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JUSTICE PROGRAMS OFFICE

SCHOOL OF PUBLIC AFFAIRS

**BUREAU OF JUSTICE ASSISTANCE (BJA) DRUG COURT
CLEARINGHOUSE/TECHNICAL ASSISTANCE PROJECT**

**FREQUENTLY ASKED QUESTIONS SERIES: Strategies for Identifying Defendants Who
Are Veterans for Potential Participation in Veterans Court Programs**

Subject: Strategies for Identifying Defendants Who Are Veterans for Potential
Participation in Veterans Court Programs
From: BJA Drug Court Clearinghouse/Technical Assistance Project
Date: May 22, 2013 (rev.)

In the course of our technical assistance activities, a number of veterans' drug court programs have expressed interest in learning from other programs about strategies they are using to identify potentially eligible participants. This FAQ presents a compilation of responses received from veterans court programs to the following question:

- (1) How do you identify defendants who are veterans and potentially eligible for your veterans court program?
- (2) Is there any systematic process that has been put in place to screen arrestees to identify those who are veterans?

To date, responses to this inquiry have been received from 20 programs across 12 states, most of which are using multiple points in the process to identify potential participants who are veterans. In many instances, pretrial interview and other related forms have been modified to add a question regarding veterans' status. In Kentucky, efforts are underway to have an individual's veterans status noted on their driver's license. We received responses from three states (California, Massachusetts and Minnesota), indicating that they have enacted statutes which outline the special treatment of veteran offenders.

Included in the Appendix are the following supporting materials sent by respondents:

- A. Placer County, California. *Veteran's Court 2112, Behavioral Management Court*. June 25, 2012
- B. West's Annotated California Codes; Penal Code § 1170.9. *Members of the military; mental health problems stemming from service; probation; mental health treatment services; sentence credits; treatment program preference; collaboration; restorative relief*. Effective: January 1, 2013
- C. Trial Court of the Commonwealth of Massachusetts, District Court Department. Hon. Lynda M. Connolly, Chief Justice. *Memorandum Re: Pretrial Diversion of Veterans*. December 19, 2012.

RESPONSES

ARIZONA

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At intake into our Detention center (Jail) all persons booked in are ask whether they are veterans and if they are eligible for Veterans benefits. If they are, the VA is notified if the defendant may have a chance to be released or processed into a program appropriate for his/her circumstance.

CALIFORNIA

Mendocino County

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My understanding is that in northern California, there is only a brief veteran's court program held, in the spring, I believe in the Napa area. It is not feasible for us because we need extended care for drug addiction. I would love to see federal funding provided for a veteran's program. It would also be nice to see it include offenses outside of the drug realm. As the domestic violence prosecutor for our office, I have cases with veterans who have violent outbursts. Our drug court program will not take people with violent offenses, so even if a domestic violence incident involves drug/alcohol use, they cannot come to our drug court program. Having federal funds for a veteran's program that is extensive and longer than a few weeks and available would be great!

Placer County

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I have attached our program process. Other strategies used to identify veterans are marketing to judges, attorneys, community providers and probation officers. The referral ends up with the defense attorney as they help the Veteran determine if they want to participate. (*See Appendix A: Placer County, California. Veteran's Court 2112, Behavioral Management Court. June 25, 2012.*)

The tools used for suitability by HHS include the PCL-M, DAST and PHQ-9 as well as a brief interview to determine the link between mental health or substance use issues and the instant offense and individual motivation for change.

Riverside County

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Riverside is working on that issue right now. My goal is to conduct brown bag lunches inviting defense attorneys to attend – educating them about the program what is needed from them to make a decision on eligibility and what the guidelines are for our program.

Santa Clara County

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(1) All Veterans are referred by other Judges.

(2) On booking into jail every defendant is asked whether he or she has ever served in the military. If the answer is yes, an entry is made in our criminal justice data for that case and from the date the defendant first appears in court the fact that he/she may be a Veteran is known to the Public Defender, defense attorney, DA and Judge.

(3) In addition, the VJO for our county, does face to face visits in the jail with inmates and may recommend the Veteran for participation in VTC and that recommendation goes to the sentencing Judge.

(4) We have no barriers to exclude any Veteran and take one and all (this makes the referral process clear) other than that the defendant is mentally ill (includes sexual trauma, etc.) and/or substance abuser, or other co-occurring disorder (e.g. TBI) and we have an assessment process in place for that determination before a defendant is referred and prior to sentencing.

(5) We take Veterans post sentence because we are a treatment court and do not make the decision on punishment, restitution, etc. The referring Judge indicates either that the VTC Judge may modify any jail sentence or may not; however, the referring Judge obviously takes into consideration the fact that the defendant is a Veteran and mentally ill, etc. at the time of sentence or the defendant would not be referred.

This process has resulted in many referrals.

Note: Below is a reference to a California Statute from Judge Peggy Hora (ret.) unrelated to this inquiry, in which she referenced California Penal Code § 1170.9. *Members of the military; mental health problems stemming from service; probation; mental health treatment services; sentence credits; treatment program preference; collaboration; restorative relief.*(See Attachment B), enacted in 1983. She also indicated that this law is seldom used.

Alameda County

**Judge Peggy Hora (ret.)
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We've had a Penal Code section dealing with "special treatment" for vets since 1983.

FLORIDA

**Judge Edward H. Merrigan, Jr.
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I am the Veterans Court Judge in the 17th Judicial Circuit in Broward County, Florida. During my court dockets, I have a representative from the Veterans Administration, who has the ability to look into the back grounds of the defendants in my court room. There are some delays, when the individual must get access to a DD-214 which usually takes 4 to 6 weeks to get the information, but it does not stop the process.

ILLINOIS

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We use a multi-prong approach:

- (1) Our jail asks every defendant at the booking phase if they have ever served in the armed forces and then sends a weekly report to our coordinator.
- (2) the Bond Court Judge also keeps a list.
- (3) Defense attorneys make many referrals, especially public defenders.
- (4) VJO identifies existing clients with new charges and makes referrals.

Some might escape at every point of intercept, which is why it is best to have multiple sources and each are encouraged to continue with making referrals.

KENTUCKY

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In Kentucky, we have partnered with our Pretrial Services officers to obtain the information. All defendants arrested in Kentucky are seen by a Pretrial officer within 12- 24 hours of arrest. We have added language on the Pretrial Services interview form asking if he/she has ever served in the United States Armed Forces, and if so, if he/she was ever in combat. If they defendant answers yes, to the first question, the Pretrial officer will then ask if he/she is willing to sign a Release of Confidential Information to allow the officer to share with the defendant the interview with the VJO and/or Drug

Court/VTC staff. If the defendant agrees, the pretrial officer will then give a copy of the interview to the VJO or Drug Court/VTC court staff to initiate conversations about the program. If possible, we attempt to see the defendant prior to release from custody, however if the defendant is released before we get to them, we then approach them at their arraignment. Of course, this is only successful if the defendant answers truthfully to the question, and agrees to sign the ROI.

