

VETERAN ADVOCACY PROJECT

Joint Legislative Public Hearing on the New York State Fiscal Year 2022 Executive Budget Proposal

PUBLIC PROTECTION

Testimony by:

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Hello and thank you for the opportunity to speak today.

My name is Coco Culhane and I am the executive director of the Veteran Advocacy Project ("VAP"). We provide free legal services to low-income veterans and their families, with a focus on those living with post-traumatic stress, traumatic brain injury, and substance use disorders. From housing court to treatment court, the common thread throughout our advocacy is that we fight for individuals who are living with mental health conditions. Our services provide access to health care and benefits, reduce incarceration and recidivism, keep veterans and their families in their homes, and empower veterans by removing barriers to recovery.

Mental Health

The correlation between mental illness and criminal justice involvement is well documented.¹ At least 55 percent of veterans who are incarcerated² have been diagnosed with a mental health disorder.³ Neither the military nor the civilian justice systems were designed to assist people struggling with mental health conditions. Often, it is the symptoms of the illness or the attempts to self-medicate it that are treated as criminal conduct. In the military, servicemembers living with post-traumatic stress ("PTS"⁴) are extremely vulnerable: misconduct such as getting into fights or smoking marijuana, symptoms and self-medication, are behaviors that can lead to a less-than-honorable discharge, known as "bad paper."

The consequences of bad paper are dire: When these servicemembers return home, they are told they are not veterans⁵ and are barred from Department of Veterans Affairs ("VA") health care and benefits.⁶ Former servicemembers with involuntary discharges are twice as likely to take their own lives as other veterans, who already average approximately 20 suicides per day.⁷ Veterans who are discharged for misconduct are nearly three times as likely to die by suicide.⁸

¹ A 2012 federal study by the Bureau of Justice Statistics showed that 55% of incarcerated veterans had been diagnosed with a mental health disorder compared to 43% of non-veterans; 23% of incarcerated veterans have been diagnosed with PTSD, more than double non-veterans.

² *Id.*

³ Our justice-involved clients with severe PTSD have told us admitting to any mental health problems in prison puts a massive target on your back. So, imagine how high that percentage actually is.

⁴ In an effort to destigmatize post-traumatic stress disorder and seeking mental health treatment, the veteran community stopped using "disorder" as a part of the term. VAP uses "PTSD" in legal and clinical contexts and "PTS" for public engagement. "PTS" may also be used interchangeably with "combat stress" without referring to a diagnostic disorder.

⁵ 38 U.S.C. § 101.

⁶ 38 C.F.R. § 3.12 (c), (d).

⁷ "VA Says Veteran Suicide Rate Is 17 Per Day After Change in Calculation," Nikki Wentling, *Stars and Stripes*, September 20, 2019 ("... the new report lists the daily average of veteran suicides at 17, down from the 20 per day reported in previous years. The VA explained that it removed servicemembers, as well as former National Guard and Reserve members who were never federally activated, from its count.").

⁸ See Bryan, CJ. "On Deployment and Military Suicide Risk." *JAMA Psychiatry*. 2015;72(9):949–950. doi:10.1001/jamapsychiatry.2015.0671

Of those who received discharges for misconduct, a GAO study found that 62 percent had already been diagnosed with post-traumatic stress disorder or traumatic brain injuries⁹ – this is undeniable evidence that we punish mental illness. In addition, these discharges are the second highest predictor of homelessness, behind only substance use.¹⁰ Veterans with bad paper are not eligible for unemployment compensation, and they cannot find work because civilians see their discharge akin to a criminal record (when it could have been showing up late a lot¹¹). They cannot get disability compensation from the VA and they struggle to find adequate mental health services.

It should come as no surprise, then, when they appear in our courtrooms, jails, and prisons across the state. Justice-involved veterans deal with compounded consequences if they have an honorable discharge or not: if they do have veterans benefits, they are not allowed to collect them in full while incarcerated for a felony. They must call the VA to ask for their benefits to be suspended on the 61st day of incarceration.¹² Very few veterans are thinking about the VA at that point, so the benefits continue until the VA gets a match on the veteran from the National Crime Information Center database. It can be years before this happens. When it does, the benefits are stopped and an "overpayment" is created for the benefits already received. Often, there was a family that was relying on that income and without it may have become homeless. When the veteran is released, they are greeted with a bill from the United States Treasury for thousands of dollars for the money improperly deposited during the incarceration. If they had an advocate during this process, they could have applied for apportionment and the veteran's family could have collected the benefits the entire time with no "overpayment" created to be paid back. This is just one of the problems that develop when veterans become justice-involved.

