

**The Bill Blackwood
Law Enforcement Management Institute of Texas**

Veterans Courts

**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**

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September 2018**

ABSTRACT

The United States entered the global war on terrorism on September 11, 2001. Since that time, millions of men and women have been deployed to Iraq, Afghanistan, and the horn of Africa in support of these combat operations. The veteran population in the United States is estimated to be 23,442,000 (National Center for Veterans Analysis and Statistics, 2008). The signature injuries of the global war on terrorism are post-traumatic stress and traumatic brain injury. A disproportionate percentage of returning veterans show signs of mental health disorders and/or substance abuse issues. These facts lead to many of our veterans entering into the criminal justice system.

In order to address the needs of this unique community, the criminal justice system should facilitate veterans courts in its jurisdictions. These specialty courts, based on the DWI courts model, have lower recidivism rates than traditional courts, address the specific needs of each veteran, cost the taxpayer less money, and are much faster than traditional courts.

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INTRODUCTION

The United States entered into the global war on terrorism (GWOT) on September 11, 2001. Not only do military operations continue today, 16 years later, but also there does not seem to be an end to these operations in sight. The United States Military has deployed millions of service men and women to Iraq, Afghanistan, the horn of Africa and countless other countries on direct action missions or support roles of the global war on terrorism. Estimates in 2008 show the entire United States veterans population was 23,442,000 (National Center for Veterans Analysis and Statistics, 2008). Approximately 84,000 veterans have been diagnosed with post-traumatic stress disorder (PTSD). This number only accounts for those diagnosed and does not include veterans with undiagnosed PTSD, traumatic brain injury (TBI) or other mental health issues. This number of undiagnosed veterans is believed to be 300,000 according to research (Maimon, 2008).

The National Association of Drug Court Professionals (n.d.a) states, "Of the 2.2 million veterans returning from Iraq and Afghanistan one in five show symptoms of a mental health disorder and of the veterans under the age of 25, one in four has a substance abuse disorder" ("Solutions for Veterans in Need" section, para 2). In 2008 the first veterans treatment court opened in Buffalo, NY (Russell, 2009). This court operated on the drug treatment and DWI courts model that began in the 1990s in response to rising drug and alcohol related charges being filed against veterans (Russell, 2009). Veterans were recognized as being a special community with special needs. Many of the veterans had unique experiences not common with those outside of the military community. It was also recognized the number of veterans entering into the

criminal justice system was on the rise from 1.73 per 1000 to 5.71 per 1000 in the third quarter of 2006 alone (Russell, 2009).

For the purpose of this research, it is difficult to define a veterans court. Each jurisdiction can modify the parameters their individual veterans court operates. However, each veterans court shares some similarities. Veterans courts can decide which offenses will be heard in the court. Some courts may decide to only handle misdemeanors, some felonies, only alcohol related offenses, minor assaults, family violence, or any combination of these crimes. It is standard the veteran must volunteer to have his case heard in the veterans court as ultimately the sentence handed down will be a form of modified probation. The court must also decide what benchmarks must be met by the veteran to claim the veterans status. Examples of this type of criteria could be any military service, only active duty service, combat service, or a period for that service. Additionally, the crime history of the veteran could be a determining factor. The court may decide to only hear a first-time offense, only those who have no felony convictions or set a bar for eligibility. The criteria for eligibility will vary from court to court. Courts could also decide to make the decision of eligibility on a case-by-case basis.

Prosecutors must also decide who the participants are in the diversion or rehabilitation process. The prosecutor, judge, and veteran are the only constant across board. Most will involve the probation service, as the veteran will most likely be on some type of probation for the duration of the program. Other resources involved could include a wide variety of Veterans Administration (VA) programs, state veterans programs, mental health counselors, family counseling, drug and alcohol counseling,

employment assistance, housing assistance and financial counseling. These are just an example of the services a veterans court could offer. Each veterans court has some variation of a volunteer veteran mentor assigned to each participant. This mentor would meet regularly with the veteran/offender, know all the terms of the program, conditions of probation and assist in providing support and help navigating the often-frustrating bureaucracy of federal and state assistance. This mentor would also be a veteran and every attempt made to match the service history of the two.

