

Amendments to the Veterans Justice Act

Summary

This model policy details alternative sentencing options for US veterans charged with certain crimes that recognize their service to the country and that their criminal behavior may derive from their military service. The options include the use of pretrial supervision and probation in lieu of a record of conviction or incarceration and are grounded in evidence-based practices for effective supervision and rehabilitation.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF _____:

Section 1. Purpose

(1) Veterans charged with certain offenses shall be given the opportunity to avoid a record of conviction, or have a felony reduced to a misdemeanor, in probation eligible offenses and avoid incarceration, and instead receive probation and treatment that has been tailored to address the specific challenges they face stemming from their military service.

Section 2. Definitions

(1) As used in this act, the words defined in this section have the meaning given.

(a) "VETERAN" refers to a person who swore an oath and entered any branch of the Armed Forces, including the National Guard or Reserve, and is either, (1) currently serving in such branch and has not been discharged, or (2) was discharged or released from such service under any characterization except for those receiving a dishonorable discharge, unless the individual receiving the dishonorable discharge has been diagnosed with substance-use disorder (SUD), military sexual trauma (MST), traumatic brain injury (TBI), posttraumatic stress disorder (PTSD), or another mental health condition.

(b) "CONDITION FROM MILITARY SERVICE" refers to substance-use disorder (SUD), military sexual trauma (MST), traumatic brain injury (TBI), posttraumatic stress disorder (PTSD), or another mental health condition that is related to an individual's military service in some manner.

(c) "CASE PLAN" means a set of goals, conditions, and programs that is based on a professional risk and needs assessment, tailored to the specific risks and needs of the veteran, and developed in collaboration with the veteran.

(d) "VETERAN SENTENCING OPTION" means that the disposition or adjudication of the case is postponed pending the completion of the case plan. If the veteran successfully completes their case plan, they receive the associated incentive described in Section 5. Except in cases where the judge approves a case plan in a pre-plea situation, if the veteran does not successfully complete the case plan, they waive their right to a trial and accept that they will be convicted of the crime and resume the standard sentencing process.

Section 3. Eligibility

(1) Law enforcement, court, and correctional personnel shall verify the veteran status of all individuals being processed, using the definition of veteran from Section 2(1)(a), to identify individuals who may be eligible for a veteran sentencing option.

(2) All veterans shall be eligible for a veteran sentencing option if there are one or more indicators of mental or physical symptoms of a condition from military service which could have contributed to the offense. This includes the psychological effects from their time in service as well as from the period of family separation related to deployment. **Notwithstanding, all veterans shall be eligible for a veteran sentencing option if they have been previously diagnosed, or provisionally diagnosed, with substance use, mental health, and/or neurocognitive disorder without condition on military service and relation to the offense.**

(3) A presumption in favor of a veteran sentencing option exists for any offense that is eligible for probation, which can only be overcome by a judicial finding that such a sentencing option would not reasonably ensure public safety based on an individualized assessment of the veteran and consideration of the supervision, treatment, and other programs available in that community. The presumption may apply to veterans who previously absconded or were re-arrested for a new offense while previously given the benefit of this option.

Section 4. Program Details

(1) Veterans who are eligible for, and choose to receive, a veteran sentencing option, as described in Section 3 shall enter a program that contains the following elements:

(a) Probation **or Pretrial, when appropriate**

(b) Evidence-based treatment tailored to address the specific challenges facing veterans, such as posttraumatic stress disorder (PTSD), traumatic brain injury (TBI), military sexual trauma (MST), or another mental health condition. **Ensure evidence-based, researched standards are implemented in all aspects of the program. Ensure all treatment providers are licensed and accredited.**

(c) A case plan:

(i) Developed by the court, corrections agencies, and/or **designated case management professionals** **appropriate psychological experts**

(ii) Based on a professional **evidence-based clinical and criminogenic** assessment of the veteran's specific risks and needs

(iii) Created in conjunction with input from the veteran

(iv) Containing clear and individualized supervision and treatment goals, including guidelines that detail the program rules, consequences for violating the rules, and incentives for compliance

(v) Communicated to the veteran at the start of the program

(d) In the implementation of the program, judges shall retain discretion in:

(i) Deciding veteran eligibility

(ii) Establishing the conditions of the program, including the creation of the case plan

(iii) Setting the terms of successful program completion and release upon that successful completion

(iv) Determining if the veteran has successfully completed their program at a final hearing

(e) All eligible veterans may request having their supervision changed to their county of residence, provided that being moved to their county of residence does not interfere with:

(i) The ability of the veteran to receive appropriate supervision and treatment

(ii) The rights of the victim according to existing state law

(f) Family members may elect to receive information about case plans and progress.

