

VETERANS TREATMENT COURTS
LEGISLATIVE REPORT

Public Chapter 943

Prepared by: Tennessee Administrative Office of the Courts
2012

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APPENDIX A: HB3394 FISCAL NOTE SUPPORT FORM SUBMITTED BY AOC

INTRODUCTION

In 2012, the legislature adopted Public Chapter 943, which required the Administrative Office of the Courts (“AOC”) to conduct a study regarding veterans treatment court (“VTC”) programs. In addition to attending two separate VTC conferences/trainings, for a total of nine days of in-person training, the AOC viewed three webinars on “Working with Veterans and Their Families in Drug Courts” at <http://www1.spa.american.edu/justice/videos.php>, viewed a webcast entitled “Coming Home: Supporting Military Service Members, Veterans, and Their Families” at <http://recoverymonth.gov/Resources-Catalog/2012/Webcast/08-Coming-Home-Supporting-Our-Military-and-Their-Families-That-Love-Them.aspx>, conducted extensive research, read multiple publications, including a novel (Home Front by Kristin Hannah), analyzed other states’ legislation, and contacted the persons/entities listed below seeking input. While a limited number of groups did not respond or declined to participate, the majority of the listed persons/entities met with the AOC in person or via telephone conference. The AOC wishes to thank them for taking the time to participate.

GROUPS/PERSONS CONTACTED BY THE AOC

Tennessee Department of Labor and Workforce Development, National Association of Drug Court Professionals (including the National Drug Court Institute (conducted the Veterans Treatment Court Planning Initiative) and Justice For Vets (national clearinghouse for veterans treatment courts)), Tennessee Association of Drug Court Professionals, Tennessee’s three Veterans’ Justice Outreach Specialists, representatives from multiple drug courts and mental health courts, Commander John Furgess, Jr., Attorney Bob Tuke, Attorney James Mackler, United States Department of Veterans Affairs, Tennessee Department of Veterans Affairs, Tennessee Department of the Military, Tennessee Department of Safety & Homeland Security, Shelby County Veterans Treatment Court team, Montgomery County Veterans Treatment Court team, judge who presides over Davidson County’s veterans court docket, Operation Stand Down Nashville, Inc., Tennessee Bureau of Investigation, Tennessee Department of Transportation, Tennessee Department of Correction, Tennessee Sheriffs’ Association, Judicial Commissioners Association of Tennessee, Tennessee State Court Clerks Conference, POST Commission, Davidson County’s Mental Health Coordinator, Office of the Tennessee Attorney General & Reporter, Tennessee Board of Probation and Parole, Tennessee Department of Mental Health and Substance Abuse Services, Tennessee District Attorneys General Conference, Tennessee Community Corrections Association, Criminal Justice Coordinating Council, Tennessee Reentry Collaborative, county veterans service officer, Tennessee Association of Criminal Defense Lawyers, Tennessee Bar Association, Bureau of TennCare, Tennessee General Assembly’s Office of Legal Services, National Alliance on Mental Illness, Tennessee Department of Finance and Administration’s Office of Criminal Justice Programs, Disabled American Veterans, Vietnam Veterans of Nashville, State Representative David Shepard, Tennessee Alliance for Legal Services, Substance Abuse and Mental Health Services Administration (“SAMHSA”) (Specifically, the AOC spoke with someone at Policy Research Associates, Inc., which runs SAMHSA’s Service Members, Veterans, and Their Families Technical Assistance Center), Tennessee District Public Defenders Conference, Public Defenders’ Offices for Shelby, Hamilton, Davidson and Knox counties, numerous Tennessee judges, the majority of whom are

veterans, and numerous judges and staff members who operate VTCs in states other than Tennessee

SCOPE OF REPORT

During its VTC trainings as well as its meetings with the interested groups, the AOC discovered that many people who are involved with the court system are unfamiliar with military issues and, conversely, many people who are involved with the military are unfamiliar with the court system and the legal concepts which are relevant to the VTC issues. Also, many individuals are unfamiliar with mental health issues. The AOC will be distributing a copy of this report to Tennessee's general sessions, trial and appellate court judges as well as to the legislative sponsors and the interested parties with whom the AOC consulted during this study. Because the AOC believes it would be helpful to educate everyone regarding these complex issues, the AOC's report includes information which was not directly requested by the legislature but which the AOC hopes will be useful to interested parties as well as to courts which are considering establishing VTCs.

DISCLAIMER

The AOC does not purport to be an expert on VTCs, veterans' benefits, mental health issues, substance abuse issues, or any other topics addressed in this report. Likewise, the AOC is not endorsing any of the groups, persons or websites mentioned in this report. The AOC is merely providing information which was conveyed to it during this study.

POLICY DECISIONS

During its study, the AOC encountered individuals and groups, including both veterans and non-veterans, who expressed the opinion that veterans and service members who are arrested should not be treated differently than other offenders. This is a policy decision for the legislature, and the AOC expresses no opinion regarding the issues raised by those individuals/groups.

The AOC also notes that some chapters of the American Civil Liberties Union have expressed concern that VTCs may have constitutional implications because similarly-situated offenders are being treated more harshly than veterans. The AOC expresses no opinion regarding this issue, but the legislature may wish to consult with the Office of the Attorney General.

WEBSITES

Throughout this report, the AOC has provided website addresses which the AOC believes the reader will find helpful. However, because websites are often reorganized and updated, addresses to particular pages will change over time. As of the writing of this report, all website addresses are accurate. If a website does not appear to be accurate, the reader should return to

the broadest website address and use the links to find the information which is being sought. For example, the VA's 2012 Benefits Book currently can be found at www.va.gov/opa/publications/benefits_book.asp. If the VA reconfigures its website and the link to that publication is no longer available on the website page identified by the AOC, the reader should return to the VA's main website at www.va.gov and use the links at the top of the page to locate the publication (or the updated version of that publication since many of the referenced publications are updated periodically).

INTERIM REPORT

The AOC submitted an interim report to the General Assembly on August 31, 2012. A copy of that report is available upon request. The report summarized the status of the AOC's study and recommended that the sponsors of PC 943 contact Tennessee's congressional delegation to express their support for providing Tennessee with additional Veterans' Justice Outreach Specialists and providing the United States Department of Veterans Affairs ("VA") with additional funding for mental health and substance abuse treatment. The AOC also encouraged the sponsors to support pending federal legislation which would provide states with federal funds for VTCs. As noted in the interim report, the amount of money at issue in the pending legislation is not adequate to fund the numerous VTCs throughout the country, but any funding efforts by Congress should be encouraged.

SUMMARY OF CONCLUSIONS

Although some states have legislation which addresses VTCs, the majority of states do not. The legislation which exists varies considerably in scope, with some merely encouraging the creation of specialty courts/dockets for veterans and others providing a great deal of detail. No states mandate the creation of VTCs.

As indicated above, the AOC spoke with many individuals and groups, including VTC judges and personnel throughout the United States, regarding the VTC issues. The majority of those groups/individuals indicated that much of the existing VTC legislation is too detailed, that it does not provide courts with adequate flexibility, and that providing assistance to veterans and/or service members within the existing framework of a state's court system is preferable to utilizing limited resources to create an entirely new system.

After studying this issue at length, the AOC concludes that legislation establishing a uniform, statewide VTC system in 2013 is neither necessary nor preferable. To the contrary, the AOC concludes that such a system would be detrimental. The most effective and cost-efficient method of assisting the largest number of men and women¹ who have served this country is to permit each judicial district to retain the discretion to address this issue after considering the available resources and the needs of the relevant populations. Some states which have narrowly

¹ The AOC acknowledges that both men and women have served, and are currently serving, our country. For the sake of convenience, however, the term "he" will be utilized throughout this report. Each reference thereto will apply equally to female veterans and service members.

drawn their legislation have done so for financial and political reasons, and since Tennessee's courts have the authority to create VTCs in the absence of legislation, there is no benefit to delineating parameters which limit the discretion of the courts and unnecessarily exclude certain service members or veterans.

In addition to providing the courts with necessary flexibility when creating VTCs, the absence of legislation will enable courts to adjust their programs as necessary over time. VTCs are in their infancy, and courts learn more each day concerning the most effective policies and procedures which should be implemented. Moreover, the AOC anticipates changes in federal law which will impact VTCs. It would be more efficient for courts to make the necessary changes without being required to seek, and await, the amendment of one or more statutes each time federal laws change or a court's experience dictates that a previously-implemented policy or procedure is not effective.

With regard to mental health and substance abuse treatment as well as other services which are provided by VTCs, numerous individuals and publications have speculated that the VA does not possess adequate resources to provide necessary services to all eligible veterans or to perform all of the VTC-related tasks in a timely fashion. Likewise, it is the AOC's opinion that neither Tennessee's court system nor the state as a whole possesses adequate treatment resources or other pertinent resources to address the needs of individuals who are not eligible for VA benefits or whose needs cannot be met entirely, or within a reasonable period of time, by the VA.

Providing VTCs with necessary resources will require significant expenditures, and the AOC has been unable to identify a viable, recurring state funding source. For the reasons discussed elsewhere in this report, the AOC does not believe that creating a fine for persons who are charged with criminal offenses is an appropriate method for funding VTCs. Instead, it is the AOC's opinion that the funding mechanism should be one which affects all Tennesseans as opposed to placing the burden entirely on those who are involved in the court system. Moreover, the AOC is concerned that Tennessee is not adequately funding the existing problem-solving courts and believes that that issue should be addressed before the legislature attempts to fund VTCs. However, as noted in its interim report, the AOC encourages the legislature to support federal funding for VTCs and to recommend that the VA provide Tennessee with additional Veterans Justice Outreach Specialists. If the legislature wishes to provide state funding for VTCs but is unable to identify a viable, recurring funding source, the legislature may wish to consider providing courts with non-recurring funds for use by VTCs or for national training for Tennessee judges who are considering establishing VTCs.

The AOC wishes to emphasize that while legislation is not necessary in 2013, the AOC will continue to monitor this issue and will propose any necessary legislation in 2014. Due to the recent creation of two VTCs in Tennessee as well as a significant change in the oversight of Tennessee's existing drug treatment courts, the AOC believes that the court system and the legislature would benefit from gathering additional information in 2013.

With regard to the oversight issue, Governor Bill Haslam recently issued Executive Order No. 12, which transferred Tennessee's Drug Courts Program from the Department of Finance and Administration's Office of Criminal Justice Programs to the Tennessee Department of Mental

Health and Substance Abuse Services (“DMH”). DMH plans to meet with all of the existing drug treatment courts to assess their needs and to assist them in accessing necessary funds and services. DMH also plans to gather statistics, including the number of veterans who are participating in Tennessee’s drug treatment courts, using the Tennessee Web Based Information Technology System (“TN-WITS”). The AOC met with DMH regarding VTC issues, and the AOC is hopeful that DMH’s collaboration with the existing drug treatment courts in 2013 will assist those courts in connecting veterans and service members with available treatment resources. During this transition period, DMH and the AOC also can determine the most cost-effective and efficient method of incorporating the specialized treatment of veterans and service members into the court system’s existing framework. If the AOC and DMH determine that legislation is necessary to accomplish that goal, the AOC will propose legislation in 2014. Moreover, as noted elsewhere in this report, Montgomery County and Shelby County recently created VTCs. Deferring legislative action until 2014 will permit those two courts to function for one year and to determine what, if any, legislation would benefit VTCs.

If the legislature prefers to file legislation in 2013, the AOC will share its report with the Office of Legal Services and consult with that office if it has questions regarding the parameters of the proposed legislation. The Office of Legal Services also may wish to refer to the fiscal note support form the AOC submitted regarding HB3394, which proposed the creation of VTCs in 2012. Although the AOC’s understanding of VTCs has changed considerably since it submitted that form, the form identifies procedural issues which the Office of Legal Services may wish to consider when drafting future legislation. The AOC’s support form is attached to this report as Appendix A.

WHAT IS A PROBLEM-SOLVING COURT?

Many groups/individuals with whom the AOC met during the course of this study incorrectly assumed that a VTC requires limited resources and effort, and that it does nothing more than provide an avenue for the dismissal of participants’ criminal charges following substance abuse and/or mental health treatment. A VTC is a problem-solving court, and many problem-solving courts are post-adjudication courts. This means that the offender has been convicted of one or more criminal offenses. This report will address such things as whether a VTC should be pre-adjudication or post-adjudication and whether persons charged with particular types of offenses should be excluded from eligibility. However, because a VTC is a hybrid problem-solving court, the parameters of a VTC should not be determined in the absence of an accurate understanding of problem-solving courts.

A problem-solving court is a long-term, judicially-supervised, multi-phase program through which criminal offenders are provided with intensive treatment and other services and are very closely monitored by a team which often includes a judge, prosecutor, defense counsel, law enforcement officer, probation officer, treatment provider, case manager, program coordinator and program evaluator. The latter two roles are critical for overseeing the program, evaluating which features are producing the desired results, coordinating with members of the community who may have services/funds to offer, applying for grants and other funding, and gathering statistics. Possessing pertinent statistics is a crucial aspect of the program because the statistics

can be used to garner community support, to satisfy reporting requirements for any grants which are awarded, or to support an application for a new grant. The National Drug Court Institute (“NDCI”) provides a core competency guide (via the National Drug Court Resource Center) which outlines drug court team members’ roles and responsibilities. See http://www.ndcrc.org/sites/default/files/core_competencies_guide_updated_7_2010_4.pdf.

There are many types of problem-solving courts, but the most common type is a drug treatment court. The types of problem-solving courts which exist in Tennessee are adult drug treatment courts, juvenile drug treatment courts, DUI courts, domestic violence courts, family drug treatment courts, mental health courts, and VTCs.

Problem-solving courts are most effective when the participants are high-risk, high-need offenders and when the courts utilize evidence-based practices, which by definition are based on scientifically-sound research studies. A high-risk offender is a person who, due to various factors which are evaluated by risk assessment tools, are considered to be at high risk for reoffending. These factors include, but are not limited to, criminal history, social relationships, employability, housing status, and family situation. A high-need offender is a person who suffers from a significant mental health or substance abuse issue and, as a result, is in need of intensive treatment. Many offenders have co-occurring disorders, which essentially means that they have both mental health and substance abuse issues. In addition to treating these issues, problem-solving courts address every other aspect of a participant’s life which could affect the participant’s ability to be successful upon graduating from the program. This includes such issues as education, employment/vocational training, housing, and finances. Addressing these issues requires a great deal of time, effort, and coordination. Moreover, depending upon the availability of resources in the community, providing the necessary services could require significant expenditures.

As a general rule, minor offenders and/or offenders who do not suffer from significant mental health and/or substance abuse issues are not good candidates for problem-solving courts. Including them in such a court would be a waste of the court’s limited resources and, more importantly, could have an adverse impact on the well-being of the participant.

When a problem-solving court includes appropriate candidates, the hope is that providing the necessary treatment and support will result in the offender becoming a productive citizen who will not be re-arrested. This would benefit the individual as well as society as a whole, and it also would result in a reduction in expenditures for incarceration and supervision. If a problem-solving court wishes to include offenders whose needs differ greatly from one another, the most effective way of proceeding would be to create separate tracks whose phases are adjusted to reflect the needs of the offenders at issue. For example, offenders who require inpatient treatment could be on a different track than offenders who require outpatient treatment.

With regard to existing resources, the AOC does not dispute that the judges, prosecutors, and public defenders are full-time state employees. However, proponents of VTCs and other problem-solving courts must be cognizant of the significant burdens created by these courts. Judges, prosecutors, and public defenders have many responsibilities which, even absent the existence of a problem-solving court in their jurisdiction, require significant time and effort to

perform. Effective problem-solving courts require a great deal of time, effort and dedication on the part of the team members. Tennessee has many problem-solving courts and, despite their many other responsibilities, the team members for these courts are willing to work overtime without additional compensation to complete the tasks associated with a problem-solving court because they believe in the concept and are dedicated to helping the participants.

After talking with problem-solving court teams and other individuals who are familiar with these courts, the AOC is convinced that this extraordinary level of dedication is crucial to the success of a problem-solving court. Mandating the creation of a VTC or any other type of problem-solving court would not benefit anyone, including the veterans and service members whom a VTC is designed to serve. This would be particularly true for a jurisdiction which already has a problem-solving court since the prosecutors, defense attorneys and judges are performing extra duties associated with the existing problem-solving court.

Although there are many resources which discuss drug treatment courts and other problem-solving courts, NDCI has two particularly-relevant publications available at no cost online as well as in hard copy form (the purchaser will be charged for shipping if a hard copy is requested). The Drug Court Judicial Benchbook is available online at <http://www.ndci.org/publications/more-publications/-drug-court-judicial-benchbook>, and Painting the Current Picture: A National Report on Drug Courts and Other Problem-Solving Court Programs in the United States is available online at <http://www.ndci.org/publications/publication-resources/painting-current-picture>.

Although VTC issues are not identical to drug treatment court issues, many of the issues are very similar, and the AOC found the benchbook to be extremely helpful. The AOC will refer to specific benchbook chapters throughout this report, and the AOC recommends that any judges/attorneys who are interested in creating a problem-solving court consult that publication.

HOW DOES A VETERANS TREATMENT COURT DIFFER FROM OTHER TYPES OF PROBLEM-SOLVING COURTS?

The parameters of a VTC or a veterans court docket vary from state to state and court to court. As a general rule, though, a VTC is a problem-solving court which is designed to assist persons who have served (or are currently serving) in the military, who have been charged with a criminal offense, who are at high risk for reoffending absent intensive intervention, and who have significant mental health and/or substance abuse issues. A VTC is essentially a hybrid of a drug treatment court and a mental health treatment court. VTCs utilize the drug court model as well as the principles of both drug treatment courts and mental health treatment courts.

The most obvious distinction between a VTC and other problem-solving courts is that the former limits participation to current or former members of the military, depending upon the particular court's eligibility requirements. The other, more subtle, differences are as follows: (1) The VTC team should include at least one member who is familiar with veteran/military culture, terminology, benefits and other veteran/military issues; (2) The treatment provider(s) should

have experience with posttraumatic² stress disorder, traumatic brain injury, military sexual trauma, and other issues often associated with military service; (3) Mentors who are veterans or service members should be utilized; (4) The risk-assessment procedure will differ slightly because a veteran-specific risk-assessment tool has yet to be identified or developed; and (5) The partners with whom such a court must coordinate include veteran-specific service providers.

Drug courts have 10 key components which, in Tennessee, are codified in Tennessee Code Annotated section 16-22-104. These components were slightly modified to create the following 10 key components for VTCs: (1) VTCs integrate alcohol, drug treatment, and mental health services with justice system case processing; (2) Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights; (3) Eligible participants are identified early and promptly placed in the VTC program; (4) VTCs provide access to a continuum of alcohol, drug, mental health and other related treatment and rehabilitation services; (5) Abstinence is monitored by frequent alcohol and other drug testing; (6) A coordinated strategy governs VTC responses to participants' compliance; (7) Ongoing judicial interaction with each veteran is essential; (8) Monitoring and evaluation measure the achievement of program goals and gauge effectiveness; (9) Continuing interdisciplinary education promotes effective VTC planning, implementation, and operations; and (10) Forging partnerships among VTCs, Veterans Administration, public agencies, and community-based organizations generates local support and enhances VTC effectiveness. Additional explanations regarding these components can be found on the Justice For Vets website at <http://www.justiceforvets.org/sites/default/files/files/Ten%20Key%20Components%20of%20Veterans%20Treatment%20Courts%20.pdf>.

HOW WERE VETERANS TREATMENT COURTS CREATED?

The first VTC was created by Judge Robert Russell in Buffalo, New York, in 2008. Judge Russell presided over a drug treatment court as well as a mental health treatment court at that time, and he noticed that one of the participants, who happened to be a veteran, was having difficulty thriving in the treatment court program. Two of Judge Russell's employees were veterans, so he asked those employees to talk with the offender. During the subsequent meeting, the employees discovered that the defendant wanted to be around other Vietnam veterans, so they connected him with a vet group at the VA. Judge Russell subsequently noticed a significant difference in the offender's demeanor and in his willingness to become an active participant in his recovery. Based in large part upon this experience, Judge Russell created a separate treatment court/docket for veterans.

While there are many factors involved and anyone who is considering creating a VTC should seriously consider participating in formal training, the bottom line is that veterans are exposed to harsh realities to which the majority of individuals are never exposed, have difficulty readjusting to civilian life, are much more successful when involved in a structured program, and benefit greatly from being surrounded by individuals who understand the military culture. In short, Judge Russell found that justice-involved veterans who are struggling with mental health and/or

² Some websites and publications refer to "post-traumatic" as opposed to "posttraumatic." The AOC is utilizing the latter in this report because the VA and the DSM-IV-TR utilize that spelling.

substance abuse issues are much more likely to succeed and to become productive members of society if they are in a structured environment in which other veterans are involved. Those veterans include other offenders as well as mentors, court personnel and/or members of the VTC team. The camaraderie and peer pressure to succeed motivate the veterans to do well, and the VTC simulates a military unit in which the judge functions as the commanding officer, mentors serve as the fire team leaders, court staff members (probation officer, law enforcement, treatment providers, etc.) simulate the company staff, and the veterans/service members serve as the troops.

As with other problem-solving courts, the hope is that utilizing VTCs will result in a reduction in recidivism which, ultimately, should result in lower expenditures for prosecution and incarceration as well as related costs such as healthcare and treatment costs for offenders who are repeatedly incarcerated or who fail to become productive citizens and rely on government-funded assistance as they age even if they are not incarcerated.

Judge Russell, his VTC team, and his other staff members are well respected at the national level. They are very active in communicating with the VA and other federal agencies regarding VTCs and in educating judges and other court personnel who are considering creating VTCs. Consistent with information garnered by the AOC during its conversations with judges in other states, however, Judge Russell acknowledges that creating a court which has community support and effective coordination and communication among all necessary governmental and community resources takes considerable time and effort. Judge Russell also recognizes, as do other VTC judges, that the VA has limited resources and that, as a result, it will not be possible for the VA to have a representative assigned to every VTC.

HOW ARE TENNESSEE'S COURTS CURRENTLY SERVING VETERANS AND SERVICE MEMBERS?

VTCs were established in Montgomery County and Shelby County in 2012. Davidson County has a VTC docket associated with its mental health treatment court. Washington County also has a mental health treatment court, and while it does not have a separate docket for veterans, a VA employee works with the court to assist eligible veterans in accessing VA benefits.

Although Knox County does not have a VTC, Knox County and other Tennessee counties participate in Veterans Stand Down events, which are discussed elsewhere in this report. Moreover, the Knox County Public Defender's Office and District Attorney's Office are implementing a program called Homeless Veterans and Civilians Legal Assistance Initiative, which is an effort to end chronic homelessness. This program serves both veterans and non-veterans who are involved in the court system. When possible, the program refers veterans to the VA for services. However, many of the veterans do not qualify for those services due to the nature of their discharge or the length of their service. This initiative also links the veteran or civilian with a case manager who assists the person in accessing housing and securing employment.

Tennessee’s problem-solving courts currently serve veterans. Judicial districts which do not operate problem-solving courts order necessary mental health and substance abuse treatment for appropriate offenders, including veterans and service members, as a condition of the offenders’ community-based sentences.

**POSTTRAUMATIC STRESS DISORDER, MILITARY SEXUAL TRAUMA,
TRAUMATIC BRAIN INJURY, DEPLOYMENT STRESSORS, AND READJUSTMENT
CHALLENGES**

A VTC should rely upon qualified mental health and substance abuse treatment providers to make informed decisions regarding what, if any, treatment is necessary. However, the AOC believes that it would be beneficial for courts to have a basic understanding of the conditions at issue. There are many websites and other resources which provide information regarding mental health and substance abuse issues, and the AOC encourages courts to consult those resources in addition to reading the summaries below.

Deployment Stressors

Patricia Watson, Ph.D., is employed by the VA’s National Center for PTSD, and she made a presentation regarding military culture at the National Association of Drug Court Professionals’ (“NADCP”) national conference. According to Dr. Watson, service members are exposed to the stressors listed below during deployment. Many of these stressors are present regardless of whether the service member is engaged in a combat mission or in a non-combat mission such as a humanitarian or peacekeeping mission.

| Routine Stressors (Constant and Cumulative) | Life Threat Events (May be Frequent) | Loss Events (May be Frequent) | Moral Injury Events (May be Frequent) |
|--|--|---|---|
| Sleep deprivation; nearly constant work demands without days off; unpredictable occupational demands; culture shock; lack of privacy; lack of control over own life; boredom; conflicts with peers and leaders; minor injuries or illnesses; extreme heat, cold, dampness, dryness; separation from family and home; conflicts with family or other loved ones | Improvised explosive devices; ambushes; firefights; rocket or artillery fire; planned assaults; accidents; friendly fire | Deaths in unit; deaths of friends outside unit; serious injuries; being removed from unit for medical care; divorce or break-up back home | Killing; inflicting suffering; feeling betrayed by others; not living up to own expectations; survivor guilt; losing control; seeking revenge; marital infidelity during separation |

In addition to identifying these stressors, Dr. Watson recommended that courts consult the following resources to learn more about military culture:

The National Center for PTSD's Military Culture Course, which can be found at the following website: http://www.ptsd.va.gov/professional/ptsd101/course-modules/military_culture.asp

The Combat Stress Intervention Program's Military 101 Course, which can be found at the following website: <http://www.copingaftercombat.com/military101.php>

The Citizen Soldier Support Program's courses, which can be found at the following website: <http://www.aheconnect.com/citizensoldier/courses.asp>

The Center for Deployment Psychology's Military Cultural Competence Course, which is 75 minutes in length. This course is summarized as follows: "This interactive online training course provides an overview of military culture to include organizational structure, rank, branches of service, core values, and demographics as well as similarities and differences between the Active and Reserve components. It is intended to assist civilian mental health providers in better understanding, communicating and effectively interacting with Service members and their families." This course can be found at the following website: <http://deploymentpsych.org/training/training-catalog/military-cultural-competence>

Readjustment Challenges

The military functions as a family for veterans and service members, who often are unsure how, or if, they fit in once they return to their "normal" lives. Moreover, deployment and/or trauma are likely to influence veterans' views of the world, including changing how they interact with the community, altering the way they view mankind/humanity, changing how safe they feel in the world, making them question their spiritual or religious beliefs, and causing them to feel differently about themselves. As a consequence, persons who have served in the military may have readjustment challenges even if they do not suffer from substance abuse or mental health issues. Courts may wish to consider that possibility when dealing with veterans and service members regardless of whether the person at issue is participating in a VTC.

Readjustment issues may be more common for members of the National Guard and the Reserves because they do not return to a "military family" on a military base following deployment.

Mental Health Issues and Resources Generally

Posttraumatic stress disorder ("PTSD") is not suffered exclusively by veterans, but veteran-specific information regarding PTSD, traumatic brain injury ("TBI"), military sexual trauma ("MST"), and depression can be found on the website for the National Center for PTSD (www.ptsd.va.gov/). This Center was created within the VA in 1989. Dr. Eric Kuhn, who is Co-Director for Education for the Center, made a presentation at the Veterans Treatment Court Planning Initiative. The AOC attended this presentation and has included much of Dr. Kuhn's information in the mental health summaries below. In addition to referencing the VA's website,

Dr. Kuhn also recommended that courts consult the website for the International Society for Traumatic Stress Studies (<http://www.istss.org/Home.htm>).

The AOC's mental health summaries also include information learned by the AOC during the presentation of Lori Simms, Ph.D. at NADCP's annual conference. Dr. Simms works at the Nashville VA Medical Center's PTSD Outpatient Clinic, and she recommended that courts consult the VA's website as well as the website for the Defense Centers of Excellence for Psychological Health and Traumatic Brain Injury (www.dcoe.health.mil) for additional information regarding veterans' mental health issues.

Finally, an individual who works for a VTC in a state other than Tennessee recommended that courts consult www.seekingsafety.org. According to that website, "Seeking Safety is a present-focused therapy to help people attain safety from trauma/PTSD and substance abuse. The treatment is available as a book, providing both client handouts and guidance for clinicians."

Trauma Generally

Military service traumas fall into the following general categories: (1) Traditional combat traumas such as firefights, seeing/handling mutilated bodies, witnessing death/dying, killing, providing medical care in the field, and becoming a captive/POW; (2) Non-traditional combat traumas such as witnessing atrocities and abusive violence and being exposed to guerilla-style warfare (improvised explosive devices ("IED"), suicide bombs, civilian combatants); (3) Military sexual trauma; (4) Accidents (motor vehicle accidents, falls, burns, unintended explosions); and (5) Physical assaults.

Following deployment, service members who served in Operation Iraqi Freedom ("OIF") reported the following: 78% saw destroyed homes and villages; 95% saw dead bodies or human remains; 65% had hostile reactions from civilians; 93% received small arms fire; 89% were attacked or ambushed; 86% knew someone who was seriously injured or killed; 37% engaged in a firefight; 48% were directly responsible for the death of an enemy combatant; 14% were responsible for the death of a non-combatant; 22% were near a "buddy" who was shot or hit; 22% engaged in hand-to-hand combat; 14% were wounded/injured; and 51% were in serious danger of being injured or killed on at least several occasions.³

Traumatic Brain Injury

TBI is a traumatically-induced physiological disruption of brain function as manifested by at least one of the following: (1) loss of consciousness (which might consist of being dazed or dizzy as opposed to actually being unconscious); (2) loss of memory regarding events before or after the injury; (3) alteration in mental state at the time of the accident; or (4) focal neurologic deficit that may or may not be transient. TBI is the designation for the injury/trauma itself as opposed to the symptoms which result from the injury, and the type of trauma (the direction and

³ This is one of numerous sets of statistics shared with the AOC by various sources. There are many statistics compiled in many different years, and all of them vary slightly. The AOC has not independently corroborated the accuracy of any of the statistics but is merely providing them to give the reader a general idea of the traumas to which veterans and service members have been exposed.

distance from which the blast at issue originates, for example) will determine which part of the brain is affected by the impact.