I am also on a Veterans Task Force chaired by one of our Supreme Court Justices and we are working on an initiative with our Circuit Clerks and Kentucky State Police to have a veterans designation placed on driver's licenses. The veteran's photograph would be taken in front of a special backdrop with the American Flag on it, thus allowing anyone seeing the license to know that the individual is a veteran. That really won't assist our Drug/VT Courts in identifying, but does inform the arresting officer, particularly if it is a DUI arrest. In areas where we have a strong law enforcement presence on our treatment court teams, those defendants could possibly be identified by law enforcement and the information passed along to the teams.

MAINE

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Maine has a veterans track as part of its co-occurring disorders court. We have worked with the local county jail from which most referrals are received to ensure that all inmates, when screened, are asked if they are veterans. If so, the veterans track case manager is informed. As the sheriff is a veteran and very invested in services to this population, he has emphasized this with his staff. Elsewhere in the state's county jails we are encouraging that this question be routinely asked. However, we are told that not all veterans are comfortable disclosing this information. There is also a close working relationship with the Veterans Justice Outreach Coordinator from the VA. She serves the entire state and has an accurate data base on her end of veterans using VA services. I am sure significant gaps remain.

MASSACHUSETTS

State Administrative Office

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Please see the attached Transmittal from Chief Justice Connolly regarding the Valor Act. Thank you.
(See Appendix C: Trial Court of the Commonwealth of Massachusetts, District Court Department. Hon. Lynda M. Connolly, Chief Justice. Memorandum Re: Pretrial Diversion of Veterans. December 19, 2012.)

Norfolk County

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In Norfolk County Massachusetts, we have added the following question to our probation intake form: Have you ever served in the military?

Every criminal defendant, whether under arrest or in court as the result of a summons for arraignment, must be interviewed by a probation office staff member. The probation officer completes the Probation Intake Form. It has basic identifying information about each defendant. A recent statute, entitled the Valor Act, requires the probation department to ascertain the military status of each defendant at or before arraignment.

I am attaching the transmittal from our office to judges and court personnel outlining the Valor Act. It includes a link to the statute. (*See Appendix C: Trial Court of the Commonwealth of Massachusetts, District Court Department. Hon. Lynda M. Connolly, Chief Justice. Memorandum Re: Pretrial Diversion of Veterans. December 19, 2012.*)

MINNESOTA

Note: In July 2008, Minnesota enacted a statute requiring the identification of veterans in the presentence process, ensuring their diagnosis and available treatment options through the Department of Veterans Affairs (VA). Their veteran's status may be taken into account as part of an appropriate sentence. (*See excerpt below from Minnesota Statute 609.115 Presentence Investigation. 2012*)

Subd. 10. Military veterans.

(a) When a defendant appears in court and is convicted of a crime, the court shall inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States.

(b) If the defendant is currently serving in the military or is a veteran and has been diagnosed as having a mental illness by a qualified psychiatrist or clinical psychologist or physician, the court may:

(1) order that the officer preparing the report under subdivision 1 consult with the United States Department of Veterans Affairs, Minnesota Department of Veterans Affairs, or another agency or person with suitable knowledge or experience, for the purpose of providing the court with information regarding treatment options available to the defendant, including federal, state, and local programming; and

(2) consider the treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant in imposing sentence.

MONTANA

Cascade County

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Montana's Eighth Judicial District has adopted the following protocols:

1. Adult Probation and Parole asks about Veteran status at intake. The file is noted accordingly and if appropriate referral to drug court is made at that time. If the Veteran Probationer does well on supervision and successfully completes their probation requirements, they do not get referred to the Drug Treatment Court Program. If the Veteran Probationer violates Probation Conditions, Probation Officers have the option (among many) to refer the Veteran Probationer to the Adult Drug Treatment Court Program. Legal history review, chemical dependency evaluation, mental health evaluation and team discussion and enrollment determination then occur. While general legal eligibility, CD and MH parameters exist in regard to eligibility, potential participants are considered on a case by case basis.
2. The Cascade County Attorney's and Public Defender's Offices staff cases for Drug Treatment Court Participation weekly. Veteran status is a component of the Drug Treatment Court staffing/referral process.

I must offer a caveat regarding the above statements with the following: The Eighth District is only preparing to implement our Veteran's Drug Treatment Court Program. The Program will commence in January and the above are manualized procedures. I am hopeful they will implement as easily and effectively as they were developed.

Thank you for the opportunity to contribute a response. I would be interested to learn of other protocols.

Missoula County

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Although we are always looking for suggestions, the Missoula Veterans Court does not have a systematic way of identifying potential applicants to the Court. Our strategy has been information outreach. Since we began the program in June of 2011, we have worked hard to make the program's existence known. We have been on television, in the newspaper several times, (as a result of press releases). We have spoken to all Veterans groups in the area. We have spoken with the local judges, prosecutors and defense attorneys and the public defender's office. We have communicated with the Veterans Center and the VA CBOC.

NEW HAMPSHIRE

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In New Hampshire, the court asks a defendant if he is a veteran.

NEW JERSEY

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While we do not have a veterans' court, we have the New Jersey Judiciary's Veterans Assistance Project. Here is a brief summary of the collaborative effort that New Jersey's Judiciary has had in operation since December of 2008.

The New Jersey Veterans Assistance Project (VAP) is a combined effort of the Judiciary, the New Jersey Department of Military and Veterans Affairs, and the New Jersey Department of Human Services, Division of Mental Health Services, to connect service members who come into contact with the courts and who need help with existing community services. The project is geared toward identifying veterans who have come into contact with the courts and referring them voluntarily for available services, not diverting veterans from the courts.

How do you identify potential participants?

Veterans are identified at the earliest possible point as they enter the court system. Self identification as a veteran is solicited when persons enter county jails, municipal and superior courts, and as existing probationers report to the Probation Department. There are multiple points at which a referral to a local Veterans Services Office (VSO) can be initiated.

Is there any systematic process that has been put in place to screen for persons who are veterans?

Once a veteran has self-identified a referral to the Veterans Services Office (VSO) may be prepared if the veteran volunteers to participate. Completed referral forms are directed to the Superior Court, Criminal Division where the referral is entered into the Veterans Assistance Project database and then electronically sent to the local VSO.