Years of data gathered from drug courts showed diversion and treatment were and are a cost effective and productive alternative to incarceration. Based on the drug court model, veterans courts quickly gained popularity in the criminal justice system. According to the Bureau of Justice Statistics, the rate of veteran incarcerations has declined since 2004 (Langan & Levin, 2002). Additionally, the national success rates for veterans treatment courts are at 98% (Borah, 2016). Clearly, the long and well-documented success of drug courts as well as the initial success of veterans courts since their inception proves the criminal justice system should create and support veterans courts in their jurisdictions.

POSITION

This research focuses on the need and success of veterans courts. The current veteran's population and the number of veterans diagnosed with PTSD are well proven. As stated earlier, the number of undiagnosed veterans is estimated to be 300,000 (Maimon, 2008). It could be suggested this number is significantly higher due to continuous advancements in the identification of combat related mental health issues. TBI and PTSD causes and symptoms continue be revealed. PTSD and TBI symptoms

are closely related and often difficult to differentiate between the two. Only now, some of the long-term effects of both PTSD and TBI are becoming clearer.

Retired four star General Barry R. McCaffrey stated, “veterans treatment courts present an opportunity to come to the aid of the men and women in uniform who are suffering as a result of their sacrifice to this country and should be expanded to serve all veterans in need” (NADCP, n.d.b, p. 1). Not only do our nation’s highest-ranking officers see the value of the veteran court program, but also state legislatures have followed suit. In 2009, the Texas State Legislature passed a bill authorizing the creation of specialty courts for veterans (Marchman, 2012). Since Senate Bill 1940 (The Veterans Court Bill) was passed, at least 11 counties in Texas have implemented veterans courts (Marchman, 2012). These courts are modeled on the drug and DWI courts in service today. The focus is on providing a team based approach to treatment and access to a wide variety of programs. This treatment and not incarceration is much like a probation program but tailored to the individual. In Texas, the courts work with the Department of Veterans Affairs and various state veteran organizations to provide case management as well as access to mental health professionals, substance abuse counselors as well as access to employment, education, housing and benefit counseling on a case by case basis (Borah, 2016). Jackson Glass, the Travis County Veterans Court manager, stated in an interview that once a veteran is accepted in the program he or she meets with a caseworker to create and implement a treatment plan along with a timeline (Borah, 2016). The program is strenuous and the requirements are more than a traditional probation program. Of the ten veterans who have graduated from the Travis County program, none has been rearrested (Borah, 2016).

Diversion is not a practice but rather a term used to describe the overall group of social services used link the offender with community-based treatment (Stettin, Frese, Lamb, 2013). This explanation is taken from a study conducted by the Treatment Advocacy Center explains the importance of diversion. Whereas this document is focused on diversion used in mental health courts, it mentions specialty courts as a whole and specifically veterans courts. The study goes on to explain diversion as used to identify those whose offense can be attributed to untreated cause and provide the needed services in lieu of incarceration. Veterans courts are designed to do exactly this. Prosecutors will identify the veteran, most likely in crisis, and connect that veteran to a host of community-based social services. These social services will address the issues unique to each veteran and provide treatment of the root cause of the behavior. This allows the veteran to return to the community as a contributor and not a burden.