(i) If a no-contact order is in place between the veteran and their family, that order shall be evaluated periodically to determine if preventing contact is necessary.

(g) Victims/survivors shall have the opportunity to be involved in the process, including the opportunity to submit a written statement to be read at the final hearing where program completion is determined.

(i) In domestic violence cases, the victim shall have the opportunity to receive a victim advocate to mentor them throughout the process.

(2) This program shall be operated by existing pretrial and/or probation departments.

Section 5. Incentives for Successful Program Completion and Record Expungement

(1) Veterans who successfully complete their program shall avoid a term of incarceration upon successful completion and have a presumption in favor of either having their case dismissed and their conviction not recorded or have their felony conviction converted to a misdemeanor. This presumption can only be overcome by a judicial finding that the veteran remains an ongoing risk to public safety and such a dismissal or conversion would not reasonably ensure public safety. The determination must be stated on the record to include the facts upon which the judge relied to reach it.

(2) Veterans, like other eligible individuals, should be eligible for expungement as provided for by existing state law.

Section 6. Sentencing Mitigation

(1) Veterans who are not eligible for a veteran sentencing option as detailed in Section 3 shall have their veteran status recognized as a factor in determining their sentence.

(2) Sentencing mitigation for veterans shall contain the following elements:

(a) At arraignment, the court shall notify the veteran that their veteran status may have mitigation value.

(i) The court shall offer the veteran the ability to communicate their veteran status through counsel or by other means, avoiding the need for self-identification of veteran status in open court.

(b) A bar on using veteran status as an aggravating factor, meaning veterans cannot receive a more severe punishment by virtue of being a veteran.

(c) Veteran status shall be considered in addition to any other existing mitigation provided for mental health conditions in a jurisdiction.

(i) Other trauma suffered by the veteran, such as Adverse Childhood Experiences, shall not be used to deny the existence of military trauma.

(d) The court may take into consideration individual merit earned during service, overseas deployment, exposure to danger, and service-connected disability ratings when considering sentencing mitigation. When considering multiple factors, the court should give additional credit for each factor.

(e) The court shall not mandate a connection between the offense and a condition from military service in order to consider a veteran for sentencing mitigation.

(f) When the veteran can show a clear connection between the offense and a condition from military service, and progress in treating that condition, prison is inappropriate in all but the most severe cases.

Section 7. Training

(1) Law enforcement, courts, and corrections personnel shall receive training designed to increase their understanding of cases involving veterans, including veterans exposure to violence and trauma.

(a) Training shall include attention to issues that disproportionately impact female veterans, such as military sexual trauma (MST).

Section 8. Data Collection and Evaluation

- (1) Courts shall track and report the number of veterans receiving, successfully completing, declining, and denied a veteran sentencing option and sentencing mitigation.**
- (2) Prosecutors and law enforcement shall track and report the number of veterans receiving, successfully completing, declining, and denied prosecutorial or law enforcement veterans diversion and treatment courts.**
- (3) All data collected and reported shall be categorized by race, ethnicity, gender, age, military discharge characterization, and offense type.**
- (4) The legislature shall identify an agency to develop a plan for tracking outcomes among veterans who receive a veteran sentencing option, including successful completion of the program, recidivism, housing status, and employment status.**
- (5) The legislature shall identify an agency to develop a plan for ongoing evaluations of the veteran sentencing option, including occasional independent evaluations that employ causal methods.**
- (6) Law enforcement, courts, and corrections are authorized to seek federal funding to support the infrastructure and operating costs associated with implementing this act.**

Section 9. Enaction

- (1) This act shall take effect on _____.**