WASHINGTON

Clark County

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The Clark County (WA) Veterans Therapeutic Court is a District Court level (misdemeanor) treatment court program. This is what we've done to help identify veterans in our criminal justice system:

- 1) The Washington Department of Veterans Affairs (WDVA) has a full-time employee that assists any incarcerated veteran through the CJ process and provides case management to help veteran reintegrate into the community. The WDVA specialist can help the veteran apply for benefits, claims, GI Bills for education, referral to voc rehab programs but mainly works on some basic needs of housing, food, clothing, utilities and transportation. At our JAIL BOOKING, the intake officers ask EACH newly booked defendant if s/he has ever served in the military. This triggers a list for the WDVA specialist to work with for currently incarcerated veterans. This WDVA specialist is a part of our Veterans Therapeutic Court team so if a veteran is identified as a potential candidate, the communication starts with attorneys, judges, defendant and court coordinator. We also have Veterans Court brochures at booking counter in the jail as well as posted in each pod of the jail for any inmate to see/read.
- 2) Our probation officers interview each newly booked defendant to help do a recognizance or bail interview. We've also included a military question as part of that process to make sure we are identifying any incarcerated veteran if for some reason the jail booking intake missed it. All veterans identified on that list go to the Veterans Court Coordinator.
- 3) All of our courtrooms have brochures about our program right in front of the clerk where they need to sign all their court orders, promises to appear.
- 4) The judges are routinely reminded to make generalized announcements on the arraignment/first appearance dockets that our community offers several treatment court options and to discuss with defense attorney should you be interested. That way this generalized announcement is made at the opening of court and not on any particular case (again, all of our treatment court brochures are then visible in the courtroom)
- 5) Lastly, the judge/coordinator/VA make community presentations frequently and most often with our public defender's office that carries 80% or more of the defense contract to continue to education attorneys on the benefits of treatment courts.

The probation intake department is becoming more standardized to again ask military status and keep in mind our program. We identified that the risk assessment tool (Service Planning Instrument, SPIN by Orbis Partners, Inc.) that our department uses does NOT ask military status questions and we've had to train the staff to add that question to our intake process.

As military status is identified at any point that a defendant is in the criminal court process or probation, the veterans' court is mentioned as a potential option if they admit/identify substance abuse/co-occurring disorder and a referral can be made.

Cowlitz County

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We do not have a Veterans Court but we target veterans. Our jail flags veterans when they are booked. We go through the jail log each day and if an inmate identified as a vet has a charge that looks appropriate, I send a case manger over to talk to them briefly, give them some literature and suggest they talk with their defense attorney if they are interested.

Our County is interested in learning more about this issue in 2013.

Pierce County

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Here in Pierce County we have added a box to the face sheet when someone is booked through the jail. The intake officer asks at all bookings if the defendant has served in the military services. If so they check the box identifying them as a veteran. Our IT department has set up a program that allows me to pull up arraignments for only veterans. (checking the box separates them from other felony charged defendants). I then go through all those charges and determine who meets the criteria for the veterans drug court program and notify the drug court prosecutor and their defense attorney regarding being eligible for the veterans program. The attorneys then determine if the client wishes to participant and if there is any other criminal history that would make them not eligible for the program. Should they meet all the requirements a screening is set for the defendant to be admitted into the veteran drug court program.

Thurston County

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In Thurston County, Washington we have our deputies in booking at the jail ask if the individual has ever served in the US Armed Services. Additionally, we work with the Washington Department of Veterans Affairs Incarcerated Veterans Re-Integration Program which has been an invaluable resource to our county. I also believe our Office of Assigned Counsel has added that question to their form.

In many other counties in Washington the Washington State Department of Veterans Affairs has been playing an important role in serving the justice-involved veterans. If other states have not yet made contact with their state departments, I strongly recommend including them.

We welcome any additional information and/or perspective readers may have on this topic.

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Appendix

- A) **Place County, California. *Veteran's Court 2112, Behavioral Management Court.* June 25, 2012.**
- B) **West's Annotated California Codes; Penal Code § 1170.9. *Members of the military; mental health problems stemming from service; probation; mental health treatment services; sentence credits; treatment program preference; collaboration; restorative relief.* Effective: January 1, 2013**
- C) **Trial Court of the Commonwealth of Massachusetts, District Court Department. Hon. Lynda M. Connolly, Chief Justice. *Memorandum Re: Pretrial Diversion of Veterans.* December 19, 2012.**

VETERAN'S COURT 2112
Behavioral Management Court

HOME COURT:

1. Defendant may request an assessment for suitability if he/she is eligible or presumptively ineligible per the attached eligibility criteria. Defendant may not request an assessment for suitability if conclusively ineligible unless the District Attorney dismisses the charges rendering the defendant conclusively ineligible.
2. Home Court shall provide the defendant with the referral form entitled "**Welcome to Placer County Veteran's Court (Attachment A)**," which form shall note the date of the assessment and the return date in Home Court for determination of suitability. In addition the Home Court will provide the defendant with the form entitled "**Veteran's Court Program (Attachment B)**."
3. For those defendants out of custody, the court shall order the defendant to appear on the 2nd, 4th or 5th Wednesday of the month at 1:00 p.m. at the offices of the Placer County Adult System of Care, hereinafter referred to as ASOC. For those defendants in custody, the court shall notify ASOC of the defendant's custody status and ASOC shall arrange to meet with the defendant at the jail.
4. Defense Counsel shall complete a "**VHA Eligibility and Referral form**" (**Attachment C**) which shall be faxed by defense counsel to the appropriate VA Office (Mather or Reno) to ascertain whether the defendant is a veteran and his/her discharge status (i.e. honorable, general, medical, other than honorable, bad conduct, or dishonorable.) The VA shall complete the form expeditiously and return it to defense counsel.
5. Defense Counsel shall provide to the VA a medical release signed by the defendant permitting the release of information, including medical records to the Placer County Adult System of Care. The release shall be submitted on the standard form entitled "Department of Veteran's Affairs, Release of Medical Records Protected by 38 U.S.C. 7332." **VA ROI (Attachment D)**
6. Defense counsel shall complete a referral/screening form entitled "**Placer County Veteran's Court Referral Form**" (**Attachment E**)," which shall include detailed information regarding the defendant's mental health and/or substance abuse problems with particular reference to service-connected problems, previous treatment, medications, and reasons why it is believed he/she meets the criteria for Veteran's Court. Defense counsel shall fax the forms to "PCVC staff" at 530-886-2972. Upon receipt from the VA of the above-noted verification for VHA services (Attachment C), defense counsel shall fax the completed form to PCVC staff.
7. The Criminal Division shall, within one business day, provide to ASOC a copy of the complaint, the minutes reflecting the referral, and any 730 evaluations. These documents should be faxed to ASOC to the attention of Veteran's Court Staff at 530-886-2972.
8. The Home Court shall set a return date in the Home Court for determination of suitability. The return date shall be set out a sufficient period of time to allow ASOC to conduct the assessment. This is likely at least three weeks for out of custody cases and two weeks for in custody cases. The return date should be noted on the referral form provided to the defendant.

