

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2389

FISCAL  
NOTE

BY DELEGATES STORCH AND PYLES

[Introduced January 14, 2019; Referred  
to the Committee on Veterans' Affairs and Homeland  
Security then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §51-12-1, §51-12-2, §51-12-3, §51-12-4, §51-12-5, §51-12-6, §51-12-7, §51-  
 3 12-8, §51-12-9, §51-12-10, §51-12-11, §51-12-12, §51-12-13, §51-12-14, §51-12-15, and  
 4 §51-12-16, all relating to the Model Veterans Treatment Court Act.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 12. MODEL VETERANS TREATMENT COURT ACT.**

**§51-12-1. Short Title.**

1 This article may be cited as the Model Veterans Treatment Court Act.

**§51-12-2. Definitions.**

1 In this article:

2 “Defendant” means a veteran or servicemember charged with a criminal offense.

3 “Domestic violence” means conduct defined in §61-2-28 of this code.

4 “Participant agreement” means the record, required by §51-12-4(a) of this code, of the  
 5 policies and procedures of a veterans treatment court and any specific terms and conditions  
 6 applicable to the defendant. The term includes a modification under §51-12-10 of this code.

7 “Record,” except as otherwise provided in §51-12-7(a)(2) of this code, means information  
 8 that is inscribed on a tangible medium or that is stored in an electronic or other medium and is  
 9 retrievable in perceivable form.

10 “Servicemember” means:

11 (A) A member of the active or reserve components of the Army, Navy, Air Force, Marine  
 12 Corps, or Coast Guard, of the United States;

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

14 (C) A member of the West Virginia State Guard.

15 “Sign” means, with present intent to authenticate or adopt a record:

16 (A) To execute or adopt a tangible symbol; or

17 (B) To attach to or logically associate with the record an electronic

18 symbol, sound, or process.

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

22 “Veteran” means a former servicemember, regardless of the character of the  
23 servicemember’s discharge.

24 “Veterans treatment court” means a veterans and servicemembers docket administered  
25 under the provisions of this article by a court of this state.

**§51-12-3. Authorization.**

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

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

3 (c) A defendant eligible to participate in a veterans treatment court under §51-12-7(a) of  
4 this code may be admitted to the veterans treatment court at any stage in a criminal proceeding.

**§51-12-4. Record Of Policies And Procedures.**

1 (a) A veterans treatment court shall create a record of policies and procedures adopted to  
2 implement §51-12-5 through §51-12-12 of this code.

3 (b) A veterans treatment court shall seek input from prosecution and defense counsel and  
4 other interested persons in developing and adopting policies and procedures to implement §51-  
5 12-5 through §51-12-12 of this code.

**§51-12-5. Key Components of Veterans Treatment Court.**

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

3 (1) Integrating alcohol-treatment, drug-treatment, and mental-health services with justice-  
4 system case processing;

5 (2) Using a nonadversarial approach in which prosecution and defense counsel promote  
6 public safety while protecting due-process rights of defendants;

- 7           (3) Early identification of eligible defendants;
- 8           (4) Providing access to a continuum of alcohol-treatment, drug-treatment, mental-health  
9 treatment, and other related treatment and rehabilitation services;
- 10          (5) Monitoring defendants for abstinence from alcohol and drugs by frequent testing;
- 11          (6) Directing a coordinated strategy that responds to each defendant's compliance;
- 12          (7) Providing ongoing judicial interaction with each defendant;
- 13          (8) Monitoring and evaluating the achievement of goals;
- 14          (9) Continuing interdisciplinary education to promote effective veterans treatment court  
15 planning, implementation, and operations; and
- 16          (10) Forging partnerships among the veterans treatment court, the United States  
17 Department of Veterans Affairs, the Department of Veterans Assistance, public agencies, and  
18 community-based organizations to generate local support and enhance the effectiveness of the  
19 veterans treatment court.
- 20          (b) In adopting policies and procedures under this section, the court shall consult nationally  
21 recognized best practices related to the key components.