Veterans courts have already proven their success with significantly lower recidivism than other traditional courts (Langan & Levin, 2002). Drug specialty courts have a longer history and therefore more data is available to judge their effectiveness. As Veterans courts are based on the drug court model, it is reasonable to extrapolate the success of drug courts will translate to the projected success of veterans courts. Not only do drug courts have lower recidivism rate but are also a cost saving program. Seventy-five percent of those who graduate from a drug court program are not rearrested compared to 30% recidivism of those released from prison (Langan & Levin, 2002). This fact alone proves the success and positive impact veterans courts not only have on the veteran but also the community as a whole. Rehabilitation is the goal, not punishment and incarceration. The high recidivism rate of traditional courts has long

been used to show the failure of the current U.S. justice system. A 2011 article in *The Prison Journal* concluded there was little evidence to suggest prisons reduce recidivism by teaching the offender “crime does not pay” (Cullen, Johnson, & Nagin, 2011). In fact, there is some evidence to the contrary, prisons may have the reverse effect and make communities less safe (Cullen, Johnson, & Nagin, 2011).

The rise of drug arrests in the United States has taxed the criminal justice system with a seemingly endless cycle of arrest, trial, probation and incarceration repeatedly for the same offender. Compared to traditional criminal justice system processing, treatment and other investment costs averaged \$1,392 lower per drug court participant. Reduced recidivism and other long-term program outcomes resulted in public savings of \$6,744 on average per participant or \$12,218 if victimization costs are included (NIJ, 2008). Several studies have proven the financial savings of drug courts in, specifically New York and Oregon. New York drug courts have shown a savings of \$254 million in 18,000 cases (Zielbauer, 2003). Multnomah County, Oregon saved over \$2,000 per person, and a national study showed drug courts saved \$90 million annually (Russell, 2009). Cost savings for veterans courts could be higher as many of the participants are funded through the Veterans Administration, the Texas Veterans Commission, community mental health, and substance abuse counselors and volunteers. Many of the participants in veterans court will be self-funded or have funding from other government budgets allowing the veterans court to provide services at no cost to the court. It is easy to suggest the saving per veterans court participant could exceed the \$2,000 recorded in Oregon.

COUNTER POSITION

The District Attorney in some states and the American Civil Liberties Union (ACLU) have claimed veterans courts inconsistently apply justice and therefore is denying justice. Other opponents claim veterans enlisted into the military voluntarily and should not be entitled special treatment. The general counsel of ACLU Nevada, Allen Lichtenstein, states he is “not against diversionary programs entirely but the idea of a different court system based on status does not make sense” (Shevory, 2011, para. 10). Others, in the same profession, have a very different opinion. The District Attorney in San Francisco, George Gascon, is a former police chief and a U.S Army veteran. Gascon believes veterans, many who have put their life on the line, may have been harmed during their service (Michels, 2015). Society, as a nation, owes those veterans support and that support includes the criminal justice system (Michels, 2015). The community support for veterans as well as the media attention focused on the failure of the VA system shows there being more support than opponents to the veterans court program (Russell, 2009).

Veterans courts are one of the few cases where the prosecutors and the defense attorneys are in agreement. Data shows diversion and not incarceration are not only a more cost-effective program but would provide those services to treat the veteran, reduces recidivism and make the community safer (Borah, 2016). Much like the current philosophy of diverting persons with mental health needs from the criminal justice system to treatment and rehabilitation, veterans would also be diverted to treatment and rehabilitation. Additionally, those veterans in need of specific assistance services could be provided to assist with housing, medical needs, employment opportunities, and

family counseling. All of the veteran's assistance groups would be available for the prosecutor and caseworker to tailor a treatment plan to meet the unique needs of each veteran. Volunteer mentors, themselves veterans, would act as mentors to each veteran to best ensure success of not only the program but of also each veteran. Veterans have unique needs and may have entered the criminal justice system because of their service. It seems this type of specialty court meets those needs and can modify treatment to meet the needs of the individual.

There is a possibility veterans courts could overstep their bounds in the application of their authority. This misapplication of authority could negatively influence the veteran and become a hurdle to recovery. There is also the possibility some veterans will not respond in the desired manner to the treatment offered (Marlowe, 2010). Another concern is the fear the judge, due to his increased and constant involvement in the case will lose his judicial authority. The judge can become personally involved in the case adopting the roles of father, psychiatrist and priest. This could lead to the judge taking on the role of an advocate and failing to impose punishment when needed (Satel, 1998).