9. Defense counsel may provide additional documents to ASOC including but not limited to previous evaluations including a 1017 evaluation, which evaluations and reports shall be returned to defense counsel with the assessment noted below. It shall be the responsibility of defense counsel to ensure the reports and evaluations are received by ASOC prior to any scheduled interview with the defendant.

PLACER COUNTY ADULT SYSTEM OF CARE:

1. ASOC shall provide the court with specified days per week and hours per day that staff will be available to meet with defendants referred for an assessment. The scheduled time will be approximately 1.5 hours and there will most often be two evaluators available – this should permit scheduling no more than 4 cases per week. The parties agree that should the numbers be more than 4 per week to reassess the feasibility of this plan. This information is noted above.
2. ASOC shall meet with the defendant and conduct an assessment for suitability to Veteran's Court pursuant to the attached suitability criteria. The meeting shall occur at 11512 B Avenue, Auburn for out of custody defendants and at the jail for in custody defendants. Thereafter, ASOC may refer the defendant for further assessment by the local VHA facility for suitability and treatment plan. The request will be submitted on the form entitled "**VHA Eligibility and Referral form**" (**Attachment C**)
3. ASOC shall complete a "**Suitability Assessment/Initial Treatment Plan (Attachment F)**" form which shall be provided to defense counsel only. ASOC may proceed in the absence of the "Preliminary Eligibility for VHA Services" report from the VA, provided, however it will be understood that the recommendations will be contingent on defendant meeting the minimum eligibility requirements of PC 1170.9.
4. The Assessment as prepared by ASOC shall include consideration of the defendant's diagnosis and whether the defendant meets the established criteria for suitability to Veteran's Court. The assessment shall note whether the defendant is suitable and may include a brief commentary on why the defendant is or is not suitable. If suitable, the assessment shall include an initial recommended case plan so that the defendant is able to determine generally what will be required of the defendant for participation in Veteran's Court. It is understood the case plan may be modified somewhat at J & S but the intent is to give the defendant a fairly good idea of the case plan and probation terms that will be imposed.
5. ASOC shall have the defendant sign a "**Consent for Release of Confidential Information (Attachment G)**", which shall permit ASOC to share information, including but not limited to any current evaluations, past evaluations, and documents/medical records received from any source including from the VA, with the court and other Veteran's Court participants, including but not limited to treatment providers, defense counsel, the District Attorney, and the VA. The release shall only be effective, however, in the event defendant is deemed suitable by the Home Court Judge and defendant agrees to Veteran's Court.
6. ASOC shall provide the defendant with a copy of a more detailed explanation of Veteran's Court entitled "**Placer County Veteran's Court, Guidelines for Participants (Attachment H)**."

HOME COURT

1. The assessment completed by ASOC shall be provided to defense counsel only. Defense counsel shall determine whether to proceed with the request for referral to Veteran's Court. In the event the defendant chooses to proceed in seeking Veteran's Court, the assessment shall be shared with the Court and the District Attorney. Upon entry of the plea, the District Attorney and the Court shall return the assessment to the defense. The defense and ASOC shall retain the assessment for future use as agreed by all parties. In no event will a defendant be accepted into Veteran's Court if he/she declines to share the results with the Court and District Attorney. The defendant may, however, choose to decline Veteran's Court in which event the results shall remain confidential as noted above.
2. If deemed suitable and the defendant accepts participation in Veteran's Court, the parties shall thereafter negotiate the appropriate plea in the Home Court. The court shall note for the record that the defendant has discussed the requirements of participation in Veteran's Court with his/her counsel and has agreed to participate. This advisement will be noted in the minutes.
3. Judgment and Sentencing will be set for hearing in the Veteran's Court and defendant will need to enter an Arbuckle Waiver and ideally a continued time waiver. Sentencing will be done by the Veteran's Court judicial officer. Any mandatory terms, lids etc. shall be noted on the clerk's minutes so they are available to Veteran's Court.
4. Parties agree that matters referred to Veteran's Court for J & S will allow for some flexibility in sentencing so as to ensure terms of probation that are appropriate for a particular defendant's mental health condition and to include best practices for ensuring compliance with appropriate treatment terms.
5. Upon entry of the plea, the Home Court shall set the matter for hearing on the next available Veteran's Court date: currently on the 1st and 3rd Wednesdays of the month at 2:30 a.m. in Dept 13.
6. The Home Court will not request the RPO; that will occur in Veteran's Court to ensure that the attorneys in Veteran's Court can become familiar with the case.

VETERAN'S COURT:

1. At the first hearing in Veteran's Court, the court shall in felony cases request a RPO, unless waived by all parties, and set the matter for J & S. In the interim, the defendant will be subject to certain probation terms as a condition of bail or OR and shall be required to attend court for review of status pending J & S. These conditions would include, but are not limited to, attending treatment as recommended, taking medication as prescribed. The court can adopt an interim case plan setting for treatment conditions, which will be adopted as conditions of bail or OR. The defendant's compliance with the interim terms may be a factor considered by the court at J & S.
2. At the first hearing in Veteran's Court, the court shall in misdemeanor cases conference the matter with all parties including ASOC staff and treatment providers to determine the most appropriate terms of probation. In the event, the court continues the matter for further hearing, the defendant shall be subject to certain Veteran's Court terms as a condition of bail or OR as note above, and shall be required to attend court for review of status pending J & S.
3. At Judgment and Sentencing the court will incorporate into the standard terms of probation a specific case plan designed to address certain goals including the following:
 - a. Decrease recidivism

- b. Increase compliance
- c. Provide appropriate services to those in need of mental health treatment
- d. Incorporate best practices that take into consideration the MH disorder of the defendant.

