



Synopsis of the La Crosse Model of the Veterans Court

By: Honorable Todd W. Bjerke, JA, USAR*

The Nature of Veterans, in General

Throughout history, members of the military have been drawn from the general population, whether by draft, servitude or on a voluntary basis. Those who have been conscripted, enlisted, or commissioned have diverse backgrounds and traits which may not be consistent with the needs of the military. But by means of intense training, those individual personalities are shaped into service members who accept the core values of the military: loyalty, duty, respect, selfless-service, honor, integrity, and personal courage. The military teaches its new recruits to follow legal orders without question, trains them to perform under the stress of combat and potential death, and requires them to live through the horrific impact of war, with the result that the completion of their mission may become more important than even their own lives. The military had, in the not too distant past, discharged its members back into society when their usefulness had been exhausted, without considering or addressing potential emotional or mental health issues stemming from their intense training and horrific experiences.

As a result of their military training, service members are trained to kill other humans while in the throes of battle, and many have done so. Many service members have lost comrades as a result of battle, sometimes witnessing those deaths first hand. Many service members have also viewed the death and destruction exacted upon the enemy and the collateral effects of war as it spilled onto the civilian population. No service member is immune to the effects of intense military training and the tragic impact of warfare.

All veterans have experienced the effects of warfare, whether directly on the battlefield or by indirect means. Most veterans are capable of adequately processing the grief, anxiety, depression, guilt and loss that war engenders, and are able to lead productive, quality lives, nonetheless. Other veterans are incapable of

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handling the effects of warfare, and they need help to restore their emotional or mental health once they leave military duty.

In the 18th and 19th centuries, the emotional and mental health effects of training and participating in warfare on the individual service member were ignored. In the early 20th century, some emotional and mental health effects of training and warfare were classified as “shell shock,” “battle fatigue,” or “combat stress.” Service members diagnosed with such disorders found themselves at the end of their military career and back in the civilian world with little or no assistance from the government. During the latter part of the 20th century, the military became cognizant of the effects of war-related issues that impact service members in the field as well as those who have returned home.

As a result of their military service, many veterans have multiple emotional or mental health issues to address including, but not limited to, Traumatic Brain Injury (TBI), Post-traumatic Stress Disorder (PTSD), suicidal thoughts or acts, and substance abuse. The veteran continues to be conflicted between military training that suppressed the assault on his or her senses to enhance performance in combat, and reporting or even perceiving the existence of emotional or mental health problems. That conflict often causes emotional and mental health concerns to be driven deep into the veteran’s psyche, as attempts are made to prevent others from thinking that they are somehow less than equal to other veterans or somehow weak. It presents a paradox in that trained soldiers must have the wherewithal to withstand inhuman conditions in combat but are then supposed to transition back to civilian life with no attendant consequences. This phenomenon is what makes the service member, once returned to the community as a veteran, a unique candidate for additional help from society.

The military is now educating its service members to look for those who display symptoms associated with emotional or mental health problems so that referrals can be made to experts who can assist them. This new attention to the emotional and mental health of the service member has now opened the door to proactively address such issues. The military no longer wants its service members to attempt to conceal or suppress their emotional or mental health problems and become probable liabilities to themselves and to their unit. In accordance with this new policy on the part of the military, the United States Department of Veterans Affairs (VA) is working to assure that the regional VA offices support community efforts to address emotional and mental health problems of our veterans.

Need to Reduce Risk for Veterans

Whether they have served in combat or not, veterans have been trained to a degree unlike any non-military profession. Their sense of honoring human dignity has been altered to allow them to complete their mission at a high cost or even the ultimate cost of sacrificing their own lives. When a veteran engages in antisocial behaviors, it is imperative that appropriate action is taken to reduce the risk of reoffending. It is even more important to identify behaviors that are antisocial at the earliest possible time, so that intervention may occur before serious acts are committed and little room is left for a sentence that may be able to address rehabilitation. Most people display subtle signs of emotional or mental distress prior to committing an atrocity. The family and friends of the veteran, however, are ill equipped to identify such signs, and the public at large is focused on the act that brought the veteran to the attention of the authorities, rather than any possible underlying cause for the behavior. Once the veteran has committed an act that results in arrest, humiliation sets in. The veteran may further suppress the emotional or mental distress to prevent further scrutiny of societal worthiness. The veteran does not want to appear vulnerable. For a relatively minor infraction, the veteran will accept judgment from the court and go forward without addressing the emotional

or mental distress underlying the inappropriate behavior. As a result, the root of the problem remains unaddressed, and the risk is increased for future antisocial behaviors. This cycle may repeat, resulting in multiple arrests over subsequent months or years. Once a record is amassed, the veteran appears to be a non-conformist: one who cannot follow the rules of society, and one who cannot successfully complete a community based sentence. The result is incarceration, which still fails to address the underlying cause or causes of the antisocial behavior.