The concern of the judge losing sight of his role seems to be of little concern to veterans court proponents. The defendant or veteran has to volunteer to be in the program. The prosecutor has to allow the veteran to volunteer as well as ensuring all the benchmarks are met. Each court will determine what constitutes veteran's status as well as what offenses the court will hear. A wide variety of stakeholders will ensure the veteran not only has all the resources and treatment available but a veteran mentor will offer support and minor taps on the rudder along the way. There seems to be little

opportunity for the judge to lose focus. There are many roles to play and each role has designated person looking out for the good of the veteran. Every person in the process, including the veteran, is focused on the success of the individual veteran and in doing so ensures the success of the program as a whole.

Opponents to veterans courts point out not all of the courts are equal, as each court operates under varying guidelines. Effectiveness will depend on the access and variety of programs the veteran and the court has readily available. Success depends greatly on the ability of the court to hold both the veteran and social services accountable (Stettin, Frese, Lamb, 2013). The number of social services, the probation officers, and veteran mentors are all focused on the success of not only the program but also the individual veteran. It is reasonable to believe one element in a case may fail the veteran for a variety of reasons. It is not reasonable to believe every element of the program would simultaneously fail. The program has a built-in system of checks and balances to best ensure success.

RECOMMENDATION

The long-term success of specialty courts as well as the short-term success of veterans courts prove the criminal justice system should either support the courts in their jurisdiction or assist in the creation of a veterans court program. This type of specialty court is based on the successful models of the drug and DWI courts currently in service. The data gathered from the relative short history of the veterans court programs prove this program will be as, if not more so, successful. Programs do not have to follow a strict set of rules but rather can be tailored not only for the local jurisdiction but also towards the individual veteran. The unique and specific needs of

the veteran can be met through this type of fluid and individual mechanism. The veterans court program benefits the veteran, the criminal justice system, and the community as a whole. Data shows participants have a significantly reduced recidivism rate, a high graduation rate, significantly reduced cost per offender, as well as allowing diversion in lieu of incarceration.

A study of veterans courts in a variety of jurisdictions as well as other specialty courts provides the proof for the continuation of either the expansion or creation of these types of programs. It is difficult to find those opposed to veterans courts. Any opposition to these specialty courts appears to be based on emotion, conjecture, and not on data. There are those who do not believe veterans should be allowed their own courts based on status. Yet other courts are created to address specific needs of a community. It is a fact military veterans choose to serve. Yet DWI and drug Courts have been created and maintained since the 1990s based on the offenders choices leading to interaction with the criminal justice system. Still others claim veterans courts can cause the judge and prosecutors to lose sight of their primary roles. With so many stakeholders involved, it would be difficult for any one person to not play his part. The other participants would all have to ignore this lack of involvement and allow the program to fail. Veterans could also fail themselves and the program. Again, the number of participants involved and services offered tilt the scales towards success. In simple terms, the veterans court program can be seen as a form of traditional probation, albeit cheaper, a higher success rate, and lower recidivism.

Implementing such a program is relatively simple. The prosecutors have to handle the cases; creating a veterans court allows prosecutors to clear their caseload

faster and easier. The growing veteran population requiring veterans courts also allows for the ease of identifying volunteer mentors. Mentors can be located through VA type programs, police and fire departments, churches, and other community resources. Some effort will be required to bring social services to the table. By design, the services want to be involved. Locating some of the non-traditional services, such as employment and housing resources, may prove to be more difficult, but many such services have robust veteran based programs in place. A bit of media attention, a few phone calls, and word of mouth in the veteran community will produce these results. It seems evident every jurisdiction should have either a veterans court in operation or one in the implementation stage.

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