VETERAN'S COURT REVIEWS:

1. Defendants shall be set for review hearings to ensure compliance with the terms of probation including a specific case plan.
2. Each defendant in addition to standard terms of probation shall have a specific case plan addressing treatment and other specific obligations.
3. The case plan for each defendant will be provided to the defendant and a copy will be kept on the left side of the court's file for easy reference.
4. Defendants shall be responsible for providing a **"Progress Report (Attachment I)"** and other obligations such as attendance at self-help meetings.
5. Treatment providers will be provided with review report forms to assist in providing the court with information regarding the defendant's treatment.
6. Veteran's Court will incorporate specific and clear graduated responses
7. Veteran's Court will set forth designated transition/graduation dates
 - a. Felony Cases – target of 18 months
 - b. Misdemeanor Cases – target of 12 months
8. Veteran's Court will provide incentives e.g.
 - a. Reduced reviews 2/12/2013
 - b. 17(b) or early termination of probation
 - c. Fast Track Calendars for those doing well
 - d. Reduction in fees and fines as statutorily allowable
 - e. Certificates, gift certificates, candy bars etc.
9. Veteran's Court will provide appropriate responses/sanctions e.g.:
 - a. Imposition of stayed jail time
 - b. Increased hearings
 - c. Increased treatment sessions.
10. All formal probation cases, whether felony or misdemeanor, will be managed by a Probation Officer. The court officer will provide a verbal update at each review hearing and a memorandum update quarterly.
11. Reviews shall be scheduled initially two times per month on the 1st and 3rd Wednesdays of the month in Dept 13.
12. Once the defendant attains level two of the program, reviews shall be scheduled one time per month.
13. Once the defendant attains level three of the program, court appearances shall be every six to eight weeks.
14. The Veteran's Court team will meet before court commences to conference those cases scheduled for hearing.

ELIGIBILITY:

1. Meets criteria of PC 1170.9
 - a. Served in Armed Forces – verified by VA. Includes combat and non-combat veterans and is not limited to an honorable discharge.

- b. Defendant is suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of military service.
 - c. Defendant alleges criminal activity is due to a qualified PC 1170.9 disorder.
 - d. Eligible for probation or currently on probation
2. Not otherwise ineligible as noted below

ELIGIBILITY: ALL FELONY AND MISDEMEANOR CASES, EXCEPT THE FOLLOWING:

1. Conclusively ineligible

- a. Prison cases including "local prison" PC 1170(h) cases; i.e. no non-probation cases.
- b. Any case subject to Three Strikes Sentencing, unless the District Attorney dismisses the strike(s) and the defendant is not now facing a violent felony;
- c. Any violent felony unless the District Attorney dismisses the violent felony charge(s).

2. Presumptively ineligible:

- a. Any "serious felony" unless all parties and the court agree otherwise;
- b. Any DUI case unless all parties and the court agree otherwise
- c. Any case in which defendant if convicted would be required to register pursuant to PC 290 unless all parties and the court agree otherwise;
- d. No documented member of a recognized gang
- e. Any felony or misdemeanor in which the defendant poses a "substantial risk to the health or safety of others." The District Attorney shall have the burden to establish such. The decision shall be made by the Home Court judicial officer after consideration of any relevant documentary evidence, the defendant's criminal record, and oral argument.

CRITERIA FOR SUITABILITY:

Defendants should meet the following criteria:

1. Individuals who are charged with a crime that makes them eligible for formal or informal probation supervision;
2. Defendant agrees to participate
3. Defendant is amenable to treatment/ therapy
4. Demonstrates a disorder arising out of military service as specified in Penal Code section 1170.9.
5. Individuals whose qualifying disorder is related to their current charge and for whom treatment in a court supervised program can expect to foster recovery and reduce recidivism.
6. No individual has the right to be admitted into veteran's court.

§ 1170.9. Members of the military; mental health problems..., CA PENAL § 1170.9

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 2. Of Criminal Procedure (Refs & Annos)

Title 7. Of Proceedings After the Commencement of the Trial and Before Judgment

Chapter 4.5. Trial Court Sentencing (Refs & Annos)

Article 1. Initial Sentencing (Refs & Annos)

West's Ann.Cal.Penal Code § 1170.9

§ 1170.9. Members of the military; mental health problems stemming from service; probation; mental health treatment services; sentence credits; treatment program preference; collaboration; restorative relief

Effective: January 1, 2013

Currentness

(a) In the case of any person convicted of a criminal offense who could otherwise be sentenced to county jail or state prison and who alleges that he or she committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from service in the United States military, the court shall, prior to sentencing, make a determination as to whether the defendant was, or currently is, a member of the United States military and whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of that service. The court may request, through existing resources, an assessment to aid in that determination.

(b) If the court concludes that a defendant convicted of a criminal offense is a person described in subdivision (a), and if the defendant is otherwise eligible for probation and the court places the defendant on probation, the court may order the defendant into a local, state, federal, or private nonprofit treatment program for a period not to exceed that which the defendant would have served in state prison or county jail, provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists.

(c) If a referral is made to the county mental health authority, the county shall be obligated to provide mental health treatment services only to the extent that resources are available for that purpose, as described in paragraph (5) of subdivision (b) of Section 5600.3 of the Welfare and Institutions Code. If mental health treatment services are ordered by the court, the county mental health agency shall coordinate appropriate referral of the defendant to the county veterans service officer, as described in paragraph (5) of subdivision (b) of Section 5600.3 of the Welfare and Institutions Code. The county mental health agency shall not be responsible for providing services outside its traditional scope of services. An order shall be made referring a defendant to a county mental health agency only if that agency has agreed to accept responsibility for the treatment of the defendant.

(d) When determining the "needs of the defendant," for purposes of Section 1202.7, the court shall consider the fact that the defendant is a person described in subdivision (a) in assessing whether the defendant should be placed on probation and ordered into a federal or community-based treatment service program with a demonstrated history of specializing in the treatment of mental health problems, including substance abuse, post-traumatic stress disorder, traumatic brain injury, military sexual trauma, and other related mental health problems.

(e) A defendant granted probation under this section and committed to a residential treatment program shall earn sentence credits for the actual time the defendant serves in residential treatment.

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(f) The court, in making an order under this section to commit a defendant to an established treatment program, shall give preference to a treatment program that has a history of successfully treating veterans who suffer from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of that service, including, but not limited to, programs operated by the United States Department of Defense or the United States Veterans Administration.

(g) The court and the assigned treatment program may collaborate with the Department of Veterans Affairs and the United States Veterans Administration to maximize benefits and services provided to the veteran.

(h)(1) It is in the interests of justice to restore a defendant who acquired a criminal record due to a mental health disorder stemming from service in the United States military to the community of law abiding citizens. The restorative provisions of this subdivision shall apply to cases in which a trial court or a court monitoring the defendant's performance of probation pursuant to this section finds at a public hearing, held after not less than 15 days' notice to the prosecution, the defense, and any victim of the offense, that all of the following describe the defendant:

(A) He or she was granted probation and was at the time that probation was granted a person described in subdivision (a).

