

JOINT LEGISLATIVE PUBLIC HEARING
ON THE 2021/2022 EXECUTIVE BUDGET PROPOSAL
TOPIC: HUMAN SERVICES

Testimony by

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February 9, 2021

Albany, New York



Good afternoon. I am Roy Diehl, Deputy Director of the Veterans Defense Program (VDP), a statewide program of the New York State Defenders Association (NYSDA). I enlisted in the Army in 1984, was commissioned in 1998, and retired as a Lieutenant Colonel in 2015. My military career includes service at Ground Zero in 2001 and in Iraq in 2005, both with the NY Army National Guard's 42nd Infantry Division, and four tours of duty at the Pentagon. I graduated from Albany Law School in 1992.

Thank you for the opportunity to testify today on the Human Services section of the State Budget Fiscal Year 2021/2022 as it relates to veterans programs.

I want to thank the Senate and Assembly for sponsoring the 2020 legislative add to the Executive Budget of \$720,000 for the VDP, with \$250,000 coming from the Assembly, and \$470,000 coming from the Senate. As you are hopefully aware, however, we have yet to receive any of those funds.

Before I discuss the budget, I would like to discuss our difficulties in the time of a pandemic. The Veterans Defense Program (VDP) and its staff, not unlike other programs and individuals, have faced significant challenges during the extraordinary year of 2020. Veterans, especially those suffering the mental health consequences of their service, including Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI) and clinical depression, are especially hard hit in these times. This year has been even more challenging for veterans suffering from mental health diagnoses where anxiety is symptomatic. In 2020, in the cases that came through our program, the VDP identified:

- PTSD in 44% of veteran cases,
- Mental health issues, such as depression and anxiety, in 34% of veteran cases, and
- Military sexual trauma in 7% of veteran cases.

The pandemic caused shut downs at Department of Defense (DoD) record repositories and Veteran Health Administration Residential Treatment Centers, and court proceedings were restricted, causing unprecedented delays in the disposition of cases. These cumulative delays exponentially intensified anxiety among veterans involved in the justice system. Each of the factors multiplied the difficulty of the next. Delayed military records hindered delivery of mitigation to the courts, who were reluctant to order alternatives to incarceration in the absence of a mitigation report. Participants in the Veterans Treatment Courts (VTCs) were particularly hard hit as they rely on the supervision and support of regular appearances before the court to foster success. VTCs in particular are marked by the peer-to-peer support provided by Veteran Mentors. And when virtual appearances did take place, such appearances were unable to replicate the human connections and support that exist between all those who are usually present during those proceedings. This was true even where there were virtual appearances. The length of time participants have to spend in VTCs has at least doubled. These delays also created an additional workload for the VDP staff to mentor veterans who had an understandably difficult time coping with the delays. The VDP staff had to deal with attorneys whose offices were closed and were difficult to reach. With cases being open much longer than usual and the regular influx of new cases never diminishing, our workload actually increased under difficult conditions. These delays in disposition of cases also directly impacted the metrics usually reported in our testimony, such as the cost of unnecessary incarceration days saved, since sentencing was delayed for 52 cases this year.

It was imperative that the VDP continue to function at full capability under unprecedented conditions to continue to address the critical needs of veterans in the justice system. Since March of 2020 the VDP maintained all staff at their regular hours, in all three office locations, through a combination of remote working and reduced office presence. No request for service and assistance was rejected.

In many of the cases where the VDP attorneys provided substantial legal assistance, veteran clients received treatment and probation, and avoided incarceration. Specifically, over the last four years, the VDP helped justice-involved veterans to be diverted into treatment and probation, with a cost saving to the State of up to \$83 million. The cost saving is calculated by taking the maximum number of incarceration years for the original charge and subtracting the number of years imposed at sentencing. The cost of incarcerating a person for a year is estimated at \$60,000.

This year, we request a *renewal of the \$500,000 for the statewide VDP* (with a match of \$250,000 from the Assembly and \$250,000 from the Senate), and a *renewal of the Senate's sponsorship of \$220,000 for the Long Island office*, which opened in 2018 to focus on the area of the state that has the highest concentration of veterans. The VDP directly assists the most vulnerable of our veterans by helping public defenders to obtain justice for veterans with neurological impairments and mental health diagnoses and place them on a treatment track to heal their wounds of war. We need your help to continue this work.

Due to the COVID-19 pandemic, we were unable to continue in-person Continuing Legal Education (CLE) trainings and educational presentations. Instead, through our parent organization, the New York State Defenders Association, and others such as the New York State Bar Association, the VDP presented CLE webinars on various topics concerning veteran representation in the justice system.

