

Commonwealth of Pennsylvania

Magisterial District Court

"Veterans Diversion
Program"

Program Guidelines

June, 2011

AOPC

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

Over the past two years, under the leadership of Chief Justice Ronald Castille and Justice Seamus McCaffery, Pennsylvania has been working to develop programming for veterans coming into contact with our criminal justice system. The success of this work can be attributed in no small part to the support received from the Director of Veterans Integrated Service Network 4, Michael Moreland.

At the national level, Pennsylvania is viewed by many as a leader in programming for veterans. Unique to the Commonwealth is the statewide task force, co-chaired by Justice McCaffery and Director Moreland, which coordinates this programming. Pennsylvania's judiciary established some of the first Veterans Courts in the country and dedicated time and resources to training probation officers throughout the Commonwealth in the services available from the Veterans Administration to veterans trying to reintegrate into their communities. The diversion by Magisterial District Judges of veterans into treatment is a critical piece of this programming. The guidelines that follow were developed to guide that effort. Membership on the committee responsible for developing these guidelines included:

P. Karen Blackburn, Chair
Program Administrator
Administrative Office of Pennsylvania Courts

Susan Davis
Executive Director, Minor Judiciary Education Board
Administrative Office of Pennsylvania Courts

Rebecca A. Hicks
Veterans Justice Outreach Worker
Veterans Healthcare Administration

Catherine Hummel-Fried, Chair
Minor Judiciary Education Board

Michael R. Kehs, Esquire
District Court Administrator
38th Judicial District

Veterans and Pennsylvania's Criminal Justice System

MAGISTERIAL DISTRICT COURT

DIVERSION PROGRAM GUIDELINES

Introduction

Today, there are approximately 24.5 million veterans in the United States. Eighteen percent of these men and women live in the northeastern part of the country; approximately one million in Pennsylvania. An estimated 18-20% of combat veterans suffer from post-traumatic stress disorder (PTSD).¹ Fortunately, recent evidence-based psychotherapies have shown to be effective for treatment of both acute and chronic PTSD.² Unfortunately, for various reasons, veterans are reluctant to seek this treatment. Many of the symptoms of PTSD, as well as self-medication of these symptoms, can lead to a lifestyle that results in criminal behavior. According to a 2007 report released by the United States Department of Justice, approximately 11.7% of the jail population in this country is veterans and approximately 9.4% of inmates in state and federal prisons.³ Of the number of veterans in prison, 33% are first time offenders.⁴ Early intervention and diversion from the criminal justice system into treatment could save the lives of these men and women who were changed as a result of their service to this country.

Magisterial District Courts are the "grass roots" level of Pennsylvania's judiciary, the first point of contact with the court system. The more than five hundred Magisterial District Judges who preside over the courts in those districts are typically very familiar with the community, including the veterans who live there.⁵ Magisterial District Judges are therefore in a unique position to respond to veterans suffering from PTSD and traumatic brain injury by diverting these men and women at this very early point in the criminal justice system, before families are torn apart and before these veterans develop backgrounds that could have a devastating affect their entire future.

¹ "Invisible Wounds," Rand Corporation, 2008.

² "Findings on the Aftereffects of Service in Operations Enduring Freedom and Iraqi Freedom and The First 18 Months Performance of the Military Support Program."

³ "Veterans in state and federal prisons," Noonan & Mumola, 2004.

⁴ Gains, 2008.

⁵ Attached is a list of magisterial districts by county.

Establishing a Program

These program guidelines are designed to establish a coordinated approach in Pennsylvania for diversion by Magisterial District Judges (MDJ) of summary cases involving defendants who are veterans, eligible for health care benefits provided by the VA. Misdemeanor cases, where there is agreement by the Commonwealth and the victim(s) to proceed on a summary charge, may also be considered for the program.⁶ Attachment (1) is a visual representation of the flow of a case in this program.

Approval to start a Veteran Diversion Program in a Magisterial District Court must come from the President Judge of the judicial district and ideally, once approved, all MDJs within that judicial district would participate.⁷ The Problem Solving Court Program Office of the Administrative Office of Pennsylvania Courts (AOPC) is to be notified when a district is considering implementation of such a program.⁸

Participation by the defendant in the program will be voluntary.