**§51-12-6. Supplemental Policies and Procedures Of Veterans Treatment.**

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

10 (5) Confer with the victim or alleged victim of the domestic violence offense that serves as  
11 the basis for the defendant's participation in the veterans treatment court;

12 (6) Evaluate and assess a defendant charged with a domestic violence offense and  
13 integrate specific counseling as part of the total rehabilitative services for the defendant;

14 (7) Monitor a defendant charged with a domestic violence offense to assure compliance  
15 with a domestic violence protection order, no-contact order, and prohibition on weapon  
16 possession; and

17 (8) Otherwise assist the veterans treatment court.

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

**§51-12-7. Eligibility.**

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

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

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

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

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

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

10 (b) In making the determination under subsection (a)(3) of this section, the prosecutor and  
11 the court shall consider:

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

13 (2) Special characteristics or circumstances of the defendant;

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

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

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

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

22 (7) Special characteristics or circumstances of the victim or alleged victim;

23 (8) Subject to §51-12-7(c) of this code, a recommendation of the victim or alleged victim;

24 (9) Provision for and the likelihood of obtaining restitution from the defendant over the  
25 course of participation in the veterans treatment court;

26 (10) Mitigating circumstances; and

27 (11) Other circumstances reasonably related to the defendant's case.

28 (c) In making the determination under subsections §51-12-7(a) and (b) of this code in a  
29 case in which a domestic violence offense serves as the basis for the defendant's participation in  
30 the veterans treatment court, the prosecutor and the court shall seek the recommendation of the  
31 victim or alleged victim of the offense.

#### **§51-12-8. Participant Agreement.**

1 For a defendant to be admitted to a veterans treatment court, the defendant must sign,  
2 and the court must approve, a participant agreement. If admission to the veterans treatment court  
3 occurs before conviction, the prosecutor also must sign the participant agreement.

#### **§51-12-9. Victim of Domestic Violence.**

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

4 (1) Referrals to services of domestic violence providers; and

5 (2) Information on how to report an allegation of:

- 6           (A) An offense committed by the defendant; or  
7           (B) A violation by the defendant of the participant agreement.  
8           (b) The participation of the defendant in a veterans treatment court does not alter the rights  
9 of a victim or alleged victim of domestic violence under law of this state other than this article.

**§51-12-10. Modification or Termination.**

1           If a veterans treatment court determines after a hearing that a defendant has not complied  
2 with the defendant's participant agreement, the court may modify or terminate the defendant's  
3 participation in the veterans treatment court. Modification or termination is subject to the  
4 participant agreement.

**§51-12-11. Completion of The Participant Agreement.**

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

**§51-12-12. Access to Records.**

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

4           (b) Any individually-identifiable health information or record pertaining to a defendant in a  
5 veterans treatment court undergoing alcohol or drug treatment may be subject to the privacy  
6 regulations promulgated under the Health Insurance Portability and Accountability Act, 42 U.S.C.  
7 Section 1320d-6, as amended, and 45 C.F.R. Parts 160,162,and164, as amended, and applicable  
8 state law.

**§51-12-13. Liberal Construction.**

1           The provisions of this article shall be liberally construed.

**§51-12-14. No Right to Participate.**

1 This article does not create a right to participate in a veterans treatment court.

**§51-12-15. Relation to Electronic Signatures In Global And National Commerce Act.**

1 This article modifies, limits, or supersedes the Electronic Signatures in Global and National  
2 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section  
3 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices  
4 described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

**§51-12-16. Severability.**

1 If any provision of this article or its application to any person or circumstance is held invalid,  
2 the invalidity does not affect other provisions or applications of this article which can be given  
3 effect without the invalid provision or application, and to this end the provisions of this article are  
4 severable.

NOTE: The purpose of this bill is to establish the Model Veterans Treatment Court Act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.