Before the pandemic, in an effort to address these problems upstream, VAP partnered with the VA's Veterans Justice Outreach ("VJO") teams, incredibly dedicated social workers who play a key role in keeping veterans out of jail and prison.¹³ Many of the veterans in the criminal justice system were not having VA issues because they had bad discharges and couldn't access benefits.

⁹ From 2011-2015, of the servicemembers who had a diagnosis of PTSD or TBI that manifested in a misconduct administrative separation, only 4 percent received honorable discharges, compared to about 80 percent of the military overall. See "Actions Needed to Ensure Post-Traumatic Stress Disorder and Traumatic Brain Injury Are Considered in Misconduct Separations," GAO-17-260: Published: May 16, 2017. Publicly Released: May 16, 2017.

¹⁰ See: Gundlapalli AV, Fargo JD, Metraux S, et al. *Military Misconduct and Homelessness Among US Veterans Separated from Active Duty, 2001-2012*. *JAMA*. 2015;314(8):832–834. doi:10.1001/jama.2015.8207

¹¹ 10 U.S.C. § 886.

¹² 38 C.F.R. § 3.665(a) ("Any person specific in paragraph (c) of this section who is incarcerated in a Federal, State or local penal institution in excess of 60 days for conviction of a felony will not be paid compensation or dependency and indemnity compensation (DIC) in excess of the amount specified in paragraph (d) of this section beginning on the 61st day of incarceration....").

¹³ Veterans Justice Outreach Program information can be found on the VA website: <https://www.va.gov/homeless/vjo.asp>.

A VTC in Brooklyn, New York, asked for VAP's help. The veterans in their program with bad discharges were cut off from VA health care, benefits, and the VJO in their court.

Veterans Treatment Courts

Founded by Judge Russell in Buffalo, New York, in 2008, Veterans Treatment Courts are a vital part of a changing view of criminal justice; alternative sentencing courts allow individuals to access treatment, the state to save money, and they reduce the criminalization of addiction and mental health disorders. New York State was a pioneer in judicial reform by leading veterans to recovery instead of prison. Judge Russell's model has been exported across the nation, providing a second chance to those who served their country. The model holds the veteran accountable while offering treatment at the VA and mentorship through peer support. The VA's VJOs are the glue connecting veterans to services, including the substance abuse rehabilitation programs and the mental health counseling that these veterans need to rebuild their lives.

In New York City, we now have seven veteran treatment courts. The challenges for the courts are making sure they have support systems in place, such as the VJOs and peer mentors. However, bad discharges create barriers. In the Brooklyn Misdemeanors Veterans Treatment Court, 34 percent of participants had less-than-honorable discharges. These vets' bad discharges mean they cannot access the VA and thus cannot work with VJOs. So, we created a pilot that supported veterans by providing civil legal services, such as housing advocacy, and by putting an advocate in the courtroom as a counterpart and complement to the VJO. Through our advocate in the court, the veterans had access to a network of partner organizations specializing in veterans health and services, and they had an attorney who could work on their military discharge upgrade with the mental health provider they chose.¹⁴

Statewide Access to VTCs

With such a wealth of resources in New York City, with so many choices outside of the VA, it is easy to forget that the rest of the state does not live in this social services ecosystem. This makes it even more critical that every veteran who qualifies for a Veterans Treatment Court have access to one. It is time for this positive change. New York State is near last in state spending per

¹⁴ The majority of VAP's discharge upgrade applications center around mental health mitigation under the recent reforms of the Department of Defense's Review Boards statutes and regulations. Medical evidence is required to prove a nexus between misconduct and mental illness or injury in order to justify relief. By working closely with mental health providers, we are able to produce stronger applications for veterans. An upgrade opens the door to over \$3 million in a lifetime of benefits for a single veteran. For more information, please contact VAP at contact@veteranadvocacy.org.

veteran; hundreds of dollars below the national average;¹⁵ New York State is well below the national average when it comes to bringing in federal veterans benefits.¹⁶ Over the last decade, our Division of Veterans' Services has been without a director more than 20 percent of the time, including the last 8 months. The Division's budget has been decreasing despite the needs of veterans increasing.¹⁷ This year's State of the State mostly listed programs from *previous* years. We passed a law that offers honorable status at the state level to veterans who have Other Than Honorable discharges and who have PTSD or TBI—but they only benefit if they can get their condition confirmed by a VA-affiliated doctor.¹⁸ If they could access VA doctors, they would not need an upgrade. This is a cruel irony that must be corrected. New York can and must do better.