(B) He or she is in substantial compliance with the conditions of that probation.

(C) He or she has successfully participated in court-ordered treatment and services to address the sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from military service.

(D) He or she does not represent a danger to the health and safety of others.

(E) He or she has demonstrated significant benefit from court-ordered education, treatment, or rehabilitation to clearly show that granting restorative relief pursuant to this subdivision would be in the interests of justice.

(2) When determining whether granting restorative relief pursuant to this subdivision is in the interests of justice, the court may consider, among other factors, all of the following:

(A) The defendant's completion and degree of participation in education, treatment, and rehabilitation as ordered by the court.

(B) The defendant's progress in formal education.

(C) The defendant's development of career potential.

(D) The defendant's leadership and personal responsibility efforts.

(E) The defendant's contribution of service in support of the community.

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(3) If the court finds that a case satisfies each of the requirements described in paragraph (1), then the court may take any of the following actions by a written order setting forth the reasons for so doing:

(A) Deem all conditions of probation to be satisfied, including fines, fees, assessment, and programs, and terminate probation prior to the expiration of the term of probation. This subparagraph does not apply to any court-ordered victim restitution.

(B) Reduce an eligible felony to a misdemeanor pursuant to subdivision (b) of Section 17.

(C) Grant relief in accordance with Section 1203.4.

(4) Notwithstanding anything to the contrary in Section 1203.4, a dismissal of the action pursuant to this subdivision has the following effect:

(A) Except as otherwise provided in this paragraph, a dismissal of the action pursuant to this subdivision releases the defendant from all penalties and disabilities resulting from the offense of which the defendant has been convicted in the dismissed action.

(B) A dismissal pursuant to this subdivision does not apply to any of the following:

(i) A conviction pursuant to subdivision (c) of Section 42002.1 of the Vehicle Code.

(ii) A felony conviction pursuant to subdivision (d) of Section 261.5.

(iii) A conviction pursuant to subdivision (c) of Section 286.

(iv) A conviction pursuant to Section 288.

(v) A conviction pursuant to subdivision (c) of Section 288a.

(vi) A conviction pursuant to Section 288.5.

(vii) A conviction pursuant to subdivision (j) of Section 289.

(viii) The requirement to register pursuant to Section 290.

(C) The defendant is not obligated to disclose the arrest on the dismissed action, the dismissed action, or the conviction that was set aside when information concerning prior arrests or convictions is requested to be given under oath, affirmation, or otherwise. The defendant may indicate that he or she has not been arrested when his or her only arrest concerns the dismissed

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action, except when the defendant is required to disclose the arrest, the conviction that was set aside, and the dismissed action in response to any direct question contained in any questionnaire or application for any law enforcement position.

(D) A dismissal pursuant to this subdivision may, in the discretion of the court, order the sealing of police records of the arrest and court records of the dismissed action, thereafter viewable by the public only in accordance with a court order.

(E) The dismissal of the action pursuant to this subdivision shall be a bar to any future action based on the conduct charged in the dismissed action.

(F) In any subsequent prosecution for any other offense, a conviction that was set aside in the dismissed action may be pleaded and proved as a prior conviction and shall have the same effect as if the dismissal pursuant to this subdivision had not been granted.

(G) A conviction that was set aside in the dismissed action may be considered a conviction for the purpose of administratively revoking or suspending or otherwise limiting the defendant's driving privilege on the ground of two or more convictions.

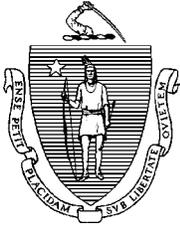
(H) The defendant's DNA sample and profile in the DNA data bank shall not be removed by a dismissal pursuant to this subdivision.

Credits

(Formerly § 1170.8, added by Stats.1982, c. 964, p. 3466, § 1. Renumbered § 1170.9 and amended by Stats.1983, c. 142, § 121. Amended by Stats.2006, c. 788 (A.B.2586), § 2; Stats.2010, c. 347 (A.B.674), § 1; Stats.2012, c. 403 (A.B.2371), § 1.)

Notes of Decisions (15)

West's Ann. Cal. Penal Code § 1170.9, CA PENAL § 1170.9
Current with urgency legislation through Ch. 3 of 2013 Reg.Sess.



Lynda M. Connolly
Chief Justice

Trial Court of the Commonwealth District Court Department

Administrative Office
Edward W. Brooke Courthouse
24 New Chardon Street – 1st Floor
Boston, MA 02114-4703

TRANSMITTAL NO. 1095

Last Transmittal No. to:	
First Justices	1094
Other Judges	1094
Clerk-Magistrates	1094
CPOs	1094

MEMORANDUM

TO: District Court Judges, Clerk-Magistrates and Chief Probation Officers
FROM: Hon. Lynda M. Connolly, Chief Justice
DATE: December 19, 2012
SUBJECT: **Pretrial Diversion of Veterans**

Pretrial diversion of veterans. Statute 2012, c. 108, entitled “An Act Relative to Veterans’ Access, Livelihood, Opportunity and Resources,” also known as the Valor Act, became effective on May 31, 2012. Section 16 of c. 108 adds §§ 10 and 11 to G.L. c. 276A to provide for the assessment and pretrial diversion of qualifying veterans, active service members, or persons with military history who are defendants in criminal cases. The full text of c. 108 is available at <http://www.malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter108>.

1. Eligibility. Under G.L. c. 276A, § 10, the District Court has jurisdiction to divert to a program any person who is:

- a veteran, active service member or person with military history as defined in [G.L. c. 4, § 7, cl. 43];¹

¹ According to G.L. c. 4, § 7, cl. 43, the term “veteran” shall mean:

“(1) any person, (a) whose last discharge or release from his wartime service as defined herein, was under honorable conditions and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States, or on full time national guard duty under Titles 10 or 32 of the United States Code or under sections 38, 40 and 41 of chapter 33 for not less than 90 days active service, at least 1 day of which was for wartime service; provided, however, than any person who so served in wartime and was awarded a service-connected disability or a Purple Heart, or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete 90 days of active service; (2) a member of the American Merchant Marine who served in armed conflict between December 7, 1941 and December 31, 1946, and who has received honorable discharges from the United States Coast Guard, Army, or Navy; (3) any person (a) whose last discharge from active service was under honorable conditions, and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States for not less than 180 days active service; provided, however, that any person who so served and was awarded a service-connected disability or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete 180 days of active service.”

