

# REPORT ON MILITARY DIVERSION PROGRAM, PC §1001.80, OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

*January 2015 – December 2017*

This is a report on the initial thirty-six months of operation of San Diego County’s pre-adjudication, criminal justice program conducted under the authority of Penal Code §1001.80, the “Military Diversion Program” hereinafter, which mandates that courts consider treatment rather than incarceration when initially addressing a misdemeanor case in which the defendant has demonstrated to the court that:

- The defendant is a current or prior member of the military.
- The defendant now suffers from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems, “Listed Condition” collectively hereinafter;
- The Listed Condition is the result of something the defendant experienced in the course of performing duties in serving in the military; and
- The defendant’s alleged criminal conduct is the result of that Listed Condition, that is, the uncontrolled/untreated behavioral symptoms of that Listed Condition are present in the defendant’s alleged criminal conduct.

The four criminal divisions of San Diego’s Superior Court each have a judge designated to conduct San Diego’s Military Diversion Program to protect the public’s safety by:

- Reducing acts of post diversion recidivism by requiring an appropriate, evidence-based treatment program whereby the military veteran acquires the coping skills needed to control the symptoms of the Listed Condition;
- Requiring multiple court appearances for progress review, toxicology screening, and group and individual counseling;
- Saving the taxpayers of San Diego County substantial monetary expenditures for the costs of incarceration and treatment; and
- Carrying out the legislative intent of Penal Code §1001.80 to relieve military veterans of the stigma of still having a criminal record after the successful completion of the Military Diversion Program.

The Military Diversion Program is not a grant of amnesty; nor a hand up. Rather, it is a “chin up bar” installed by the Legislature for a military veteran to pull himself/herself up:

- First, through the Military Diversion Program’s strict eligibility process;
- Second, through completion of the emotionally wrenching, soul searching treatment of the Listed Condition that resulted in the alleged offense that brought him/her into the criminal justice system; and
- Finally, to reentry into the community to live again as a law-abiding citizen.

**A. SIZE OF VETERAN POPULATION TO BE ADDRESSED.** Each year, approximately 15,000 San Diego-based, service members are discharged from the military. About 50% of those make San Diego County their home.<sup>i</sup> San Diego County has 363,000 military veterans residing within its boundaries<sup>ii</sup>.

- About 38,000 have “recent combat service,” the greatest concentration of any county in the United States and almost double the number residing in Los Angeles.
- Of that 38,000, research by the Department of Veterans Affairs (VA) indicates that:
  - Approximately 13,300 suffer a diagnosable, Listed Condition; and

- Almost 6,700 of those will be charged with criminal activity (5,200 with misdemeanors and 1,500 with a felony.)<sup>iii</sup>
- On average, 100 self-identified, military veterans are booked into San Diego County Jail each week. Based on age, it is estimated that about 25% of these veterans served during the Iraq and Afghanistan wars.<sup>iv</sup>
- Statistically, most veterans that become involved in the criminal justice system are not being evaluated for purposes of the Military Diversion Program.

**B. PARTICIPANTS SERVED BY SAN DIEGO'S MILITARY DIVERSION PROGRAM. PC §1001.80 became effective in January, 2015. As of December, 2017:**

- **257 defendants applied to the Superior Court, San Diego County, for a grant of PC §1001.80 Military Diversion.**
- **Of those,**
  - **51 applicants either withdrew their applications or were found not to meet admission requirements.**
  - **206 applicants were admitted as "participants" in San Diego's Military Diversion Program.**
    - **52 participants have met the program's completion requirements and their cases have been dismissed.**
    - **154 are currently participating.**
- **PARTICIPANTS' BACKGROUND.**
  - The participant was a law abiding teenager and young adult with no history of substance abuse, domestic violence, or significant criminal conduct. The participant's history includes employment and good citizenship.
  - The participant served as a member of the United States military, receiving promotions and commendations.
  - About a quarter of the participants are on active duty. They struggle to maintain military careers in light of the current criminal charges. A criminal charges in state court:
    - May end the participant's military career by administrative separation from the service or court martial; and
    - May cause the participant to be discharged from the military under conditions other than honorable. This prevents the participant from accessing VA healthcare benefits direly needed to overcome their listed condition. It requires the county or the veteran personally to pay for treatment provided by facilities that may have less experience than the VA in treating the military-related, listed condition.
- **TYPES OF CRIMINAL CASES IN SAN DIEGO'S MILITARY DIVERSION PROGRAM**
  - For 50% of the participants, the current offense involves an alleged violation of Vehicle Code §23152, driving under the influence (DUI.) This percentage is lower than in years one and two because of a legal challenge to admitting DUI cases. The percentage is likely to be higher in the future because the challenge was defeated.
  - For 15% of the participants, the current offense involves an alleged act of domestic violence (DV). Generally, the DV victims are family members who want the participant to get treatment for the Listed Condition.
  - For the remainder of the participants, the current offense involves drug use, violence, or alcohol abuse.