Protocol for Diversion

- I. The attached colloquy (Attachment 2) has been drafted by the AOPC for use throughout the Commonwealth by MDJs operating one of these programs.
- II. Admission to Program
 - A. Preliminary identification of a defendant as a veteran will be made by the police and/or the MDJ. Research indicates a significant number of veterans are not aware of their veteran status, particularly if they have not served in a combat theater. Based on the recommendation of the National GAINS Center, prior to the time the defendant appears before the MDJ for arraignment, police should ask the defendant: "Have you ever served in the military?"⁹ The MDJ should confirm this self-report at the time of the summary trial.

⁶ If there is no summary charge associated with the case, the misdemeanor should be withdrawn, a summary filed and the case should proceed on the summary.

⁷ The President Judge of the district may elect to pilot the program with one MDJ before deciding to adopt the program district-wide.

⁸ Notification should be by email to karen.blackburn@pacourts.us or by phone at 215-560-6300, ext. 6338.

⁹ ----, August, 2008; "Responding to the Needs of Justice-Involved Veterans with Service Related Trauma and Mental Health Conditions," GAINS Samsha

- B. If the defendant responds affirmatively, the summons, citation or complaint to be filed will be "held." The police will be asked by the MDJ to advise the victim (if there is one) of possible diversion and note same in the police report. If there is an objection by the victim, the MDJ will be notified in a timely manner by law enforcement.
- C. Using the colloquy mentioned in Section II A, the program will be explained to the defendant by the MDJ. If the defendant wishes to be considered for this diversion program, his/her signature will be obtained on a referral form, a template of which is available from the AOPC, which will include the VA's Veterans Justice Outreach Specialist (VJO)¹⁰ contact information, and the "Department of Veterans Affairs Request for and Authorization to Release Medical Records or Health Information." The MDJ will note on the referral form the next hearing date, which will be within three weeks of the initial hearing. The referral form and the release of information form must be faxed by the MDJ to the VJO as soon as possible on the day of the referral.
- D. The defendant will be instructed by the MDJ to make contact with the VA/Veterans Justice Outreach Worker (VJO) within three days of receiving the referral. If the defendant does not make contact with the VJO within the designated three day period, the MDJ will either reschedule the hearing with the defendant to the earliest date possible or issue a warrant.¹¹
- E. Upon contact by the defendant, the VJO will verify the defendant's eligibility for VA benefits and schedule an appointment for an assessment. The initial assessment will be completed either in person or via telephone and must be scheduled and completed within the two weeks following the initial contact with the VJO.
- F. Using an email contact list that includes all MDJs in their region, every business day the VJO will distribute an email that identifies:

¹⁰ As part of the VA's five year plan to end homelessness among veterans, a position of Veterans Justice Outreach specialist (VJO) was established in each VA hospital. The VJO acts as the point of contact within the VA for criminal justice system programming. VJO's are licensed clinical social workers, qualified to do clinical assessments, develop treatment plans, and coordinate treatment for eligible veterans.

¹¹ The MDJ will be alerted to the fact a defendant has not made contact with the VA if his/her name is not listed on the daily email generated by the VJO (section F).

- (1) all defendants who have made contact with the VJO to determine eligibility for benefits,
- (2) all defendants who have been assessed and whether the assessment determined that the defendant was an appropriate candidate for treatment.¹²

In order to insure compliance with confidentiality and HIPPA regulations, defendants will be identified using the first letter of the last name, followed by the last four digits of his/her social security number.

After a program has commenced in a judicial district, the VJO will generate an email daily, even if it is to report no activity only.

It will be the responsibility of the MDJ to insure the email is reviewed, defendants referred by their court are identified, the court records are updated, and appropriate action is taken.

