

Court Services Administration Committee

- An Advisory Committee of the Supreme Court -

Justice Daniel J. Crothers, Chair
North Dakota Supreme Court
600 E. Boulevard Ave Dept 180
Bismarck, ND 58505-0530
Phone: (701) 328-4205

June 7, 2011

The Honorable Gerald W. VandeWalle
Chief Justice
North Dakota Supreme Court
600 E. Boulevard., Dept 180
Bismarck, ND 58505-0530

Re: Basic Guidelines - Veterans Court Alternative Process - Proposed Policy

Dear Chief Justice VandeWalle:

The Court Services Administration Committee recently completed review of the feasibility of establishing a veterans court in North Dakota. You referred the subject matter to the Committee for consideration following a suggestion by Judge Lee Christofferson. At two preparatory meetings, the Committee reviewed assembled background information regarding veterans courts, generally discussed the possibilities for a veterans court program, and considered possible alternatives. The Committee was assisted in these initial discussions by representatives of the Department of Veterans Affairs, the Veterans Administration, and the North Dakota National Guard.

Following these discussions, the Committee generally concluded that establishment of a specialized veterans court was not feasible within the current limits of judicial system resources. However, the Committee also concluded system and process enhancements and methods of collaborating with other governmental entities should be explored to address the unique challenges posed by veterans involved in the criminal justice process who may have problems related to post-traumatic stress syndrome (PTSD) or other combat- or service-related trauma. The Veterans Court Review Subcommittee was formed to conduct this inquiry. The Subcommittee was chaired by Judge Steven Marquart. Other Subcommittee members were Judge Lee Christofferson; Judge Bruce Romanick; Aaron Birst, ND State's Attorneys Association; Capt. Michelle Hagel, JAG, Jt Force North Dakota National Guard; Robin Huseby, Commission on Legal Counsel for Indigents; Nathan

Viton, Veterans Administration Veterans Justice Outreach Program; and Lonnie Wangen, Director, North Dakota Department of Veterans Affairs. Others assisting in the Committee's and Subcommittee's discussions were Jean Delaney, Commission on Legal Counsel for Indigents; CWO2 Amber Wilson, JAG, Jt Force ND National Guard; and Meredith Vukelic, Legal Services of North Dakota.

The Subcommittee reviewed additional information regarding the veterans courts established in other jurisdictions, the availability of various kinds of treatment services through the Veterans Administration and other providers, and methods of enabling the judicial system to respond effectively in cases involving veterans or others with military experience and whose conduct may be affected by PTSD or other combat- or service-related trauma. Based on its information review and discussions, the Subcommittee developed a framework of process components that could serve as an alternative to a specialized veterans court program. The Committee reviewed the Subcommittee's recommended framework and, after revision, approved the attached proposed policy establishing guidelines for a veterans court alternative for submission to the Supreme Court for its consideration.

The proposed policy begins with a statement of policy supporting the advisability of guidelines for addressing cases involving veterans with PTSD or other combat- or service-related trauma. The proposed policy then describes six categories of activities that would enable the system to respond to these cases. These categories are (1) Early Identification of Military Service, a key element to determining how a case may move forward; (2) General Information Availability, which will ensure an information resource for veterans involved in the criminal justice process; (3) General Education, which will serve to enhance awareness of issues related to PTSD and other combat- or service-related trauma; (4) Judicial Officer Expertise, which provides a mechanism for specialized education of a contingent of resource judges and additions to the Trial Court Benchbook; (5) Procedural and Process Alternatives to facilitate a more versatile response to these cases; and (6) Extra-Judicial Mentoring, which is outside the general purview of the judicial system but recognizes the importance of community-based volunteer mentoring for veterans as a tool to possibly assist the courts in handling these cases.

The Committee recognizes that, in the absence of a specialized veterans court or diversion process, a formal procedural framework to address cases involving veterans would be difficult to formulate and implement. The proposed policy is intended to provide a "tool kit" to judges, court personnel, and others to enable an effective response within current system resources. The proposed policy and its implementation would provide information, resources and considerations that judges could use in the adjudication and disposition of these cases.