- **RATE OF RECIDIVISM.** Based on San Diego County court records (JURIS through SDLAW), for the 52 participants who have completed the requirements of San Diego's Military Diversion Program and have had their cases dismissed, the recidivism rate is zero.

### **C. MILITARY DIVERSION PROGRAM'S IMPACT ON SAN DIEGO COUNTY:**

- **POTENTIAL FOR REDUCING RECIDIVISM.** San Diego's Military Diversion Program has the potential to be as successful in addressing the specific needs of this identified community of offenders as did San Diego's Veterans Treatment Review Calendar (VTRC) Pilot Program (2011-2014). Both programs:
  - used similar admission and monitoring processes,
  - held participants accountable for their conduct without imposing sanctions or incarceration; and
  - imposed individualized, adjustable treatment programs.

Defendants in the traditional criminal justice system have a recidivism rate. In its evidence-based experience, VTRC's participants had a recidivism rate of zero after three years.

Like VTRC, San Diego's Military Diversion Program has begun to successfully return participants to our community with the restored ability to live as law abiding, productive citizens, posing no danger to the safety of the public.

- **POTENTIAL ANNUAL AVOIDANCE OF COSTS TO SAN DIEGO COUNTY AND STATE OF CALIFORNIA.**
  - If left untreated, the symptoms of the Listed Conditions increase in severity which in turn increases the likelihood of future offences with attendant incarceration costs. There is not sufficient incarceration data to present a dollar amount avoided at this time.
  - With 206 participants receiving treatment of four hours per week at no less than \$61.50 per hour for LCSW service, the annual cost of the treatment component of Military Diversion Program is no less than \$2,600,000. This is paid by the Department of Defense (DoD), the VA, or the individual participant.

**F. FUTURE OF SAN DIEGO'S MILITARY DIVERSION PROGRAM.** The designated San Diego Military Diversion Program judges will continue their efforts to improve the short and long term protection of the public.

**PROGRAM FOR TREATING PC §1001.80 TYPE DOMESTIC VIOLENCE.** California's traditional criminal justice system relies on the 52 week, Domestic Violence Recovery Program (DVRP) which addresses domestic violence that is the result of behavior learned from family, friends, and associates. DVRP is based on the premise that learned DV behavior can be unlearned through instruction.

San Diego's Military Diversion Program uses the VA's Family Recovery Program (FRP) that was developed in San Diego to fill a void in the treatment of persons whose domestic violence conduct is not the result of learned behavior, but rather is the result of a Listed Condition.

Under PC §1203.097(a)(6), FRP has been determined to be a lawful, though more demanding, alternative to DVRP in §1001.80 cases. FRP is now available at Vet Centers in San Diego, San Marcos, and Chula Vista. Statewide and nationwide, other veterans courts and the VA are beginning to use FRP-like treatment.

**ELECTRONIC APPEARANCES IN COURT:** After admission, San Diego’s Military Diversion Program continues utilizing point-to-point, internet connections to enable certain participants to appear at their mandatory court review appearances using Skype. Electronic appearances facilitate the use of distant treatment facilities, assist when transportation is not available, and aid the participant in community reintegration.