We have maintained our services throughout this time, even though State funding has not been forthcoming as enacted in the 2020/2021 State Budget. We understand the financial difficulties the State faces because of the pandemic, and the lack of emergency federal aid to states and localities. We hope that these issues can be resolved soon, as the VDP cannot continue to exist without State funding.

Overall, the VDP has continued our activities, hardly missing a beat, to provide much needed services to veterans and defense counsel in New York, despite the pandemic and a financial crisis.

The VDP has helped justice-involved wounded warriors suffering from mental health conditions to obtain treatment and receive just, trauma-informed dispositions in the court system. The VDP has assisted hundreds of justice-involved veterans and trained hundreds of public defense attorneys representing veterans in New York State's criminal and family court systems at county-level and state wide trainings.

The VDP also provided mentoring and assistance to veterans and their families. In addition, we provided newly incarcerated veterans with mentoring and support to help them survive prison and transform their lives.

I am here today to ask for your support of a Senate and Assembly renewal add to the Executive Budget of \$720,000 for the VDP. The VDP provides training, support, and legal assistance to promote trauma-informed effective representation of veterans and service members in New York State's criminal and family court systems. The first of its kind in the nation, and replicated elsewhere, the VDP was launched in response to a crisis situation as growing numbers of veterans with service-related mental health illnesses were lost in the criminal justice system. Studies report that depressive disorders, substance abuse, Post-Traumatic Stress Disorder (PTSD), and Traumatic Brain Injury (TBI) among veterans are at epidemic proportions. Studies have shown that 50% of those veterans are untreated.

The U.S. Veterans Administration (VA) and the National Academy of Sciences report that veterans with untreated mental health conditions are at significant risk of arrest as their trauma symptoms can lead them to criminal conduct. Sadly, PTSD and TBI are linked to incarceration, antisocial behavior, and violence among veterans.

Our budget request is supported by over 70 veteran and mental health organizations, including the American Legion, AMVETS, Disabled American Veterans, Marine Corps League, Military Order of the Purple Heart, New York State Council of Veterans Organizations, United War Veterans Council, National Alliance for Mental Illness-NYS, Veterans of Foreign Wars, and county public defense programs, such as Brooklyn Defender Services, Legal Aid Society of Suffolk County, Ontario County Public Defender's Office, and the Legal Aid Bureau of Buffalo.

Intersection of Military Service, Mental Illness, and Criminal Justice

Veterans returning home face indifference when suffering from a frontline military-related mental illness and all too often do not receive timely treatment. After making tremendous sacrifices, many suffer from PTSD, TBI, major depression, and substance use disorder that negatively affect their cognitive abilities, judgment, and behavior, potentially drawing them into the criminal justice system and possibly leading to incarceration. Veterans often come into contact with the justice system because of the struggle of integrating back into society, including difficulty securing employment, unstable housing, and a lack of family connections, social networks, and supportive social services. They face unique challenges that are often overlooked or ignored, resulting in criminal charges that can trigger a host of collateral consequences as their lives derail, leading to homelessness, unemployment, or suicide. Those veterans charged with a crime end up lost in a criminal justice system that does not address their core problems nor treat their underlying condition(s).

As noted earlier, the National Academy of Sciences has reported that criminal justice involvement is a significant problem for Vietnam, Iraq, and Afghanistan War veterans. One study underscored that veterans with PTSD, anger, and irritability are at higher risk of arrest because their symptoms can lead them to commit a crime. According to the Veterans Administration, "the association between PTSD and violence is especially strong in the post-9/11 veteran cohort."

Attorney Brock Hunter, a recognized national expert on veteran defense, summarized the situation. "We are fighting wars on the backs of volunteers and a smaller military and we recycle the same troops back over and over, with many tours of duty. PTSD rates climb with each additional tour. The military culture is one of service and sacrifice: you deal with your problems privately and don't complain or ask for help. Vets are badly treated and ignored in

the criminal justice system. We need to give veterans support when they fall, particularly when they fall into the criminal justice system.”

“Left untreated, the emotional wounds of war can have a dramatic and destructive impact on veterans,” said Melissa Fitzgerald, Justice Director of the national Justice for Vets. “If we don’t intervene at the critical point of arrest, we risk losing veterans to the system forever. We can hold accountable veterans who commit crimes while connecting them to the benefits and treatments they have earned. Men and women who, instead of languishing behind bars, are going back to school, working, raising children, and living as civic assets. Veterans have fought for our freedom—shouldn’t we fight for theirs?”

Justice-involved veterans often do not have the funds to hire an attorney and are represented by public defenders. Defense attorneys are rarely trained or prepared to adequately represent veterans who suffer from the invisible wounds of war, or to translate the combat experience of their clients to explain resulting criminal behavior. Approximately 7% of Americans are veterans. Thus, it is likely that very few judges, attorneys, and jurors are veterans.