A blunt trauma/closed head injury can result from the following, among others: explosion/blast (IED, rocket propelled grenade, land mine, etc.), motor vehicle crash (any type, including airplanes), fall (including jumps by paratroopers), or a non-deployment related event (sports injury, construction accident, bicycle accident, physical abuse/assault). A penetrating/open head injury is an injury caused by an object crushing, stretching, or entering the head, and it can result from the following, among others: gunshot, stab wound, penetration of fragments/shrapnel, or some types of skull fractures.

There are four grades of TBI. TBI severity can be mild (essentially a concussion), moderate, severe (coma), or penetrating (open head injury). Symptoms are physical, cognitive, and behavioral/emotional. Most TBIs are mild, and mild TBIs (“mTBI”) can affect brain function, particularly if the individual suffers from multiple TBIs since the effects are cumulative. An mTBI can affect memory, concentration, learning, information processing, language, problem-solving, decision-making, impulse control, and thinking. It can also cause behavioral problems.

As with substance abusers, the symptoms suffered by persons diagnosed with mTBI should be considered by courts and treatment providers during the recovery process since those symptoms can affect the person’s behavior or the person’s ability to understand, remember, and comply with the court’s directives. However, the AOC believes it is unlikely a court will encounter a large number of offenders who suffer exclusively from mTBI. The majority of mTBI victims’ symptoms are resolved within 4-12 weeks. Individuals who continue to exhibit symptoms likely have post-concussive syndrome or co-morbidities, and the court and treatment provider will be dealing with PTSD, substance abuse, depression or other co-occurring disorders in addition to dealing with the mTBI symptoms.

Military Sexual Trauma

Every VA medical center has an MST Coordinator, and the VA is legally required to provide care for physical and mental health conditions related to MST. MST refers to trauma which “resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the veteran was serving on active duty or active duty for training,” and sexual harassment refers to “repeated, unsolicited verbal or physical contact of a sexual nature which is threatening in character.” 38 U.S.C. § 1720D. As with TBI, MST is the designation for the trauma itself as opposed to the symptoms which result from that trauma, and MST can be experienced in the absence of combat or deployment. This fact is relevant to a court’s determination regarding whether VTC eligibility should be limited to persons who were deployed and/or who engaged in combat.

While some sexual assaults involve physical force or lack of consent due to intoxication, some individuals are victims of “command rape,” in which the victim is pressured into sexual activity through the threat of consequences for failure to comply or the implication that compliance will result in better treatment. Command rape is particularly troubling because of the victim’s repeated and continued exposure to the perpetrator as well as the victim’s complete dependence upon the perpetrator, sometimes during a period in which the victim is involved in life-

threatening situations. This can result in wariness toward authorities and institutions, including law enforcement and judges, particularly if the person with whom the victim comes into contact is the same gender as the perpetrator.

Courts should be cognizant of the fact that both males and females can experience MST. Indeed, more than one study has reflected that the number of males who experience MST exceeds the number of females. One study showed that between 2002 and 2008, 61,126 men experienced MST and 59,690 women experienced MST. While the percentage of female victims relative to the number of females in the military exceeds the percentage of male victims, this should not minimize the fact that there are many male victims.

Courts also should be aware that there is a very high rate of PTSD among persons who are victims of MST and that the rate is even higher among combat veterans. Other diagnoses which are most commonly associated with MST are depression and other mood disorders (including suicidal thoughts or suicide attempts), psychotic disorders, mania/bipolar disorders, and eating disorders, among others. Victims also can suffer from employment problems, relationship problems, readjustment issues, spirituality (crisis of faith) issues, and physical health problems. Many of the symptoms and adverse consequences are similar to those suffered by victims of trauma generally and PTSD specifically. As with victims of other traumas, individuals who experience MST often self-medicate, and this can lead to substance abuse issues.

The VA recognizes that it is in the relatively early stages of understanding many MST-related issues. For more information regarding MST and the available VA resources, see the VA's MST website at <http://www.ptsd.va.gov/public/pages/military-sexual-trauma-general.asp>. Courts also may wish to consult the PowerPoint presentation made by Margret Bell, Ph.D., who is on the MST Support Team at the VA's Office of Mental Health Services. Dr. Bell made a presentation at the NADCP conference, and her PowerPoint handout is available on NADCP's website at http://www.ndci.org/conferences/2012/Sessions/E_sessions/E-21.pdf.

Female veterans might feel more comfortable seeking treatment from the VA's "Women Veterans Healthcare Center," which "offers women [v]eterans a private, comfortable setting with all female providers and state-of-the-art equipment." In Tennessee, this center is located in Nashville. For healthcare purposes, Tennessee is located in VISN 9, which is a geographical area designated by the VA. VA facilities which are located in VISN 9 but are not located in Tennessee can be utilized by veterans who reside in Tennessee. For additional information regarding the women's center which is located in Nashville, see http://www.tennesseevalley.va.gov/visitors/charlotte_women.asp. For additional information regarding resources which are available in VISN 9, see the VA's VISN 9 website at <http://www.visn9.va.gov/>.

Posttraumatic Stress Disorder

Most people who experience a trauma will have PTSD symptoms immediately following the trauma, but for 75% of the people the symptoms are short-term and do not result in the development of PTSD. The AOC possesses statistics, risk factors, and diagnostic criteria for PTSD, and the AOC will provide this information upon request. However, because the AOC anticipates that the courts and the legislature will defer to mental health experts regarding diagnosis and treatment issues, the AOC will limit its discussion to a general overview.

In lay terms, an individual who suffers from PTSD has been exposed to trauma involving actual or threatened injury to himself or to another person, and this exposure causes the individual to feel intense fear, helplessness, or horror. Such an individual subsequently suffers from flashbacks and/or nightmares, avoids discussing the trauma or the symptoms it is causing, has difficulty sleeping, suffers from hyperarousal/hypervigilance, often has substance abuse issues, has difficulty interacting with others and functioning normally in daily life, is unable to cope with routine daily stressors, and is prone to anger, verbal and physical aggression, and interpersonal violence. A PTSD sufferer will be “super aware” of his surroundings, will be alert to any potential sign of danger, and will often perceive danger where no threat exists. The individual also may have an inappropriate response to routine stimuli, such as “hitting the deck” upon hearing a car backfire. These symptoms have the potential to inhibit an individual’s ability to react/ behave appropriately in routine civilian scenarios and to impair the ability to make decisions and process information.

The VA and others have noticed an increase in the number of Vietnam veterans who are exhibiting symptoms of PTSD. This may be due to the fact that as they get older and retire they have more free time and less structure, and they are refocusing on their combat experiences. This would be difficult for them under any circumstances, but some have lost their support systems due to the relatively recent deaths of family members and friends, and they do not possess adequate coping mechanisms. Participating in therapy can be difficult for any veteran or service member because the person must confront painful memories and feelings, but it could be particularly difficult for some Vietnam veterans since they have avoided dealing with those memories for many years.

PTSD sufferers appear to be at higher risk for suicide. The VA has a National Crisis Line (1-800-273-TALK), which is a suicide hotline.

Co-Occurring Disorders

Many victims of trauma suffer from multiple physical and mental health conditions. The VA is learning more about these conditions and is adjusting its treatment protocols as needed. For example, if a veteran suffered from PTSD as well as substance abuse issues, the VA previously attempted to treat the substance abuse issue before addressing the PTSD. The VA now recognizes that veterans often self-medicate, using alcohol and other drugs in an attempt to control PTSD symptoms. Whether a veteran uses depressants or stimulants depends upon which symptoms he is attempting to control. As a result of these discoveries, the VA now attempts to treat the PTSD prior to, or simultaneously with, the substance abuse issues. In contrast, PTSD and TBI share many symptoms but PTSD is easier to diagnosis and more is known about effectively treating PTSD than TBI, so the VA focuses on treating the PTSD.

Screenings and DOD/VA Files

Service members who participate(d) in OEF/OIF are being screened for PTSD and TBI, and this likely will be reflected in their medical records. The screening consists of a one-page, self-reported assessment. Because this is not an anonymous assessment and service members are reluctant to admit to anything which could adversely affect their careers, these records may not

be particularly helpful. The timing of the assessment also may result in an under-reporting of mental health issues due to the delay in experiencing those symptoms. One veteran noted that many service members “lose it” 12-18 months after returning from deployment because it takes that much time for their mental health and/or substance abuse issues to have an adverse impact on their relationships with family and friends and to cause them to lose their jobs, get arrested and/or become homeless.

SUBSTANCE ABUSE ISSUES

As the AOC previously noted, the AOC is not an expert on substance abuse issues or any other issues which are discussed in this report. The AOC gathered information during interviews and trainings, and it is conveying information which it believes the interested groups will find helpful. The information below was gathered from numerous sources. However, a primary source of the information was Steve Hanson, who is the Acting Associate Commissioner of the New York State Office of Alcoholism and Substance Abuse Services. Mr. Hanson has an M.S. Ed, is a licensed mental health counselor, and is a credentialed addiction counselor. Mr. Hanson made a presentation on addiction/psychopharmacology at a national training attended by the AOC.

Reasons for Alcohol/Drug Use

There are many reasons a veteran or service member might consume alcohol and/or take other legal or illegal drugs. With regard to alcohol, it is generally accepted that the military culture encourages excessive alcohol consumption. When service members are not on duty, they often are drinking alcohol.

Moreover, as noted above, substances often are used in an attempt to self-medicate. Persons who have mental health issues will use these substances to help themselves sleep and to treat other symptoms. Unfortunately, these substances often exacerbate their symptoms and lead to self-destructive, reckless and/or violent behavior.

Persons who have physical injuries use substances in an attempt to control their pain. While there is the potential for abuse and/or addiction even when someone is under the care of a licensed physician, there is an increased potential for abuse when the person is in combat. In that circumstance, service members often are given the discretion to gauge how much pain medication is required to control their pain.

For some individuals, the use of substances will have no adverse consequences. For others, the ramifications will include addiction.

Recovery Challenges

While the initial decision to use alcohol or other drugs is voluntary in nature, for some people dependence on drugs is an involuntary result which, in very simplified terms, results from the flip of a switch in the brain. Regardless of whether the continued drug use is voluntary or

involuntary, however, its effects on the brain can be dramatic and long-lasting. Indeed, brain scans reflect that prolonged drug use alters the manner in which the brain functions, primarily impacting the portions which affect critical thinking and the regulation of emotions. The resulting poor judgment skills and unregulated emotions will impede abusers during the early stages of any attempt at recovery. Months into the recovery, the abusers' brains still will not be functioning properly, so for many abusers long-term treatment is necessary. Moreover, people who are recovering from addictions feel guilty about things they've done and how they've treated people, and their instinct is to drink/drug to deal with those feelings. If the substance abuse started at an early age, it is likely that the abuser never developed the "normal" coping skills that non-abusers developed.

Courts and treatment providers should recognize that there is a difference between patients who become dependent on prescription drugs and other types of drug abusers. Veterans often will fall into the former category. These addicts will not see themselves as true drug addicts or criminals, and they may be reluctant to seek treatment or, when ordered to seek treatment, may have difficulty accepting that they need the treatment.

Although there must be sanctions for non-compliance with court orders, courts should consider the complexity of the recovery issues, including the substances' physiological effects on the brain, when determining the nature of an appropriate sanction. For example, revocation of an alternative sentence or removal from a problem-solving court program would not necessarily be an appropriate response to a dirty drug screen. Relapse rates for drug addicts are 40-60%. Accepting an offender into a problem-solving court program or ordering treatment as a condition of an alternative sentence does not immediately cure the addiction. Recovery takes time and failures are inevitable, so if a court takes the position that it will not tolerate any dirty drug screens, the addict will feel helpless because he knows that he will fail at some point, and the court's position on that issue will virtually guarantee that the addict's recovery will not be successful. Sanctions also may interfere with treatment, so judges should consult with all team members, including treatment providers, before making a final decision regarding the appropriate reaction to a violation.

Courts also should be aware that drug use impacts memory. For example, methamphetamine "kills" certain brain cells, while cocaine "tires" them. This should be considered by courts during the initial phases of recovery, and those phases should not include complicated or abstract concepts. Providing a problem-solving court participant with a calendar which lists the participant's court dates and/or treatment appointment dates (or providing the calendar but requiring the offender to note the dates on the calendar) would be helpful, but courts should anticipate that some users, due to memory deficiencies, will miss appointments/hearings. As one drug court conference presenter noted, for some offenders, appearing in court on a particular date may be the most the court can expect that person to accomplish initially. The offender might be intoxicated when he appears in court and there would have to be an appropriate sanction for that behavior, but the court also should recognize that, for some people, the mere fact that they appear in court on the required date is a step in the right direction and deserves some recognition. The AOC spoke with someone who has extensive experience with drug treatment courts, and she encourages courts to recognize that "the lights are not on" for 90-120 days after an addict stops using. For that reason, courts also should reiterate the treatment court rules periodically.

Regardless of whether an offender is being considered for participation in a problem-solving court, is being placed on probation, or is serving a period of incarceration, the person in a position of authority, whether it is a judge or a TDOC/jail employee, should defer to substance abuse experts when determining what, if any, treatment is appropriate for an offender. The experts can differentiate between casual use, abuse, and dependence, and the treatment for each differs greatly. A casual user may require no treatment, abuse often can be successfully addressed through outpatient treatment, and dependence often requires inpatient treatment. There also are different types/levels of inpatient and outpatient treatment. Mandating the wrong type of treatment, whether too intensive or not intensive enough, is a waste of resources and, more importantly, can negatively impact the offender. More is not always better. Substance abusers and individuals who suffer from mental health issues also should be reassessed periodically because treatment needs may change as the person's condition improves or deteriorates.

The AOC is not oblivious to the fact that some offenders will intentionally deceive the court, will never comply with the court's orders, and may not be good candidates for a problem-solving court or an alternative sentence. Addicts are skilled at manipulation. The AOC merely is identifying issues the court may wish to consider when dealing with offenders who potentially suffer from substance abuse issues.

VARIOUS METHODS OF ASSISTING VETERANS AND SERVICE MEMBERS

Creating a VTC is one way in which courts can assist veterans and service members, and this report provides guidance regarding issues courts must address when creating a VTC. However, a particular judicial district may not have an adequate number of veterans/service members to justify the creation of a VTC, may not possess adequate resources to create a VTC, or may decline to create a VTC for another reason. Moreover, even if a judicial district or county creates a VTC, not all veterans and service members will be eligible to participate. However, it does not follow that the court system will be precluded from providing assistance to justice-involved veterans and service members who do not participate in a VTC.

Veterans and Service Members Without Mental Health and/or Substance Abuse Issues

A VTC is a ***treatment court*** which should only service individuals whose mental health and/or substance abuse issues warrant their inclusion in this type of long-term, intensive treatment program. If a justice-involved veteran does not have mental health issues or substance abuse issues, it would not be appropriate for that person to participate in a VTC. However, the veteran's defense attorney, probation officer, or other court personnel could assist the veteran in enrolling with the VA for the purpose of receiving any financial benefits or other benefits for which the veteran is eligible. This report provides those individuals with links to websites and publications which will aid them in assisting veterans.

Service members are not eligible for veterans' benefits. However, due to the possibility that criminal charges and/or the nature of the disposition thereof could adversely affect a service member's career, a prosecutor may wish to consider the person's status when determining the

most appropriate manner in which to proceed. As noted below, though, incarceration may be the most appropriate disposition for certain offenders regardless of their military service. Moreover, during this study multiple individuals, including veterans and members of the military, indicated that some service members deserve to have their security clearances revoked or to be discharged from the military due to the arrest itself (depending upon the nature of the offense) or due to the arrest when considered in conjunction with the offender's past behavior. Members of the military emphasized that commanders will retain their authority to discipline a service member in whatever manner the commander deems appropriate regardless of how the criminal charges are resolved in the civilian court.

Incorporating Veterans and Service Members into Existing Problem-Solving Courts

The AOC interviewed many people who currently work for problem-solving courts such as drug treatment courts and mental health courts, and the majority stated that they serve veterans in those courts. In lieu of creating an entirely new problem-solving court, which would further stretch their already limited resources (both financial resources and other resources such as personnel) and/or may not be warranted given the limited number of veterans in the judicial district or county, these courts could adjust their existing programs to address veteran-specific issues. This could include recruiting veteran mentors, adding a team member who is familiar with military/veteran issues, utilizing the VA's medical centers/clinics or other treatment providers who are familiar with veteran-specific issues, and assisting the veterans in securing applicable veterans' benefits.

Depending upon the number of veterans or service members at issue, the problem-solving court could incorporate the additional services into its existing docket, address veterans and service members separately during a portion of its existing docket (for example, hearing all veterans' and service members' cases during the first hour of a three-hour problem-solving court docket), or create a separate docket for veterans and service members who are participating in the problem-solving court. Adapting an existing problem-solving court to specifically address veterans' issues will require additional expenditures, but the expenditures will be significantly lower than creating an entirely new problem-solving court.

Judicial Districts or Counties Which Do Not Have Existing Problem-Solving Courts

If a judicial district or county which currently does not have a problem solving court (or has a problem-solving court for which the offender does not qualify) encounters veterans or service members who have mental health and/or substance abuse issues, the judge could order the person to receive treatment as a condition of probation or Community Corrections. This could be ordered through a pretrial disposition such as pretrial diversion or judicial diversion, or it could be ordered through a post-disposition sentence. Military service is considered when determining the appropriateness of diversion and/or an alternative sentence because it is part of the offender's social history. For some offenders, a period of confinement may be ordered in addition to a community-based sentence such as probation or Community Corrections.

As previously noted, it is important for any treatment providers to be familiar with veteran-specific issues. In addition to securing the services of treatment providers who have the

expertise to treat veterans, courts should consider incorporating the other veteran-specific services. For example, veteran mentors and camaraderie among justice-involved veterans and service members are VTC components which can be incorporated into a court even if the court does not establish a VTC. This could be done by creating a special docket for veterans/service members or by grouping their cases together on an existing docket.

If the court is not willing or able to create a special docket or grouping, the court could hear the cases in the same manner the cases are currently being heard, but the court could add an optional mentoring component to the existing court procedures. However, grouping the veterans' cases together has two primary benefits. First, these offenders benefit greatly from camaraderie, peer pressure, and peer support. Therefore, having them on the same docket will give them the opportunity to interact and to support each other. Moreover, staff members of existing VTCs and veterans dockets noticed that the participants often share information with each other regarding VA benefits/procedures and other available resources while they are waiting for court to begin. This builds rapport among the participants and also assists them in accessing resources which will assist them in becoming productive citizens.

Incarceration

The majority of veterans and non-veterans to whom the AOC spoke during this study acknowledged that serving in the military should not give anyone a free pass to commit a criminal offense. After considering all appropriate factors, the prosecutor, defense counsel, judge and/or jury may conclude that a conviction is warranted and that a period of incarceration is appropriate for a particular offender. These factors could include such things as the nature of the offense, the victim's preference, the existence and severity of any mental health and/or substance abuse issues, and the causal connection, if any, between those mental health and/or substance abuse issues, the defendant's military service, and/or the commission of the offense.

As discussed elsewhere in this report, incarceration affects VA benefit eligibility. However, if a veteran is sentenced to a term of imprisonment in the Tennessee Department of Correction ("TDOC"), TDOC will assist the veteran in securing any VA benefits to which the veteran will be entitled upon release from incarceration and also will assist the veteran regarding other reentry issues. For more information on reentry issues, see the section of this report which addresses the Tennessee Reentry Collaborative.

ISSUES WHICH MUST BE RESOLVED WHEN CREATING A VETERANS TREATMENT COURT

If a county or judicial district opts to create a VTC, there are numerous issues which must be addressed prior to creating such a court. Therefore, during the initial VTC planning phases, a court should consider the issues which are listed below in addition to considering all of the other issues which are relevant to problem-solving courts. As noted elsewhere in this report, the AOC strongly encourages judges to undergo professional VTC training, to consult with Tennessee judges who currently are presiding over problem-solving courts, and to read The Drug Court

Judicial Benchbook, which can be found at <http://www.ndci.org/publications/more-publications/-drug-court-judicial-benchbook>, prior to establishing a VTC.

The most important thing for courts, the legislature, and other interested parties to understand, however, is that there is not a “right” or “wrong” way to structure a VTC. The goal is to assist as many veterans and service members as resources and public safety considerations will reasonably allow. In the absence of restrictive legislation, a court will have the flexibility to adjust the parameters as necessary following a VTC’s initial implementation. The AOC recommends that courts reevaluate their positions regarding each issue after establishing VTCs if the programs’ statistics and/or the courts’ experiences indicate that a different approach would benefit the participants or if the eligibility criteria are so broad that the courts lack the capacity to process the applications of the large number of potentially-eligible offenders. Initially, though, courts should consider these issues:

1. Should eligibility be restricted to currently-serving service members, anyone who has ever served in the military (including those who served in the National Guard or Reserves) regardless of whether they qualify as veterans for the purpose of receiving VA benefits, only those individuals who qualify as veterans for the purpose of receiving VA benefits, or a combination thereof?
2. What procedure should the VTC use to identify veterans and/or service members?
3. Should the VTC be located at the general sessions court level or the circuit/criminal court level?
4. Should the VTC be a pre-adjudication court, a post-adjudication court (including probation violators), or a combination thereof?
5. Should the nature and/or number of an alleged offender’s current or prior criminal offenses automatically disqualify an otherwise eligible candidate from participation?
6. Should persons with certain medical conditions automatically be disqualified from participation in a VTC?
7. Should participation be limited to persons who can establish a causal connection between the military service, the substance abuse and/or mental health issues, and the commission of the offense(s) at issue?
8. Should participation be limited to combat veterans?
9. What is the procedure for screening offenders for eligibility?
10. How will confidentiality/privacy/constitutional issues be handled?
11. What is a mentor’s role, and how will mentors be selected and trained?

12. How will the VTC deal with transportation issues?
13. Will particular defense attorneys be assigned to represent all offenders who participate in the VTC?
14. How will the program be evaluated?
15. What costs are associated with a VTC, and how will that issue be addressed?
16. Should a judicial district consider participating in a regional VTC?

What Is The Definition Of “Veteran”?

As noted above, the first issue is whether the VTC participants should be limited to currently-serving service members, anyone who has ever served in the military, only those individuals who have served in the military and who qualify as veterans for the purpose of receiving treatment through the VA, or a combination thereof. During this study, the AOC discovered that many people, including the author of this report, incorrectly assumed that anyone who served our country as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, whether on active duty or as a member of the National Guard or the Reserves, was considered a veteran upon discharge. However, for the purpose of receiving veterans’ benefits through the VA, the Tennessee Department of Veterans Affairs (“TDVA”), or any other department or group which provides veterans with benefits, the definition of “veteran” varies depending upon what benefit the person is seeking and from which department/group the person is seeking the benefit. These issues must be considered when establishing the parameters of the VTC because potential participants’ ineligibility for VA healthcare benefits or other VA benefits will have a fiscal impact on the VTC.

The definition of “veteran” for benefit eligibility purposes often involves consideration of the type of service (active duty vs. National Guard/Reserves), dates of service, length of deployment, if any, and type of discharge. Currently, the types of discharge are as follows: (1) Honorable; (2) General Under Honorable Conditions; (3) Other Than Honorable; (4) Bad Conduct; and (5) Dishonorable. The first three are handled administratively, but the latter two can only be imposed through the military’s court-martial system. As a general rule, only veterans who received an honorable discharge or a general discharge under honorable conditions are eligible for medical/treatment benefits as well as non-medical benefits through the VA. Veterans who received a dishonorable discharge typically are not eligible for any medical or non-medical benefits. Veterans who received an other than honorable or bad conduct discharge are not eligible for medical benefits, and their eligibility for non-medical benefits is often discretionary and varies by the type of benefit.

An arrest or conviction will not affect a veteran’s discharge status. In other words, a veteran who received an honorable discharge could not be downgraded to a dishonorable discharge even if he was subsequently convicted of first degree murder. In contrast, it is possible for a veteran to seek a discharge upgrade. However, it is the AOC’s understanding that this is a time-

consuming process and that it is rarely successful. If an attorney wishes to assist a veteran in pursuing a discharge upgrade, the attorney should consider contacting Tennessee's congressional delegation to request a copy of the veteran's service records. Congressional delegations often can obtain more information than a veteran can obtain through standard Department of Defense and VA procedures. The congressional delegation also can be contacted if an attorney/court is having difficulty obtaining a copy of a veteran's medical records. However, VA Form 10-5345, which is discussed elsewhere in this report, should initially be utilized when attempting to secure a copy of a veteran's medical records.

Veterans vs. Service Members

For a court with limited resources, it likely will be necessary to narrowly define the target population. Specifically, the court may wish to limit the eligible participants to veterans who qualify for mental health and substance abuse treatment through the VA. However, courts should be aware that there will be costs associated with VTC participation even if the veteran is eligible for the VA's medical and non-medical benefits.

If a VTC has significant resources, it may wish to broaden the target population to include anyone who has been discharged after serving as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, whether on active duty or as a member of the National Guard or the Reserves. Due to the nature of their discharge or to other relevant factors, some of these individuals will not be eligible for VA benefits. However, VTCs have observed that members of the National Guard and Reserves who have mental health or substance abuse problems may have greater difficulty readjusting to civilian life because they do not return to a military base following deployment and, therefore, do not have the full emotional support of the "military family" or other support services provided to service members who return to a military base following deployment. Indeed, when they return from deployment, members of the National Guard and Reserves are given 90 days of leave. While this will allow the person to reconnect with his family and friends and to deal with other issues which arose during his deployment, it also has the unintended effect of isolating the individual from similarly-situated military personnel.

Some people to whom the AOC spoke expressed the opinion that anyone who receives a bad conduct discharge or dishonorable discharge should be excluded from participation in a VTC. This is a policy matter for the courts and the legislature as opposed to the AOC. When resolving this issue, the courts/legislators may wish to consider the purpose of VTCs. If the purpose is to provide treatment to people who served our country, the nature of the person's discharge may not be relevant. Moreover, the behavior which ultimately resulted in a bad conduct or dishonorable discharge may have been caused by the mental health and/or substance abuse issues for which the individual is now seeking treatment. This is particularly true for individuals who were discharged before the military understood posttraumatic stress disorder and the impact it can have on an individual's behavior. Finally, the mere fact that an offender is deemed eligible for participation in a treatment court does not guarantee that the offender will in fact participate. The VTC team ultimately determines which of the eligible offenders should be permitted to participate, and that team has the authority to consider, among other things, the nature of the

behavior or series of infractions which resulted in the offender's discharge as well as the number of times the service member was warned/counseled about his behavior prior to discharge.

Courts also should consider whether service members should be eligible for participation in a VTC. There are practical problems associated with these individuals, including the fact that VTC programs are long-term programs. Active duty service members are frequently deployed or are moved to another military base, so for those individuals a long-term program may not be a practical resolution of their criminal charges.

On the other hand, although there are costs associated with things other than treatment in a VTC, one factor for a court to consider when determining whether to include service members is the fact that they often can receive treatment at no cost on a military base. Moreover, when community-based treatment is required, the service member's insurance might cover the associated costs. See <http://www.tricare.mil> for more information regarding TRICARE. This assumes, of course, that the military does not discharge the service member following his arrest. If the service member is discharged, he will not be eligible for on-base treatment and, depending upon the nature of the discharge, may not qualify for VA benefits. Assuming the service member is discharged, if he has a mental health or substance abuse issue, participation in a VTC may assist him in transitioning from the military to civilian life.

The AOC encourages the judge, prosecutor and/or the entire VTC team to establish a relationship with the military commanders whose service members the VTC is likely to encounter. If the VTC team understands a commander's philosophy and the commander understands the VTC's role, they are more likely to resolve each case in the most appropriate manner while respecting and retaining their respective professional discretion. For example, if a service member's history and the nature of his offense so warrant, a commander might agree not to revoke a service member's security clearance or discharge him if he successfully completes the VTC program. Similarly, a prosecutor might agree not to pursue the civilian charges if the commander agrees to discipline the service member and/or provide necessary mental health or substance abuse treatment through the military's system. Finally, the commander may inform the VTC team that a particular service member will lose his security clearance or be discharged regardless of how the civilian courts proceed regarding the charged offense(s).

How Many Veterans Reside in Tennessee?

According to TDVA's most recent estimate based upon 2009 data, there are 501,907 veterans in Tennessee. For purposes of this statistic, a veteran is defined as "a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable." 38 C.F.R. § 3.1(d). TDVA's annual report, which can be viewed at http://www.state.tn.us/veteran/news_releases/VAAnnualReport2011Lr.pdf, also reflects how many of the 501,907 veterans reside in each county.

Neither the TDVA nor any other entity gathers statewide statistics regarding the number of Tennessee veterans who are arrested for, or convicted of, criminal offenses. Moreover, as noted above, TDVA's statistics do not include service members who currently are serving on active duty or in the National Guard or Reserves, and they only include former service members who

were “discharged or released under conditions other than dishonorable.” Although certain individuals are excluded from TDVA’s statistics, courts may wish to declare those individuals eligible for participation in a VTC.