The term “armed forces” includes “army, navy, marine corps, air force and coast guard,” and the term “active service in the armed forces” shall not include “active duty for training in the army national guard or air national guard or active duty for training as a reservist in the armed forces of the United States.” *Id.*

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- charged with an offense against the Commonwealth for which a term of imprisonment may be imposed, regardless of age;
- has not previously been convicted of a violation of any law of the Commonwealth or any other state or of the United States in any criminal court proceeding after having reached the age of 18 years, except for traffic violations for which no term of imprisonment may have been imposed; and
- does not have outstanding warrants, continuances, appeals or criminal cases pending before any courts of the Commonwealth or any other state or of the United States.

2. 14-Day continuance for assessment of eligible defendants. At arraignment, a District Court judge *may* offer a 14-day continuance to an eligible defendant to seek an assessment by the United States Department of Veterans Affairs, the Massachusetts Department of Veterans' Services, or another state or federal agency with suitable knowledge and experience of veterans affairs. An initial determination of eligibility will be made with information provided to the court by the probation department. The purpose of the assessment is "to provide the court with treatment options available to the defendant, including diversion programs, if appropriate." G.L. c. 276A, § 11. Before offering a continuance, the court shall inquire into the circumstances of the charge. If the defendant accepts the court's offer of a 14-day continuance, the defendant shall notify the court at arraignment. Upon receipt of such notification, the court may grant the continuance. *Id.* at § 11. As in any other case, the Clerk should, at the court's direction, schedule the case for a future pretrial hearing date. A note should be added to the manual docket and MassCourts that the case is continued for completion of a Veterans Service assessment. Future modifications to MassCourts have been requested to accommodate this statutory revision.

The court, through the probation office, shall then direct the defendant to an assessment program, and shall require that the program provide the probation department and court with its findings, and specifically whether the defendant would benefit from participation in such program. If the defendant has demonstrated symptomatology suggestive of a mental illness, a qualified psychiatrist, clinical psychologist or physician shall, in consultation with the United States Department of Veterans Affairs, the Massachusetts Department of Veterans' Services, or another federal or state agency, provide a written report to the court to assist in sentencing or diversion. The court may consider the recommendations of any diagnosing or treating licensed mental health professional for the defendant for pretrial diversion or the imposition of a sentence. *Id.* at § 11.

While not referenced in the statute, clearly the court has a general power to add further time to the continuance if needed to complete the referral, assessment and report procedure. It is suggested that the court provide the defendant with a 30-day date to report back to the court. This is intended to provide adequate time for the completion of the assessment in the event that more than 14 days is required. Attached is a form, "Order of Continuance for 14 Days to Seek Assessment Pursuant to the Valor Act," which is suggested for use by the court when granting such continuances. This form is

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available in the Forms area of our intranet site, at <http://trialcourtweb/courtsandjudges/courts/districtcourt/formsfordownload.html>, under “Criminal.” Upon completion, the original signed “Order of Continuance” form shall be returned to the Clerk for docketing and inclusion in the court file.

3. 14-Day continuance for assessment of ineligible defendants. Under G.L. c. 276A, § 11, a court may grant a defendant who is preliminarily determined not to be eligible for pretrial diversion a 14-day continuance for assessment. The court “shall consider the opinion of the Commonwealth on the merits of granting or denying the continuance.” A court may grant a continuance sua sponte or upon motion of the defendant. Unless otherwise ordered by the court, any post-arrest conditions of bail or recognizance shall remain in effect.

4. Disposition of criminal charges. Once the assessment has occurred, the Valor Act is silent as to actual referral to a diversion program and the disposition of any criminal charges should the defendant complete any such program. **Although the court has the inherent power to place a qualified defendant in a pretrial diversion program, the court lacks authority to dismiss the case over prosecution objection because of the principle of separation of powers.** See *Commonwealth v. Cheney*, 440 Mass. 568, 574-575 & n.12 (2003) (court may not dismiss complaint prior to verdict, finding, or plea in “interests of public justice” over prosecutor’s objections); *Commonwealth v. Taylor*, 428 Mass. 623, 628-629 (1999) (court dismissal over prosecution objections is violation of separation of powers doctrine of Massachusetts Declaration of Rights, art. 30, due to prosecution’s executive function).² Clearly, any referral to a pretrial diversion program conditioned upon dismissal of charges upon successful completion of such program can occur only with the consent of the Commonwealth.

If the court anticipates that the probation department will monitor defendant’s participation in any treatment program and report to the court on the defendant’s progress, the defendant should be placed on pretrial probation. Where the defendant is not placed on pretrial probation, there is no mechanism to monitor the status of the case. Any order of pretrial probation as a potential disposition requires the normal assessment of a probation supervision fee or an alternative order of community service if the defendant is found to be indigent.

Please find attached the probation department’s “Probation Protocol for Enforcement of Veterans’ Pretrial Diversion Program Pursuant to the Valor Act.” The Office of the Commissioner of Probation will train all of its Chief Probation Officers on the implementation of the Valor Act on January 18, 2013. Implementation by the probation department in the District Court will begin on January 21, 2013.

² See also Kaplan, *Revising Dispositions and Sentencing Advocacy in the Massachusetts District Courts*, 92 Mass. L. Rev. 65, 71 n.107 (2009).

**PROBATION PROTOCOL FOR ENFORCEMENT OF
VETERANS' PRETRIAL DIVERSION PROGRAM PURSUANT TO
THE VALOR ACT**

G.L. c. 276A, §§ 10 and 11

1. The Pre-Trial Intake Report has been changed to include the question, "Have you ever served in the United States Military?"
2. If the defendant answers in the affirmative to the question in Step 1 of whether he or she has ever served in the United States Military, then Probation shall also review, before the defendant's arraignment, his or her Massachusetts criminal record to determine whether the defendant:
 - has been charged with an offense against the Commonwealth for which a term of imprisonment may be imposed, regardless of age;
 - has previously been convicted of a violation of any law of the Commonwealth in any criminal court proceeding after having reached the age of 18 years, except for traffic violations for which no term of imprisonment may have been imposed; and
 - has any outstanding warrants, continuances, appeals or criminal cases pending before any courts of the Commonwealth.

Before the defendant's arraignment, Probation shall also review, if possible, the defendant's out-of-state and federal criminal record. If Probation is unable to review the defendant's out-of-state and federal criminal record before the defendant's arraignment, it shall review such records after the defendant's arraignment and before the return date, as stated in Step 7.

3. If the defendant answered in the affirmative to the question in Step 1, then:
 - At the defendant's arraignment and after counsel has been appointed to the defendant or has filed an appearance, the probation officer/assistant probation officer covering the session shall inform the defendant's counsel of the defendant's military service background, its findings from Step 2 based on its review of the defendant's Massachusetts criminal record, and whether the defendant appears to be eligible for pretrial diversion.
 - At the defendant's arraignment, the probation officer/assistant probation officer covering the session shall inform the assistant district attorney of the defendant's military service background, its findings from Step 2 based on its review of the defendant's Massachusetts criminal record, and whether the defendant appears to be eligible for pretrial diversion.

