.10211.

DOD NUMBERS FOR TRAUMATIC BRAIN INJURY WORLDWIDE - TOTALS

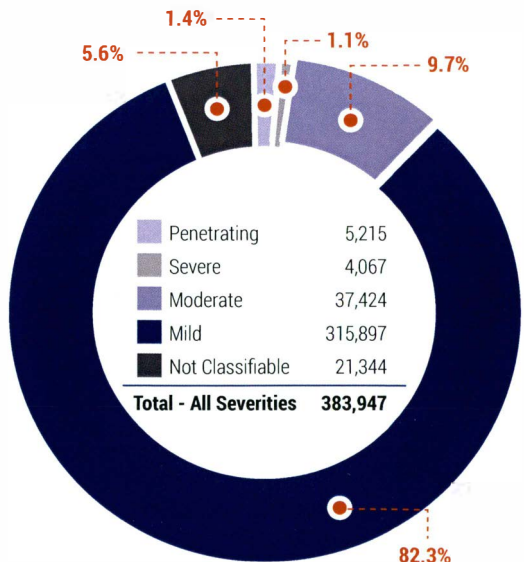
2000-2018 Q1, as of June 21, 2018

Mild: Confused or disoriented state which lasts less than 24 hours; or loss of consciousness for up to 30 minutes; or memory loss lasting less than 24 hours.

Moderate: Confused or disoriented state which lasts more than 24 hours; or loss of consciousness for more than 30 minutes, but less than 24 hours; or memory loss lasting greater than 24 hours but less than seven days.

Severe: Confused or disoriented state which lasts more than 24 hours; or loss of consciousness for more than 24 hours; or memory loss for more than seven days.

Penetrating: A head injury in which the scalp, skull and dura mater (the outer layer of the meninges) are penetrated.



<http://dvbic.dcoe.mil/files/tbi-numbers/worldwide-totals-2000-2018Q1-total-jun-21-2018-v1.0-2018-07-26-0.pdf>

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ABOUT ND CARES

MISSION: STRENGTHENING AN ACCESSIBLE, SEAMLESS NETWORK OF SUPPORT FOR SERVICE MEMBERS, VETERANS, FAMILIES, AND SURVIVORS.

The ND Cares Coalition includes a broad spectrum of military and civilian professionals dedicated to the support of North Dakota Service Members, Veterans, Families, and Survivors (SMVFS).

The coalition uses the broadest definition of Veteran and is working to encompass all individuals who are currently serving or who have served – the “total force.”

ND Cares is not a provider of services; rather, it is dedicated to improving understanding of the needs and services required by our SMVFS.

The purpose of ND Cares is to resolve barriers or gaps in services to ensure those serving and those who have served, their families, and survivors receive the care and assistance they need.

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ND CARES GOALS

1. Convene in a collaborative process to provide a robust, readily accessible information portal for Service Members, Veterans, Families, and Survivors.
2. Educate and engage partners at the local, state, and tribal levels around priority issues (e.g., substance abuse, suicide prevention and resource gaps).

ND CARES STRATEGIC FOCUS

1. Partnerships and capacity-building
2. Training and education
3. Internal and external communication

RESOURCES

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NATIONAL

fargo.va.gov/services/caregiver/index.asp

maketheconnection.net

militaryonesource.mil

psycharmor.org

samhsa.gov

va.gov

NORTH DAKOTA

capnd.org

jobsnd.com

legalassist.org

myfirstlink.org

nd.gov/veterans

ndhealth.gov/suicideprevention

ndhomelesscoalition.org

nd.gov/dhs/services/

nd.ng.mil/Pages/default.aspx

prevention.nd.gov

parentslead.org



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TO REQUEST COPIES

ONLINE : prevention.nd.gov
EMAIL : ndprmc@nd.gov
PHONE : 701.328.8919

NORTH DAKOTA
PREVENTION
RESOURCE & MEDIA CENTER



Strengthening an accessible,
seamless network of support for
Service Members, Veterans,
Families, and Survivors.

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ndcares.org
ndcares@nd.gov
701.333.2015

19.0380.01001
Title.02000

Adopted by the Judiciary Committee

January 29, 2019

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1518

Page 1, line 24, after "system" insert "and whether the courts could be integrated into other specialty courts existing within the state"

Renumber accordingly