The AOC was unable to locate an agency or other source which has identified the number of individuals who reside in Tennessee and who previously served in the military but do not qualify as “veterans” for TDVA purposes. Likewise, the AOC does not know how many service members currently reside in Tennessee, although the AOC assumes that number fluctuates due to the nature of military service. Finally, the AOC is not able to predict how many former or current members of the military will be arrested in Tennessee in general or in a particular judicial district or how many of the arrestees will have mental health and/or substance abuse issues which would make them eligible for participation in a VTC.

What Procedure Should Courts Use To Identify Veterans And/Or Service Members?

Early intervention is critical, and courts should attempt to identify veterans as quickly as possible following arrest. Individuals who have substance abuse and/or mental health issues are reluctant to seek or accept help, and this is especially true for veterans. However, someone who is in jail and/or is charged with a criminal offense has often “hit rock bottom” and will be motivated to do anything, including participating in a treatment court, if it could have a positive impact on his life or liberty. Moreover, the earlier the veteran is identified the earlier the veteran can begin the sometimes lengthy process of obtaining proof of his status as a veteran and completing the necessary paperwork to receive treatment and other benefits.

Additionally, regardless of whether a jurisdiction creates a VTC, the jurisdiction may wish to identify veterans and/or service members. Even absent an official VTC, the arrestee’s status could assist the stakeholders in determining the most appropriate manner in which to proceed with the arrestee’s case and/or to assist the arrestee in determining whether he is entitled to veterans’ benefits.

It is important for the legislature to permit the courts to retain the discretion to determine the most efficient manner of identifying veterans and service members. One jurisdiction might conclude that the law enforcement entity which performs the booking function for the county should identify those individuals while another jurisdiction might conclude that the judicial commissioners should perform this function. As a practical matter, courts may wish to take referrals from anyone who possesses relevant information, including mental health providers, attorneys, probation officers, bail bondsmen, or military officials, among others.

In addition to determining which entity/person should gather this information, each jurisdiction must determine the most effective method of gathering the information and communicating it to the court. With regard to the latter, stamping “veteran” on the arrest warrant or sending a list to the relevant court staff via email could be adequate. With regard to the former, courts may find that active duty service members will be easier to identify than veterans because they likely will list the military as their employer on a jail’s intake form. With regard to veterans, it is the AOC’s understanding that many individuals who have served our country will not acknowledge being veterans upon inquiry because they are confused about whether they officially qualify as

veterans for the purpose of receiving VA benefits. This is particularly true for persons who have served in the National Guard or the Reserves. Therefore, it may be preferable to ask, “Have you ever worn the uniform?” or “Are you currently serving or have you ever served in the Army, Navy, Air Force, Marine Corps, or Coast Guard or in the National Guard or Reserves?” as the initial inquiry. Another option would be to ask, “Have you ever served in the military?” These inquiries will capture a broad range of service members and veterans (regardless of whether they qualify as “veterans” for VA purposes), and the court/prosecutor/defense counsel can subsequently determine the exact nature of the service and identify any programs/services which might be available to that person. Some VTCs include veterans who served other countries while others limit participation to veterans of the United States Armed Forces.

It is also the AOC’s understanding that veterans often will deny being veterans because they are embarrassed about being arrested, they do not think they will be treated fairly if they identify themselves as veterans, or for various other reasons. For example, persons who have experienced MST often are unresponsive to this inquiry because they have been traumatized and are reluctant to discuss their military service or associate themselves with the military in any way. Although these individuals initially will not be identified as veterans, the attorney who is retained or appointed to represent such an individual often will discover the person’s status during the course of the representation. The attorney can then communicate this status to the court.

On a related issue, judges and attorneys must be aware that some individuals who have never served in the military will identify themselves as veterans in an attempt to receive favorable treatment. As with all potential VTC participants, their status can be verified through the VA. The VA currently is conducting a pilot project for an electronic system which would allow jails/courts to send the VA a list of persons who have been arrested and to receive a response which indicates whether each person is currently serving, or has ever served, in the armed forces. That system is not yet available nationwide.

Should The VTC Be Presided Over By A Trial Court Or General Sessions Court Judge?

Courts must next decide whether the VTC will be presided over by a general sessions court judge or a circuit/criminal court judge. The AOC recommends that judges who are creating VTCs consult with judges who currently are presiding over other problem-solving courts to identify the pros and cons of each option, including the availability of state or county probation services in each court. There are jurisdictional issues and other legal issues, but courts may ultimately conclude that the most important factor is which judge has adequate time and interest.

If time constraints preclude a single judge from presiding over every VTC session, judges can consider rotating. However, consistency is important in problem-solving courts, so it is preferable to have an offender appear before the same judge each time the offender appears in court.

Should The VTC Be A Pre-Adjudication Court, A Post-Adjudication Court,
Or A Combination Thereof?

The AOC recommends that courts which are considering creating VTCs consult with judges who currently preside over problem-solving courts regarding the pros and cons of establishing a pre-adjudication court, a post-adjudication court, or a combination thereof. This issue also is discussed in §§ 2.14-2.20 of The Drug Court Judicial Benchbook, which can be found at <http://www.ndci.org/publications/more-publications/-drug-court-judicial-benchbook>.

There are many factors which must be considered when making this determination, and the AOC will defer to those who have more expertise than the AOC. However, judges who are considering establishing pre-adjudication VTCs may wish to consider the fact that someone who is granted pretrial diversion or whose prosecution is not pursued by the district attorney pursuant to prosecutorial discretion pending successful completion of a VTC program will not be eligible for supervision by a state probation officer. Therefore, there will be costs associated with supervising those offenders. Also, as noted in the benchbook referenced above, “If there is little consequence for failing to complete the program, outcomes tend to be poorer. Thus, pre-plea diversion models tend to have less impressive effects because participants who are terminated are essentially put back in the same position, legally speaking, as when they were first arrested.”

Conversely, judges who are considering establishing post-adjudication VTCs may wish to consider the impact a conviction could have on service members and veterans. The impact incarceration could have on veterans’ benefits is discussed elsewhere in this report. With regard to service members, the general rule is that if someone is convicted of misdemeanor domestic assault or a felony or is under an order of protection, that person loses the right to possess a firearm. *See* 18 U.S.C. §§ 922(g), -921(a)(20); T.C.A. §§ 39-13-111(c)(6), 36-3-625, 39-17-1307. This could adversely impact a service member’s ability to continue serving in the military. There are some exceptions for military-issued weapons, but those exceptions do not apply if, for example, a misdemeanor domestic assault conviction is at issue. 18 U.S.C. § 925. Moreover, regardless of the firearms prohibition provisions and any applicable military/government exceptions, there is the potential that, subject to the discretion of the commander, the service member will lose his security clearance and/or will be discharged from the military if he enters a plea pursuant to judicial diversion (which the commander could consider equivalent to a conviction even though a judgment is not entered and, therefore, there is not a conviction), is convicted of any criminal offense, or is under an order of protection. This would have a financial impact on the service member as well as the service member’s family.

As noted elsewhere in this report, however, the arrest itself could result in revocation of the security clearance and/or discharge from the military regardless of the nature of the disposition. That decision is entirely within the discretion of the service member’s commander, and it often depends upon the service member’s history and the nature of the offense for which he was arrested.

Nature And/Or Number Of Prior And Current Criminal Offenses

There are practical and jurisdictional issues which must be considered when determining the parameters of a VTC, but public safety should be an overriding consideration. As noted below, however, the AOC is not stating that only minor offenders should be permitted to participate in a VTC. The AOC believes that the best way to approach this issue is for the court to consult with the local prosecutor, defense bar, victims' rights groups, treatment providers, and other relevant stakeholders before establishing the eligibility parameters for a VTC. After setting those parameters, functioning within that system for an appropriate period of time, and considering any available statistics and first-hand observations, the court and other VTC team members should periodically reevaluate and redefine the parameters as necessary.

When setting the initial parameters, the first question courts must answer is whether eligibility is based upon the offense for which the offender is charged or the offense for which the offender was convicted. This will depend upon whether the VTC is a pre-adjudication court, a post-adjudication court, or a hybrid. If it is a pre-adjudication court, the charged offense will be at issue because there has not yet been a conviction. If it is a post-adjudication court, the charged offense, conviction offense, or both may be considered. Similarly, whether persons who are charged with (or convicted of) misdemeanors, felonies, or both are eligible to participate in a VTC may depend upon whether the court is presided over by a general sessions court judge or a trial court judge.

The VTC team also must consider whether someone who is alleged to have committed a "violent" or "serious" offense should be excluded from eligibility for a VTC. If the VTC team intends to adopt such an exclusion, the team must clearly define those terms so there is no confusion regarding the parameters. However, the AOC believes that a case-by-case approach might be preferable to an across-the-board exclusion.

Previously, there was a trend to exclude violent offenders from participation in problem-solving courts. One reason for this trend was that victims' rights groups and other interested groups were opposed to "special treatment" for violent offenders. As a result, it was politically unpopular to assist those offenders. While such groups' concerns still exist and should be considered, it also should be recognized that many individuals who work for problem-solving courts or are involved in setting policy for those courts at the national level no longer believe that violent offenders should automatically be excluded. Indeed, these offenders are often the most likely offenders to fall within the high-risk, high-need category that a problem-solving court is designed to serve. Many minor offenders do not fall into this high-risk, high-need category and, therefore, are not good candidates for VTCs. Moreover, many of these "serious" or "violent" offenders qualify for, and are presumed to be good candidates for, community-based supervision such as probation or Community Corrections. If such an offender has a mental health or substance abuse issue, participation in a VTC would actually promote public safety because VTC participants are supervised much more closely than individuals who are sentenced to probation or Community Corrections.

While the violent/serious offender issue is relevant to all problem-solving courts, it is particularly relevant to a VTC. A service member is trained to always be in possession of his weapon. As a

result, upon re-entering civilian life, many veterans continue to carry loaded weapons. Therefore, regardless of whether a weapon is used during the offense at issue, there is a significant possibility that a veteran who commits a criminal offense will be armed when he does so. This would be true even if the offense is a relatively minor offense such as reckless driving, which is a common offense for veterans of OIF/OEF. During their deployment, service members drive at a high rate of speed and utilize evasive maneuvers (rapid lane changes, unpredictable movements, etc.), often driving down the middle of the road. If they fail to do so, they increase their chances of being killed or seriously injured by an improvised explosive device (“IED”). When a service member returns from deployment, this type of driving can result in a ticket and/or an arrest. Driving under the influence, domestic assault, and other assaultive offenses also are relatively common among justice-involved veterans, particularly if they have mental health or substance abuse issues.

When making eligibility determinations, however, a VTC should recognize that including violent offenders in a problem-solving court may adversely affect eligibility for grant funding. Even if a VTC opts for broadly-defined eligibility to give the VTC team the flexibility to evaluate each case on its own merits, the VTC may wish to automatically exclude certain offenders such as those who are charged with sex offenses or offenses which result in the death or serious bodily injury of a victim. Judges should consider, among other things, whether the available treatment facilities will treat the offenders at issue. For example, some treatment facilities will not accept sex offenders or violent offenders. A VTC which is utilizing such a treatment facility may, therefore, choose to exclude those types of offenders from eligibility for the VTC. With regard to sex offenders, a VTC should consider that some of the participants will be victims of MST. Requiring those individuals to participate in a VTC which includes sex offenders could be detrimental.

Finally, in addition to considering the nature of the current offense, courts may wish to consider the offender’s criminal history, including whether the criminal activity began prior to or after the offender’s military service. As a general rule, if the person is not a good candidate for community supervision, even if it’s the type of intensive supervision utilized in a VTC, the person should be excluded from the program.

Medical Conditions

Judges who currently are presiding over VTCs in states other than Tennessee noted that some veterans are taking narcotics to deal with chronic pain. If the veteran is unwilling or unable to stop taking those narcotics, the veteran likely will not be a good candidate for a VTC, which often precludes the use of drugs. In the alternative, if deemed appropriate by a qualified treatment provider, the court could allow the individual to participate in the VTC but a VTC team member could closely monitor the drug use by conducting random pill counts.

Relationship Between The Military Service, The Mental Health And/Or Substance Abuse Issues, And The Commission Of The Offense(s)

The VTC team also should determine what, if any, causal connection must be established between the offender’s military service and the alleged mental health or substance abuse issue

and/or between the alleged mental health or substance abuse issue and the commission of the charged offense(s). Some courts may conclude that these are significant considerations while others may conclude that a causal connection is not required.

Combat Veterans

Courts must decide whether eligibility for participation in a VTC will be limited by the nature of the offender's military service. As with other eligibility factors, courts may wish to evaluate this issue on a case-by-case basis or set initial parameters and reevaluate those parameters as necessary over time.

In the past, a service member's military occupational specialty ("MOS") clearly defined the service member's role. In the current military operations, a clearly-defined "front line" does not exist, and individuals who are serving in non-combat roles routinely find themselves involved in potentially life-threatening situations or exposed to emotionally-disturbing scenes. For example, someone who is serving in an administrative capacity on a military base in a combat theater will be subjected to the same mortar fire as everyone else who resides on that base. A person who has a non-combat MOS would be exposed to IEDs when being transported in a convoy, and could be exposed to dead bodies, body parts, and great destruction on or off the base. Moreover, someone who has a non-combat MOS may be required to perform combat-related duties.

Mental health issues and substance abuse issues also are suffered by service members who never serve in a combat theater. For example, MSTs often occur outside of a combat theater, and TBIs can be caused by incidents which occur during training exercises. Similarly, a service member who is serving as part of peacekeeping mission may witness atrocities but be powerless to help due to the limited peacekeeping role. Finally, service members who serve during natural disasters will be exposed to death and destruction.

If a court wishes to limit participation to "combat veterans," the court should clearly define the parameters. For example, would anyone who served in a combat theater be eligible, would the person be required to have a combat-related MOS, or would the person have to prove that he actually engaged in combat?

Screenings

Even if a county identifies an offender as a veteran or service member, the offender should not automatically be considered for participation in a VTC. For a VTC to be effective, participation must be voluntary. Therefore, the AOC recommends that a VTC require an offender to submit an application if he is interested in participating in a VTC. The AOC possesses sample applications, which it will forward to interested judges upon request.

After an offender submits an application, the offender must be subjected to both a screening and an assessment. A screening is distinguishable from an assessment in that the former determines eligibility and appropriateness for participation, while the latter identifies the nature and scope of the needed treatment and services. After a court determines the eligibility requirements for the VTC, it will be necessary for potential participants to go through a legal screening to determine

legal eligibility, including the consideration of the risk to public safety and the offender's willingness to comply with the VTC's requirements. Potential participants also should be required to undergo a clinical screening to determine, among other things, whether treatment would be appropriate/necessary as well as whether the person is willing to submit to any necessary treatment.

It is important to remember that the initial clinical screening is very limited in scope and does not result in a diagnosis. Therefore, although these initial screenings are helpful and serve their limited purposes, the person must undergo a clinical assessment before being treated. A clinical assessment results in a diagnosis as well as the formulation of an appropriate treatment plan. Individuals who participate in problem-solving courts typically will undergo multiple assessments so their treatment plans can be adjusted as their needs change over time.

How quickly the initial screening and assessment can be completed and who will perform the screening/assessment will depend upon such things as the eligible population for the court at issue (VA eligible only, anyone who has served, service members, etc.), the caseload/schedule of the court personnel, the caseload/location of the mental health/drug/VA facility, the availability of necessary transportation, whether the VTC is a pre-adjudication or post-adjudication court, whether the offender is incarcerated or has been released on bond, and whether the issue is a substance abuse issue, a mental health issue, or both. Every county functions somewhat differently, so the AOC does not recommend a statewide, uniform procedure for these screenings/assessments.

In some VTCs, the court coordinator initially gathers as much information as possible from the potential participant, the potential participant's family, the court's files (including information regarding the alleged offense(s) and any previous offenses), and any available medical or military records. The coordinator then provides the prosecutor with this information, and the prosecutor reviews the information, consults with the victim, and makes a determination regarding whether the offender should automatically be excluded from participation. Assuming the prosecutor does not automatically exclude the offender, the offender then undergoes a formal assessment, after which the entire VTC team determines whether the offender should be permitted to participate in the VTC. The gatekeeper function performed by the prosecutor in this scenario is important due to courts' limited resources. In other words, if the prosecutor determines that the offender is not an appropriate candidate for VTC participation, subjecting the offender to a formal clinical assessment would be an unnecessary expenditure. This is just one example of a procedure utilized by a VTC. A Tennessee court may determine that an entirely different procedure is appropriate for its VTC program.

If the offender at issue is eligible for medical benefits through the VA, the VA must conduct the required clinical screening and assessment.⁴ The VA will only provide treatment that its employees determine is medically necessary. The time it takes to complete this process will depend upon the court's proximity to the VA's clinics and medical centers as well as the available resources at those facilities.

⁴ This report includes information regarding the procedure which must be followed if a veteran is seeking formal approval for medical benefits through the VA. However, an informal initial screening can be conducted at http://www.va.gov/healtheligibility/Library/Tools/Quick_Eligibility_Check/.

Although experts, as opposed to judges or other court personnel, will be conducting the necessary medical assessments and screenings, various screening tools are discussed elsewhere in this report, and PTSD screening information can be located on the VA's website at <http://www.ptsd.va.gov/PTSD/professional/pages/assessments/list-screening-instruments.asp> and http://www.ptsd.va.gov/PTSD/ptsd_search.asp?SECT=2&QT=screening+tools&RPP=20.

Privacy/Confidentiality/Constitutional Issues

Prior to creating a VTC, a court should consider entering into a memorandum of understanding ("MOU") with the VA and any other entity with which the VTC will frequently be interacting. This will eliminate the potential for confusion regarding their respective responsibilities and expectations. The AOC possesses sample MOUs, which are available upon request, and MOUs also can be found on numerous websites cited in this report, including www.NDCRC.org. MOUs, while helpful, do not resolve the confidentiality and privacy issues.

Although courts are not covered entities for the purpose of the privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA") unless the courts are the actual treatment providers, problem-solving courts are provided with treatment information from covered entities and, therefore, should make every effort to comply with HIPAA. For additional information regarding that issue, judges who are considering creating a problem-solving court may wish to consult with a judge who currently is presiding over such a court. Judges also may wish to consult the Tennessee Department of Health's website at <http://health.state.tn.us/HIPAA/index.htm>.

In addition to privacy considerations regarding records created by a court, courts also must address confidentiality issues regarding records it wishes to obtain. Much of the information required by a VTC to adequately address an offender's mental health and substance abuse issues is confidential, and VTCs will not be provided with access absent a waiver by the offender. For example, if a VTC wishes to obtain a copy of the veteran's medical records from the VA, the veteran must complete and submit VA Form 10-5345 (Request For And Authorization To Release Medical Records or Health Information), which can be found on the VA's website at <http://www.va.gov/vaforms/medical/pdf/vha-10-5345-fill.pdf>. If necessary, a veteran also can authorize a VTC's treatment provider (if it is a non-VA provider) to release information to the VA. To do this, the veteran must complete VA Form 21-4142, which can be found at <http://www.vba.va.gov/pubs/forms/VBA-21-4142-ARE.pdf>. If a veteran has not applied for benefits through the VA, the VA's records will be very limited and it may be necessary to request records from the Department of Defense.

VTCs also may need to obtain access to the VA's records regarding a VTC participant's financial benefits. VTCs often provide veterans and service members with guidance regarding the proper way to manage their financial assets. Many veterans are not skilled at budgeting and, as a result, will have difficulty becoming productive members of society after graduating from a VTC even if the VTC resolves their mental health and substance abuse issues. This is particularly true for drug abusers, who routinely spend any available funds on drugs.

Veterans who participate in a VTC may apply for disability compensation benefits through the Veterans Benefits Administration (“VBA”) after being informed of this available benefit. If the veteran qualifies and is approved, the veteran will begin receiving monthly checks from the VBA. Eligible veterans also will receive back pay for the period of time during which they were eligible for, but did not receive, disability compensation. For example, a VTC staff member informed the AOC that one of its participants received \$30,000 in back pay.

Numerous VTCs emphasized to the AOC that it is crucial for a VTC to have access to information regarding any income a VTC participant is receiving from the VBA. In addition to monitoring a veteran's expenditures and educating the veteran regarding the appropriate way to budget, a VTC team needs to be aware that someone who is inclined to “blow” an entire paycheck on drugs over a weekend is now receiving a substantial amount of income. The VA does not have a form which is designed to give courts or other interested persons access to information regarding monetary benefits a veteran is receiving from the VBA. However, the VBA will provide this information to a court upon receipt of a court order accompanied by a waiver or consent form which has been signed by the veteran at issue.

There are numerous other ethical, confidentiality, legal and constitutional issues related to problem-solving courts. For additional information and forms regarding these issues, courts may wish to consult Chapters 8-10 of The Drug Court Judicial Benchbook. This benchbook can be found at <http://www.ndci.org/publications/more-publications/-drug-court-judicial-benchbook>. Courts also may wish to consult the following resources:

State v. Stewart, No. W2009-00980-CCA-R3-CD (Tenn. Crim. App., filed Aug. 19, 2010, at Jackson)

<http://spa.american.edu/justice/documents/1936.pdf>

<http://www.ndci.org/sites/default/files/nadcp/ethicalconsiderations.pdf>

<http://www.ndci.org/sites/default/files/nadcp/federalconfidentiality.pdf>

<http://www.ndci.org/sites/default/files/ndci/Mono4.CriticalIssues.pdf>

www.ndci.org/law

www.nderc.org

Mentors

As with the other issues which are addressed in this report, there are differing views regarding some aspects of the mentoring issue. Based upon the AOC’s research, training, and interviews, though, there appears to be universal agreement that mentors are an important component of a VTC or veterans court docket. Each court should determine what procedures are most appropriate for the county or judicial district in which the court is located. However, the information below may be helpful in identifying and resolving the pertinent issues.

Role of the Mentor

As a general rule, a mentor does not give legal advice, does not serve on the VTC team, and should refrain from criticizing the court or the court’s staff when speaking with a defendant. If a

defendant is unhappy with an aspect of his treatment or the legal issues associated with the criminal proceedings, the mentor should refer the defendant to a member of the VTC team.

A mentor's primary role is to serve as a resource and to provide emotional support and encouragement. The majority of people who have served in the military have a "warrior mentality" and, as one VTC staff member stated, feel as if they should be "lean, mean fighting machines" who do not need help from anyone for any reason. If they have mental health or substance abuse issues during or after their service, they do not want to admit that they need help. This can be for one of the following reasons or for an unrelated reason: (1) There is a stigma attached to admitting you have a problem and seeking help; (2) They fear that their military careers will suffer if they admit to having mental health or substance abuse issues; (3) They have survivor guilt and think they should not be complaining about "minor" mental health/substance abuse issues when others have died and/or they think they don't deserve help because they deserve to be punished for failing to do more to help someone who died; (4) They assume that everyone who served feels the same way and that it's just a "normal" reaction to what they went through; and (5) They think they're strong enough to help themselves. The mentor's role is to counter the warrior mentality and to convince the defendant that it is okay to seek and receive help. It is important to remember, though, that the mentor is not a counselor. The treatment professional, not the mentor, should provide any necessary counseling and related treatment.

In addition to providing emotional support, a mentor can assist a defendant with issues which are unrelated to the disposition of the criminal charges. One VTC graduate explained that he was completely overwhelmed by the paperwork and bureaucracy associated with seeking VA benefits. While having a defendant perform some tasks on his own will give him confidence and help with his recovery, mentors can provide some assistance, particularly for defendants who are in the very early stages of the VTC program and are easily overwhelmed.

Defendants often will share problems (such as not having enough money to buy a bus pass to get to court or to a treatment appointment) with mentors that they are too embarrassed to share with the judge during a court proceeding. Some mentor programs raise funds so they can provide defendants with such things as bus passes, eye glasses, furniture, funds for electric bills or car payments, etc. One VTC mentioned a defendant who desperately needed employment and housing. Unbeknownst to the defendant, one mentor owned an apartment complex and another mentor owned a company, so the mentors were able to provide both employment and housing. As noted above, mentors also assist defendants in accessing veterans' benefits and any other benefits to which they are entitled and which will assist them in their recovery.

With regard to other types of assistance which can be provided by mentors, one VTC judge explained that a defendant was behaving in an immature fashion, showing up late for court hearings, and otherwise failing to comply with the VTC requirements. A mentor addressed these issues with the defendant, explaining how important it was for him to comply with the court's requirements and how everyone on the VTC team was trying to help him. The mentor also taught the defendant how to use the day planner the court had given him. The judge said there was a significant change in the defendant's attitude following the mentor's intervention.

A VTC also must address confidentiality issues as they relate to mentors. The VTC must decide whether, and under what circumstances, a mentor will tell the judge or another member of the VTC team something that the defendant told the mentor. Some courts feel strongly that a mentor is not part of the VTC team, is not a probation officer, and should not repeat anything the defendant says unless there are extenuating circumstances such as a mentor's belief that the defendant intends to harm himself or someone else. However, a member of one court's team expressed her view that defendants are more honest with mentors than with VTC staff, that mentors "listen with a different ear" than other VTC staff members, and that the defendant's recovery will be more successful if a mentor shares relevant information with the team. Courts may find, however, that a volunteer mentor will object to being required to share information with the VTC team since a mentor's goal is to help the defendant as opposed to behaving like a probation officer or another member of the VTC team. Regardless of which theory a court adopts, it is extremely important for the VTC to confirm that a defendant clearly understands a mentor's role, including whether statements made to a mentor are confidential or could be repeated to the VTC team.

The level of a mentor's involvement with a defendant might vary depending upon the VTC phase. For example, a defendant who is in the first phase of the program may not be emotionally ready to speak to a mentor, and a defendant who is in the final phase of the program may not need as much support from a mentor. In contrast, a defendant who is in one of the middle phases of the program may require considerable assistance and emotional support.

Similarly, defendants who have mental health issues may be interested in talking with a mentor on some days but not on others. It is important for the mentor coordinator, the VTC team, and other court personnel to receive training from a mental health professional regarding how to deal with persons who have mental health issues. For example, individuals who suffer from PTSD often do not like being approached from behind. Therefore, if a veteran who is suffering from PTSD is being taken into custody for a VTC violation, the judge should warn the veteran that an officer is going to handcuff him, and the officer should consider approaching the veteran from the front instead of approaching him from behind. Similarly, if a veteran who is suffering from PTSD is uncomfortable in crowds and/or in dark places, giving the veteran a gift card to a movie theater would not be the most appropriate manner of rewarding the veteran for meeting a VTC goal.

Whether a defendant is assigned to one mentor or rotates among multiple mentors may depend upon the number of available mentors. It also may depend upon the particular VTC's philosophy or a mental health expert's advice. Some courts believe that the veteran should always be assigned to the same mentor so the veteran does not have to explain his history and issues to multiple people. In contrast, some courts believe that it is helpful for a veteran to be exposed to multiple mentors since each mentor has something different to offer. If a mentor coordinator rotates the mentors due to the VTC's philosophy or because the VTC does not have an adequate number of mentors, it would be helpful to have a book in which each mentor makes notes regarding his conversation with a defendant so the next mentor will have access to that information. Moreover, even if a court chooses to rotate the mentors, the mentor coordinator may wish to assign a single mentor to a defendant who is having particular difficulty adjusting to treatment or to the VTC requirements.

With a defendant's permission, mentors should consider talking with the defendant's family members in addition to talking with the defendant. Mentors learn things from family members that they do not learn from defendants since the families have a different perspective. Mentors also can assist family members who are entitled to benefits through the VA or other agencies.

How often a mentor communicates with a defendant likely will vary depending upon each defendant's circumstances. In some courts, the mentor speaks with the defendant for 15-20 minutes after each court session, calls the defendant once per week to confirm that the defendant is doing well and to encourage the defendant, and calls to remind the defendant about court dates and other required appointments.

Selecting Mentors

The mentor coordinator is responsible for selecting mentors, and the coordinator may wish to have mentor candidates observe court proceedings and/or talk with current mentors prior to commencing the application process. The coordinator should be a veteran who is familiar with the VA, the community (including available services and resources), and the court system. Although the mentor coordinator's position could be a paid position if resources are available, mentors should be volunteers. Moreover, defendants will have the most productive relationships with mentors who have the most in common with them, so it is important to have a diverse pool of mentors.

The most important requirement for a mentor, including the mentor coordinator, is that the person has previously served, or is currently serving, in the military. The following categories, among others, should be considered when selecting mentors and/or when determining which mentor(s) should be assigned to each defendant: (1) branch of service; (2) type of service (combat experience vs. non-combat experience, National Guard vs. active duty, occupational specialty (tank driver vs. sniper), etc.); (3) personal interests; (4) family history; (5) gender; (6) age; (7) ethnicity; and (8) mentor candidate's familiarity with issues which will be helpful in assisting defendants (mental health, employment, transportation, veterans' benefits, education, etc.). It is not mandatory for the defendant and the mentor to be the same gender, but the defendant may be more comfortable with a mentor of the same gender if, for example, the defendant is a victim of MST and the perpetrator was a member of the opposite gender. It is very important to pair persons who served in the same branch of the military if at all possible.