Given the special training the veteran has received in the military, the unique direct or indirect experiences of war, and the veteran's propensity to suppress appearances of being emotionally or mentally weak, special care must be taken to ascertain the factors that may explain the veteran's antisocial behaviors. Since the first Gulf War there has been an awakening by the government as to the effects of military experiences on service members and veterans. As a result, service members have been mandated to receive special training to learn the traits and characteristics associated with TBI, PTSD, and suicidal ideation so that intervention with personnel exhibiting such symptoms may be made at the earliest opportunity. The VA has been screening veterans for TBI, PTSD, and suicidal ideation so that appropriate treatment regimens can be developed for those suffering from these afflictions. However a further problem that must be addressed is getting the veterans to the VA for the treatment they need. One way to assure that veterans are connected with the VA services they are entitled to is through the oversight of specialized treatment courts that are being developed to address criminal acts committed by veterans. The ultimate goal of these courts is to reduce the veteran's risk of reoffending.

Modalities Available to Reduce Risk in La Crosse County

At the time of sentencing, the judge seeks to reduce the risk that the offender will likely commit future crime. To accomplish this, courts are beginning to apply evidence-based practices¹ to determine the needs and risks of each individual offender. In La Crosse County, the community response to jail overcrowding resulted in the formation of the Criminal Justice Management Council, which is comprised of various professional and lay people interested in developing effective strategies to cope with criminal justice issues on a community wide basis. To reduce jail populations, the "Justice Sanctions" program was created.

Justice Sanctions grew over the past decade from a one person office to a critical component of the La Crosse County justice system. Justice Sanctions assesses offenders in a variety of ways, including: suitability for release on bond or on a jail sentence, to include conditions of release that will reduce risk; supervised release on electronic monitors, GPS units, SCRAM units (which continually monitor the participant for alcohol use), and day reporting; observed alcohol and drug testing on site; home alcohol testing on MEMS unit; assessments of risk and need; and assessments for domestic violence. The main assessment on offenders completed by Justice Sanctions results in an AIM (Access, Inform and Manage) Report, which documents the background of the offender with relation to the offender's risk, to include prior convictions and current charges, a risk assessment (such as the Level of Service Inventory or LSI), a motivational rating (such as the University of Rhode Island Change Assessment Scale or URICA), identification of the pertinent criminogenic factors² that need to be addressed, and unique characteristics that need to be considered when developing treatment or an intervention plan.

La Crosse County courts have, in appropriate cases, used the AIM Report generated by Justice Sanctions to determine risk and needs of an offender when considering bond release conditions and in lieu of a Presentence Investigation Report prepared by a Department of Corrections officer prior to sentencing an

offender. Justice Sanctions has been instrumental in the reduction of La Crosse County's jail population and has been invaluable for the Drug Treatment Court and OWI Court programs. Justice Sanctions has worked with veterans in the criminal justice system, whether on bond or while serving a sentence. Justice Sanctions, however, is not equipped to address many of the unique needs of the veteran, and if those needs are not addressed, the veteran's risk to reoffend is not reduced.

VA Involvement in Reducing Risk in Veterans

Due to the unique nature of the veteran, especially the combat veteran, courts need to develop new strategies to address the hidden issues underlying the veteran's criminal or improper behaviors. Those veterans who have used and continue to use available VA programs are meeting many of their underlying emotional and mental health issues. Yet often these veterans continue to reoffend, and many develop chronic drug and/or alcohol addictions that are so pervasive that neither the VA nor the courts have any effective interventions available. Veterans who have not had their potential TBI, PTSD, or other service connected emotional or mental health issues identified following an arrest have gone through the court system without resolving or even addressing their service-connected emotional or mental health issues. For this reason, courts have begun to view veterans in a different light. The County Veteran Service Officer (CVSO) and the VA are available to assist courts to properly identify veterans so that they may be referred to the VA to receive eligible services and treatment.

To obtain VA services, veterans need to meet with the CVSO in their county of residence. The veteran must provide proof of military service, which is their discharge document, also known as the DD 214. The CVSO can assist the veteran in obtaining the DD 214, if necessary. The veteran will need to obtain medical records or other reports generated during the period of military service to establish a service connected injury or diagnosis. The CVSO will assist the veteran in applying to the VA for benefits and services, which may result in the veteran being screened and ultimately diagnosed with an emotional or mental health issue that otherwise may have been hidden from non-military treatment providers.