If the proposed policy were adopted, implementation activity would include staff development of the various kinds of contact information identified in the policy, the development of a sample colloquy for the Trial Court Benchbook and further development of education programs. I should note that implementation activity in some areas, particularly education, are underway. Programs are in the planning stages for judges, state's attorneys, indigent defense counsel and law enforcement. Changes are being made to indigent defense application forms and to judges information sheets used in some parts of the state to solicit information regarding a defendant's veteran status.

The Honorable Gerald W. Vandewalle

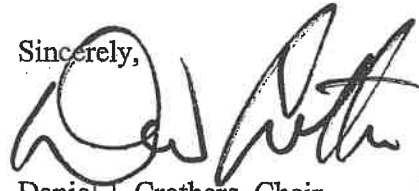
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The Committee concluded that the attached proposed policy would provide a useful framework for enabling the judicial system to respond to the unique considerations posed in cases involving veterans whose conduct may be affected by post-traumatic stress syndrome or some other combat- or service-related trauma. I also take this opportunity to thank the members of the Committee and the Subcommittee and others for their interest and commitment of time to this project.

If you have any questions regarding the Committee's proposal, please contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Crothers", written over the word "Sincerely,".

Daniel J. Crothers, Chair
Court Services Administration Committee

DJC/pfw
Attachment

VETERANS COURT ALTERNATIVE - BASIC GUIDELINES

A. Policy

The North Dakota judicial system policy directs that general guidelines should be established to address issues related to military veterans with post-traumatic stress disorder (PTSD) or other service- or combat-related trauma who are involved in the judicial system as a result of alleged criminal offenses or other matters requiring judicial involvement. The guidelines also should enable collaboration among the judicial system; federal, state and local governmental entities; and service providers to facilitate access to treatment and other services in appropriate cases.

B. Early Identification of Military Service.

A defendant's status as a veteran or as someone with military service should be determined as soon as possible. It is also important to identify circumstances of military service in which traumatic experiences may have occurred and which may be related to the defendant's involvement in the justice system. To achieve these objectives, the following should be considered:

1. Information questionnaires and bond envelopes used by correctional facilities and jails should be modified to ask whether the defendant has ever served in the armed forces.
2. Questionnaires used by clerks of court to solicit personal information such as social security numbers and dates of birth should be modified to ask whether the defendant

1 has ever served in the armed forces.

2 3. Judges information sheets completed by jail personnel, which are used in some areas
3 of the state, should be uniform and used throughout the state. The information sheets
4 should ask whether the person has ever served in the armed forces.

5 4. If the defendant answers in the affirmative regarding military service, questionnaires
6 and information sheets should request information regarding period of service (entry
7 and discharge).

8 5. A judge's colloquy should be developed for purposes of soliciting additional
9 information if the defendant answers affirmatively to questions regarding military
10 service. Additional questions as part of the colloquy when the defendant first appears
11 in court may include whether the defendant experienced combat, served otherwise
12 in a hostile fire zone, or experienced any service-related trauma and whether the
13 defendant is receiving any treatment services regarding service-related trauma. As
14 circumstances may dictate, the judge should consider the appropriate setting or
15 format for soliciting additional information from the defendant.

16 6. A regularized process should be developed to ensure an orderly flow to the court of
17 information collected by jail and correctional facility personnel.

18 C. General Information Availability.

19 General information should be available to judicial officers regarding Veterans
20 Administration (VA) services, including the Veterans Justice Outreach and related programs;
21 substance abuse and mental health treatment service providers; identification of county
22 veterans services officers and general military resources. To achieve this objective, the
23 following should be considered:

1. If a person is identified as having served in the armed forces on the questionnaire used by a correctional facility or jail, a brochure regarding VA services and contact information for the county veterans services officer should be provided to the person.

2. Informational brochures regarding VA services and contact information for the county veterans services officers should be available in each clerk of district court office.

3. Summary information regarding VA treatment services, contact information for the county veterans services officers, National Guard contact information and area substance abuse and mental health treatment providers should be assembled and included in the Trial Court Benchbook.

D. General Education.

Education regarding the effects of PTSD or other combat-related injuries that may affect behavior is a basic predicate for responding to those with military experience who may be involved in the justice system. To achieve the general educational objective, the following should be considered:

1. General education programs should be provided to all judicial officers, state's attorneys, criminal defense counsel, law enforcement and probation officers to raise awareness of the dynamics of PTSD and other combat-related trauma that may lead to anti-social, confrontational or illegal conduct or that may hinder a veteran's effective reintegration into regular society.