Defense attorneys need to be educated as to the critical impact of military culture on justice-involved veterans. The military trains individuals to become warriors. Modern military training involves conditioning to break down soldiers’ innate psychological resistance to killing and to reflexively take another’s life. To survive in battle, a soldier must remain hyper-vigilant and learn hand-to-hand combat and how to use weapons. The skills that serve soldiers so well in the military often make reintegration into civilian life without help extremely difficult, especially when they have experienced trauma during military service. Defenders need to understand how a client’s military experience and health issues impact their cases at every stage of representation and gain insight into how their mental health conditions affect them. Traumatized military veterans who need access to qualified defense attorneys are further traumatized by their lawyer’s unfamiliarity with how their military culture and service-related mental health conditions affect their case.

Some remarkable progress has been made with the advent of Veterans Treatment Courts to provide a therapeutic health-based approach to respond to the mental health calamity among justice-involved veterans. However, New York has Veterans Treatment Courts in only 31 cities or counties and most accept only a small percentage of cases, often limited to misdemeanors. Veterans with mental illnesses in the criminal justice system—the most vulnerable of our returning warriors—deserve an alternative resolution process with treatment and rehabilitation. Incarcerating veterans for crimes, such as assault and burglary, when mental health treatment is needed, provides no benefit to families who have struggled with the stress of long separations from their partner or parent, separations which are often exacerbated by multiple deployments. It also exposes families to additional economic challenges due to lost wages. Prosecuting veterans without needed mental health treatment closes the door to substantial opportunities for healing, recovery, family restoration, and being a productive member of society. An alternative treatment track for veterans whose crimes stem from service-related injuries is strongly supported by many veteran organizations, including the Iraq & Afghanistan Veterans of America and the NYS Council of Veterans Organizations.

The United States Supreme Court has recognized defense counsel’s obligation to identify and advance defenses that acknowledge the role military service may have played in a criminal charge. In a 2009 unanimous ruling, the Court held that attorneys must investigate a

defendant's military history and any service-related mental health impairments such as PTSD, and present such evidence. Although the defendant in this case was a decorated Korean War veteran, his court-appointed counsel presented no evidence of his military service to the jury, and the Court reasoned that this type of evidence might have swayed the jury as "[o]ur Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines as [the defendant] did."

Defense attorneys need to be zealous advocates for therapeutic justice on behalf of their veteran clients. They need to be trained to develop strategies for dealing with their clients around the issue of treatment with a higher degree of psychological sensitivity. They need to understand that they are functioning as therapeutic agents in their interactions with their clients, particularly in the plea and sentencing process. To accomplish this, understaffed and overburdened public defenders need the support services of a resource center. A statewide analysis found the vast majority of public defenders were only able to spend an average of four hours on a case: from arraignment, to motion filing, to court appearances, to visiting clients in jail, to pre-trial hearings, to disposition and sentencing.

This is why the NYSDA launched the VDP. The VDP is staffed by attorneys with deep experience working with veterans and the criminal justice system. Our goal is to create informed and effective representation of service members and veterans in the state criminal justice and family court systems and further justice by facilitating treatment programs for soldiers devastated by military-related trauma.

The most vulnerable of our returning warriors, those who have been injured either physically or mentally and are now in the criminal justice system because of those injuries, are often somehow removed from those "troops" that we support. In short, we support the troops and thank them for their service until they get arrested. Very often their military experiences, which a civilian judge or jury would have a very difficult time understanding, are at the core of their involvement in the criminal justice system. A veteran who has seen combat often experiences more trauma in a day than the rest of us have experienced in a lifetime. It is difficult for those within a civilian judicial system to understand what it means to undergo rocket attacks five days a week for months on end or know what it is like to spend Thanksgiving, Christmas, and New Year's crouched in a bunker, or to hold a fellow soldier in your arms as he dies. That has an effect on a person that is difficult to recover from when he or she returns home. The VDP's goal is to ensure that each veteran has an effective advocate; each veteran's story is properly presented to a judge, jury, and prosecutor; and these veterans get the treatment they need and deserve.

The VDP is committed to giving veterans access to the best possible legal representation when they need it. Veterans with battle-borne illnesses need treatment and an alternative resolution process in the criminal justice system. The VDP is training attorneys to advocate that courts consider the role a veteran's mental health condition played in their conduct, and recommend treatment. The VDP directly assists the most vulnerable of our veterans by helping public defenders to obtain justice for mentally-impaired veterans and place them on a treatment track to heal their wounds of war. We need your help to continue this work.

Thank you for the opportunity to testify today.