The AOC is not endorsing any of the listed groups, but VTC staff members, conference speakers, and other individuals who are involved with VTCs informed the AOC that the following groups often are consulted when a court is attempting to recruit mentors: Women Veterans of America, Marine Corps League, National Association for Black Veterans, Operation Stand Down, Veterans of Foreign Wars, Military Order of the Purple Heart, American Red Cross, The American Legion, Disabled American Veterans, Vietnam Veterans of America, Paralyzed Veterans of America, Elk Lodge, Blue Star Mothers of America, Inc., Wounded Warrior Project, The National Exchange Club, Iraq and Afghanistan Veterans of America, Hope For Heroes Foundation, The Salvation Army, Volunteers of America, AMVETS, Narcotics Anonymous, and

Alcoholics Anonymous. Courts also send representatives to special events such as a Marine Corps birthday party in an effort to recruit veterans to serve as mentors.

In addition to contacting these types of service organizations, courts should recruit local, state and federal employees or retirees who are veterans and who are familiar with programs which could benefit veterans. This could include, but would not be limited to, county veterans service officers as well as employees/retirees who work(ed)/volunteer(ed) for the VA, TDVA, United States Department of Labor, Tennessee Department of Labor and Workforce Development, Tennessee Department of Mental Health and Substance Abuse Services, Tennessee Department of Human Services, Tennessee Military Department, law enforcement agencies, and Vet Centers (often trained in PTSD/TBI issues). Courts also could recruit mentors from the private sector, particularly if the candidates have access to housing or employment opportunities for defendants or if they are teachers, social workers, or attorneys (not an attorney who is associated with the VTC).

Mentors who are retired are often available to attend every VTC docket. In contrast, younger mentors and/or mentors who are in the National Guard or the Reserves are often juggling family, school, and employment responsibilities, so their schedules may not be as flexible. The latter may wish to consult with their employers and explain the services they are providing. The employer – particularly if the employer is a state or federal agency – may be willing to assist the employee by allowing him to participate in VTC proceedings without being required to take annual leave or a reduction in pay for the time the employee is out of the office. It is important to pair defendants with mentors who are in similar age groups, though, so it is better to include some part-time, young mentors than to exclude them completely simply because they anticipate missing some court dates.

Courts also should consider whether a mentor candidate should be excluded because he has a criminal record, is a recovering drug addict or alcoholic, or received something other than an honorable discharge. Many courts require background checks for mentor candidates but consider the criminal record/recovery/discharge issues on a case-by-case basis.

On occasion, a VTC graduate will request to become a VTC mentor. According to a VTC staff member, a VA counselor recommended that courts wait eight months after the graduation to confirm that the graduate is stable. As discussed elsewhere in this report, transition periods, including graduation from the program, are high-risk periods for persons who have drug/mental health issues and can result in relapses.

Regardless of the nature of the screening process, the mentor coordinator should learn as much as possible about the mentor candidate and should continue to monitor the mentor's behavior once the mentor is selected to participate in the VTC. As one coordinator stated, not all veterans are good people and even if they were, not all good people are good mentors. Coordinators should not be afraid to reject applicants or to fire mentors whose behavior is inappropriate. For example, if a mentor is telling the defendant to "stand up and be a man" instead of relying on professional mental health and/or substance abuse treatment, that mentor should be removed from the program or be subjected to additional training.

Training Mentors

The nature of mentor training will depend upon the scope of the mentors' responsibilities as determined by the court and mentor coordinator, but mentors should become familiar with VA benefits, other available resources for veterans and service members, and the court system. Mentors also should be trained on the appropriate manner in which to communicate with persons who suffer from mental health and/or substance abuse issues. Regardless of the nature of the initial training, the mentor coordinator may wish to meet with the mentors periodically and/or provide additional training/presentations as needed. The mentor coordinator also should provide mentors with a list of resources and contact numbers/names for pertinent agencies.

Resources

Judge Russell's (founder of VTCs) VTC is in the process of revising the policy/procedure manual for its mentors and has kindly agreed to share it. When it becomes available, the AOC will distribute it to anyone who requests a copy. The AOC has a copy of the current version of the manual and related materials, and the AOC will forward those upon request.

Archived webinars on mentor issues and other problem-solving court issues are posted by the National Drug Court Resource Center at www.ndcrc.org/node/182.

Transportation

Individuals who have mental health and/or substance abuse issues often have difficulties with finances and interpersonal relationships. One of the byproducts of this is that these individuals have limited access to transportation because they cannot afford to own a vehicle and they have few, if any, family members or friends who are willing to provide transportation. Because problem-solving court participants must attend court hearings, supervision meetings, and treatment appointments on a regular basis, limited access to transportation is a significant obstacle to participating in such a court. For this reason, some problem-solving courts limit eligibility to persons who can establish that they have access to transportation. Although the AOC anticipated that the lack of transportation would cause a significant problem for VTC participants, the AOC has discovered some programs which will assist VTC participants with that issue.

The Tennessee Department of Transportation ("TDOT") receives funding from the Federal Transit Administration to provide statewide public transportation for individuals in all 95 counties. Federal Transit Administration grant funds are allocated to twenty-eight (28) transit providers across the state. TDOT provided the AOC with a list of its representative for each county, and the AOC will provide courts with a copy of this list upon request. The three programs which are available to assist qualified individuals, including veterans and service members, are the Job Access and Reverse Commute Program, the New Freedom Program and general public transportation services.

The Job Access and Reverse Commute Program, which is administered by TDOT grantees, provides employment-related transportation. Specifically, transit is offered for submitting a job

application, participating in a job interview, or traveling to work after obtaining employment. The program is available in the rural areas at no cost if the individual certifies that his income does not exceed the Health and Human Services Poverty Guidelines, or if the participant receives a referral from a county office of the Tennessee Department of Human Services. In the “urbanized areas” (Knoxville, Chattanooga, Memphis, Nashville, Clarksville, Cleveland, Jackson, and Johnson City), Job Access funding is used to provide extended hours or special routes, but passengers must pay public transit fares.

For individuals who have qualified disabilities, TDOT grantees participating in the New Freedom Program may provide no-cost transportation to employment-related activities as well as travel training for individuals who require assistance utilizing public transportation.

Finally, public transit agencies operating in rural areas offer “demand response” service which provides door-to-door transportation. Rural public transportation is open to the general public, and passengers must pay a fare. Rural public transportation operators cross county lines and frequently travel to large urbanized areas. This includes transport to VA medical centers and clinics. As a general rule, individuals must call the rural transit agency 24 to 48 hours in advance to make a reservation and also must provide detailed trip information. The one exception is that TDOT has a contract with the Tennessee Department of Correction (“TDOC”) to transport persons who are on state probation or parole (these individuals were supervised by the Board of Probation and Parole prior to the BOPP/TDOC merger).⁵ TDOT’s demand response service works with TDOC to provide guaranteed reservations for individuals who are referred for transport to treatment appointments or to employment interviews. TDOT also provides TDOC with a detailed accounting of the trip, including mileage, what time the individual was picked up and dropped off, and whether the individual requested any additional stops. This information is useful for the purpose of confirming that the individual complied with employment/treatment requirements, that the individual did so in a timely fashion, and that the trip did not include any additional/unapproved stops.

If a veteran travels to a VA medical center or clinic, the VA will provide mileage reimbursement under certain circumstances. For more information regarding eligibility for reimbursement, see <http://www.va.gov/healthbenefits/resources/BeneTravelFAQ.asp>. Even if a veteran is eligible for travel reimbursement, there are very specific rules regarding the parameters. For example, the veteran must travel to the closest VA facility which is capable of providing the necessary care. In other words, the VA will not reimburse a veteran who travels to a VA medical center if the veteran lives near a VA clinic which is capable of providing the care. Also, absent a waiver, veterans are required to pay a deductible for each trip. The AOC possesses an electronic version of the VA’s travel benefits summary, and the AOC will forward it to interested persons upon request.

Sometimes it will be necessary for a veteran to be seen by a doctor at a VA medical center as opposed to the local VA clinic. Veterans service organizations such as Disabled American Veterans often work with the VA to provide round-trip transportation from a VA clinic to a VA

⁵ The funding for the TDOC/TDOT contract is a grant which is scheduled to expire on June 30, 2013, and TDOC is unsure whether additional funding will be available after that date. Therefore, although the rural areas’ demand response service will continue after June 30, the TDOC/TDOT agreement may not continue after that date.

medical center. Courts should contact their local VA clinics for additional information regarding schedules and availability. The AOC also encourages courts to contact local Vet Centers. On occasion, Vet Center representatives will travel to a courthouse to provide limited mental health treatment for eligible veterans who are unable to travel to the Vet Center. Vet Center treatment eligibility is discussed elsewhere in this report.

Defense Counsel

In some VTCs, the attorney who is initially appointed to represent the defendant continues that representation while the defendant participates in the VTC. In other VTCs, defense attorneys are permanently assigned to the VTC, and those attorneys represent all participants. Defense attorneys who are interested in participating in a VTC or other problem-solving court may wish to refer to NDCI's publication entitled Critical Issues for Defense Attorneys in Drug Court at <http://www.ndci.org/sites/default/files/ndci/Mono4.CriticalIssues.pdf>.

Program Evaluations

A VTC should have a mission statement as well as goals and objectives. The court will be unable to determine if it is achieving its goals and objectives unless the court gathers and analyzes data. This is important for the purpose of determining such things as whether the court is reaching its intended population and whether the program's graduates have avoided relapses and/or subsequent arrests. If a VTC does not determine what is working and what is not working in its program, the VTC is destined to repeat its mistakes and will not be successful. Equally important is the fact that possessing this data will permit the court to provide potential funding sources and members of the local community with adequate data to support a request for funding or other types of support. It will be necessary for the court to possess a computer information system which is adequate for these purposes, and the court will need adequate staff to collect, record, and analyze the data.

Due to the confidentiality of the collected information, the court's computer system must be a secure system. The Tennessee Department of Mental Health and Substance Abuse Services ("DMH") currently utilizes the Tennessee Web Based Information Technology System ("TN-WITS"), which is a secure system Tennessee's drug treatment courts will begin utilizing in early 2013 due to the recent transfer of drug court supervision responsibilities from the Office of Criminal Justice Programs to DMH. VTCs are not included in DMH's supervision responsibilities at this time, but opportunities may arise in the future for the VTCs to work in collaboration with DMH and access the TN-WITS system.

Although various organizations are attempting to develop a nationwide standard for VTC data collection, this standard does not yet exist. Dr. Cary Heck, Associate Professor in the Department of Criminal Justice at the University of Wyoming, made a presentation at one of the national VTC trainings attended by the AOC, and Dr. Heck provided the AOC with a list of the types of data VTCs may wish to collect for program evaluation purposes. There are numerous listed items, but the list includes military categories such as branch of service, years of service, and rank, and non-military categories related to substance abuse and mental health issues. The AOC will forward this list to interested persons upon request.

The AOC possesses additional information regarding evaluation issues, and this information will be made available to courts upon request. Courts also may wish to consult with judges who currently preside over problem-solving courts and refer to The Drug Court Judicial Benchbook, which is available online at <http://www.ndci.org/publications/more-publications/-drug-court-judicial-benchbook>.

Costs

When deciding whether to create a VTC, a judge must consider the costs associated with such a court as well as the available resources and funding opportunities. Those issues are discussed in more detail elsewhere in this report.

Regional Courts

Judicial districts which have an interest in creating a VTC or veterans docket but do not have an adequate number of veterans or sufficient resources to do so may wish to work with other judicial districts to create a regional court. Due to the many logistical and jurisdictional challenges associated with such a court, the legislature should not mandate regional courts, however.

A regional court may be an attractive option for rural areas. Many service members/veterans reside in rural areas, and there are few resources available when service members return following their service. The problem, however, is that VA resources may be equally unavailable in those areas.

The AOC attended a presentation regarding regional courts which are currently functioning in Oregon and Missouri, and the AOC will discuss the presentation with Tennessee judges upon request. The AOC also possesses contact information for those courts, and the AOC will provide this information to Tennessee judges who are interested in speaking with the courts' coordinators.

COMMUNITY SUPERVISION

Close supervision of a VTC participant is important both inside and outside the courtroom. When the offender's behavior is being monitored outside the courtroom to ensure compliance with the program's requirements, this is referred to as community supervision. As part of this supervision, the court may wish to require the offender to agree to both announced and unannounced visits to such places as his home, bars he frequented prior to his arrest, and his place of employment.

Each VTC team will be required to determine who is responsible for performing this task. For example, a probation officer's supervisor may not permit the officer to conduct home visits, or a probation officer may not have been assigned to the team or to the offender. In those circumstances, it might be more appropriate for a law enforcement officer or the case manager to

perform this task. To allow for more random visits during the day and at night, it would be beneficial to have more than one person (ideally, persons who work different shifts) serve in this capacity.

Anyone who is responsible for community supervision of VTC participants should be trained and should be a member of the VTC team. While inappropriate behavior by the offender should be reported to the team and it is important for the team to have an accurate understanding of the offender's compliance, or lack thereof, with the program's conditions, the person who is conducting the random visits should not proceed as if the goal is to catch the offender doing something wrong. Moreover, the training should include guidance regarding the appropriate manner in which to deal with offenders who have mental health and/or substance abuse issues. For example, if an offender suffers from PTSD, there could be serious ramifications if a law enforcement officer has his hand on his gun when he enters the offender's home.

A person who makes home visits also should consider an offender's individual circumstances when determining the proper time and manner to perform those visits. For example, an offender who is suffering from PTSD would have an adverse reaction if someone banged loudly on his door in the middle of the night. If that offender reports that he has difficulty sleeping and is often awake during certain specified hours of the night, some of the unannounced overnight visits could take place during that time period but on unannounced days.

The visits should be conducted randomly as opposed to occurring on a particular day of the week at a particular time (or only during office hours). If the visits are not random, it will be difficult to capture an accurate picture of the offender's behavior because the offender will prepare for the visit and portray himself in the best light by refraining from consuming prohibited substances or by altering his behavior in some other manner.

Finally, these random visits will be an important tool in a court's attempt to address an offender's denial regarding his substance abuse. As previously noted, it is often difficult for substance abusers to recognize that they have a substance abuse issue and to accept that they need treatment for it. Conducting random drug screens will assist a court in demonstrating that an offender does in fact have a substance abuse issue. However, those screens will not be an effective tool if an offender finds a way to circumvent them or if the offender is abusing a substance which is not detected by the type of screen which is utilized by the court. In contrast, if a VTC participant continues to abuse substances, community supervision likely will expose that behavior. When the court confronts the participant following a random visit which exposes continued substance abuse, it will be more difficult for the participant to deny that he has a problem and to deny that he needs treatment.

SANCTIONS AND INCENTIVES

A court's response to an offender's behavior is an important aspect of a treatment court. Inappropriate behavior should be discouraged through the use of sanctions, and appropriate behavior should be encouraged through the use of incentives. Changing behavior, as opposed to

punishment, is the goal of sanctions. The effective use of these tools will improve the chances that the offender will stay engaged in his treatment and will successfully complete the program.

While it is important to recognize and praise successes, courts also should consider the challenges associated with the recovery process. For example, while the court should acknowledge the completion of inpatient drug treatment, the celebration should not be excessive because many offenders immediately begin using drugs upon release. This is especially true if there is not a seamless transition to outpatient treatment and/or monitoring.

If a VTC team member discovers that the offender is not complying with the court's requirements, he should contact the team immediately, and the team should address the issue as quickly as reasonably possible. Likewise, appropriate behavior should be recognized by the court and the team as quickly as possible. To address the issues in a timely fashion, it might occasionally be necessary to require the offender to appear in court on something other than a regularly-scheduled VTC docket day. The court should address every infraction, regardless of how minor it appears to be.

Lengthy incarceration is rarely an effective response to an infraction. Research shows that a 24-hour period of incarceration is a more effective sanction than a five-day period, and anything longer than five days has no impact on an offender's future behavior. Also, many offenders do not perceive incarceration to be a punishment because they play cards, watch television, and are fed on a regular basis. Courts should consider alternative punishments such as requiring an offender to clean dog cages at an animal shelter.

While some sanctions and incentives require expenditures, not all of them do. Applauding an offender's good behavior or telling the offender he did a good job will have an impact. Similarly, many VTCs have noted that a little bit of criticism goes a long way with veterans and that severe sanctions may not always be necessary to accomplish the court's goal if the court is merely attempting to get the veteran's attention.

Courts should be aware that sanctions which are typically used for substance abusers may not be effective for individuals who have mental health issues. Likewise, sanctions and incentives which are appropriate for non-veterans may not be appropriate for veterans. Courts may wish to consult with a mental health expert who has experience treating veterans. However, while each offender's situation is somewhat different, courts should treat offenders in as consistent a manner as possible. If the court cannot articulate why the punishment for one offender differs from the punishment for another offender for similar behavior, the punishment should not be different.

Finally, the nature of an appropriate response depends on the nature and severity of the violation, but an increase in drug use could demonstrate a need to adjust the treatment program, possibly from an outpatient program to an inpatient program. The court should rely on licensed clinicians when making this determination because placing the offender in the wrong type of treatment program could adversely affect the offender in addition to wasting resources. While treatment programs should be adjusted as necessary, treatment should never be used as a punishment.

Judges may wish to speak to Tennessee judges who preside over VTCs and other problem-solving courts because those judges likely will have suggestions regarding effective incentives and sanctions. The AOC has a list of incentives and sanctions which are currently being utilized by the Coffee County Mental Health Court, and the AOC will forward it to interested persons upon request. Also, the AOC attended a training regarding this issue and is available to discuss it upon request. Finally, there are some additional resources noted below.

For a list of examples of incentives and sanctions utilized by drug treatment courts nationwide, see the following website: http://www.ndcrc.org/sites/default/files/court_responses_nationwide-list_of_incentives_negative_reinforcements_and_sanctions.pdf

To read an NDCI publication entitled Ten Science-Based Principles of Changing Behavior Through the Use of Reinforcement and Punishment, see the following website: <http://tadcptn.org/p10%20Science%20Based%20Principles%20of%20Changing%20Behavior-Meyer.pdf>.

The Drug Court Judicial Benchbook also includes a chapter on incentives and sanctions, and the benchbook is available at the following website: <http://www.ndci.org/publications/more-publications/-drug-court-judicial-benchbook>

Webinars on incentives and sanctions are available through the National Drug Court Resource Center's website at www.ndcrc.org/node/182.

VETERANS TREATMENT COURT PHASES

Having phases in a problem-solving court is important because it provides structure for the participant, clearly establishes the court's expectations, and allows the participants to measure their success in identifiable increments. Due to the nature of their military service, structure is particularly important for individuals who have served, or are currently serving, in the military. The VTC's participant handbook should include information regarding these phases.

A problem-solving court is most successful if the offender is required to maintain 12 months of sobriety. Therefore, while an offender likely will conclude his formal drug/alcohol/mental health treatment prior to the conclusion of the 12-month period, it is important for the VTC team to continue monitoring the offender. Although the program lengths can vary, participation in a problem-solving court should average approximately 12 months for offenders with drug/alcohol issues, and 18-24 months for offenders with co-occurring disorders. The length of the program will be one factor for an offender to consider when determining whether he wishes to participate. A minor offender, for example, may prefer to serve a short sentence as opposed to entering a lengthy treatment court program.

As previously mentioned, problem-solving courts take a holistic approach and address numerous issues such as housing, education, and employment in addition to addressing the substance abuse and/or mental health issues. The goal is for the person to be a healthy, employed, law-abiding citizen at the conclusion of the program and thereafter. When determining the phases of the

program, the court should recognize that during the early stages of recovery it will be important for the offender to focus on his recovery as opposed to finding a job or furthering his education.

The number of phases, length of each phase, and requirements for each phase should be determined by the VTC team. The team members should be flexible and should reconsider their approach if they find that the initial approach is not working well. How quickly an offender moves through each phase will depend on the offender's individual needs and circumstances as well as whether the offender complies with the requirements of each phase. The team may wish to create a different track for offenders who receive inpatient treatment than the track for offenders who receive outpatient treatment. For example, phase one for an outpatient offender would likely be phase two for an inpatient offender since the inpatient offender would be focusing exclusively on treatment during the first phase.

The AOC is providing some general guidance below regarding VTC phases and is available for further consultation upon request. Much of the court phase information was provided by Judge Patricia Marks, who presided over a VTC in Rochester, New York, prior to her retirement and served as faculty during the one-week VTC training the AOC attended.

PHASE ONE

Some VTC representatives refer to phase one as the “show up phase” because some veterans who have mental health and substance abuse issues are capable of doing little more than “show up” for court hearings, treatment appointments, and supervision appointments at this early stage of recovery. Therefore, this phase could focus on completing treatment (including abiding by the rules associated with that treatment), participating in offense-related classes (domestic violence classes, for example), submitting to drug tests, reporting to a probation officer or case manager, securing stable and orderly housing, taking required medications, abiding by the law (such that there are no new arrests), abiding by probation requirements such as a curfew, if applicable, and making regular court appearances.

This also might be a good phase in which to require a veteran to determine whether he is entitled to any non-medical benefits through the VA, TDVA, or other agencies. If after considering the offender's physical and mental state the VTC team believes that the offender is capable of pursuing these benefits on his own, it would be beneficial to require him to do so because personally seeking and securing those benefits will provide the offender with a sense of pride and accomplishment. Otherwise, VTC mentors or team members can assist the veteran in this endeavor.

With regard to housing, the court might find it necessary to direct the offender to make alternative arrangements if the offender is, for example, living with someone who is using drugs. This could be somewhat problematic for offenders, though, if they have limited resources. Although the VA can provide some assistance for persons who qualify, there are very strict rules, and if an offender's name is on a lease the offender is not considered “homeless” for the purpose of receiving benefits even if the offender needs to move because a roommate is a bad influence.

The frequency of drug testing should be determined by the VTC team and will vary depending upon the offender's circumstances, the phase of the program, and the available resources. Typically, the testing is more frequent during the early phase(s) of the program, decreases in frequency thereafter, and increases again shortly prior to completion of the program. Transition periods, including approaching the end of a treatment court program, are critical periods for substance abusers, and relapses are not uncommon.

Regardless of the frequency, it is well settled that any testing should be random and observed or it won't be a successful tool in the offender's recovery. It also is recommended that courts utilize labs which are certified by the Substance Abuse and Mental Health Services Administration ("SAMHSA"). SAMHSA certifies labs as opposed to particular drug tests. At the very least, drug testers should check photo IDs and should observe the test. Not all facilities/labs do this.

The cost of a drug test varies depending on the type of test which is requested. However, it would be a mistake to test only for the offender's drug of choice because the offender will attempt to evade detection by taking a different drug. Courts also should be aware that drug tests are not foolproof and that a negative drug screen simply could mean that the drug test which was utilized was not designed to detect the drug which is being used by the offender. New drugs are being developed each day, and drug tests simply cannot keep up. Therefore, VTC team members should be cognizant of behavioral changes even if a drug test fails to detect drug use.

The AOC possesses additional information regarding drug testing procedures, methods of detecting attempts to "cheat" the drug test, shortcomings of particular drug tests, etc., and that information will be made available to courts upon request.

PHASE TWO

During the second phase of the problem-solving court program, a court could require the offender to devise an educational and/or vocational plan which could be executed at a later date (maybe later in this phase or in the final phase of the program). The court also could require the offender to participate in prosocial activities, which could include such things as performing community service or joining various community groups. It also would benefit the offender if the court required him to develop a budget or other financial plan. This should include a plan for paying applicable fees, costs and/or restitution associated with the offense at issue and/or with participation in the VTC itself. There may be programs through the VA or through community resources which will assist an offender who wishes to develop budgeting skills. Finally, the court could require the offender to attend AA/NA meetings, continue his treatment (if necessary), maintain sobriety, submit to random drug tests, and continue taking required medications. Of course, the nature of the requirements will vary depending upon whether the offender has a substance abuse issue, a mental health issue, or both.

Whether sobriety should be a requirement for an offender who has a mental health issue but who does not have a substance abuse issue is something for the VTC team to consider. If the offender's mental health medication cannot be taken with alcohol, it will be easier to answer that question.

If an offender has a substance abuse problem, the court may wish to consider precluding him from securing prescriptions for narcotics without the court's permission. Judge Marks provided the AOC with a copy of a letter which her treatment court participants were required to present to their doctors. The AOC will provide courts with an electronic copy of the letter upon request, but the text of the letter provides in relevant part as follows:

To Medical Treatment Provider/Doctor:

Your patient, _____ is a participant in a Monroe County Adult Criminal Treatment Court Program, and is court ordered to participate in a substance abuse treatment program. He/She has been assigned to this program due to ongoing and significant substance dependence.

Your patient has provided documentation indicating that you have prescribed medication with addictive properties as part of his/her treatment. Please verify your knowledge of the patient's involvement in chemical dependency treatment and that you feel the current course of treatment is necessary, as there are no other alternative forms of treatment that will effectively address the patient's medical needs.

To ensure that this is a valid prescription and you have received this letter, the participant must return this letter with the information below, and include an authorized signature.

Physicians Name _____

Address _____

Phone Number _____

DEA# _____

Prescribed Medications/Dosage/Date of Prescription/Amount Prescribed:

(Provider/Physician) Signature

Date

PHASE THREE

In phase three, the court may wish to add a requirement that the offender secure employment and/or attend school (or a GED program) on a full-time basis. As with other aspects of the treatment court program, the VTC team should be flexible and should consider each offender's individual circumstances when determining the nature of the requirements. However, the requirements should be as consistent as possible for all offenders. Absent this consistency, resentment may become an impediment to a successful program if some offenders feel that the court is treating them unfairly relative to other offenders.

GRADUATION

Each VTC handles graduation differently, but all VTCs praise the graduates' accomplishments and many of them give the graduates a VTC coin which displays military insignia as well as the name of the court. Coins have significance in substance abuse recovery programs and in the military, so VTC graduates appreciate receiving them. A VTC which is located in Philadelphia, Pennsylvania provided the AOC with one of its coins, and the coin is available for viewing upon request.

Many VTCs have an aftercare/alumni program, and this is particularly important for veterans who were treated for substance abuse issues. As previously noted, transition periods are difficult for substance abusers, and relapses are not uncommon. Therefore, a VTC team member should contact the graduate in person or via telephone on a monthly basis (if not more frequently), get an update on his progress, monitor him for signs of relapse, and make any necessary treatment or aftercare referrals.

TERMINATION/WITHDRAWAL FROM PROGRAM

The VTC team should discuss the circumstances in which an offender who is participating in a VTC should be terminated from the program. As discussed elsewhere in this report, the court should anticipate that offenders will commit minor violations of the court's rules. As such, those violations should result in a sanction as opposed to termination from the program. Termination would be more appropriate if the offender's continued participation is a threat to public safety or a threat to the integrity of the program, the offender commits a new offense which is a disqualifying offense for the program, the offender habitually violates the court's rules, or the offender is not improving and the court has exhausted available treatment resources. It should be noted, however, that termination is not permitted absent the procedural protections required by the relevant statutory and constitutional provisions. See *State v. Stewart*, No. W2009-00980-CCA-R3-CD (Tenn. Crim. App., filed Aug. 19, 2010, at Jackson) and Chapter 8 of The Drug Court Judicial Benchbook (<http://www.ndci.org/publications/more-publications/-drug-court-judicial-benchbook>).

Occasionally, it also may be necessary for a participant to voluntarily withdraw from a VTC due to a change in circumstances. For example, a request to withdraw may be due to a previously-undiagnosed medical condition which is terminal or which otherwise precludes the participant from completing the program.

COSTS AND FUNDING OPTIONS

As previously noted, the AOC's fiscal note support form is attached as Appendix A to this report, and it includes the AOC's comments regarding HB3394, which proposed the creation of VTCs in 2012. Some of the AOC's comments are procedural in nature, and others reference the bill's financial impact. The AOC submitted that form prior to conducting this study, and the AOC was unfamiliar with VTCs at that time. While some of the AOC's comments would differ

now that it has a better understanding of VTCs, many of the comments would remain the same. Therefore, interested persons may wish to review that form.

The costs associated with VTCs will vary greatly depending upon the community's available resources, the existence of a problem-solving court which can accommodate veterans and service members, the type of VTC (pre-adjudication, post-adjudication, hybrid), the availability of existing staff, and the size and scope of the VTC, including such things as whether veterans will only be eligible for participation if they are eligible for VA benefits. The AOC has identified potential costs and possible funding options below. The key to sustaining a VTC or other problem-solving court is diversified funding. Courts simply cannot depend upon one source for all funding needs.

Treatment And Screening Costs

There will be costs associated with screening, assessing and treating VTC participants. Although the VA is dedicated to providing veterans with necessary services, the VA has limited resources, and an increasingly large number of individuals are seeking treatment. Numerous individuals and publications have speculated that the VA does not have an adequate number of mental health and substance abuse treatment programs to serve veterans in a timely fashion and that the drawdown will exacerbate that problem. Moreover, although the VA gives treatment priority to certain categories of veterans due to its limited resources, the VA's priority list does not give treatment priority to veterans who have been charged with a criminal offense.⁶ If the necessary treatment programs are not available within a reasonable period of time, there is not an available cost-free state program, or a veteran does not qualify for VA benefits/treatment, the veteran will not be permitted to participate in the VTC, the court will be required to pay for the treatment, or the veteran will be required to pay for the treatment. For indigent veterans, the latter is not a viable option unless the treatment provider charges on a sliding scale based upon income.

Assuming that there is an available VA treatment program and assuming further that the veteran has transportation and/or that the program is conveniently located, some veterans will require longer-term treatment than the VA provides. Any additional treatment in the private sector will come at a cost. The AOC also notes that treatment provided by the VA is not always free of cost. Depending upon the nature of the treatment and the veteran's status, a co-payment may be required.