By allowing jurisdictional transfers to Veterans Treatment Courts, New York has a chance to once again be first. Passing universal access to VTCs will make New York a leader in the country. It will also let our servicemembers and veterans know that we believe they *all* deserve a second chance; they *all* deserve mental health care and substance abuse treatment. Access to justice should not depend on what side of a line you live on. If you live in a rural area are you less worthy of recovery? If your district attorney refuses to recognize what PTS can do to a person, do you deserve to spiral in anxiety and addiction?

People ask: Why a separate veterans court? Why can't they use a treatment court like everyone else? VTCs are unique in the same way that veterans' experiences are unique. Even setting combat aside, there is a shared culture of discipline and respect. Peer mentors play an important role in the success rates. For example, one of VAP's clients had been through a treatment track in a criminal court in Westchester County a couple of times about ten years ago, before he started working with VAP. The Marine served in Iraq and came home a different person—he drank every night to the point of blacking out just so he could sleep. And he tried using cocaine because someone told him it would make him feel normal for a minute. He was found on base with the drug and faced court-martial. Despite his severe post-traumatic stress disorder and traumatic brain injury, he was given a Bad Conduct Discharge that legally prohibits a veteran from receiving VA health care.¹⁹

¹⁵ Birnbaum, N., Armstrong, N., Huitink, Z., & Van Slyke, R. (2019). *A Strategic Roadmap to Enhance the Role and Impact of the New York State Division of Veterans Services*. Syracuse, NY: Institute for Veterans at Military Families, Syracuse University.

¹⁶ New York City Bar, *Report by The Military and Veterans Affairs Committee, The Disability Law Committee, and the Social Welfare Law Committee Concerning Inadequate Financial Support from the City and State of New York For Legal Services to Obtain Benefits from U.S. Department of Veterans Affairs*, May 2019. Available at: <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-on-the-inadequate-financial-support-for-legal-services-for-veterans-seeking-benefits>.

¹⁷ Birnbaum, *supra*, at 11.

¹⁸ See Restoration of Honor Act. *Bill available at:* <https://www.nysenate.gov/legislation/bills/2019/a8097>.

¹⁹ 38 C.F.R. §3.360 (b).

The Marine went home and soon alcohol wasn't numbing him enough. However, the pain killers he was given after a surgery during service were helping. Like so many people suffering through opioid addiction, when he could not get the pills, he turned to heroin.²⁰ Even after a treatment court graduation, he would disappear for days, wander and attempt to get into fights by provoking police officers; he attempted suicide numerous times. His wife kept him alive as she struggled to earn a living for the two of them and his daughter. VAP worked on his VA character of discharge case, getting him access to the VA after seven years of appeals. The family received over \$500,000 in back benefits and the VA Medical Center near them called the Marine to make an initial appointment for an exam.

After battling the VA for a total of twelve years, the win was emotional and overwhelming. The Marine relapsed and was arrested for possession. This time, he went to a VTC. He had been arrested in the *right county*. This time, he had people around him who knew what he had been through, who knew the pain he was desperate to dull. He had access to the VJO and VA health care, and, most important, he had a peer mentor to walk him through sustaining his recovery. The Marine has been sober for two years—the longest period since Iraq. His wife no longer worries that she will come home to find him dead. Every veteran, and every family of a veteran, should get this chance—regardless of discharge status, addiction, or county line.

Veteran Advocacy Project urges you to pass the legislation expanding access to Veterans Treatment Courts with jurisdictional transfers. We urge you to support the service providers who help veterans not only graduate from these programs but succeed in their new sober, civilian lives. In fully supported VTCs the level of collaboration among nonprofits, court staff and judges, and personnel from all levels of government is extraordinary. Expanding access to these resources will save New York State money and allow *all* veterans the chance to rebuild their lives.

Thank you for the opportunity to speak today.

²⁰ NIDA. "Heroin use is driven by its low cost and high availability." *National Institute on Drug Abuse*, 9 Jun. 2020, <https://www.drugabuse.gov/publications/research-reports/prescription-opioids-heroin/heroin-use-driven-by-its-low-cost-high-availability>. Last accessed 7 Feb. 2021.