2. More detailed, in-depth education programs should be provided on a regular basis to at least four judicial officers (one in each administrative unit). The programs could include an in-person one-day education session for the selected judges with

1 presentations by VA psychologists, substance abuse counselors and others and a
2 explanation of treatment resources and facilities. See Section D(2).

3 E. Judicial Officer Expertise.

4 Consistent with Section C, judicial officers should be generally versed in the dynamics and
5 effects of PTSD and other combat-related trauma. Judicial officers should be prepared to
6 respond effectively and efficiently, in concert with prosecutors, defense attorneys or other
7 attorneys involved in a case to facilitate early identification of a defendant's military service
8 status and to consider the possible relevance of PTSD or other combat-related trauma to the
9 conduct involved in the case. They also should be aware of the availability of appropriate
10 treatment programs and of possible alternative dispositions of the case. To achieve these
11 objectives, the following should be considered:

- 12 1. At least four - one in each administrative unit - judicial officers should be identified
13 to receive more detailed, in-depth education programs on a regular basis. These
14 judicial officers should be prepared to serve as resources for other judges who may
15 be assigned a case involving a veteran with PTSD or other combat-related trauma
16 relevant to the subject matter of the case. Consultation with other judicial officers is
17 subject to Canon 3B(7)(c), N.D. Code Jud. Conduct.
- 18 2. Judicial officers should be generally aware of appropriate language to include in
19 court orders regarding access to treatment services provided by the VA. Sample
20 orders should be included in the Trial Court Benchbook.
- 21 3. A sample colloquy should be developed for inclusion in the Trial Court Benchbook
22 which reflects a possible sequence of questions to the defendant and counsel
23 regarding veteran status; whether contact, if any, with the VA or county veterans
24 services officer has taken place; whether an evaluation has occurred; whether the

1 defendant is prepared to voluntarily participate in, or is already participating in, a
2 treatment program; and possible dispositions.

3 F. Procedural and Process Alternatives.

4 Alternatives to traditional case processes and dispositions should be available to address
5 cases involving those with military service in which PTSD or other combat-related trauma
6 may be relevant to the conduct involved in the case. To achieve this objective, the following
7 should be considered:

8 1. Criminal defense attorneys may discuss with the defendant the possibility of pretrial
9 diversion in accordance with Rule 32.2, N.D.R.Crim.P.

10 2. Prosecutors may closely review cases to determine whether pretrial diversion is a
11 suitable alternative.

12 3. Trial judges may inquire of counsel whether pretrial diversion has been considered.

13 4. Trial judges may set bail conditions that require veteran contact with VA service
14 providers, including assessment, treatment or simply continued communication.

15 5. Trial judges may consider appropriate continuances in cases involving veterans who
16 are receiving treatment services through the VA as a means of facilitating
17 participation in and completion of treatment. Docket currency reports should be
18 annotated to reflect the nature of the continuance if the docket currency standard
19 relating to a case is affected by this practice.

20 G. Extra-Judicial Mentoring.

1 The judicial system should encourage and support the development of a contingent of
2 volunteers within communities who may serve as mentors and resources for veterans or
3 others with military experience who are involved in the criminal justice system and who are
4 experiencing difficulties related to their military experience. Methods of implementing this
5 objective may include:

- 6 1. Coordination among the Department of Veterans Affairs, county veterans services
7 officers and veterans service organizations to identify and provide support services
8 for volunteers in the community to serve as mentors or resources for veterans or
9 others with military experience.
- 10 2. National Guard involvement through Military Outreach Programs will serve as a
11 significant aid to providing support services in the community for volunteers and may
12 also aid in the effort to identify volunteer mentors.
- 13 3. Once developed, a list of volunteer mentors in the community should be provided to
14 all trial judges and should be available to clerks of district court. The list should also
15 be provided to prosecutors, indigent defense counsel and law enforcement agencies.
16 The list should be updated on a regular basis.
- 17 4. In appropriate cases, judicial officers should be encouraged to provide mentor contact
18 information to a veteran or person with military experience involved in the judicial
19 process.