Finally, there may be circumstances in which the VA declines to provide substance abuse or mental health treatment to an otherwise qualified veteran. For example, if a veteran has previously participated in multiple VA inpatient substance abuse treatment programs, the VA may decline future requests for inpatient treatment. The rationale is that the VA provided the veteran with the required "tools" for recovery during the previous treatment, that reiterating the same information will not benefit the veteran (and, presumably, would not be cost effective for

⁶ The AOC read an article which indicated that veterans who are charged with criminal offenses are given treatment priority, and this was not consistent with information gathered by the AOC during its study. Therefore, the AOC contacted the VA and confirmed that criminal offenders are not given priority. For additional information regarding VA priority issues, see http://www.va.gov/healthbenefits/resources/priority_groups.asp.

the VA), and that it is the veteran's responsibility to utilize the previously-imparted tools/guidance to advance his recovery instead of reentering treatment.

With regard to active service members, treatment may be available on a military base or in the private sector via TRICARE (<http://www.tricare.mil>), which is the military's insurance.

Staff

A VTC cannot function without the required personnel, including the judge, prosecutor, defense counsel, law enforcement officer, probation officer, mentor coordinator, program coordinator, program evaluator, treatment provider and case manager. Although mentors should be volunteers, mentor coordinators are often paid by VTCs. The AOC assumes that a law enforcement officer and probation officer would not charge additional fees for their participation in a VTC. However, if a VTC is a pre-disposition court, it is unlikely that the veteran will be supervised by a probation officer who is paid by the county or the state. For example, as noted elsewhere in this report, state probation officers are not authorized to supervise someone who is granted pretrial diversion. If a state or county probation officer does not supervise a veteran or if the probation officer is not authorized to perform home visits and the VTC does not have a law enforcement officer on staff who is able to perform that task, the VTC will be required to hire someone to perform the supervision services.

As noted above, the court also will need a case manager, program coordinator, and program evaluator. A case manager oversees all aspects (treatment and non-treatment) of each participant's case and works closely with each participant from the moment the person enters the program to the moment the person graduates or is terminated from the program. It is possible for a probation officer to serve in this capacity, but only if the officer can fulfill all of the required duties, including remaining in close contact with the participant throughout all phases of the VTC. In contrast, the program coordinator is responsible for overseeing the entire program (including the budget and the functions of all VTC team members), coordinating with community-based providers, and securing funding.

Although the case manager and program coordinator should be two different people, it may be possible for one of those individuals to serve as the program evaluator as well. However, if the VTC has a large number of participants, the court may be required to hire more than one case manager. The number of people a court is required to hire also depends upon whether the court currently has any employees whose existing job duties and skills provide them with adequate time and expertise to perform VTC functions.

The AOC will defer to the District Public Defenders Conference and the District Attorneys General Conference regarding whether additional staff will be required, although the AOC anticipates that the answer will vary depending upon the specific language of any proposed legislation. Assuming the legislature does not file legislation, the AOC assumes that courts will establish VTCs or otherwise assist justice-involved veterans in whatever manner existing resources will allow. In other words, if a court is permitted to address veterans' issues within the existing framework of the court system and to create a separate VTC if resources allow, the AOC anticipates that there may not be additional personnel costs for prosecutors and public defenders.

In contrast, if the legislature mandates statewide creation of VTCs regardless of the current caseloads of prosecutors and public defenders, the AOC anticipates that additional staff may be requested. As previously discussed, VTCs and other problem-solving courts are time-consuming and labor-intensive endeavors, and they place a significant burden upon all VTC team members.

Miscellaneous Non-Treatment Costs

In addition to the costs listed above, VTCs may require expenditures for the following: (1) Drug testing; (2) Alcohol monitoring devices, such as SCRAM (Secure Continuous Remote Alcohol Monitor); (3) Incentives (gift cards, movie passes, bus passes, etc.); (3) Veteran transportation; (4) Secure computer program for evaluation purposes (if not utilizing DMH's TN-WITS system); (5) VTC team member travel; (6) Training; (7) Miscellaneous office supplies and postage; and (8) Screening for level of risk (As previously noted, high-risk, high-need offenders are the most appropriate offenders for participation in a problem-solving court).

It is possible that community partners would be willing to offset some of these costs. Similarly, if a veteran is being supervised by a state or county probation officer, that officer might provide drug testing and risk screening. However, VTCs likely will require more frequent drug testing than is permitted under standard probationary guidelines.

If the legislature mandates the creation of VTCs, identifies a recurring funding source, and directs the Department of Mental Health and Substance Abuse Services to administer the newly-created fund, the AOC will defer to that department regarding whether it will require additional staff.

Resource Mapping

As previously discussed, a problem-solving court does not focus exclusively on substance abuse and mental health treatment. Instead, the court focuses on any factors which may affect a participant's ability to become a productive citizen. Each VTC (or other problem-solving court) will be required to perform a resource mapping exercise to determine what resources are locally available. Judge Patricia Marks (New York VTC) recommended that problem-solving courts consider the following non-treatment needs and potential resources: (1) law enforcement/probation; (2) recreational/libraries; (3) mental health services; (4) family therapy; (5) government agencies/officials; (6) social services; (7) faith community; (8) community foundations; (9) service organizations; (10) schools/colleges/universities; (11) housing; (12) arts; (13) health; (14) employment/job training; (15) mentoring programs; (16) literacy programs; (17) treatment; (18) residents; (19) businesses; (20) community-based organizations; and (21) transportation. Judge Marks also noted that art therapy has been very successful in helping individuals who suffer from pain, and she noted that local schools might have art therapy programs.

During the resource mapping process, courts may wish to utilize the COCHS M.A.P. Tool (<http://www.cochsmaptool.org/>). This tool automatically populates some resources based upon the physical location the user enters into the system. The user can then add additional resources and also can tailor the system to a particular offender's needs. The AOC has identified various

community and government resources throughout this report, and there are many more available through links on the websites the AOC referenced.

State Legislative Funding

Neither the AOC nor any participant in this study has identified a recurring state revenue source which could be utilized to fund VTCs. Moreover, Tennessee's drug treatment courts and other problem-solving courts such as mental health treatment courts are not being adequately funded, and the AOC is concerned that diverting any funding sources to VTCs will cause additional hardship for the existing problem-solving courts. In January 2012, Governor Bill Haslam's Subcabinet Working Group submitted a Public Safety Action Plan which recognized the importance of expanding access to drug treatment courts and adequately funding those courts. See <http://news.tn.gov/system/files/PUBLIC%20SAFETY%20ACTION%20PLAN.pdf>.

Tennessee's drug treatment courts and other problem-solving courts are receptive to addressing veteran-specific issues. Indeed, the majority of the judges to whom the AOC spoke indicated that veterans currently participate in their problem-solving courts. Therefore, if a recurring funding source is identified, the AOC encourages the legislature to authorize additional funding for problem-solving courts which incorporate veterans into their programs in addition to authorizing funding for free-standing VTCs.

The AOC's fiscal note support form for HB3394 provided as follows with regard to the legislature's proposal to fund VTCs via a \$25.00 fine for criminal offenders:

With regard to funding, Section 14 proposes a \$25.00 fee for the four listed categories of persons. As previously noted, this legislation authorizes the court clerk to take \$5.00 of this fee (it's unclear whether this is in addition to the clerk's currently-authorized commission). In addition to considering how much of the \$25.00 clerks will be taking, Fiscal Review should consider how many offenders will actually pay the \$25.00 fee. Approximately 75% of criminal offenders are indigent and will not be capable of paying such a fee or any other costs/taxes/fines associated with their prosecution. Given the current state of the economy as well as the numerous fines/fees/taxes imposed upon litigants in criminal courts, it is unlikely that the remaining 25% of the offenders will be capable of paying their court bills in full. Based upon the relevant statutes and other pertinent information, the automated system utilized by many clerks' offices prioritizes (and distributes) incoming payments in the following order: state litigation taxes, county litigation taxes, clerk fees, other fees due to the county (officer cost, etc.), other fees due to the state, fines, and restitution. Because offenders are unlikely to pay their bills in full and because the revenue which is generated must be used to satisfy so many other obligations prior to being utilized for the veterans courts, the AOC believes that the \$25.00 fee imposed by this legislation is unlikely to generate a substantial amount of revenue.

While the AOC believes this is an accurate assessment, there are additional considerations which were not mentioned. For example, any revenue generated by such a fee (or any other proposed

recurring revenue source) would not be accessible immediately by VTCs because it would take time for those fines to be assessed (at the conclusion of a criminal proceeding) and paid, and it also would take time for those payments to accumulate in any meaningful way. Indeed, it is the AOC's understanding that it took approximately three years for the drug court fees to generate substantial funds and that a non-recurring fund of \$1,000,000 was initially utilized to support the drug treatment courts. Therefore, even if the legislature identifies a recurring funding source for VTCs, the AOC encourages the legislature to provide non-recurring funding for the VTCs' initial years of operations.

Additionally, the AOC notes that VTCs are designed to help justice-involved veterans and service members who have substance abuse and mental health issues. While the AOC does not dispute that this is a worthy cause, the AOC questions why the burden of funding this service should be borne solely by criminal offenders as opposed to being borne equally by all Tennesseans.

Pending Federal Legislation

As the AOC noted in its interim report, H.R. 5326 appropriates \$4,000,000 for veterans treatment courts. It has passed the House of Representatives but has not passed the Senate. While \$4,000,000 is not adequate to fund the numerous VTCs throughout the country and courts likely will be precluded from utilizing those funds for violent offenders, any funding efforts by Congress should be encouraged.

Other Funding Sources

During the AOC's study, multiple participants mentioned the availability of federal grants. The AOC agrees that grants are one source of funding for VTCs and other problem-solving courts. However, VTCs will not be sustainable if they rely exclusively upon grants for funding. Courts must have adequate staff to complete the grant applications, to compile any required data, and to comply with any necessary reporting requirements following the awarding of a grant. Assuming courts have adequate staff to perform these tasks, which they do not, it is still important to recognize the limitations of grants. First, grants are competitive in nature. A court is not guaranteed to receive a grant merely because it applies for one. Moreover, grant funds must be used for very specific purposes, and there are many VTC expenses for which grant funds cannot be used. Most importantly, grants are of limited duration, and the court system should not create a VTC with grant funds if the court system does not have access to non-grant funding which is adequate to sustain the VTC at the same level following the expiration of the grant. Therefore, while grants are one source of funding they cannot be the exclusive source.

If a VTC or another problem-solving court is interested in applying for a grant which requires a letter of support, the Department of Mental Health and Substance Abuse Services ("DMH") has indicated that it will provide a court with such a letter upon request. Moreover, if a VTC is willing to go through the required certification process (during a time period in which that process is being offered), DMH has indicated that it may have limited operational funds available for VTCs. However, those are the same funds which currently are being utilized by Tennessee's drug treatment courts and, as previously noted, those courts are not being

adequately funded. Therefore, while the AOC applauds DMH for offering funds, the AOC is concerned that assisting VTCs will adversely affect drug treatment courts. The AOC encourages the legislature to increase funding for drug treatment courts and to identify a new and recurring funding source for VTCs.

Courts also may wish to consult with local groups which have received grants for veteran-specific programs or which may offer such programs even if not via a grant. For example, the Appalachian Regional Coalition on Homelessness, which is based in Johnson City but serves eight counties, received a grant to provide housing and support services for qualified veterans and their families.

Similarly, local organizations may provide services to any person, including a veteran. For example, in 2012 the Crumley House in Washington County was provided with \$100,000 in state funding “for the provision of programs and services on behalf of persons suffering from traumatic brain injuries.”

Funds or other support also may be available through one of the following sources, although some may state that the funding cannot be used for violent offenders: (1) Bureau of Justice Assistance (distributes Department of Justice’s funds); (2) Substance Abuse and Mental Health Services Administration (“SAMHSA”); (3) Department of Housing and Urban Development; (4) Department of Labor; (5) Center for Substance Abuse Prevention; (6) Center for Substance Abuse Treatment; (7) Veterans Administration – Supportive Services for Veteran Families Grant; (8) Veterans Service Organizations (DAV, VVA, VFW, etc.); (9) Faith-based organizations; (10) Social service agencies; and (11) Philanthropic arm or foundation of a local company. In contrast to a federal grant, philanthropic groups usually have a relatively simple application process and do not place restrictions upon the manner in which a VTC may utilize the funds.

Several VTC staff members also noted the importance of publicity. Individuals and companies often contribute financially to a VTC after the VTC staff members participate in a Veterans Day parade or the local newspaper writes an article about the VTC.

Finally, courts may generate funds by charging each participant a monthly fee. The AOC spoke to numerous VTC judges and staff members nationwide who stated that in addition to requiring participants to pay all court costs, fines, fees, restitution, child support, etc. over the course of the program, they charge monthly fees to help offset the costs of bus passes, drug tests, incentives and other VTC expenditures. Although some courts waive those fees for indigent offenders, they noted that the majority of the offenders, even if indigent upon entering the program, are no longer indigent after they begin their substance abuse treatment and are no longer spending their money on alcohol or other drugs. If a veteran is indigent, one VTC stated that it requires the veteran to make toys, knit small pieces of clothing, or make other items which are then donated to charity. This assists the community and also boosts the veteran’s self esteem because the veteran is helping others instead of focusing exclusively on his own problems.

Ethical Issues

There are ethical issues associated with VTCs, especially with regard to fundraising. Judges should consult with other problem-solving judges regarding the issues they've encountered. Judges also may wish to consult the Code of Judicial Conduct (Tenn. Sup. Ct. R. 10, RJC 3.7), and Chapter 10 of The Drug Court Judicial Benchbook (<http://www.ndci.org/publications/more-publications/-drug-court-judicial-benchbook>). If judges have additional questions, the Judicial Ethics Committee is available for consultation.

Due to potential ethical issues, many judges and VTC personnel with whom the AOC spoke stated that they created what's commonly referred to as a 501(c)(3) nonprofit organization. *See* 26 U.S.C. §501(c)(3). Others utilize a 501(c)(3) pass through, which allows them to pay a fee to partner with an organization which qualifies as a 501(c)(3).

Funding/Sustainability Websites

Courts also may wish to consult the following websites/publications regarding funding issues:

<https://www.bja.gov/> - Grant information - Bureau of Justice Assistance, Office of Justice Programs, Department of Justice

<http://www.samhsa.gov/grants/> - Substance Abuse and Mental Health Services Administration ("SAMHSA")

<http://www.grants.gov/> - Federal grant information generally

<http://www.nhtsa.gov/> - National Highway Traffic Safety Administration – For example, a grant might pay for alcohol monitoring devices for DUI offenders.

<http://ndcrc.org/sites/default/files/mono8.sustainability.pdf> - NDCI – Ensuring Sustainability for Drug Courts: An Overview of Funding Strategies

WHAT IS DIVERSION?

During its study of the VTC issue, the AOC discovered that many interested persons misunderstood the substantive and procedural provisions of pretrial and judicial diversion. As a result, there is considerable confusion regarding the manner in which diversion could be utilized by a VTC. A summary of each type of diversion is provided below.

Pretrial Diversion

Pretrial diversion is addressed in great detail in Tennessee Code Annotated Title 40, Chapter 15, Part 1, and the AOC will not include all of those details in this report. However, as a general rule, pretrial diversion is a procedure through which ***minor*** offenders, with the agreement of the District Attorney General, seek to avoid prosecution and potential incarceration by agreeing to

comply with certain conditions including, but not limited to, not committing criminal offenses, not engaging in specified activities, participating in a supervised rehabilitation program, and paying certain costs/fees/restitution. The Board of Probation and Parole (now the Department of Correction) does not have the authority to supervise individuals who are placed on pretrial diversion, and there are typically minimal reporting requirements as opposed to being subjected to intensive supervision.

An offender is not eligible for pretrial diversion if he is charged with: (1) a felony; (2) DUI; (3) a sex offense listed in Tennessee Code Annotated Title 39, Chapter 13, Part 5; (4) conspiracy or attempt to commit a Class E felony sexual offense under Title 39, Chapter 13, Part 5; (5) solicitation to commit Class D or E felony sexual offense under Title 39; or (6) certain misdemeanor offenses if the offender is an elected/appointed official. Assuming the offender is not disqualified due to the nature of his offense, the offender will still be ineligible if he has previously been granted pretrial diversion or judicial diversion or has a prior conviction for a Class A or B misdemeanor or for any felony.

If the offender is eligible for pretrial diversion and the District Attorney agrees that the offender is a good candidate, prosecution will be suspended for a specified period not to exceed two years. If the offender complies with the requirements, the charges will be dismissed and the offender will be eligible for expungement of his record. If the offender does not successfully complete the requirements of diversion, the District Attorney has the authority to proceed with the prosecution.

In 2011, the District Attorneys General Conference communicated with the Tennessee General Assembly regarding its concerns about pretrial diversion. There were three primary concerns. First, if an offender fails to comply with the requirements of diversion and the prosecutor opts to proceed with the prosecution, it is difficult for the prosecutor to locate witnesses and evidence for a crime which occurred years earlier. Second, if a prosecutor concludes that an offender is not an appropriate candidate for diversion, the trial and appellate courts review the denial of diversion to determine if the prosecutor abused his discretion. Anticipating this review, prosecutors spend a considerable amount of time drafting a written explanation regarding the rationale for the denial. The prosecutors explained to the General Assembly that they did not believe this was an efficient use of their limited resources. Finally, the prosecutors explained that determining whether an offender should be granted diversion/probation is a sentencing function which should be performed by a judge as opposed to a prosecutor. After considering the prosecutors' concerns, the General Assembly amended the pretrial diversion statute and, as a result, very few offenders are now eligible for pretrial diversion.

Judicial Diversion

Judicial diversion, which is addressed in Tennessee Code Annotated section 40-35-313, is similar to pretrial diversion in that prosecution is temporarily suspended after an eligible offender agrees to comply with certain requirements. In contrast to pretrial diversion, though, a person who is granted judicial diversion has been found guilty by a jury, has entered a guilty plea, or has entered a *nolo contendere* plea. However, the court does not issue a final judgment during the probationary period. If the offender does not successfully complete the requirements

of diversion, the court enters the judgment and the offender has a “conviction.” If the offender complies with the requirements of diversion, the judgment is never entered. With certain exceptions, an offender who successfully completes diversion may apply to have his record expunged.

The statute governing judicial diversion provides that an offender who is charged with one of the following is not eligible for judicial diversion: (1) a sexual offense (“sexual offense” is defined in the statute, and the offenses are listed); (2) a violation of 71-6-117 or 71-6-119 (deal with abuse/neglect/exploitation of impaired adult); (3) DUI; (4) a Class A or B felony; or (5) certain misdemeanor offenses if the offender is an elected/appointed official. An offender also is ineligible for judicial diversion if he has previously been convicted of a felony or of a Class A misdemeanor for which a sentence of confinement was served, or if he has previously been granted judicial diversion or pretrial diversion.

Unlike pretrial diversion, the Board of Probation and Parole (now the Department of Correction) has limited authority to supervise individuals who are placed on judicial diversion. However, this authority only extends to felons as opposed to misdemeanants.

PROCEDURES FOR IDENTIFYING AVAILABLE BENEFITS AND ASSISTANCE FOR VETERANS AND SERVICE MEMBERS

Despite its best efforts, the AOC was unable to identify a user-friendly, uniform procedure for judges and attorneys to utilize when determining the benefits to which veterans are eligible, identifying which agencies/groups provide those benefits, and assisting the veterans in accessing the benefits. There are complicated procedures and eligibility requirements at issue with regard to state, federal and non-governmental benefits. Indeed, there are numerous lengthy publications and websites which address those issues. The problem is exacerbated by the fact non-governmental organizations which purport to be veteran-specific service providers do not always act in the best interest of veterans. At this point, no agency/group/individual has compiled or endorsed a list of legitimate, non-governmental service providers for veterans. Given the large number of groups at issue and the potential for fraud, the AOC understands why the VA and the TDVA are being cautious in their approach to this issue. Indeed, the VA’s website for “Veterans Service Organizations” stated (as of 9/26/12):

The VSO web page has been removed while we determine a new process and policy by which VSOs and MSOs will be listed in VA’s directory. In the interim, please visit the Office of General Counsel’s Accreditation web site to find information on accredited VSO organizations and organizations chartered by Congress.

The accreditation website referenced by the VA can be found at the following address: www.va.gov/ogc/apps/accreditation/index.asp.

According to recent news reports, VA officials are “going after scams that charge veterans for help to obtain benefits. It’s illegal to charge a veteran for help filing a claim for disability or

pension benefits.” There are, however, some ways to locate reputable groups which provide services to veterans. The AOC references various groups and agencies throughout this report. Courts also can refer to the second page of VA Form 21-22 (<http://www.vba.va.gov/pubs/forms/VBA-21-22-ARE.pdf>), which lists “Recognized Service Organizations.” According to the form, those organizations are “national, regional, or local organizations recognized by the Secretary of Veterans Affairs in the preparation, presentation, and prosecution of claims under laws administered by the Department of Veterans Affairs.” The listed groups represent veterans free of charge if the veterans are seeking benefits.

Courts also can refer to the TDVA’s website to view a list of organizations which participate in the United Tennessee Veterans Association (“UTVA”) (<http://www.tn.gov/veteran/utva.shtml>). According to TDVA’s website, UTVA

provides communication, cooperation, and unity among affiliated organizations in matters relating to Veterans and their family members. UTVA has created and cultivated a cooperative and non-partisan relationship among all federal, state, local, private and public agencies and organizations that provide services to Tennessee Veterans and their family members.

UTVA has quarterly meetings during which the participants are provided with information which will assist them in providing services to veterans. Those meetings are open to the public, and TDVA’s website provides access to the minutes and videos of previous meetings. The next meeting is scheduled for December 4, 2012, and it will address rural veterans services.

A court which is considering creating a VTC, or is attempting to assist veterans even if the court does not intend to create a VTC, should consider contacting the organizations, individuals and agencies which the AOC has identified throughout this report. However, the AOC believes that courts ultimately will discover that the most effective method of identifying reputable service organizations and service providers is for each jurisdiction to handle that issue at the local level, where the stakeholders are likely to possess information regarding the sincerity and effectiveness of every entity which claims to provide services to veterans. For the purpose of securing veterans’ benefits, though, the two most important organizations are the United States Department of Veterans Affairs, and the Tennessee Department of Veterans Affairs, which are discussed below.

UNITED STATES DEPARTMENT OF VETERANS AFFAIRS AND TENNESSEE DEPARTMENT OF VETERANS AFFAIRS

There are many governmental and non-governmental entities which offer services to veterans and service members. However, the VA and TDVA are the two primary governmental agencies through which qualified veterans access available resources. The former provides a broad range of services, while the latter focuses on non-medical benefits. Both the VA and TDVA are dedicated to serving veterans, but they have limited resources, and they recognize that community partners serve an important role in providing veterans with the needed services.

Online VA Resources

Although the AOC is providing a brief summary of some aspects of the VA, a great deal of information can be accessed through the VA's website (www.va.gov). This includes, but is not limited to, the links listed below.

| TOPIC | LINK |
|---|---|
| Physical location of state, local, and federal resources for veterans | www.va.gov/landing2_locations.htm |
| Veterans services generally | www.va.gov/landing2_vetsrv.htm |
| 2012 Benefits Booklet | www.va.gov/opa/publications/benefits_book.asp |
| 2010 Organizational Briefing Book (includes organizational charts for the VA, VHA, VBA, and NCA) | www.va.gov/ofcadmin/docs/vaorgbb.pdf |
| VA Benefits In Brief – Summary of Available Benefits | http://www.vba.va.gov/pubs/forms/VBA-21-0760-ARE.pdf |
| Access to many VA forms | http://www.va.gov/vaforms/ |
| Information regarding available benefits and services, eligibility requirements, and application procedures | http://www.va.gov/opa/newtova.asp |
| Statistics regarding veterans | http://www.va.gov/vetdata/Quick_Facts.asp |
| VHA eligibility information | http://www.va.gov/healthbenefits/apply/veterans.asp |
| Informal assessment regarding VHA eligibility | http://www.va.gov/healtheligibility/Library/Tools/Quick_Eligibility_Check/index.asp |

VA Structure, Benefits and Eligibility Requirements Generally

The VA's three major line organizations are the Veterans Health Administration ("VHA") (www.va.gov/health/default.asp), Veterans Benefits Administration ("VBA") (www.vba.va.gov/VBA/), and National Cemetery Administration ("NCA") (www.cem.va.gov/). It is the AOC's understanding that the computer systems for VHA, VBA and NCA are not compatible and, therefore, do not "talk" to each other. Similarly, as a general rule the VA medical centers' computers do not share information with each other, and the Department of Defense's ("DOD") computers do not share information with the VA's computers. Although DOD and the VA are attempting to combine their files, this is a work in progress. Therefore, although there are exceptions, as a general rule DOD and the VA currently maintain separate records for each service member/veteran.

The types of services for which a veteran is eligible through the VBA, VHA, and numerous other governmental and non-governmental entities will depend, in part, upon the nature of the veteran’s discharge. As previously noted, the types of discharge are currently as follows: (1) Honorable; (2) General Under Honorable Conditions; (3) Other Than Honorable; (4) Bad Conduct; and (5) Dishonorable. As a general rule, veterans who received an honorable discharge or a general discharge under honorable conditions are eligible for benefits, and veterans who were dishonorably discharged are not eligible for benefits. Eligibility for veterans who received an other than honorable or bad conduct discharge is often discretionary and varies by the type of benefit.

VA and TDVA Facilities in Tennessee

There are VA medical centers, clinics (including CBOC’s (community based outpatient clinics)) and Vet Centers located throughout Tennessee. The clinics offer primary care services, some basic mental health services, and access to VA medical centers via Telehealth, which is discussed below. Vet Centers also are discussed below.

The TDVA has field offices throughout the state, and these offices assist veterans with non-medical benefits issues. Even if a field office is not located in a particular county, every Tennessee county is serviced by a field office. For example, the field office which is located in Washington County also services Greene, Unicoi, Carter, Sullivan and Johnson counties.

Although the table below includes the location of Tennessee’s VA medical centers, clinics, Vet Centers, and other VA and TDVA resources, information often changes, and the websites for the VA and TDVA should be consulted to confirm the continued accuracy of this information. Those websites also provide contact information for each of the listed offices/facilities.

In addition to the resources listed below, many counties have County Veterans Services Officers. The names and contact information for the service officers can be found at www.tnvso.com/id16.html. Their role is discussed elsewhere in this report.

| JUDICIAL DISTRICT | COUNTIES | VA MEDICAL CENTERS, OUTPATIENT CLINICS, AND VET CENTERS | VA REGIONAL OFFICE AND TDVA FIELD OFFICES |
|--------------------------|-------------------------------------|--|--|
| 1 | Carter, Johnson, Unicoi, Washington | Medical Center: Mountain Home / Johnson City VAMC Johnson City Vet Center | TDVA Field Office: Washington County |
| 2 | Sullivan | | |
| 3 | Greene, Hamblen, Hancock, Hawkins | Clinic: Morristown, Tennessee CBOC Clinic: Rogersville, | TDVA Field Office: Hamblen County |

| JUDICIAL DISTRICT | COUNTIES | VA MEDICAL CENTERS, OUTPATIENT CLINICS, AND VET CENTERS | VA REGIONAL OFFICE AND TDVA FIELD OFFICES |
|--------------------------|---|---|--|
| | | Tennessee CBOC | |
| 4 | Cocke, Grainger, Jefferson, Sevier | | |
| 5 | Blount | | |
| 6 | Knox | Clinic: Knoxville, Tennessee CBOC Knoxville Vet Center | TDVA Field Office: Knox County |
| 7 | Anderson | | |
| 8 | Campbell, Claiborne, Fentress, Scott, Union | | |
| 9 | Loudon, Meigs, Morgan, Roane | Clinic: Roane County CBOC (is in Rockwood) (on 10/11/12, the VA informed the AOC that this clinic would be closing temporarily) | |
| 10 | Bradley, McMinn, Monroe, Polk | The VA plans to open a clinic in McMinn County but, as of 10/11/12 the VA did not have an opening date available. | |
| 11 | Hamilton | Clinic: Chattanooga, Tennessee CBOC Chattanooga Vet Center | TDVA Field Office: Hamilton County |
| 12 | Bledsoe, Franklin, Grundy, Marion, Rhea, Sequatchie | | |
| 13 | Clay, Cumberland, DeKalb, Overton, Pickett, Putnam, White | Clinic: Cookeville, Tennessee OPC | TDVA Field Office: Putnam County |
| 14 | Coffee | Clinic: Tullahoma, Tennessee CBOC | |
| 15 | Jackson, Macon, Smith, Trousdale, Wilson | | |
| 16 | Cannon, Rutherford | Medical Center: Tennessee Valley Healthcare System – Alvin C. York (Murfreesboro) Campus | TDVA Field Office: Rutherford County |

| JUDICIAL DISTRICT | COUNTIES | VA MEDICAL CENTERS, OUTPATIENT CLINICS, AND VET CENTERS | VA REGIONAL OFFICE AND TDVA FIELD OFFICES |
|--------------------------|--|--|---|
| 17 | Bedford, Lincoln, Marshall, Moore | | |
| 18 | Sumner | | |
| 19 | Montgomery, Robertson | Clinic: Clarksville, Tennessee CBOC Clinic: Ft. Campbell | TDVA Field Office: Montgomery County |
| 20 | Davidson | Medical Center: Tennessee Valley Healthcare System – Nashville Campus Clinics: Charlotte Avenue and Nashville General Hospital at Meharry Clinic: Women Veterans Healthcare Center Nashville Vet Center | VA Regional Office: Nashville TDVA Field Office: Davidson County |
| 21 | Hickman, Lewis, Perry, Williamson | | |
| 22 | Giles, Lawrence, Maury, Wayne | On 10/11/12 the VA informed the AOC that it planned to open a clinic in Maury County in November 2012. | |
| 23 | Cheatham, Dickson, Houston, Humphreys, Stewart | Clinic: Dover (Stewart County), Tennessee CBOC | TDVA Field Office: Dickson County |
| 24 | Benton, Carroll, Decatur, Hardin, Henry | Clinic: Savannah, Tennessee CBOC | |
| 25 | Fayette, Hardeman, Lauderdale, McNairy, Tipton | Clinic: Bolivar, Tennessee CBOC Clinic: Covington, Tennessee (North Memphis) CBOC – is on Austin Peay Hwy in Memphis, so this table | |

| JUDICIAL DISTRICT | COUNTIES | VA MEDICAL CENTERS, OUTPATIENT CLINICS, AND VET CENTERS | VA REGIONAL OFFICE AND TDVA FIELD OFFICES |
|--------------------------|-----------------------------|---|--|
| | | also lists it for Shelby County | |
| 26 | Chester, Henderson, Madison | Clinic: Jackson, Tennessee CBOC | TDVA Field Office: Madison County |
| 27 | Obion, Weakley | | |
| 28 | Crockett, Gibson, Haywood | | |
| 29 | Dyer, Lake | Clinic: Dyersburg, Tennessee CBOC | TDVA Field Office: Dyer County |
| 30 | Shelby | Medical Center: Memphis VA Medical Center Clinic: Covington, Tennessee (North Memphis) CBOC – on Austin Peay Hwy in Memphis – this table also lists this facility for Tipton County Clinic: Memphis, Tennessee (South) CBOC Memphis Vet Center | TDVA Field Office: Shelby County |
| 31 | Van Buren, Warren | Clinic: McMinnville, Tennessee OPC | |

VA Form DD-214

To access many benefits, the veteran will be required to submit a copy of VA Form DD-214 (“DD-214”), which is often referred to as a Report of Separation or a Certificate of Release or Discharge from Active Duty. The AOC possesses a redacted copy of a veteran’s DD-214 and will share it with judges and other interested parties upon request. The DD-214 includes such information as dates of service, type of discharge (honorable, etc.), and branch of service. Depending upon the nature of a veteran’s service, it is possible that he will have multiple DD-214s since service members receive a DD-214 each time they are discharged from active duty. This will be particularly true of members of the National Guard and Reserves who have been activated.