- At the defendant’s arraignment, the probation officer/assistant probation officer covering the session shall inform the court of the defendant’s military service background, its findings from Step 2 based on its review of the defendant’s Massachusetts criminal record, and whether the defendant appears to be eligible for pretrial diversion; and
4. Based on the information provided to the court by the Probation Department in Step 3:
 - If the court initially determines the defendant to be eligible for pretrial diversion, the court, after considering the position of the assistant district attorney, may grant to the defendant a 14-day continuance (or 30-45 days if the court deems that additional time is necessary) to seek assessment by the United States Department of Veterans Affairs, the Massachusetts Department of Veterans’ Services, or another state or federal agency with suitable knowledge and experience of veterans affairs. The court may grant the continuance and order the defendant to return to court on a given date on the District Court form “Order of Continuance for 14 Days to Seek Assessment Pursuant to the Valor Act” (attached hereto).
 - If the court initially determines the defendant to be ineligible for pretrial diversion, the court, after considering the position of the assistant district attorney, may grant to the defendant a 14-day continuance (or 30-45 days if the court deems that additional time is necessary) to seek assessment by the United States Department of Veterans Affairs, the Massachusetts Department of Veterans’ Services, or another state or federal agency with suitable knowledge and experience of veterans affairs. The court may grant the continuance and order the defendant to return to court on a given date on the District Court form “Order of Continuance for 14 Days to Seek Assessment Pursuant to the Valor Act.”
 5. If the court has granted the defendant a continuance to seek assessment, then the court, after arraignment, shall order the defendant to report to the Probation Department, where Probation will determine whether the defendant is a veteran, active service member, or person with military history, as defined in G.L. c. 4, § 7, cl. 43,¹ by contacting the Veterans Administration.
 6. If Probation confirms that the defendant is a veteran, active service member, or person with military history, as defined in G.L. c. 4, § 7, cl. 43, Probation will schedule an appointment for the defendant to receive an assessment with the United States Department of Veterans Affairs, the Massachusetts Department of Veterans’ Services, or another state or federal agency with suitable knowledge and experience of veterans affairs.
 7. Prior to the defendant’s 14-day return date to court, as ordered by the court on the “Order

¹ Note that this generally does not include active duty for training in the army or air national guard, or for training as a reservist in the armed forces.

of Continuance for 14 Days to Seek Assessment Pursuant to the Valor Act” form, Probation will review the defendant’s out-of-state and federal criminal record, if not already completed in Step 2, to determine whether the defendant:

- has previously been convicted of a violation of any law of any state other than the Commonwealth or of the United States in any criminal court proceeding after having reached the age of 18 years, except for traffic violations for which no term of imprisonment may have been imposed; and
 - has any outstanding warrants, continuances, appeals or criminal cases pending before any courts of any state other than the Commonwealth or of the United States.
8. At or before the hearing on the defendant’s 14-day return date to court, Probation shall present to the court its findings from Step 5 whether the defendant is a veteran, active service member, or person with military history, as defined in G.L. c. 4, § 7, cl. 43.
 9. At or before the hearing on the defendant’s 14-day return date to court, Probation shall present to the court its findings based on its review in Step 7 of the defendant’s out-of-state and federal criminal record.
 10. At the hearing on the defendant’s 14-day return date to court, Probation shall also present to the court the defendant’s evaluation report from the United States Department of Veterans Affairs, the Massachusetts Department of Veterans’ Services, or another state or federal agency with suitable knowledge and experience of veterans affairs or other entity. The evaluation report must indicate whether the defendant would, in light of the capacities of and guidelines governing it, benefit from participation in the program.
 11. After consultation with and the consent of the assistant district attorney, the court may take such action as it deems appropriate, including referring the defendant to a pretrial diversion program conditioned upon dismissal of charges upon the defendant’s completion of such program or continuance without a finding.
 12. If the court does not refer the defendant to a pretrial diversion program the matter shall be returned to the trial list.
 13. If the court orders the defendant to a pretrial diversion program, the court shall schedule a future status date for a determination of compliance with the program and dismissal, or other action.
 14. In addition to ordering the defendant to a pretrial diversion program, the court may place the defendant on pretrial probation.
 15. If the court places the defendant on pretrial probation, Probation shall monitor the defendant’s participation in any pretrial diversion program and report to the court, at or

before the defendant's future status date, on the defendant's progress.

16. If Probation receives a report from the pretrial diversion program that the defendant has violated the terms and conditions of the program, or if Probation becomes aware of any subsequent arrests, Probation shall notify the district attorney and the trial court clerk's office. Upon notification from Probation, the court may issue such process as is necessary to bring the defendant before the court for a hearing on whether such violation or arrest has occurred.

ORDER OF CONTINUANCE FOR 14 DAYS TO SEEK ASSESSMENT PURSUANT TO THE VALOR ACT <i>(G.L. c. 276A, §§10 & 11)</i>	Docket number	Trial Court of Massachusetts District Court Department  _____ DIVISION
Defendant's Name:	Next Scheduled Event	

Defendant, having been initially determined to be eligible as a person with a military history, as defined in G.L. c. 4, § 7, cl. 43, has requested a continuance in order to seek an assessment by the United States Department of Veterans Affairs, the Massachusetts Department of Veterans' Services, or another state or federal agency with suitable knowledge of veterans' affairs.

The request for continuance is hereby **ALLOWED**, and the Defendant is directed to the Probation Office for the purpose of coordinating an assessment program with the appropriate agency that will provide the Court with treatment options available for the Defendant, including diversion programs.

Date:	Justice:
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NOTICE TO _____
 (Treatment Provider: Name and Address)

Pursuant to G.L. c. 276A, §§ 10 & 11, the above-named Defendant has been directed to you for initial assessment and recommendation whether such person would, in light of the capacities and guidelines governing your program, benefit from participation in that program.

After such assessment, please indicate to this Court your findings as follows:

- The Defendant would benefit from participation in programs available by this provider, as set forth in the specific treatment plan filed with the Probation Department.
- The Defendant would not benefit from any available program offered by this provider.
- The Defendant has demonstrated symptomatology suggestive of a mental illness and a written report from a qualified physician, psychiatrist or clinical psychologist has been submitted to the Probation Department to assist in the sentencing or diversion.

Date:	Provider Representative and Title:
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Original order to be filed with Clerk, as well as a copy of any modification made to order by the Provider.