Recently, the U.S. Department of Defense determined to discharge active duty service members who are “not deployable” for longer than twelve months. (See DoD Undersecretary of Defense letter dated February 14, 2018 Subject: Retention Policy for Non Deployable Service Members) The judicial requirement to appear at Military Diversion review hearings may render a participant “not deployable.” Thus, the innovative use of video/audio technology to allow the participant “to appear” at review hearings from a remote location (Germany, Korea, Kansas) may, in some cases, meet the aims of the Military Diversion program and preserve the military career of the participant.

**INCREASED ACCESS BY IN-CUSTODY VETERANS TO MILITARY DIVERSION OPPORTUNITY.** The San Diego Sheriff’s Office, through its Jail Inmate Services staff and jail counselors, continues to successfully identify veterans who are incarcerated and who may be eligible for San Diego’s Military Diversion Program. The San Diego Sheriff’s Office continues to facilitate quick access of veterans to VA Veterans Justice Outreach Specialists. This has facilitated the evaluation and intake of veterans into the treatment programs funded by the VA.

In addition, recidivism monitoring occurs as part of the San Diego Sheriff’s Office operation of the Veterans Moving Forward special housing unit for incarcerated veterans at the Vista Detention Facility. This housing assists in the conduct of assessments, VA enrollment, peer mentoring, and motivational interviewing. It also aids in-custody veterans in identifying and obtaining transition services.

**INCREASED PUBLIC AWARENESS.** For San Diego’s Military Diversion Program to reach more veterans, there needs to be more effort in educating the bench, bar, and the general public.

*ANA ESPANA*

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ANA ESPANA  
ASSIGNED MILITARY DIVERSION JUDGE

*ROGER W. KRAUEL*

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ASSIGNED MILITARY DIVERSION JUDGE

*TIMOTHY R. WALSH*

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*CYNTHIA A. FREELAND*

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ASSIGNED MILITARY DIVERSION JUDGE

## **POST SCRIPT**

### **IMPACT OF LEGAL CHALLENGE TO PC 1001.80**

In 2016, a statewide legal challenge was made alleging that the Legislature did not intend to include DUI cases in PC 1001.80 Military Diversion. This challenge was soundly defeated by a legislative effort led by Senator Hannah Beth Jackson. Responding to a request from San Diego’s veteran community to legislatively address the challenge, and relying on the testimony from San Diego experts invited to present their data at legislative committee hearings, in

August, 2017, the Legislature adopted urgency legislation which announced that the Legislature certainly did intend to include DUI cases in PC 1001.80 Military Diversion. Senator Jackson's efforts brought an end to the significant reduction in the number of applications for admission into San Diego's Military Diversion Program, and cleared the way for all 30 impeded cases to receive the restorative relief afforded by Military Diversion.

## ENDNOTES

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<sup>i</sup> Military Transition Support Program Presentation by San Diego Grantmakers and Navy Region Southwest February 18, 2014, San Diego, California.

<sup>ii</sup> San Diego County's veteran population is down from 387,000 in 2010. In 2016, as reported in 8<sup>th</sup> Annual SDMAC Military Economic Impact Study, there are approximately 134,000 active duty service members plus 229,000 Reserve, Retired, or Discharged veterans residing in San Diego County. The reduction reflects the higher cost of living in San Diego; fewer persons are leaving active duty and of those who do leave, fewer are staying in San Diego. In March 2012, the Wall Street Journal reported that 38,000 veterans with service after 9/11/2001 were residing in San Diego County.

<sup>iii</sup> Typical offenses from this research comport with the typical offenses observed in the VTRC Pilot Program (e.g. Domestic Violence, DUIs, assaults, weapons possession and adrenaline-seeking driving behaviors) Source: National Center for PTSD, Fact Sheet: Findings from the National Vietnam Veterans' Readjustment Study, 1988.

<sup>iv</sup> With the help of the Sheriff's Department, as part of the in-processing of arrested suspects into San Diego County's jails, every person is now asked, "Have you ever served in the military?" Based on a review of the booking records from 2010 through February 2013, an average 100 persons per week are booked into County Jail and self-identify as a veteran by answering "yes" to that question. Since CVLTF jail outreach efforts continue to identify veterans who did not report their service upon booking, the number of veterans booked into San Diego County jails is likely exceeding 100 per week.