In theory, the most recent DD-214 will be cumulative. As a practical matter, it is the AOC's understanding that the final DD-214 does not always accurately reflect a veteran's entire history. The AOC also has heard that the large volume of paperwork which is being generated as a result of the recent drawdowns has resulted in the misplacement of some documentation by the VA, and this could affect how quickly the VA processes requests for DD-214's and other benefits-related requests.

Veterans receive a copy of the DD-214 upon their discharge, so many veterans will have copies readily available. Many veterans also file their DD-214s with the Register of Deeds, and this can be done at no cost to the veteran. T.C.A. § 8-21-1001(b)(1). The AOC encourages service members to file their DD-214s with the Register of Deeds upon discharge so a copy will be available if the original is misplaced. Although service members are statutorily authorized to request that the social security number be redacted from the DD-214 upon its filing with the Register of Deeds, service members should be cognizant of the fact that the social security number is important for the purpose of securing benefits. Therefore, service members should inquire about the possibility of retaining the social security number on the filed copy while redacting it from the version which is publicly accessible.

If a justice-involved veteran does not possess a copy of his DD-214, there are multiple methods of securing a copy at no cost. If a Veterans' Justice Outreach Specialist ("VJO") is working with a VTC, the VJO can assist the court in confirming a veteran's eligibility for services.⁷ If one of Tennessee's three VJOs is not available in person or via telephone, the veteran can secure a copy of his DD-214 with the assistance of one of the following entities: (1) County Veterans Service Officer; (2) TDVA (main office or field office); (3) TN War Records Division in Nashville (if a veteran's home of record is Tennessee); (4) VA Regional Office in Nashville; (5) Vet Center; or (6) VA medical center (benefits officers are located at VA medical centers). The DD-214 also can be requested online through many governmental and non-governmental websites. See, for example, the websites for eBenefits (<https://www.ebenefits.va.gov/ebenefits-portal/ebenefits.portal>) and the National Personnel Records Center in St. Louis (<http://www.archives.gov/veterans/military-service-records/>). According to multiple sources, submitting an electronic request via eBenefits is likely the most efficient method of requesting a copy of a DD-214.

The National Personnel Records Center (<http://www.archives.gov/st-louis/>) is the "central repository of personnel-related records for both the military and civil services of the United States Government." Depending upon the age of the records, it could take months to receive information which is stored at this facility. Also, some records were destroyed by a fire in 1973. See <http://www.archives.gov/st-louis/military-personnel/fire-1973.html> for additional information. Some of the files have been recreated by the VA, particularly if a veteran whose records were destroyed in the fire subsequently applied for benefits.

If necessary, it also is possible for the VA's Regional Office, which is located in Nashville, to issue a letter regarding a veteran's service. However, a veteran can only obtain this letter by appearing in person.

⁷ VJOs and the other entities which provide services to veterans will be discussed elsewhere in this report.

Veterans Health Administration

The VHA is the healthcare branch of the VA. The United States is divided into 23 Veterans Integrated Service Networks (“VISN”) for veteran healthcare purposes, and Tennessee is included in VISN 9, which is the VA MidSouth Healthcare Network. VISN 9 includes parts of states other than Tennessee, and VISN 9’s VA medical centers are located in Huntington, West Virginia, Lexington and Louisville, Kentucky, and Nashville, Memphis, Murfreesboro, and Mountain Home/Johnson City, Tennessee. As noted above, there also are VA clinics and Vet Centers located throughout Tennessee.

The VA’s 2012 Benefits Booklet summarizes the basic eligibility for health care (VHA) benefits as follows:

Basic Eligibility

A person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable may qualify for VA health care benefits. Reservists and National Guard members may also qualify for VA health care benefits if they were called to active duty (other than for training only) by a Federal order and completed the full period for which they were called or ordered to active duty.

Minimum Duty Requirements: Veterans who enlisted after Sept. 7, 1980, or who entered active duty after Oct. 16, 1981, must have served 24 continuous months or the full period for which they were called to active duty in order to be eligible. This minimum duty requirement may not apply to Veterans discharged for hardship, early out or a disability incurred or aggravated in the line of duty.

Although this publication references “other than dishonorable” discharges, the VA informed the AOC that veterans are only eligible for VHA medical benefits, including mental health and substance abuse treatment, if they received an honorable discharge or a general discharge under honorable conditions. Individuals who received an other than honorable, bad conduct, or dishonorable discharge are not eligible.

In contrast to eligibility requirements for certain VBA benefits, the medical problem at issue does not have to be related to the veteran’s military service for the veteran to be eligible for medical treatment through VHA. Therefore, regardless of the cause of the medical problem, an eligible justice-involved veteran can, in theory, receive (sometimes with a mandatory co-pay) medical, mental health, and substance abuse treatment through VHA. As a practical matter, the VA’s resources are limited, so the necessary treatment may not be easily accessible for veterans who live in certain parts of Tennessee. Moreover, due to high demand there may be delays in accessing the services even if a treatment program is offered at nearby facility. Likewise, available VA mental health and substance abuse treatment programs are limited in length, and justice-involved veterans may require additional treatment following completion of a VA treatment program. Finally, as previously discussed, community-based treatment may be necessary if an otherwise-qualified veteran no longer qualifies for mental health or substance

abuse treatment through the VA because the veteran has previously utilized those services. Any of these circumstances would require the expenditure of additional funds by the VTC unless the veteran has adequate private insurance, is offered community-based services at no charge, or is eligible for treatment through a state program.

Regardless of those limitations, however, a veteran's first step should be to attempt to secure treatment through the VHA. To receive any such treatment, the veteran must first "enroll" by completing and submitting VA Form 10-10EZ (the submitted information can be updated by using VA Form 10-10EZR). Some veterans enroll prior to, or shortly after, being discharged from service. However, if a veteran did not do so, he can complete the necessary steps in person at a VA medical center or clinic, via telephone, via mail, or online. For more information regarding these options or to access the necessary forms, see <https://www.1010ez.med.va.gov/>. According to a representative of the VA, it typically will take approximately two weeks following submission of Form 10-10EZ for a veteran to become eligible for VHA services because the VA must confirm the accuracy of the submitted information. However, this timetable assumes that the form is completed in full, and the VA's representative stated that many veterans do not provide all of the required information. Any omissions will result in additional enrollment delays because the VA will be required to notify the veteran of the omissions and await receipt of the requested information.⁸

After a veteran completes the necessary enrollment paperwork and is approved for VHA services, the veteran can contact any VA medical center or clinic to request treatment. Typically, the veteran will be assigned to a primary care physician, who will then refer the veteran to specialists as necessary. Primary care physicians are located at every VA medical center and clinic, but specialists, including substance abuse and mental health treatment specialists, are only located at a limited number of facilities. The VA has the ability to refer veterans to non-VA facilities for treatment when the necessary treatment is not available through a VA facility, but the authorized non-VA facilities also are somewhat limited and are not easily accessible by veterans in all areas of Tennessee. The AOC was unable to locate a VA employee who could provide a list of all VA or VA-approved drug, alcohol and/or mental health treatment facilities in Tennessee.

With regard to substance abuse treatment, an initial assessment will be conducted by an addiction therapist or another appropriate VA employee. This assessment will indicate whether treatment is necessary and, if so, whether outpatient (typically utilized for "abuse") or inpatient (typically utilized for "dependence") treatment would be most effective for the veteran at issue. The VA is governed by numerous federal laws, and it will only provide treatment which is statutorily authorized and which is appropriate for a particular veteran. In other words, the VA, not the VTC judge, will determine what services the VA will provide.

With regard to mental health issues, a physician, psychologist, nurse practitioner or licensed clinical social worker will diagnose the veteran and recommend any necessary treatment. Emergency mental health treatment is available at VA medical centers and may be available at some VA clinics as well.

⁸ While formal approval is pending, a veteran can informally assess his eligibility for VHA services by answering the questions at http://www.va.gov/healtheligibility/Library/Tools/Quick_Eligibility_Check/index.asp.

If a court establishes a relationship with a VJO or a representative of VHA or VBA and if any necessary VA waivers are filed, it may be possible for the VTC to quickly establish whether a defendant is a VHA-eligible veteran by providing the defendant's name and social security number or military serial number to the VA's representative. However, eligible veterans will not be assigned to a primary care physician or be referred to a specialist for any necessary mental health or substance abuse treatment until the veteran has officially enrolled by using Form 10-10EZ. Official enrollment is not required for a veteran to receive emergency medical treatment, however.

Veterans who utilize the VHA system will be provided with a Veteran Identification Card (VIC) by a VA medical facility. This card will be used for VA healthcare identification and appointment check-in purposes. For more information, see http://www.va.gov/healthbenefits/access/veteran_identification_card.asp.

Telehealth and My HealthVet

Eligible veterans always have the option of making an appointment with a doctor, therapist, or other medical professional at a VA medical center or clinic, but a veteran who lives a significant distance from a medical center, who is not comfortable driving due to age or illness, or who has limited access to transportation may find it difficult to access those services. The VA now offers more access to services through its Telehealth program. For VTC purposes, the two most important aspects of this program are Home Telehealth and Clinical Video Telehealth.

Home Telehealth assists veterans with monitoring and managing chronic conditions such as diabetes and congestive heart failure. The system, which is home-based, reminds the veteran when to test his blood sugar levels, when to take his medication, etc. It then allows the veteran to electronically submit information such as blood pressure and blood sugar levels and also allows a veteran to answer daily questions related to his condition. A care coordinator such as a nurse or social worker monitors these submissions, consults with other medical personnel as necessary, and communicates with the veteran regarding any issues which arise as a result of the submissions. Veterans are not required to pay for the devices which are utilized in this program. Those devices are prescribed and provided by the VA just as a wheelchair or assistive device in the home would be prescribed.

As noted elsewhere in this report, Tennessee has four VA medical centers and numerous clinics. Primary care physicians are located in the clinics, but specialists typically are only located at the larger urban medical centers. If a veteran lives closer to a clinic than a medical center, it might benefit the veteran to utilize the Clinical Video Telehealth program. This program allows a veteran to be "treated" by a specialist via video systems located at the clinic (site of veteran) and medical center (site of VA clinician). This system allows the specialist to not only have visual contact and interaction with the veteran but to perform a physical examination remotely with the assistance of a clinic employee. In addition to dealing with physical ailments, the VA can provide mental health (Telemental Health) and substance abuse counseling via video in appropriate circumstances. This type of communication may not be appropriate for some veterans, particularly if they have mental health issues which would be exacerbated by a

perception that someone on the “television” is talking to them, monitoring them, etc. According to the VA, Telehealth services are available at all of Tennessee’s VA clinics other than the clinic in Roane County. According to the VA, the Roane County clinic is closing temporarily.

Although a home-based video conferencing service is not currently available, the VA is conducting a pilot project and is hoping to provide home-based, secure/encrypted video services in the future. To access this service, which is referred to as Clinical Video Telehealth to Home, veterans would be required to have access to a computer, webcam, high-speed internet, and speakers. The VA does not anticipate reimbursing veterans for the costs associated with those items, but the VA may, at some point, provide veterans with a device which will allow a veteran to communicate with the VA if the veteran does not own a computer or the other required devices. In addition to the obvious convenience such a service would provide, this home-based service might be favored by veterans who require mental health services but, due to the perceived stigma attached to receiving those services, do not wish to be seen at a VA medical center or clinic. Clinical Video Telehealth to Home also may be a more attractive option for veterans who, for example, are uncomfortable driving long distances or driving over bridges due to stressors associated with their military service.

As with other VA services, resources are limited. Therefore, courts cannot rely exclusively on the Telehealth Program for mental health/medical/substance abuse services. Courts should consult with their local VA clinics regarding available resources and accessibility. Courts also can consult the Telehealth website (<http://www.telehealth.va.gov/>) for additional information.

In addition to these services, the VA offers the PTSD Coach mobile application, which is not a substitute for professional treatment but can help veterans “learn about and manage symptoms that commonly occur after trauma.” For more information or to download the app, see the VA’s website at <http://www.ptsd.va.gov/public/pages/ptsdcoach.asp>.

Finally, the VA offers online healthcare services through the My HealthVet program. Courts can consult the website at <https://www.myhealth.va.gov/index.html> for additional information.

Vet Centers and Non-VA Treatment of Mental Health and Substance Abuse Issues

Veterans who have mental health issues may prefer to be treated by community-based providers or at a Vet Center as opposed to utilizing a VA medical center or clinic. Some veterans simply do not trust the VA. Other veterans may avoid the VA due to the perceived stigma associated with seeking help or due to confidentiality issues. With regard to the latter, persons who have mental health and/or substance abuse issues would prefer that that information not be included in their permanent military records.

Vet Centers provide services to war zone veterans and their families. According to the Vet Center website (www.vetcenter.va.gov/index.asp), which provides a great deal of information regarding eligibility and available resources, the “goal of the Vet Center program is to provide a broad range of counseling, outreach, and referral services to eligible veterans in order to help them make a satisfying post-war readjustment to civilian life.” Based upon the AOC’s

discussions with various groups/persons, it is the AOC's understanding that many Vietnam veterans did not feel comfortable accessing services through the VA's medical centers and, as a result, were not seeking needed counseling. The Vet Centers, which are less formal than other VHA facilities and are staffed primarily by combat veterans, including licensed therapists, were created as a result. Although the Vet Centers, which were initially independent, now fall under the auspices of the VA, the centers do not share their clients' records with the VA.

War zone experience typically is a requirement for receiving services from a Vet Center, but the AOC contacted a Vet Center for clarification, and the representative stated that Vet Centers will provide treatment for a victim of MST regardless of whether the veteran has war zone experience. Moreover, even if a veteran does not have war zone experience, Vet Centers will often provide short-duration treatment and assist the veteran with a referral to an appropriate treatment provider.

The VA also has Mobile Vet Centers (<http://www.va.gov/health/NewsFeatures/20120117a.asp>). The AOC initially was told that the mobile units travel the state and offer mental health counseling, and the VA's website appears to support that concept. However, the AOC contacted individuals who work directly with this program and learned that the program is much more limited. In Tennessee, the Mobile Vet Centers are based in Memphis, Nashville, and Johnson City. The Vet Centers take these mobile units to events veterans are likely to attend (Operation Stand Down events, parades, etc.). The units serve in an outreach capacity, informing the eligible veterans of the services they can receive at a Vet Center and providing them with contact information for the Vet Center. If someone is having a mental health crisis at one of those events, the Vet Center representative will talk briefly with that person. However, Vet Centers do not provide extensive counseling at these events, and they do not plan to use the mobile units to provide statewide mental health counseling in the future. They merely are connecting eligible veterans with Vet Centers for counseling.

Veterans Benefits Administration

The VA's Organizational Briefing Book summarizes the VBA's role as follows:

The [VBA] is responsible for administering the Department's programs that provide financial and other forms of assistance to Veterans, their dependents, and survivors. Major benefits include Veterans' compensation, Veterans' pension, survivors' benefits, rehabilitation and employment assistance, education assistance, home loan guaranties, and life insurance coverage.

Unlike VHA benefits, which do not require a service-connected condition or a disability rating, some VBA benefits, such as monthly disability payments, require that the condition at issue relate to an event which occurred during the person's military service. The injury/disorder will be rated 0%-100%, and any approved monetary benefits will be tax-free. A veteran who qualifies for VA disability compensation also may be given priority for non-monetary VA benefits.

In addition to addressing a veteran's mental health and substance abuse issues, a VTC will attempt to address housing, education, employment, and other issues which, absent intervention, could hinder a veteran's ability to succeed. Educational benefits are particularly important for veterans because many of them enlisted immediately after graduating from high school.

If a county does not have a VTC or if a veteran is not eligible to participate in such a court, the veteran may still be eligible for the tax-free disability compensation or many non-monetary benefits through the VBA. For offenders who qualify for services, the VBA is an excellent resource. VTC team members and/or defense attorneys (who may be representing veterans who aren't participating in a VTC) should attempt to familiarize themselves with available VBA benefits. Although there are many resources and websites which discuss these benefits, the VA's 2012 Benefits Booklet (www.va.gov/opa/publications/benefits_book.asp) provides a particularly helpful general overview of those benefits. There also are many websites which address various issues such as education (<http://www.gibill.va.gov/benefits/index.html>), and these websites can be accessed through the VA's general website (www.va.gov). Government websites www.vetsuccess.gov and www.cwt.va.gov are helpful for employment-related issues, with the latter focusing on the VA's Compensated Work Therapy program, which assists with reintegration into the workforce following homelessness. There also are non-governmental entities which assist with employment issues. For example, the Helmets to Hardhats program (<http://helmetstohardhats.org/>) assists veterans (including National Guard and Reserves) in transitioning from military service to a career in construction.

The AOC has heard from multiple sources that acquiring VBA benefits, particularly if the veteran is seeking disability compensation, can be a lengthy, time-consuming process. Veterans can receive assistance at no cost from Veterans Benefits Representatives (employed by TDVA and located in TDVA's Field Offices), County Veterans Service Officers, the Veterans Benefits Office at the VA's Regional Office in Nashville, or any of the groups listed on the second page of VA Form 21-22 (<http://www.vba.va.gov/pubs/forms/VBA-21-22-ARE.pdf>), which a veteran must submit to the VA before a listed service organization will be permitted to act on the veteran's behalf. Veterans also can appoint an individual to act as his benefits representative by utilizing VA Form 21-22a (<http://www.vba.va.gov/pubs/forms/VBA-21-22A-ARE.pdf>).

If a veteran prefers to utilize the VA's online services, he can submit a benefits application online and track it through eBenefits (<https://www.ebenefits.va.gov/ebenefits-portal/ebenefits.portal>). There are different levels of access, some of which require a secure logon credential called a DS Logon. For more information regarding how to obtain a DS Logon and how to register for an eBenefits account, see the VA brochures and registration links at: <https://myaccess.dmdc.osd.mil/identitymanagement/footer/help.do?helpTypeValue=ABOUT#7>. Veterans/service members also can register for eBenefits in person when meeting with a VA representative during out-processing upon discharge from the military, or at a VA medical center, the VA's Regional Office in Nashville, or a TDVA outreach event (which often, but not always, offers this service).

National Cemetery Administration

The AOC does not anticipate that the NCA will have a significant role in a VTC. Therefore, the AOC will not discuss it in this report. However, individuals who wish to learn more about the NCA can consult its website at www.cem.va.gov/.

VETERANS' JUSTICE OUTREACH SPECIALISTS

The VA's website (www.va.gov/HOMELESS/VJO.asp) summarizes the Veteran Justice Outreach Initiative, which began in 2009, as follows:

The purpose of the Veteran Justice Outreach Initiative is to avoid the unnecessary criminalization of mental illness and extended incarceration among Veterans by ensuring that eligible justice-involved Veterans have timely access to VHA mental health and substance use services when clinically indicated, and other VA services and benefits as appropriate.

VA is requiring justice-focused activity at the medical center level. VA Medical Centers have been strongly encouraged to develop working relationships with the court system and local law enforcement and must now provide outreach to justice-involved Veterans in the communities they serve.

Each VA medical center has been asked to designate a facility-based Veterans' Justice Outreach Specialist, responsible for direct outreach, assessment, and case management for justice-involved Veterans in local courts and jails, and liaison with local justice system partners.

The AOC spoke with the VA's General Counsel and the National Coordinator for the Veteran Justice Outreach Initiative, both of whom made presentations at a national conference attended by the AOC. They stressed that the VA is committed to ending homelessness among veterans, and that since many people who are charged with criminal offenses subsequently become homeless, they believe that intervening on behalf of justice-involved veterans is crucial to their mission. Veterans are a relatively small percentage of the U.S. population, but they are a large percentage of the homeless population.

Tennessee has a total of three Veterans' Justice Outreach Specialists ("VJO"), and because they are attached to the VA's medical centers, they are based in Nashville, Memphis and Mountain Home. The AOC spoke at length with Tennessee's VJOs as well as numerous VJOs from other states. The AOC found the VJOs to be very knowledgeable regarding the available resources and very motivated to assist veterans in any way possible.

The VJOs work with regular courts, problem-solving courts, jails, and law enforcement officials. Some courts/jails assist the VJOs by notifying them when a veteran or service member has been arrested. Upon receiving this notification, the VJO meets with the arrestee to determine if he has enrolled with the VA for the purpose of receiving benefits. If the arrestee has not enrolled or is unsure if he has enrolled, the VJO will assist the arrestee in completing the required paperwork and, thereafter, in accessing the services to which a qualified arrestee is entitled. Unlike the

majority of the state, local, and non-governmental veterans' groups, which tend to focus on VBA benefits, the VJOs focus primarily on VHA benefits, and they are capable of assisting courts in identifying available VA resources for mental health and substance abuse treatment.

While the AOC applauds the enthusiasm of the VJOs, who clearly are dedicated to the veterans they serve, it is important for the legislature and the courts to recognize that Tennessee's VJOs have many responsibilities throughout VISN 9 (which includes states other than Tennessee), that there are only three VJOs in Tennessee, that there are 95 counties in Tennessee, and that each county has multiple courts. Therefore, it **will not be possible for the VJOs to be present in each VTC**. Representative John Ragan, who sponsored the legislation which directed the AOC to conduct this study, met with the AOC regarding his expectations. During that meeting, he asked the AOC to make recommendations regarding federal resources which would be helpful in assisting justice-involved veterans. As the AOC stated in the interim report it submitted to the legislature regarding VTCs, the AOC believes that additional VJOs are needed in Tennessee. This is a nationwide problem, though, and the VA has many other responsibilities, so the AOC recognizes that even with additional federal funding the VA will be unable to provide every state with an adequate number of VJOs.

Although the VJOs will be unable to attend every court session in person, the VJOs will be an excellent resource for the courts, and the AOC encourages courts to include the VJOs in the initial discussions regarding both procedural and substantive issues for justice-involved veterans. Courts and attorneys must be patient, however, because the VJOs quickly will become overwhelmed by the number of requests for assistance as the drawdown continues and there is, as anticipated, a significant increase in the number of arrests involving veterans.

INCARCERATED AND HOMELESS VETERANS

The VHA is precluded from providing hospital or outpatient care to a veteran who is a patient or inmate of another government agency if that agency has a duty to provide the care/services. This includes jails and prisons, but the prohibition does not apply if the inmate is released into a temporary housing program such as a halfway house. 38 C.F.R. § 17.38(c)(5). Moreover, a representative from the VA can meet with an incarcerated veteran to assist the veteran in enrolling for benefits for which the veteran will be eligible upon release. Likewise, the VA will perform a clinical assessment of an incarcerated veteran even though it will not provide the recommended treatment until the veteran has been released.

Depending upon the nature of the conviction (felony vs. misdemeanor), a veteran could become ineligible for certain VBA benefits, including disability and pension compensation, on the 61st day of incarceration. For more information regarding the parameters of these rules, see <http://www.vba.va.gov/bln/21/Benefits/Incarcerated/benprofact.htm>. A veteran's family may be eligible to receive compensation from the VA even if the incarcerated veteran becomes ineligible to receive compensation. A VA representative can assist inmates in determining the family's eligibility, if any, for VBA benefits.

There also are various VA benefits available to homeless veterans, and a VA representative, if located reasonably close to the facility at issue, may be willing to meet with a homeless veteran to assist the inmate in completing the necessary paperwork to access housing benefits (including transitional housing, when applicable) and related services, including screens for substance abuse and mental health issues. The VA representative also can assist the veteran in creating a plan for how to proceed following the veteran's release from incarceration.

The homeless services assessment form is referred to as the Homeless Operations Management and Evaluation System (HOMES) form. Homeless veterans (according to the VA's definition of "homeless") who receive an honorable discharge or a general discharge under honorable conditions are eligible for benefits through the VA's homeless program. Veterans who receive an other than honorable or bad conduct discharge are eligible for transitional housing and limited dental benefits but are not eligible for other services. Veterans who receive a dishonorable discharge are not eligible for any services through the VA's homeless program.

For general information regarding benefit eligibility for incarcerated veterans and veterans who are on fugitive status, see <http://www.vba.va.gov/bln/21/Benefits/Incarcerated/index.htm>. For general information regarding benefits for homeless veterans, see the VA's website at <http://www.va.gov/HOMELESS/index.asp>. For information regarding the VA's reentry programs for incarcerated veterans, see <http://www.va.gov/HOMELESS/Reentry.asp>. The Tennessee Department of Correction also has a program which assists veterans who are being released from incarceration. That program is discussed elsewhere in this report.

MISCELLANEOUS STATE, FEDERAL AND COMMUNITY RESOURCES

Although a basic internet search will identify countless resources for veterans and service members and the AOC encourages interested persons to conduct their own searches, VTCs also should consider utilizing the resources listed below.

Tennessee Department of Labor and Workforce Development

The Tennessee Department of Labor and Workforce Development ("TDLWD") has special programs for veterans who are seeking employment. Information regarding both state and federal programs can be found on TDLWD's website at <http://www.state.tn.us/labor-wfd/veterans.shtml>. The website also has a link which provides contact information for the local career centers which are staffed by TDLWD. TDVA representatives are located in some of those centers. As with other benefits, courts should be aware that the definition of "veteran" for the purpose of qualifying for assistance through TDLWD and the United States Department of Labor will vary depending upon the type of benefit which is being sought.

Pursuant to the Tennessee Excellence, Accountability, and Management ("T.E.A.M.") Act of 2012, veterans are given special consideration with regard to hiring and layoffs. See T.C.A. §§ 8-30-307, -314.

Tennessee Department of Mental Health and Substance Abuse Services

The Tennessee Department of Mental Health and Substance Abuse Services (“DMH”) has the following funding sources for drug/alcohol treatment: (1) ADAT⁹ DUI – source is a DUI offender fee; (2) ADAT SPOT¹⁰ – source is a drug offender fee; (3) Community Treatment Collaborative (“CTC”) – source is TDOC/TDOCPP; and (4) Federal block grants. Moreover, in 2012, Governor Bill Haslam issued Executive Order No. 12, which transferred Tennessee’s Drug Courts Program from the Department of Finance and Administration’s Office of Criminal Justice Programs (“OCJP”) to DMH. Therefore, DMH will now be receiving the drug treatment court funds which were previously received by OCJP in addition to receiving the ADAT, CTC, and federal funds.

The majority of the ADAT funds and the federal funds are directed to treatment services through drug treatment courts and mental health treatment courts, and the recipients of those services must be indigent offenders or offenders who have insurance or TennCare but who have exhausted their benefits and meet federal poverty guidelines. Under limited circumstances, the funds also can be used to treat an offender if the offender’s insurance declines to pre-certify the offender for treatment. The CTC funds are for offenders who are at high risk for reoffending due to alcohol/drug use and for offenders whose probation/parole would otherwise be revoked due to a technical violation.

According to DMH, there currently are 55 treatment providers in Tennessee. Some of these providers offer inpatient treatment, and some offer outpatient treatment. Two providers offer only drug/alcohol treatment. All 55 are co-occurring capable or have the ability to refer individuals to a provider who is co-occurring capable. Tennessee’s judges and problem-solving court staff members feel strongly that Tennessee does not have an adequate number of treatment facilities to provide drug, alcohol, and mental health services to indigent and non-indigent offenders who require such services. Judges who wish to learn more about the available treatment resources can contact Ellen Abbott, DMH’s Director of Criminal Justice Services, at (615) 253-7837 or Ellen.L.Abbott@tn.gov.

