



Veterans Treatment Courts in Michigan

A Consideration of the Factors for Success

By Michael C. McDaniel

In 2013, the Michigan legislature created a separate judicial process to address the unique circumstances of Michigan veterans. Establishing courts in Michigan, first by local administrative rule and now by statute, recognizes the great impact that has been made on the criminal justice system by increasing numbers of returning veterans with mental health or substance abuse issues.

The Michigan legislature and State Court Administrative Office (SCAO) made funds available for veterans treatment courts at the circuit and district court levels. The SCAO and the new Michigan Veterans Affairs Agency asked Western Michigan University Thomas M. Cooley Law School to develop a manual for judges wishing to develop a veterans treatment court in their jurisdictions. WMU Cooley Law students interviewed every judge in Michigan who had created a veterans treatment court¹ and compiled their recommendations into a single volume. This article discusses the highlights gleaned from that process. Although created as a manual for veterans treatment court judges, the advice also serves practitioners representing veteran-clients. Of the more

than 661,000 veterans in Michigan, approximately 87,000 receive disability compensation benefits and approximately 10 percent have had some contact with the Michigan judicial system.² Thus, it is likely that lawyers will have veterans as clients.

The legislature intended an expansive consideration of potentially eligible veterans for participation in treatment courts, as the term “veteran” in the Michigan statute is broadly defined: either served on active duty for six months with any discharge other than dishonorable or discharged due to a service disability, or a reservist or National Guardsman ordered to active duty for any length of time during a time of war or campaign without receiving a dishonorable discharge.³

While the definition of veteran may be broad, the courts have complete discretion in determining whether to accept veterans into their treatment programs. The statute defines “[p]articipant” as one “who is admitted into a veterans treatment court,”⁴ recognizing the court’s discretion to evaluate veterans for admission. The statute goes on to expressly state that participation in the

program is not a veteran's "right," but that the courts "shall determine" eligibility⁵ for participation in the program.⁶ Further, the law requires the court to order a comprehensive "preadmissions screening and evaluation assessment..."⁷

The veterans treatment court is not the same as a drug treatment court or mental health court, or a means to direct folks through a 12-step program. It has elements of recovery courts, but is meant to include much more. It essentially assumes the daunting task of not only interrupting the destructive cycle in a veteran's life, but disrupting the cycle for veterans in the community and creating a new cycle for the benefit of both veterans and the community.

Some have questioned why judicial resources should be expended on a separate court for veterans rather than integrating veterans into existing mental health and drug treatment courts.⁸ There are a number of sound policy reasons for creating a distinct veterans court. First, the court is *not* based on the veteran's status but built on the concept that the veteran's criminal conduct was "caused by an underlying physical or psychological injury that was incurred during military service in a combat zone."⁹ A veteran's root problem is not substance abuse or mental illness, but an underlying service-connected injury. Second, that service-connected injury provides an avenue to resources from the U.S. Department of Veterans Affairs (VA) not available elsewhere.¹⁰ Finally, there should be some recognition of the sacrifices made by those who served in the military in times of armed conflict. Although it should not be the primary consideration, the benefits accorded veterans are not gifts, but recompense for physical and mental injuries incurred by service, which should be extended to consideration for criminal acts linked to those injuries.

A few important observations about veterans are necessary. First, they are great candidates for diversion since there are VA resources and veteran volunteers to ease the burden on the courts. Second, through their past military experience, many veterans have a high level of self-discipline. Almost by definition, criminal defendants lack impulse control. The best candidates for veterans treatment court consideration will have the ability to control their impulses and follow instructions. That ability may have been eroded by underdiagnosed or untreated mental, physical, or emotional injuries and resultant self-medication but, once addressed through available resources, will likely reappear. Further, veterans may actually need—or, at a minimum are willing to adapt to—strong organization and structure. Most received their military training at a formative time in life and may respond to strong counseling—follow orders, if you will—from a recognized authority figure.

The veterans treatment court invites veterans to voluntarily choose to be transformed from a typical defendant into "veteran-participants." This shifts the focus from the stigma of being a criminal to the honor of being a veteran, highlighting their individual worth and collective value to society. By that choice, they receive a lesser charge or alternative resolution and commit to rigorous accountability—a potentially more invasive, longer, and intensive process than a simple fine, brief sentence, or traditional probation. Impressing upon veteran-participants the importance

FAST FACTS

Of the more than 661,000 veterans in Michigan, approximately 87,000 receive VA disability compensation benefits and approximately 10 percent have had some contact with the Michigan judicial system.

Michigan has 20 standalone veterans treatment courts—the most in the nation.

Veterans treatment courts are a specialized form of diversionary, or problem-solving, courts that rely heavily on veterans as mentors and on the resources of VA, through the Veterans Justice Outreach Program.

of the statutory agreement for program participation is a key to successful completion.¹¹

There is a state grant specifically for veteran treatment courts: the Michigan Veterans Treatment Court Grant Program. This is an annually approved grant and currently the only state-funded grant for which veteran treatment courts qualify.¹² The Bureau of Justice Assistance offers a variety of grant solicitations each year. Some are specific to veteran treatment courts while others are offered more generally to drug courts.¹³ The SCAO does not administer these grants, but will provide letters of support to Michigan courts applying for them.

Although most courts are at the district level, the statute does not mandate jurisdiction,¹⁴ providing the flexibility and discretion to fit the needs of the community. Consideration should be given to developing a regional court.¹⁵ Another consideration is proximity of VA or other treatment options.¹⁶ A veterans treatment court near a VA facility or other treatment options will, obviously, be able to use those resources. Additional factors include transportation issues, available treatment facilities, cooperation from other jurisdictions, the number of veterans in the population, local community resources, and available mentors.