- G. Defendants will be instructed by the MDJ at the initial hearing and again by the VJO that they **must** report to the next scheduled hearing, regardless of their status in treatment. If a defendant fails to appear, the MDJ may reschedule the next hearing to the earliest date possible or issue a warrant .
- H. At the second hearing, the MDJ will:
 1. Advise the defendant of his or her eligibility for this diversion program. A defendant will be deemed eligible if he/she is eligible for VA healthcare benefits and if the assessment by the VJO has determined the defendant is in need of behavioral health care and treatment.
 2. Cases of veteran defendants not eligible for the program or cases of veteran defendants who choose not to participate in the program will proceed as a traditional summary case, according to the Rules of Criminal Procedure.
 3. Eligible defendants who elect to participate in the program will be formally diverted, effective the date of this second hearing, which will be considered admission date to the program. Diverted defendants will be advised by the MDJ that if they have not

¹² Emails will be generated daily and they will report contact by defendants over the past twenty-four hours. Contacts made on Friday will be reported via email on Monday.

already done so, they are to begin compliance with the treatment plan, as instructed by VJO, and conditions of the program.

4. At this hearing, the MDJ will schedule the defendant for a status hearing in sixty (60) days.
5. On the same day, the MDJ will immediately notify the VJO, via email, of admission of the participant into the program.

Compliance with Treatment

- III. At the status hearing, which will be held sixty (60) days after the participant is diverted into the program, the MDJ will review the participant's progress in the program, based on consultation with the VJO. Participants who are complying with the requirements of the program will be congratulated and advised they are to continue with the program and the treatment plan developed by the VJO. They will be scheduled for a final hearing in approximately four months.
- IV. If at any point during the six months of the program the defendant is not compliant with the treatment plan, the VJO is to notify the court immediately.
 - A. When contact is made by the VJO to report non-compliance, the MDJ will schedule the participant for a hearing on the first available date.
 - B. The VJO will be notified of the hearing date and asked to attend this hearing. MDJs are reminded, as a matter of VA policy, VJOs are prohibited from testifying under oath in court.
 - C. If during this hearing an acceptable reason as to why the defendant has not been compliant is presented, the court can use its discretion to determine how the case will proceed (possibly another chance at treatment, termination, an alternative program, etc.)
 - D. If at this hearing a defendant is terminated from the program because of non-compliance, his/her plea will be "accepted" and he/she will be required to pay fines and costs.
- V. Six months after formal admission into the program, defendants who have complied with the treatment plan and have had no further contact with the criminal justice system will again appear before the court.
 - A. Charges will be dismissed and the case will be closed.

- B. The victim will be notified of this hearing and will be afforded the opportunity to speak about changes, continuing issues, etc.
- C. The criminal record of this case will be expunged.
- D. Although restitution must be paid, the President Judge can use his/her discretion in developing a policy for collection of costs.

Data Collection

- VI. District Court Administrators will be asked to collect basic data on program operation for each magisterial district court. Data should include, at a minimum:
 - A. number of veterans referred to the VA for assessment
 - 1. number of veterans deemed not eligible for services
 - 2. number of veterans assessed not in need of treatment
 - B. number of veterans admitted into the program
 - C. number of veterans who are offered the program but decline to participate
 - D. number of veterans who complete the program
 - E. number of veterans who are terminated
 - F. reason for termination
 - 1. non compliance with treatment
 - 2. new criminal charges
 - G. if possible, the nature of the original charges

These data are to be reported to the Problem Solving Court Program Office in the AOPC on a quarterly basis.

Conclusion

Wounds of war are not always visible. As our soldiers return, they deserve all of the support this country can provide as they "battle the demons that followed them home."¹³

"On these august occasions, I always like to take a brief moment to remember the service to our Nation of the men and women who have worn the uniform of our nation's military services and who go into harm's way in order to preserve the liberties that we sometimes take for granted. Even as we sit in this historic courtroom, American men and women are serving in far-flung, and

¹³ Obama Barrack, Speech of June 21, 2011

often hostile, dysfunctional and failed states, much as I served in 1967 in the U.S. Marine Corps in Vietnam. While some may disagree with our involvement in some or all of these hostilities, we must still honor those Americans who serve in the Army, Navy, Marines, Air Force and Coast Guard - for they are the very forces who protect our liberties and ensure our Nation's security, even to the point of sacrifice of life and limb. We owe them all a debt of gratitude."

*Chief Justice Ronald D. Castille
Supreme court of Pennsylvania
Installation Speech from January 14, 2*