Tennessee Department of Correction

Because the Tennessee Department of Correction (“TDOC”) believes that it is less expensive to treat offenders than to incarcerate them and also because TDOC believes that addressing mental health and substance abuse issues will result in a lower recidivism rate, TDOC favors treatment over incarceration for all appropriate offenders. If an offender is incarcerated, TDOC provides as much treatment as its limited resources will allow. Although TDOC provides this service to all offenders regardless of whether they are veterans, TDOC has some services and procedures which apply specifically to veterans.

During the intake process, which takes approximately one month, inmates are given the opportunity to identify themselves as veterans. TDOC then provides TDVA with the names of those prisoners, and TDVA confirms their status. A TDVA representative also goes to the

⁹ ADAT is the “Alcohol and Drug Addiction Treatment Program.”

¹⁰ SPOT is “Supervised Probation Offender Treatment.”

facility to discuss benefits with veterans. As previously noted, the VA will not provide benefits to an inmate during the period of incarceration, but the VA will, when appropriate, provide benefits to the inmate's family. The VA also has reentry specialists who assist incarcerated veterans as they approach their release dates.

Finally, TDOC attempts to assist prisoners during the reentry process via the Tennessee Reentry Collaborative ("TREC"). TREC will be discussed in more detail below.

Tennessee Board of Probation and Parole

The supervision services section of the Tennessee Board of Probation and Parole merged with TDOC in 2012. The Board of Parole remains an independent entity, but community-based state probation and parole services are now provided through TDOC. That section is referred to as TDOC Probation and Parole. The AOC met with representatives from TDOC and BOPP separately prior to the merger and continued to communicate with them following the merger. For the sake of convenience, the AOC will refer to the new supervision section of TDOC as TDOCPP in this report.

TDOCPP primarily supervises persons who have been convicted of felonies.¹¹ Occasionally, TDOCPP also supervises someone who is charged with a felony, is bound over to the circuit/criminal court by the grand jury, and subsequently enters a plea to a misdemeanor. Similarly, if someone who has been convicted of a felony and is being supervised by TDOCPP is subsequently convicted of a misdemeanor, TDOCPP may continue to supervise that offender. TDOCPP will supervise persons who are granted judicial diversion if the offense at issue is a felony, but it does not have the authority to supervise persons who are granted pretrial diversion.

TDOCPP only services circuit courts and criminal courts, and its probation officers are not available at the general sessions court level. Because early identification and intervention are critical to the success of a VTC court and the majority of criminal cases are initially heard at the general sessions court level, TDOCPP officers likely will not be involved in the veteran/service member identification process. However, those officers are familiar with available treatment resources and other relevant community resources, so courts may wish to consult with them when establishing a VTC or other problem-solving court.

As previously noted, a member of the VTC team should conduct periodic home visits to provide offenders with support and also to confirm that offenders are complying with the VTC's requirements. For some courts, a law enforcement officer might perform that function. If the VTC is a circuit/criminal level court as opposed to a general sessions level court and if the offender at issue qualifies for TDOCPP services due to the nature of the disposition, the presiding judge may wish to consult with TDOCPP regarding the possibility that a state probation officer could conduct home visits. Like other state agencies, though, TDOCPP has very limited resources. Moreover, pursuant to TDOCPP policy, the frequency of home visits varies depending upon the nature of the offense at issue. Some offenders do not receive home visits, while others receive one visit per year. Sex offenders receive frequent home visits.

¹¹ Although TDOCPP previously was the only entity which was authorized to supervise felons, 2012 Public Chapter 652 authorizes private probation companies to supervise Class E felons under certain listed circumstances.

Offenders who are supervised by TDOCPP are asked if they are veterans, but TDOCPP neither confirms the accuracy of the response nor offers veteran-specific services. However, it performs a risk assessment on all offenders in the same way that VTCs will be assessing potential VTC participants to determine whether they are high-risk, high-need offenders. TDOCPP utilizes the Level of Service Case Management Inventory (“LS/CMI”) as well as the Addiction Severity Index (“ASI”), and/or the American Society of Addiction Medicine (“ASAM”) assessment tools through DMH to assess an offender’s needs if he potentially has a substance abuse problem. TDOCPP then tailors its services to address those needs. Depending upon the severity of the addiction, for example, an offender might require inpatient treatment, outpatient treatment, relapse prevention classes, or a combination thereof. TDOCPP contracts with DMH for some screening and treatment purposes, but the funding is limited in large part to addressing substance abuse issues as opposed to mental health issues. TDOCPP also contracts with the Tennessee Community Corrections Association (<http://www.tncommunitycorrections.org/index.html>), which has residential programs in Kingsport and Memphis. However, those programs focus primarily on developing life skills as opposed to offering treatment for substance abuse or mental health issues.

Consistent with the recommendations of participants and presenters at the VTC trainings attended by the AOC, TDOCPP recommends that judges refrain from attempting to diagnose and/or to determine the appropriate course of treatment for offenders. Instead, judges should rely upon qualified personnel to conduct a screening/assessment to determine what, if any, treatment is appropriate for a particular offender. The court’s order could simply refer to the appropriate assessment entity and order “treatment as assessed by” that entity.

A presentence report, which will include the results of the risk assessment, typically is completed following an adjudication of guilt but prior to sentencing. However, Tennessee Code Annotated section 40-35-205(b) authorizes a court, with the concurrence of the defendant, to direct a presentence service officer to begin the investigation prior to adjudication. The information which is gathered is confidential and will only be shared with the court, prosecutor and/or jury prior to a finding (or plea) of guilt if the disclosure is authorized by the defendant. TDOCPP suggests that courts may wish to consider utilizing the provision more frequently, particularly if a VTC or other problem-solving court is a pre-adjudication court. For the information to be properly utilized to determine an offender’s eligibility for a problem-solving court, the offender would be required to agree to its disclosure.

Tennessee Reentry Collaborative

Knoxville created an inmate reentry program in the 1990’s, and the program reduced the recidivism rate by 40%. The statewide Tennessee Reentry Collaborative (“TREC”) was created in 2004, and it is co-sponsored by TDOC and the Board of Parole. TREC’s mission is “to provide a continuum of services for all offenders reentering society in order to reduce recidivism and promote public safety,” and the “desired outcome is to enhance public safety through improving the successful transition of offenders from prison to the community through a collaborate effort of state agencies, community resources, and the offender.” Several state agencies and community-based providers are represented in TREC, and the AOC began attending the monthly meetings in June of 2012 at the invitation of the Board of Probation and

Parole (prior to the TDOC/BOPP merger). Additional information regarding TREC can be found on TDOC's website at <http://www.tennessee.gov/correction/rehabilitative/trec.html>.

Although TREC is a statewide program, there are nine local TRECs within that program. Those TRECs are located in Johnson City, Tullahoma, Knoxville, Chattanooga, Nashville, Murfreesboro, Jackson, Memphis, and Clarksville. Hamblen County currently is considering creating a TREC. The local TRECs focus on such services as housing, education, employment, transportation, veterans' services, medical treatment, mental health treatment, and drug abuse treatment. For example, as previously noted, the Appalachian Regional Coalition on Homelessness ("ARCH"), which is based in Johnson City but serves eight counties, received a grant to provide housing and support services for qualified veterans and their families. ARCH works with Johnson City's TREC, so judges in East Tennessee may wish to contact the Johnson City TREC for additional information.

TRECs focus on individuals who are being released from incarceration. In contrast, Tennessee's problem-solving courts, including VTCs, focus on individuals who are receiving treatment and are not currently incarcerated. However, the participants in both groups must address many of the same issues if they intend to become productive, law-abiding citizens. Therefore, the AOC encourages courts to contact the TRECs to request information regarding the available community resources. The AOC possesses contact information for each of the local TRECs, and the AOC will forward it to interested persons upon request.

Tennessee Criminal Justice Coordinating Council

The Criminal Justice Coordinating Council ("CJCC") was initially created via executive order by Governor Phil Bredesen and was legislatively created in 2010. There are 19 members, including a juvenile court judge and a criminal court judge. T.C.A. § 41-52-102. CJCC "is charged with collaborating with and coordinating the services of state and local governmental agencies and non-governmental entities in the criminal justice system to increase public safety. In performing these duties, the council shall conduct planning, research and evaluation activities to improve criminal justice system operations and coordination." T.C.A. § 41-52-103. Lee Ragsdale is the Executive Director of CJCC, and he can be reached at Lee.Ragsdale@tn.gov or 615-532-7368. Mr. Ragsdale has a great deal of institutional knowledge and is willing to assist Tennessee's courts. CJCC serves TREC in an administrative capacity, so Mr. Ragsdale is well-informed regarding both TREC and CJCC.

Tennessee Military Department / Tennessee National Guard

The Tennessee National Guard's representatives met with the AOC regarding VTCs, and information they provided is included in various sections of this report. With regard to resources, the National Guard indicated that it would be willing to provide courts with technical assistance concerning the interpretation of VA Form DD-214.

Tennessee Department of Veterans Affairs

TDVA is a relatively small department which has approximately 100 employees. It services 500,000 veterans and 1.5 million dependents and survivors. TDVA's primary role is to keep the public informed regarding veterans' contributions and needs, to provide cemetery services, and to assist veterans in filing claims and obtaining benefits through the VBA (pension, disability, loans, housing, education, etc.). TDVA's benefits assistance function is performed primarily by its Veterans Benefit Representatives, who are located in TDVA's field offices throughout Tennessee.

In addition to interacting with veterans through its main office in Nashville as well as its field offices, TDVA conducts and/or participates in outreach programs across the state. Many governmental agencies and non-governmental organizations also participate in these events in an effort to assist veterans with accessing available resources.

Other than serving as an advocate for a veteran who feels he has been mistreated at a VA medical center, for example, the TDVA does not have a role in VHA issues (medical treatment, substance abuse treatment, mental health treatment, etc.) and does not anticipate possessing adequate resources to assist courts with those issues. However, TDVA's benefit representatives will be available to assist courts in interpreting VA Form DD-214 when necessary.

In addition to assisting veterans directly, TDVA conducts training for County Veterans Service Officers. These officers are selected by local officials and are not employed by TDVA. Each officer is listed by county at www.tnvsso.com/id16.html. Many of the officers are veterans, and the majority of them work on a part-time basis. Some of them are paid for their services, and others serve in a volunteer capacity. The officers' available time and resources vary by county. The officers serve as advocates for veterans, and they assist with such things as accessing VA benefits and pursuing discharge upgrades.

TDVA's website (<http://www.state.tn.us/veteran/>) has links to information regarding state and federal benefits for veterans.

Governor's Council for Armed Forces, Veterans, and Their Families

On August 31, 2010, Governor Phil Bredesen established the Governor's Council on Service Members, Veterans and Their Families via Executive Order No. 71. The Council subsequently became inactive and, on July 23, 2012, Governor Bill Haslam reconstituted it via Executive Order No. 15 as the Governor's Council for Armed Forces, Veterans, and Their Families ("Council"). The Council is administratively attached to the TDVA and is composed of 10 citizen members and seven *ex officio* members. The qualifications for the citizen members are listed in the executive order, and the *ex officio* members represent the TDVA, Military Department, Department of Mental Health and Substance Abuse Services, Department of Health, Department of Labor and Workforce Development, Senate, and House of Representatives. The executive order reflects that the Council "is charged with facilitating collaboration and coordination within the system of care to effectively and responsively meet the needs of the members of the armed forces, veterans and their families." The AOC is hopeful that the

Council's efforts will assist the court system in identifying available resources for justice-involved veterans and service members.

Office of the Judge Advocate General

The Office of the Judge Advocate General ("JAG") provides active duty service members, retirees, and their dependents with free legal assistance. For example, a JAG officer may assist a veteran, service member or dependent in drafting a will, obtaining benefits, or resolving landlord/tenant disputes. JAGs will not make an appearance on behalf of military personnel or act as legal counsel in any civilian court. However, JAG offices in the National Guard and Reserves as well as on active military bases are available for meetings in person or via telephone. The JAG attorney will provide legal assistance to help resolve the pending issue. If the issue requires direct legal representation, JAG offices typically are aware of attorneys who are willing to assist veterans in civil and criminal matters in state and federal courts. Those services will not be free unless the attorney offers to work *pro bono*, but JAG will often provide referrals upon request.

United States Executive Branch

On August 31, 2012, President Barack Obama issued an executive order which addressed veterans' issues. A fact sheet regarding that order can be accessed at <http://www.whitehouse.gov/the-press-office/2012/08/31/fact-sheet-president-obama-signs-executive-order-improve-access-mental-h>. Moreover, multiple members of President Obama's Administration have publicly acknowledged the importance of problem-solving courts, including VTCs. Indeed, the federal government was well-represented at the 2012 national conference of the National Association of Drug Court Professionals, which had a separate training track for VTC issues.

Disabled American Veterans (www.dav.org)

Disabled American Veterans ("DAV") has a National Service Officer at the VA's Regional Office in Nashville. The DAV assists veterans in filing VBA benefits claims. Although this is the only national DAV office which is located in Tennessee, there are many DAV members located throughout the state. Those members likely would be willing to serve as mentors for justice-involved veterans and also may be interested in assisting with the filing and processing of claims for benefits. Also, the DAV is known for assisting veterans with transportation issues. Therefore, courts may wish to collaborate with the DAV if justice-involved veterans lack personal transportation for mental health, substance abuse and/or court appointments.

Bar Associations, Legal Aid Societies, Law School Clinics

Persons who are facing criminal charges often have pending civil matters as well. This could include such things as bankruptcy proceedings, consumer and debt issues, domestic issues, and housing issues. The AOC recommends that courts consult with their local bar associations, legal aid societies, and law schools regarding any *pro bono* services which may be available to veterans and service members. Local resources (although not necessarily veteran-specific

resources) can be found through the Tennessee Alliance for Legal Services at www.tals.org or through Justice For All, a Tennessee Supreme Court initiative, at www.justiceforalltn.org.

Courts also may wish to consult with the Tennessee Bar Association, whose Access to Justice Committee is establishing programs for veterans and service members. Even if a bar association has not established a formal committee to deal with veterans' issues, the bar association may have individual attorneys who are willing to provide *pro bono* services or to assist courts in VTC-related issues such as interpreting a DD-214.

The VA provides space in its medical centers for legal service providers. The VA also recognizes the legal referral process provided by Stateside Legal (<http://statesidelegal.org/>) and the American Bar Association's Home Front project (http://www.americanbar.org/portals/public_resources/aba_home_front.html).

Policy Research Associates, Inc.

The AOC contacted a Policy Research Associates, Inc. ("PRA") representative and found him to be very helpful and well-informed. PRA operates SAMHSA's Service Members, Veterans, and Their Families Technical Assistance Center ("SMVF Center") as well as SAMHSA's GAINS Center for Behavioral Health and Justice Transformation ("GAINS Center").

PRA is available to provide technical support via email or telephone at no cost. In-person technical support typically is conditioned upon receipt of a grant which includes that type of support, but in-person support is available to all states for a fee.

Because it is a past policy academy state, Tennessee is eligible for technical assistance through the SMVF Center. The available support includes phone consultation and/or a site visit. Wendell Cheek, Deputy Commissioner at the Tennessee Department of Veterans Affairs, is Tennessee's contact for the purpose of requesting technical support from the SMVF Center.

PRA also offers information and training regarding the Sequential Intercept Model, which "provides a conceptual framework for communities to use when considering the interface between the criminal justice and mental health systems as they address concerns about criminalization of people with mental illness." The AOC possesses information regarding this model and will forward it to interested persons upon request. According to PRA, there will be a general solicitation for Sequential Intercept Mapping events in the coming months.

For more information regarding PRA's services as well as available online resources, click the "veterans" link on PRA's website at <http://www.prainc.com>.

National Coalition of Homeless Veterans

A state agency the AOC met with regarding VTC issues mentioned the National Coalition of Homeless Veterans (“NCHV”) as a reputable resource for VTCs. NCHV has a great deal of information on its website (www.nchv.org). According to that website, NCHV is, among other things:

the resource and technical assistance center for a national network of community-based service providers and local, state and federal agencies that provide emergency and supportive housing, food, health services, job training and placement assistance, legal aid and case management support for hundreds of thousands of homeless veterans each year.

Operation Stand Down

Periodically, there are Operation Stand Down events throughout the country, including in Tennessee. In 2011, there were 175 such events in the United States, and Tennessee hosted them in Memphis, Chattanooga, Knoxville, and Nashville. State and federal agencies as well as other governmental and non-governmental entities which offer services to veterans set up booths at the event and educate veterans regarding the available benefits/services. These “vendors” often include judges and lawyers who assist veterans who have pending criminal charges. The AOC spoke with lawyers, judges, and other participants, and all participants spoke very highly of the event.

The Nashville event, which is a three-day event with approximately 130 participant organizations/individuals, is organized by a permanent, stand-alone entity called Operation Stand Down Nashville, Inc. (“OSDN”), whose website (<http://osdnashville.org/>) summarizes its overall role as follows:

Operation Stand Down Nashville, Inc (OSDN) is the primary nonprofit resource for veterans in Middle Tennessee providing life changing social services including transitional housing, or referrals, employment readiness training and placement assistance, and coordination of the activities of other agencies in the delivery of such services. We are the only VA approved and supported Veteran Service Center in Tennessee. Our clients are honorably discharged veterans¹² with an emphasis on veterans who are homeless. Our ultimate goal is to give veterans in need the tools to rejoin their community as productive, responsible citizens.

The AOC toured OSDN’s facility and met with the executive director as well as multiple staff members, and the AOC found them to be fully committed to their mission and willing to provide assistance to the courts or to any other entity which is interested in helping veterans. OSDN offers a wide range of services to veterans, and the AOC possesses a significant amount of

¹² It is the AOC’s understanding that “honorably discharged” as used in this context includes veterans who received a discharge which falls within one of the following two categories: (1) Honorable; or (2) General Under Honorable Conditions.

information regarding those services. The AOC will forward this information to interested persons upon request.

National Alliance on Mental Illness (<http://www.namitn.org/>)

The Tennessee Chapter of the National Alliance of Mental Illness (“NAMI”) expressed a willingness to assist courts which are dealing with offenders who have mental health issues. NAMI’s website includes a map (<http://www.namitn.org/affiliates.htm>) which identifies the local affiliates by county. A county which does not have an affiliate listed may be covered by an affiliate from a neighboring county.

NAMI is not a treatment provider, and its members do not offer treatment at no cost. Instead, NAMI offers technical assistance and referrals to treatment providers and to entities which provide other types of assistance to persons who have mental health issues.

NAMI also noted that the Rural Health Association of Tennessee (“RHAT”) is interested in assisting courts. Although RHAT has approximately 800 members, it is a relatively small organization with one full-time staff member. For additional information, see RHAT’s website at <http://www.rhat.org/>.

National Veterans Technical Assistance Center

The National Veterans Technical Assistance Center (<http://www.bbi.syr.edu/nvtac/>) summarizes its role as follows:

National Veterans Technical Assistance Center (NVTAC) provides technical assistance to current grantees and potential applicants as well as information to the public; gathers grantee best practices; conducts employment-related research on homeless Veterans; conducts regional grantee training sessions and conferences; and coordinates efforts with various local, state and federal social service providers.

The role of the NVTAC is to assist HVRP programs help homeless Veterans find meaningful sustainable employment through a mix of approaches - from leveraging benefit and education resources to building partnerships with growth/green industries.

The Technical Assistance provided through collaborations with many types of specialists, is aimed at Homeless Veterans Reintegration Programs (HVRP) as well as the Incarcerated Veterans Transition Program (IVTP) and Homeless Female Veterans and Homeless Veterans with Families Programs (HFV/VWF), and is supported by the Department of Labor Veterans’ Employment and Training Services (DOL-VETS).

Goodwill Industries International, Inc. (“Goodwill”)

The AOC heard from multiple sources that Goodwill is an excellent resource for employment opportunities for justice-involved individuals.

American Red Cross

It is possible that the American Red Cross will be able to provide justice-involved veterans or service members with temporary housing vouchers.

Colleges and Universities

Colleges and universities often have special services and educational opportunities for veterans. They may offer counseling to veterans and have administrative offices which cater to veterans. As with all other veteran-specific offers, though, veterans should be aware that some establishments target veterans due to their available VA resources and that these establishments aren't always acting in the best interest of the veterans.

Coaching Into Care

Coaching Into Care is a free and confidential VA service which assists friends and families who believe a loved one may need mental health treatment. The “coach” will give the caller guidance regarding the most effective manner of speaking with the veteran about the caller’s concerns and also will assist the caller in understanding what VA resources are available to the veteran. The AOC contacted Coaching Into Care, explained the possibility that courts/attorneys will be assisting justice-involved veterans, and asked if court personnel could access the service or if it was limited to family and friends of the veteran. The representative indicated that the service also could be accessed by court personnel for guidance. For additional information, call 1-888-823-7458 or see their website at <http://www.mirecc.va.gov/coaching/index.asp>.

Mental Health First Aid USA

A SAMHSA webcast which was viewed by the AOC referenced the Mental Health First Aid USA program. A substantial amount of information can be found on the program’s website at http://www.mentalhealthfirstaid.org/cs/program_overview/, which summarizes the program in relevant part as follows:

Mental Health First Aid is offered in the form of an interactive 12-hour course that presents an overview of mental illness and substance use disorders in the U.S. and introduces participants to risk factors and warning signs of mental health problems, builds understanding of their impact, and overviews common treatments. Those who take the 12-hour course to certify as Mental Health First Aiders learn a 5-step action plan encompassing the skills, resources and knowledge to help an individual in crisis connect with appropriate professional, peer, social, and self-help care.

Give An Hour

Given an Hour also was mentioned during a SAMHSA webcast. Give an Hour is a nonprofit organization which may be able to assist courts in locating mental health providers for veterans and service members. The group's website (www.giveanhour.org) summarizes its mission as follows:

Our mission is to develop national networks of volunteers capable of responding to both acute and chronic conditions that arise within our society. Our first target population is the U.S. troops and families affected by the wars in Afghanistan and Iraq and other post-9/11 conflicts. Give an Hour™ is asking mental health professionals nationwide to literally donate an hour of their time each week to provide free mental health services to military personnel and their families. Research will guide the development of additional services needed by the military community, and appropriate networks will be created to respond to those needs. Individuals who receive services will be given the opportunity to give an hour back in their own community.

INFORMATIONAL RESOURCES, EMAIL GROUPS AND TRAININGS

The National Drug Court Institute (“NDCI”) (<http://www.ndci.org/ndci-home/>) is the professional services branch of the National Association of Drug Court Professionals (“NADCP”) (<http://www.nadcp.org/nadcp-home/>), and NDCI provides education, training and technical assistance to drug treatment courts and other problem-solving courts. NDCI provides extensive resources through its website as well as the websites for NADCP and the National Drug Court Resource Center (“NDCRC”) (<http://ndcrc.org/>). The National Center for DWI Courts (“NCDC”) (<http://www.dwicourts.org/ncdc-home/>) also is affiliated with NADCP and provides resources for DWI/DUI treatment courts. Finally, NADCP is affiliated with Justice For Vets (<http://www.justiceforvets.org/>), which is the national clearinghouse for veterans treatment courts. The AOC has referred to these organizations' publications and other resources, such as archived webinars, throughout this report. As previously noted, the publications are available at no cost online, and they also are available in hard copy form for the cost of shipping. Each organization has an email group, and the AOC encourages judges to subscribe to the email groups.

The websites for the Substance Abuse and Mental Health Services Administration (“SAMHSA”) (<http://www.samhsa.gov/> or <http://www.samhsa.gov/militaryfamilies> (veteran-specific resources)) and the Tennessee Department of Veterans Affairs (<http://www.state.tn.us/veteran/>) also are excellent resources and have email groups to which individuals can subscribe.

In addition to offering resources on its websites as well as through in-person training sessions, NADCP offers access to “mentor courts.” Mentor courts are well-established problem-solving courts, including VTCs, whose staff members are willing to provide guidance to judges and other personnel who may be interested in creating a problem-solving court. Under certain

circumstances, NADCP will pay for individuals to travel to a mentor court to observe the proceedings and meet with the court’s team.

Trainings

Justice For Vets is holding the first national veterans treatment court conference December 2-5, 2013, in Washington, D.C., and the registration fee is \$550 for NADCP members, \$650 for non-members, and \$700 for late registration. This fee does not include hotel, flight or other travel expenses. The AOC attended the VTC track of NADCP’s national conference in 2012 and learned a great deal from the presenters as well as the other participants, the majority of whom either worked for an existing VTC or were considering creating a VTC.

In 2012, the Montgomery County VTC team and a representative from the AOC attended NDCI’s Veterans Treatment Court Planning Initiative (“VTCPI”) training, which is funded by the Bureau of Justice Assistance at the Department of Justice and “is the nation’s only comprehensive Veterans Treatment Court training designed to assist jurisdictions in the planning and development of Veterans Treatment Court programs.” In addition to providing presentations regarding the relevant issues, the VTCPI staff provided each team with a mentor who guided that team through the steps which are necessary to create an effective VTC. The AOC found this training to be extremely helpful and highly recommends it. Registration is free, and scholarships are available for travel costs. The registration deadline for the 2013 training was November 2, 2012, but the training likely will be offered again in 2014. Contact the AOC for additional information regarding this training.

Miscellaneous Websites

| ENTITY | CONTACT INFORMATION | SERVICE/INFORMATION PROVIDED |
|--|--|--|
| American University | www.american.edu/justice | American University provides technical assistance and training to problem-solving courts pursuant to an agreement with the Bureau of Justice Assistance. Webinars which address problem-solving court issues, including issues which relate directly to VTCs, are archived and can be viewed on American University’s website. |
| SAMHSA’s GAINS Center for Behavioral Health and Justice Transformation | http://gains.prainc.com/ | The GAINS Center is “a national locus for the collection and dissemination of information about effective mental health and substance abuse services for people with co-occurring disorders in contact with the justice system.” The GAINS |

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|---|---|---|
| | | Center has veteran-specific information on its website at http://gains.prainc.com/topical_resources/veterans.asp |
| Bureau of Justice Assistance, U.S. Dept. of Justice | https://www.bja.gov/ | Educational and funding resources |
| United States Department of Veterans Affairs | www.visn9.va.gov/VISN9/news/mental_health_guide_2011.asp | Guide to VA mental health services in VISN 9, which covers Tennessee |
| <u>The Drug Court Judicial Benchbook</u> | http://www.ndci.org/publications/more-publications/-drug-court-judicial-benchbook | The AOC referenced this publication throughout this report. A VTC is a hybrid problem-solving court, so not everything in this benchbook applies to a VTC. However, the publication is an excellent resource. |

Presentations

The AOC discussed VTCs at the educational conferences for the Judicial Commissioners Association of Tennessee, Tennessee Judicial Conference, and Tennessee General Sessions Judges' Conference. The AOC is scheduled to make a VTC presentation at the upcoming annual conference for the Tennessee Association of Drug Court Professionals. The AOC is available to make similar presentations for other groups upon request.

CONTACT INFORMATION

If you have any questions regarding the issues raised in this report or if you wish to request that the AOC make a presentation to your organization regarding VTCs, please contact Karen Yacuzzo, Deputy General Counsel for the Administrative Office of the Courts, at (615) 741-2687 or Karen.Yacuzzo@tncourts.gov.

APPENDIX A



**FISCAL REVIEW COMMITTEE
OFFICIAL SUPPORT FORM
Revised December 2010**

* Denotes required field.

1. General Information

*Bill or Amendment Number(s): **HB3394**

X Original Bill

Corrected Bill

Amendment(s)

Corrected Amendment(s)

*Drafting Code(s): 01005861

*Department: Judicial / AOC

*Date: February 1, 2012

*Preparer: Karen Yacuzzo

*Phone: 615-741-2687, Ext. 1600

*Preparer's E-mail (hit return to make hyperlink): Karen.Yacuzzo@tncourts.gov

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2. *Explain specifically how this bill or amendment will impact your department or programs.

This bill, if enacted, would amend Title 16 by creating the "Veterans Court Treatment Act." In addition to identifying potential costs associated with this legislation, the AOC will identify items which appear to require clarification before a court will be capable of implementing the proposed program/court/docket.

SECTION 3

"Post-adjudicatory veterans court program" is defined, but it does not appear to be utilized anywhere in the bill. Moreover, if this bill is designed to create a pre-adjudicatory veterans court program, which appears to be the case, it is unclear why a reference to a post-adjudicatory program would be necessary.

"Pre-adjudicatory veterans court program" is defined, but it does not appear to be utilized anywhere in the bill. The bill references "preadjudicatory veterans treatment intervention program" and "preadjudicatory veterans treatment program," though, so the sponsors may wish to utilize consistent terminology throughout the bill.

"Service member" and "veteran" are defined and the bill appears to apply to both categories of persons, but the bill itself is inconsistent with regard to those references. Many sections refer only to veterans when, presumably, they apply to both veterans and active service members.

The sponsors may wish to amend the bill to utilize one term which includes both active service members and veterans. For the sake of convenience, the AOC's support form will often reference veterans when both veterans and service members are at issue.

"Veterans court professional" is defined, but it does not appear to be utilized anywhere in the bill.

The terms "veterans court team," "judicial officer," and "veterans treatment intervention team" are utilized in this bill but are not defined in the definition section. The bill also does not define "controlled substance." That term is defined in 39-17-402, but that section does not apply to TCA Title 16.