The veterans treatment court judge needs to assemble the team he or she believes will best serve veteran-defendants and understand the community's needs. The enabling legislation requires the court to have a prosecuting attorney, a criminal defense attorney, community treatment providers, a representative of veterans service organizations, and a VA representative.¹⁷

By law, a prosecuting attorney is a necessary party only when the veterans treatment court program includes veteran-defendants who may be eligible for discharge and dismissal of an offense, a delayed sentence, deferred entry of judgment, or a sentence involving deviation from the sentencing guidelines. Many of the judges who were interviewed observed that without the ability to



offer those remedies, the program would likely be inadequate; consequently, the best practice is to include prosecuting attorneys within the program.

Collectively, the judge-interviewees recommended the following individuals be members of the veterans treatment court team:

- Veteran mentor coordinator
- Case manager(s) and probation officer(s)
- Representative(s) of local law enforcement
- Representative(s) of a local substance abuse coordinating agency
- Representative(s) of local services such as Michigan WORKS!, GED programs, transportation services, etc.
- Veteran mentors

To be most effective, veteran-participants should partner with mentors from the same branch of service with military experience from the same conflict era and the same skills training. Veteran-participants listen to other veterans because they distinguish between the military world and the civilian world and see fellow warriors as worthy of their respect and attention.

The judges who were interviewed also endorsed or credited veteran mentor-coordinators as vital team members akin to team captains. Mentor-coordinators should be veterans known and trusted by the court. Local veteran service organizations are great resources for mentor recruitment.

The graduation ceremony is vital to the program's success. The veteran's probation officer, mentor, service providers, and family must be invited. Community leaders, including fellow members of the judiciary, law enforcement, and other local government officials, should also be invited to impress upon veteran-participants and families the solemnity and importance of the occasion and the community's support and recognition of their efforts. All other veteran-participants in the program should be required to attend.

Considering the 2013 passage of the statute and the time needed for participation, it is too soon for conclusions on the

program's success rate. For their service to our country, veterans have earned a second chance. Through veterans treatment courts, the bench and bar can ensure they receive it. ■

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ENDNOTES

1. See SCAO, *Michigan Veterans Treatment Courts* <<http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/VTCs.pdf>>. All websites cited in this article were accessed January 15, 2015.
2. U.S. Department of Veterans Affairs, *State Summary: Michigan and the U.S. Department of Veterans Affairs* <http://www.va.gov/opa/publications/factsheets/ss_michigan.pdf>.
3. MCL 600.1200(j).
4. MCL 600.1200(g).
5. MCL 600.1203(1) ("A veterans treatment court shall determine whether an individual may be admitted to the veterans treatment court. No individual has a right to be admitted into a veterans treatment court. However, an individual is not eligible for admission into a veterans treatment court if he or she is a violent offender.")
6. A violent offender is defined as "an individual who is currently charged with or has pled guilty to an offense involving the death of, or a serious bodily injury to, any individual, whether or not any of these circumstances are an element of the offense, or is criminal sexual conduct in any degree." MCL 600.1200(m).
7. MCL 600.1203(3).
8. See generally Michigan Courts, *Problem-Solving Courts* <<http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Pages/default.aspx>>.
9. Cavanaugh, *Helping Those Who Serve: Veterans Treatment Courts Foster Rehabilitation and Reduce Recidivism for Offending Combat Veterans*, 45 New Eng L R 463, 479 (2011) <<http://www.nesl.edu/userfiles/file/lawreview/vol45/2/Cavanaugh.pdf>>.
10. The participation of VA has been described as a key partnership to success. See generally Ingham County Veterans' Treatment Court, *Developing and Implementing a Veterans' Treatment Court in Michigan* (August 2010) <<http://www.justiceforvets.org/sites/default/files/gallery/Developing%20%26%20Implementing%20a%20VTC%20in%20Michigan.PDF>>.
11. Those conditions for success which must be completed by the veteran-participant include the plea provisions of MCL 600.1206, the extensive treatment and counseling provisions of MCL 600.1207(a) through (g), and the costs and fees required by MCL 600.1208.
12. Veterans treatment courts are not eligible for grants designated for drug courts, sobriety courts, or mental health courts. Interested court systems should contact SCAO at (517) 373-2218. More information is also available at Michigan Courts, *Trial Court Administration: Current Grant Opportunities* <<http://courts.mi.gov/Administration/admin/Pages/Grant-Opportunities.aspx>>. The SCAO grant applications are submitted through the online program WebGrants.
13. Veterans treatment courts are eligible for federal grants to drug courts (e.g., Bureau of Justice Assistance Adult Drug Court Discretionary Grant Program or the Joint Adult Drug Court solicitation). See U.S. Department of Justice Bureau of Justice Assistance <<https://www.bja.gov/Programs.aspx>>.
14. MCLA 600.1201(2).
15. See generally MCL 600.1201(4) (allowing for a veterans treatment court to accept participants from any other jurisdiction based on the unavailability of such a court in the jurisdiction where a participant is charged).
16. VA has five inpatient care facilities in Michigan and its website lists 18 outpatient care facilities. VA has recently started eight Veteran Readjustment Counseling Centers. See U.S. Department of Veterans Affairs, *Michigan Locations* <<http://www.va.gov/directory/guide/state.asp?STATE=MI&dnum=ALL>>.
17. MCL 600.1201(2).