SECTION 7

This section states that the "veterans court team" may request the assistance of various persons. The AOC recommends that Fiscal Review contact the DA's Conference and PD's Conference regarding any additional staff which may become necessary due to this legislation. Also, the AOC believes it is unlikely that every county will have a substance abuse liaison or mental health liaison who would be willing to perform the necessary tasks at no cost. Therefore, there would be costs associated with those services. The AOC will defer to the Tennessee Department of Veterans Affairs and the United States Department of Veterans Affairs regarding what services (and to whom) they supply at no cost.

Although Fiscal Review may wish to contact the Comptroller's Office and BOPP, the AOC does not believe that a probation officer would be permitted to perform these pre-adjudication functions. Assuming they would be, however, the AOC assumes there would be costs associated with broadening the scope of their current duties.

SECTION 8

Subsection (a) of this section says, "If a defendant in a general sessions or criminal court is charged with a criminal offense and it is alleged that such defendant committed the offense as a result of post-traumatic stress disorder, traumatic brain injury, substance use disorder, or psychological problems stemming from service in a combat theater in the United States military, the court shall hold a veterans status hearing prior to hearing the matter. The court shall order the defendant to submit to an eligibility screening and an assessment through the VA or the Tennessee department of veterans affairs to determine the defendant's veteran status. The defendant shall bear the burden of proof at the hearing." The AOC has the following questions regarding this subsection: (1) Do the sponsors anticipate that a defendant (through whatever procedure is devised by the court) will admit that he/she committed a criminal offense but allege that one of the listed conditions was the cause? If that's what's required and the defendant subsequently fails to successfully complete the program, can the defendant's admission of guilt be used against him/her at trial if the district attorney decides to pursue the prosecution?; (2) What is a "substance use disorder"? Also, does it have to be a controlled substance or can it be any substance?; (3) Do service members and veterans only qualify for this program if the alleged injury/disorder/problem stems from "service in a combat theater" or do all service members and veterans qualify? This provision appears to limit it. Also, the sponsors may wish to define "stemming from."; (4) Is there a veterans office (either state or federal) in every county? If not, who would be responsible for transporting a veteran/service member to the closest office for the necessary evaluations/assessments? If the person is incarcerated, for example, will the sheriff be required to transport him/her? If so, there will be costs associated with that transport. If the person is not incarcerated and does not have access to transportation, how will he/she get to the closest office? (5) The court is holding a status hearing "prior to hearing the matter." What does "prior to hearing the matter" mean?; (6) The referenced assessment is to "determine the defendant's veteran status" and the defendant "shall bear the burden of proof at the hearing." Does this mean that the only issue at this hearing is whether the defendant is a veteran (or a service member – as noted earlier, this bill often references "veteran" when service members should also be included) as opposed to determining whether the offense "stems from" the injury/disorder/problems alleged by the defendant?

Subsection (b) says that the court shall order the defendant to submit to an eligibility screening and mental health and drug and alcohol screening and assessment by the VA or by the Tennessee department of veterans affairs. Is this done after the hearing contemplated in subsection (a) or is it included in the assessment referenced in subsection (a)? If the sponsors contemplate that the assessment includes confirmation of service member/veteran status as well as the drug/mental health assessment prior to the hearing noted in subsection (a), the sponsors may wish to combine these two subsections to clarify that issue as well as to clarify what the defendant has the burden of proving (and what standard applies – preponderance of the evidence, beyond a reasonable doubt, etc.?). Also, subsection (b) says that the assessment is not necessary "if the court finds a valid screening or assessment related to the present charge pending against the defendant was completed within the previous sixty (60) days." What does "previous sixty (60) days" mean? Is it 60 days prior to the "hearing," 60 days prior to the filing of the defendant's statement (or similar pleading as required by the procedure created by the court) alleging that the offense "stemmed from" the injury/disorder/problem, or 60 days prior to the commission of the alleged offense? The bill also says that the assessment shall "include recommendations for treatment and shall be reflective of the level of risk of the individual." What does "level of risk" mean? Is

this a reference to the severity of the mental health/drug issue, a reference to the possibility the person will reoffend, or something else? Finally, the AOC will defer to the VA and the Tennessee department of veterans affairs regarding whether such an assessment is available at no cost. With regard to costs, though, Fiscal Review may wish to consider whether these offenders will be incarcerated (if they cannot make bond) while these assessments are being conducted. If so, there will be costs associated with this incarceration. The AOC spoke with the executive director of one of Tennessee's mental health courts, and he said there is often a very long delay before services are available to veterans. He said that the delays are partially due to the application process and partially due to volume.

Subsection (c)'s reference to the court's conclusion that the defendant is an eligible veteran (again, this should reference service members in addition to veterans) appears to contemplate that the hearing addresses all of the issues raised in subsections (a) and (b). Therefore, those subsections need to be combined and/or clarified. Subsection (c) also references a "condition of probation." It is the AOC's understanding that this bill is designed to provide treatment to veterans and service members prior to disposition of the case so the person can avoid a conviction entirely. Probation is ordered after, not before, a defendant is convicted unless pretrial diversion or judicial diversion is at issue, and this bill does not reference either of those. Moreover, eligibility for pretrial and judicial diversion is very limited, so many of these offenders would not be eligible even if that is what the sponsors contemplated when referencing probation. This subsection also contemplates that every court has access to a treatment program which will offer services at no cost. The AOC believes it is unlikely that these services will in fact be available at no cost.

Subsection (d) – Typographical error – Need to delete “an treatment program” and substitute “a treatment program.” Also, do the sponsors contemplate that this treatment will be at no cost?

Subsection (e) – Does this subsection contemplate that the program was offered in a previous criminal matter or at some point previously in the current matter?

Subsection (h) – As noted earlier, “veterans treatment intervention team” is not defined by this legislation. Also, the proposed sanctions include a “jail-based treatment program or serving a period of incarceration.” If the defendant has not been convicted of anything, what authority is there to incarcerate him or her? As noted earlier, because there has not been a conviction, this is not a situation in which the person is on probation. Therefore, the court cannot revoke the probation and incarcerate the person if the person violates a condition of probation. As such, under what authority is incarceration permitted?

Subsection (i) and (j) – These subsections are unclear. Do they mean that if the defendant successfully completes the program the court must dismiss the charges within 90 days, and that if the defendant does not successfully complete the program the court may order continued education/treatment or resumption of the prosecution, but that the court has to consider the district attorney's recommendation regarding which of those two options (continued treatment vs. prosecution) would be appropriate?

SECTION 9

This section references a “chief judge,” and this title does not exist in Tennessee. This should be changed to “presiding judge.” This section also suggests that the veterans court/program could be included in a drug court program. While that might be possible, the AOC's understanding is that drug courts are post-adjudication courts, and this legislation contemplates a pre-adjudication program. This proposed program appears to be more similar to mental health courts, which will be discussed elsewhere in this support form. This section also states that the presiding judge may allow the veterans court program to operate in one county in a multiple-county judicial district. The Office of the Attorney General may wish to comment regarding this provision since the Tennessee Constitution and the Tennessee Rules of Criminal Procedure state that a defendant has a right to be prosecuted in the county in which the alleged crime was committed. Moreover, from a practical standpoint, it is the AOC's understanding (based upon its conversation with a mental health court director) that the majority of persons with mental health and/or drug abuse issues have little or no support from family and friends, whom they likely have alienated, and do not have access to transportation. Therefore, resources are necessary to provide for transportation within one county, and requiring these offenders to travel to another county would be an undue burden. Moreover, if the person does not successfully complete the veterans program in one county and the prosecution elects to pursue the pending charges, the case would have to be sent back (for prosecution) to the county in which the offense was allegedly committed. Therefore, the judge, defense counsel, and prosecutors assigned to the case might change, and the defendant's records would be in two different counties. Finally, this section says that the chief judge “may” establish a veterans court program. Elsewhere in this bill, the sponsors utilized “shall” for many provisions. Are these programs/courts/dockets mandatory or are they permissive? If they are mandatory, which the bill appears to contemplate, the “may” in this section should be replaced by “shall” to avoid confusion.

SECTION 10

Subsection (a) says that the defendant may be admitted into the program only if the prosecutor, defendant, and court agree. This requirement should be included in Section 8 of this bill, and the procedures should be clarified. If the prosecutor is not going to agree to the defendant's inclusion in the program, many of the procedures in Section 8 of the bill would be unnecessary.

Subdivision (b)(2) says a defendant is ineligible for the program if he/she "has been convicted of a crime against a person within the past ten (10) years, excluding incarceration time." First, how should "crime against a person" be defined? Is it limited to the offenses listed in TCA Title 39, Chapter 13 (Offenses Against Person) and similar offenses in other states? Also, the 10-year provision is somewhat unclear. Does it mean that if a person was convicted of a crime against a person 19 years ago and served a sentence of 11 years, the person would be eligible for this program because $19-11 = 8$ years and 8 is less than 10? Does this 10-year restriction apply only to a crime against a person or does it also apply to "any offense involving the discharge of a firearm or where occurred serious bodily injury or death to any person." This bill lists the offenses of "armed robbery" and "aggravated battery resulting in great bodily harm or permanent disability," but these offenses do not exist in Tennessee. Also, what does "involving the discharge of a firearm" mean? If the discharge of a firearm is not an element of the offense but the facts of a particular person's offense could have "involved" a firearm, does someone have to research the facts of the previous conviction? If that has to be done for every offender, that could require considerable resources, especially if the conviction was not in the same county in which the current charges are pending. For example, the elements of attempted first degree premeditated murder do not require the discharge of a firearm, but that offense might "involve" the discharge of a firearm. That will not be known unless someone takes the time to look at the record from the previous conviction. There is a similar problem regarding "any offense . . . where occurred (sic) serious bodily injury or death to any person." Using the same example, it's possible that someone could have suffered serious bodily injury when an offender committed attempted first degree premeditated murder, but serious bodily injury is not an element of the offense and it's possible that nobody suffered an injury. This would not be known unless someone read the record from the previous trial/plea hearing.

Subdivision (b)(3) says the person is not eligible if he or she "has previously completed or has been discharged from a veterans court program within three (3) years of an offense punishable as a felony or a Class A misdemeanor." Does the felony/Class A misdemeanor classification refer to the pending charges or to the previous offense for which the defendant was permitted to participate in a veterans court program?

SECTION 11

Subsection (a) says that if a defendant fails to meet the conditions of the program the defendant may, among other things "be sentenced." How can the defendant be sentenced if this program is a pre-adjudication program and the defendant has not been convicted of a criminal offense?

Subsection (b) – As previously noted, utilizing incarceration as a sanction does not appear to be appropriate or lawful if the defendant has not been convicted of a criminal offense. The AOC spoke with the director of a mental health court in Tennessee, and he said that typical sanctions for violations include such things as requiring the person to report to the case manager more frequently or requiring more frequent drug testing. The possible sanctions do not include incarceration.

Subsection (c) – A "jail-based custodial treatment program" does not appear to be appropriate or lawful for a person who has not been convicted of a criminal offense. Also, in the third line, there should be an "or" prior to "comply." Finally, why are the mental health conditions which are subject to treatment limited to post-traumatic stress disorder, traumatic brain injury and depression? Maybe that should say "include, but are not limited to" if the sponsors wish to include all relevant mental health conditions.

SECTION 13

Subdivision (a)(4) references "his or her sentence." A person who has not been convicted of a criminal offense would not have a "sentence."

Subsection (b) – This subsection refers to "terminat[ing] the defendant's sentence." Again, the defendant has not been convicted, so a sentence has not been imposed.

SECTION 14

Subdivision (a)(3) references a person who is "adjudicated at trial." It does not say that the person was found guilty. Therefore, someone who goes to trial and is found not guilty will also be required to pay this \$25.00. That may have been the sponsors' intent, but that is

unlikely. As this legislation is drafted, it appears that every person who is charged with a criminal offense will eventually be required to pay \$25.00 unless the district attorney dismisses the charges prior to trial.

Subsection (b) says, in relevant part, that “[t]he assessment in subsection (a) shall be subject to 8-21-401 and shall be in addition to all other taxes, costs and fines. The first five dollars (\$5.00) of each such assessment shall be paid to the clerks of the court imposing assessment for the purposes of administering this chapter.” First, if the sponsors wish to include all counties, the bill should reference 8-21-409 in addition to referencing 8-21-401. Also, what does “shall be subject to 8-21-401” mean? Is that an acknowledgement that 8-21-401 allows clerks to receive a commission (see also 8-21-409)? If so, does the clerk take the allowable percentage (for commission) from the \$25.00 fee and also take the first \$5.00 of that fee? What is the clerk’s role in “administering this chapter”?

The bill says that the clerk shall deposit the remaining money into a dedicated county fund to “be used by the county exclusively for the creation and maintenance of state veterans courts as provided in this chapter.” However, the bill also says that “[i]n the event no veterans court operates in the judicial district, the remainder of the funds from that county shall be remitted annually in full to the state of Tennessee to be placed in a veterans court resources fund to be administered by the department of finance and administration, office of the criminal justice programs, in accordance with Section 15.” As previously noted, this bill appears to mandate the creation of a special court/docket/program for veterans. If such a court/docket/program is mandatory, under what circumstances would “no veterans court operate[] in the judicial district”? The Comptroller may wish to comment on any costs associated with its auditing responsibility under this subsection.

Subsection (c) – This subsection says, among other things, that “[j]udges who wish to serve on veterans courts may apply for funds for training and continuing education on issues relevant to veterans.” Would judges submit these applications to the court clerk, the office of criminal justice programs (“OCJP”), or some other entity?

SECTION 15

After taking their commission and/or the \$5.00 authorized by this bill, clerks will be putting the majority, if not all, of the money collected from the \$25.00 assessment into a county fund. Therefore, this section’s reference to money “collected and remitted to the state” must be referencing money which is submitted to OCJP if the judicial district does not establish a court for veterans. Again, since the creation of such a court appears to be mandatory, it does not appear that any counties would be forwarding money to OCJP. Assuming counties forward money to OCJP, this section states that the money in this fund shall be used “for the purposes of funding veterans court operations” and that OCJP shall “administer the money in the veterans court fund.” Can that money only be used for judges’ “training and continuing education on issues relevant to veterans” as referenced in Section 14 of this bill, or can it be used for any veterans court purpose OCJP deems appropriate? OCJP may wish to comment regarding any costs associated with administering the fund.

SECTIONS 14 and 15 - EXAMPLE

Of the 31 judicial districts in Tennessee, 22 districts have more than one county in the district. For example, the 1st Judicial District includes Carter, Johnson, Unicoi, and Washington counties. If the presiding judge of that district decided to have a court/docket/program for veterans in Carter County, would the court clerks for Johnson, Unicoi and Washington counties be permitted to retain the \$5.00 of the \$25.00 fee even though there would not be a court/docket/program for veterans in their counties? Also, as previously noted, the bill provides that the money “shall be used by the county exclusively for the creation and maintenance of state veterans courts as provided in this chapter.” The money only goes to OCJP if the “judicial district” does not have a program for veterans. Where does the money go if the “judicial district” operates a program for veterans but the county does not? Using the 1st Judicial District as an example, since the veterans/service members from Johnson, Unicoi and Washington counties would be serviced by the program established in Carter County, it appears that Johnson, Unicoi and Washington counties should be sending the revenue generated by the \$25.00 fee to Carter County for use in establishing and running the program. However, it is unclear if the bill mandates, or even authorizes, that transfer of funds. Importantly, the bill also does not appear to require Johnson, Unicoi and Washington counties to send the funds to OCJP since there would in fact be a veterans court operating in the judicial district. Therefore, do Johnson, Unicoi and Washington counties merely retain the funds and utilize those funds to establish a special court/docket/program for veterans in the future? If those counties never establish such a program, does the money simply remain unused?

SECTION 17

The effective date of this legislation is July 1, 2012. Creating these new courts/dockets/programs will be a time-consuming process which will require extensive research, education, and deliberation regarding the most effective method of assisting veterans, and it will also require the coordination of numerous agencies, offices and programs. The AOC does not believe that this can be accomplished by July 1, 2012.

ALTHOUGH THIS SECTION OF THIS SUPPORT FORM RAISES SOME FISCAL IMPACT ISSUES, PLEASE SEE SECTION 6 OF THIS FORM FOR A MORE THOROUGH EXPLANATION REGARDING THE IMPACT TO THE COURT SYSTEM.

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3. State Fiscal Impacts (Boxes will expand as information is typed.)

Increase State Expenditures

| Fiscal Year | One-Time | Recurring | Fund Affected |
|-------------|----------|-----------|---------------|
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| | | | |
| | | | |
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Decrease State Expenditures

| Fiscal Year | One-Time | Recurring | Fund Affected |
|-------------|----------|-----------|---------------|
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Increase State Revenue

| Fiscal Year | One-Time | Recurring | Fund Affected |
|-------------|----------|-----------|---------------|
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| | | | |

Decrease State Revenue

| Fiscal Year | One-Time | Recurring | Fund Affected |
|-------------|----------|-----------|---------------|
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If state revenue is forgone, denote amount, fiscal year(s) and explain why the department believes it is forgone as opposed to a decrease:

If the dollar amount or source of funding will change beyond the first two fiscal years, please state the change:

=====

4. Local Fiscal Impacts

Increase Local Expenditures

| Fiscal Year | One-Time | | Recurring | |
|-------------|-----------|------------|-----------|------------|
| | Mandatory | Permissive | Mandatory | Permissive |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Decrease Local Expenditures

| Fiscal Year | One-Time | | Recurring | |
|-------------|-----------|------------|-----------|------------|
| | Mandatory | Permissive | Mandatory | Permissive |
| | | | | |
| | | | | |
| | | | | |

Increase Local Revenue

| Fiscal Year | One-Time | | Recurring | |
|-------------|-----------|------------|-----------|------------|
| | Mandatory | Permissive | Mandatory | Permissive |
| | | | | |
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| | | | | |

Decrease Local Revenue

| Fiscal Year | One-Time | | Recurring | |
|-------------|-----------|------------|-----------|------------|
| | Mandatory | Permissive | Mandatory | Permissive |
| | | | | |
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Additional Explanation of local impact if desired:

If local revenue is forgone, denote amount, fiscal year(s) and explain why the department believes it is forgone as opposed to a decrease:

=====

5. Federal Fiscal Impacts

Increase Federal Expenditures

| Fiscal Year | One-Time | Recurring | Fund Affected |
|-------------|----------|-----------|---------------|
| | | | |
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| | | | |

Identify which federal programs these funds are attached to:

If the dollar amount or source of funding will change beyond the first two fiscal years, please state the change:

Decrease Federal Expenditures

| Fiscal Year | One-Time | Recurring | Fund Affected |
|-------------|----------|-----------|---------------|
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Identify which federal programs these funds are attached to:

If the dollar amount or source of funding will change beyond the first two fiscal years, please state the change:

Increase Federal Revenue

| Fiscal Year | One-Time | Recurring | Fund Affected |
|-------------|----------|-----------|---------------|
| | | | |
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Identify which federal programs these funds are attached to:

If the dollar amount or source of funding will change beyond the first two fiscal years, please state the change:

Decrease Federal Revenue

| Fiscal Year | One-Time | Recurring | Fund Affected |
|-------------|----------|-----------|---------------|
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Identify which federal programs these funds are attached to:

If the dollar amount or source of funding will change beyond the first two fiscal years, please state the change:

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6. Other Fiscal Impacts (If the impact cannot be placed into the above fields, is not specifically quantifiable, is a cost avoidance, or if additional information is needed to explain the fiscal impact(s) use the space below):

The AOC has partially addressed the fiscal impact below, but **PLEASE NOTE** that the AOC identified other costs in Section 2 of this support form.

REVENUE / FUNDING / SAVINGS

If the eligible veterans successfully complete the veterans program and, as a result, are not incarcerated, there would be a reduction in incarceration costs. The nature of that reduction would depend upon the number of veterans at issue, the offenses at issue, and the veterans' criminal history (which is relevant to determining the appropriate sentencing range), among other things. The AOC does not collect any statistics from the general sessions courts, and the AOC's available statistics from the trial courts do not reflect whether a perpetrator was a veteran/service member.

With regard to funding, Section 14 proposes a \$25.00 fee for the four listed categories of persons. As previously noted, this legislation authorizes the court clerk to take \$5.00 of this fee (it's unclear whether this is in addition to the clerk's currently-authorized commission). In addition to considering how much of the \$25.00 clerks will be taking, Fiscal Review should consider how many offenders will actually pay the \$25.00 fee. Approximately 75% of criminal offenders are indigent and will not be capable of paying such a fee or any other costs/taxes/fines associated with their prosecution. Given the current state of the economy as well as the numerous fines/fees/taxes imposed upon litigants in criminal courts, it is unlikely that the remaining 25% of the offenders will be capable of paying their court bills in full. Based upon the relevant statutes and other pertinent information, the automated system utilized by many clerks' offices prioritizes (and distributes) incoming payments in the following order: state litigation taxes, county litigation taxes, clerk fees, other fees due to the county

(officer cost, etc.), other fees due to the state, fines, and restitution. Because offenders are unlikely to pay their bills in full and because the revenue which is generated must be used to satisfy so many other obligations prior to being utilized for the veterans courts, the AOC believes that the \$25.00 fee imposed by this legislation is unlikely to generate a substantial amount of revenue. The AOC has no means of measuring the potential revenue, though, because the AOC does not collect any offender/offense statistics from the general sessions courts and because all costs/fees/fines (regardless of whether the court at issue is a trial court or general sessions court) are submitted directly to the individual counties as opposed to the AOC.

COSTS

As noted in Section 2 of this support form, the proposed court/docket/program appears to be similar to a pre-adjudication mental health court. Upon inquiry, OCJP informed the AOC that it is aware of four mental health courts in Tennessee (Davidson County, Coffee County, Washington County, and Madison County). OCJP assists in funding one of the four established courts, providing the county's mental health court with \$75,000, which the county is required to supplement with \$25,000 as a condition of receiving those funds. The court's expenses are recurring expenses, so this is a three-year grant and OCJP's expenditure is \$75,000 per year. According to OCJP, these funds are for staff salaries and benefits, supplies, telephone, occupancy, travel, and "a little in professional fees for evaluation." With regard to staff, OCJP stated that these funds pay for two staff members and 5% of the mental health court director's time. The director's salary is supplemented, in part, by grants for a separately-funded and separately-run drug court.

The AOC spoke with the executive director of this mental health court. According to the director, \$100,000 "opens the doors" but little else. The county has a non-profit foundation which supports an existing drug court, and the mental health court often receives financial and other support from that organization (providing free photocopies of paperwork, for example). In addition to acknowledging that the \$100,000 only funds 5% of his salary, he stated that those funds are not adequate to provide the participants with the required mental health treatment. Also, persons with mental health and drug issues often do not have access to transportation, and they often have very little support from family and friends. Therefore, his program struggles to provide transportation for the participants. As noted in Section 2 of this support form, requiring participants to travel within the county is challenging enough, but requiring them to travel to another county (for an assessment/evaluation if those federal/state services are not available in the person's county or for court hearings or meetings with the case manager if the judicial district only has a veterans court in one county of the district) would be even more challenging and costly. This should be considered when determining the cost of this legislation. The director said that his participants are also typically in need of clothing and housing, and resources are necessary to assist the participants in resolving those issues. Finally, the director noted that many mental health court participants are repeat offenders who lost their TennCare benefits when previously incarcerated. Those offenders "face the monumental task of benefit reinstatement in order to obtain the necessary medication to help them function as normally as possible." Fiscal Review may wish to consult with the Tennessee Department of Veterans Affairs and the United States Department of Veterans Affairs regarding the circumstances in which repeat offenders lose their benefits through those organizations as well.

Although it is likely that each mental health court functions slightly differently, the director said that in his county the offenders' cases are continued while the offenders participate in the program. If they successfully complete the program, the charges are often dismissed. His program can serve a maximum of 20 offenders. Participants are in daily contact with a case manager, and they must appear before the court and meet with a case manager at least once per week for a status check. Due to the nature of their conditions, though, it is not unusual for the participants to "disappear" and lose contact with the case manager entirely. If a participant fails to comply with the requirements of the program but the violations are not serious enough to warrant resumption of the prosecution in lieu of treatment, sanctions typically include such things as requiring the participant to meet with a case manager or submit to a drug test on a more frequent basis. Incarceration is not permissible unless the participant is on probation for another offense, the mental health court program violation also constitutes a violation of the participant's probation, and the court incarcerates the participant after conducting a hearing and concluding that the probation violation warrants a period of incarceration. As noted in Section 2 of this support form, this bill contemplates incarceration as a sanction and the AOC questions whether this is appropriate or lawful.

In addition to the four counties identified by OCJP, the AOC learned that Warren County recently received a federal grant of \$1.2 million (OCJP was not involved with securing this grant) to fund mental health treatment for offenders for a three-year period. Warren County has an existing post-adjudication drug court, and the offenders who have mental health issues will receive post-adjudication treatment through this existing court, which will now be a joint mental health/drug court. According to the director of that program, the \$1.2 million will not be used by his office or by the court. Instead, the \$1.2 million will be used exclusively by the mental health provider, and that provider will be responsible for evaluating, treating, and monitoring offenders for the next three years. A maximum of 60 participants per year can be served under this program.

As noted above, the AOC's statistics do not reflect whether a perpetrator was a veteran or service member. Therefore, the AOC cannot predict how many offenders would be eligible for the programs proposed by this legislation. However, if each judicial district/county is required to create this special court/docket/program, there will be costs associated with doing so regardless of how many offenders ultimately are served by the court/docket/program. There are 95 counties (31 judicial districts) in Tennessee. A conservative estimate for the salary of the director of a veterans court would be \$50,000 (\$35,000 base salary plus benefits). Moreover, a minimum annual expenditure of \$100,000 would be necessary to provide two case managers and basic supplies for a specialized court for a small county. Additionally, there will be costs associated with the mental health and drug abuse assessments and treatments contemplated by this bill. As previously noted, the already-established drug court in Warren County will be using \$1.2 million over the next three years for mental health evaluation, treatment and monitoring costs for a maximum of 60 participants per year. The AOC recommends that Fiscal Review contact the Tennessee Department of Veterans Affairs and the United States Department of Veterans Affairs to determine whether they have offices in every county in Tennessee as well as whether they have the necessary resources to provide mental health and drug abuse evaluations and treatment to every person who qualifies for the veterans court program. In addition to addressing general coverage issues, Fiscal Review may wish to ask those agencies if they provide services to active service members or if those services are only available to veterans. If the agencies would not provide the anticipated services for all service members and veterans in every county in Tennessee, there will be expenditures associated with securing those services.

The mental health court director referenced above works closely with local mental health groups which secure federal funding in an effort to provide treatment at no cost. The AOC does not believe it would be appropriate for Fiscal Review to assume that such resources are available in every county or judicial district. If the veterans affairs agencies are not willing or able to provide the necessary assessments and/or treatment, it is unclear who would be responsible for the costs of those services. The AOC does not pay for drug treatment and only pays for mental health evaluations in limited circumstances. With regard to the latter, there are significant costs involved. For example, a competency evaluation by a psychologist typically costs approximately \$5,000, and the psychologist often finds that an additional evaluation is necessary regarding the offender's mental state at the time of the alleged offense. This additional evaluation is conducted by a psychiatrist and costs an additional \$5,000. These are merely preliminary evaluations and do not include any necessary treatment. Moreover, Tennessee Supreme Court Rule 13 ("Rule 13") only authorizes the AOC to compensate experts for services for indigent offenders, and the participants in the veterans court program may or may not be indigent. Finally, Rule 13 authorizes payment at the trial court level as opposed to the general sessions court level, and based upon the AOC's reading of this legislation it appears that the intervention will most likely occur at the general sessions court level. Fiscal Review may wish to contact the Department of Mental Health and Developmental Disabilities and any other relevant agencies regarding what services they are willing/authorized to provide.

Although the procedure contemplated by this legislation is somewhat unclear, there is a possibility that offenders who are awaiting assessment will remain incarcerated for a longer period of time than an offender whose case is proceeding through the court system in the typical manner. Therefore, the Comptroller may wish to comment regarding any potential costs associated with incarceration in the local jails.

The AOC has heard, but has not confirmed, that the American Civil Liberties Union has expressed concern that veterans court programs may have constitutional implications since similarly-situated offenders are being treated more harshly than veterans. Also, there may be constitutional problems with requiring veterans in a multi-county judicial district to participate in a program which is not offered in the county in which the alleged offense occurred. Therefore, the Office of the Attorney General may wish to comment regarding any costs which may be associated with defending the constitutionality of this legislation.

The Board of Probation and Parole, Office of Criminal Justice Programs, District Attorneys General Conference, Tennessee Association of Criminal Defense Lawyers, Court Clerks, and District Public Defenders Conference may also wish to comment regarding any costs associated with their responsibilities pursuant to this legislation.

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7. *Assumptions Used to Determine Fiscal Impact/Breakdown of Impact: (Indicate number and type of positions; show personnel costs, benefits, supplies, equipment, travel, etc. Attach copies of worksheets, if needed. Include assumptions for zero impacts).
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8. *Is funding for this legislation included in the Governor's proposed budget?

- Yes No

Amount Included if different from estimated cost \$ _____

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9. Explanation of Abbreviations Used:
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10. Additional Comments by Preparer:
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11. List Other State Departments/Agencies Fiscally Affected by this Bill or Amendment:
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The AOC identified the agencies in the body of the support form.

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12. List Bills from Previous Sessions which are Identical/Similar to this Bill or Amendment:
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***Commissioner's Signature or Designee:**