The Buffalo, New York Model of the Veterans Court

One model of a Veterans Treatment Court exists in Buffalo, New York.³ Judge Robert T. Russell presided over the Buffalo Drug Treatment Court and the Buffalo Mental Health Treatment Court for years before becoming aware of a need to look at veterans in a different light. Although not a veteran, Judge Russell was confronted with a recurring theme when he saw veterans who resorted to drug and alcohol abuse to suppress the TBI, PTSD, or suicidal ideations they manifested as a result of their service to our country. These veterans came to the attention of the authorities because of their drug and alcohol use, or because of other emotional or mental health concerns after committing crimes. Judge Russell felt that these veterans needed more than what a standard drug or mental health treatment court could offer. The veterans needed an advocate familiar with their military background, the VA, and the court system. The veterans needed mentors who had lived through what they had experienced, which is the training to prepare for war and warfare itself. They needed mentors who may have had their own emotional or mental distress in the past, but were able to successfully conquer their problems, and who were familiar with the VA, especially VA benefits and treatment opportunities. They needed mentors who understood the court process, whether criminal or civil, and who were capable of persuading the veterans to open his or her eyes to their current reality, thereby motivating the veteran in taking the necessary steps to reduce their risk of recidivism.

In Buffalo, Judge Russell developed a Veterans Court modeled in part on the Drug Treatment Court

concept.⁴ The Veterans Court, however, brings the mentor and a VA representative into the court for each session involving the veteran. The mentor speaks to the veteran prior to the veteran standing before the judge. Depending on what the veteran's needs are at that time, the mentor will ensure that the veteran is connected with the VA representative to set up any necessary VA appointments before the veteran leaves the courtroom. The mentor will also make sure the veteran's daily needs, such as transportation, housing, subsistence, and non-VA appointments are being addressed appropriately. The mentor is not to interact with the veteran outside the courthouse. Judge Russell has a significant number of veterans in the area who have legal difficulties and have found their way to his Veterans Court. The court handles veterans throughout the Buffalo VA region, which includes Erie County, New York.

The VA is committed to supporting Veterans Courts throughout the nation. However, the VA can support only one Veterans Court in any VA region. This has been problematic for the Buffalo area. Other judicial districts in that VA region have wanted to begin veterans courts modeled after Judge Russell's court. Judges in other jurisdictions have, by agreement, assigned cases involving veterans to Judge Russell so he can work with the troubled veteran pursuant to the VA policy. This results, however, in the veteran sometimes having to travel great distances to participate in the Veterans Court. There is a CVSO in each county throughout the nation, and the VA generally has local clinics, called Community Based Outreach Clinics, that the veteran can utilize, but travel remains an issue. Mentors try to assist the veterans in obtaining transportation so they can attend Veterans Court and get to other required destinations.

The La Crosse, Wisconsin Model of the Veterans Court

In La Crosse County, Wisconsin, a team of approximately 20 professionals, who are involved with either the judicial system or the VA, have looked at Judge Russell's Veterans Court.⁵ Early on, it was decided that a formal veterans court would likely be unnecessary, despite the fact that La Crosse County has over 10,000 veterans. The frequency of veterans interacting with the criminal justice system is unknown. A rudimentary survey of the La Crosse County criminal intake court was conducted. Over a series of weeks, each person appearing on the criminal intake calendar was asked if they had any current or prior military service. Those who responded that they had prior military service were further examined by the La Crosse County CVSO for VA benefit eligibility. It was determined that only approximately seven percent of the population surveyed had prior military service. This number was deemed too small to warrant a formal Veterans Court for La Crosse County.

The members of the La Crosse County Veterans Court Initiative are developing a two-tiered system to address the needs of veterans. The first and most important tier is the Veterans Network. The second tier concerns consistent court interaction with the veteran who has been identified with service connected emotional or mental health issues.

The Veterans Network was created to operate independently from the judicial system, and it is based upon early identification of veterans who may be prone to have service connected emotional or mental health issues that result in police contact. The Mentor Group is a subcomponent of the Veterans Network, but it will operate as an independent entity. The role of the Veterans Network is to educate the community, law enforcement, prosecutors, defense attorneys and the courts about the unique issues facing veterans, and to oversee the Mentor Group. The role of the mentor is to encourage the veteran to address any potential emotional and mental health issues.

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The La Crosse model is based upon identification of a veteran prone to committing criminal acts at the earliest possible moment, referring the veteran to the county CVSO and assigning a mentor to the veteran. The City of La Crosse Police Department has developed a pilot program in August 2009 to document military service for each person that the police contact. This information will appear in the incident report generated from the contact, which is then inputted into a searchable data base. The military service data is compiled weekly into a list containing the name of the veteran, the veteran's status as a potential defendant, victim or witness, and the veteran's address and telephone number. This list is forwarded to the La Crosse County CVSO. The CVSO sends the identified veteran a letter suggesting that the veteran see him to determine eligibility for VA benefits and, if eligible, to assist the veteran in applying for available benefits.⁶ The CVSO will send the name of the veteran, and brief service history, if available, to the Mentor Group where a mentor coordinator will assign a mentor to the veteran. The mentor will be similar in age, gender, period of service, and branch of service to that of the veteran whenever possible. The assigned mentor will contact the veteran a few days after the veteran should have received the letter from the CVSO. The mentor is trained to strongly encourage the veteran to meet with the CVSO and is also required to assist the veteran in getting screened for potential effects of TBI, PTSD, suicidal ideation, substance abuse or other emotional or mental health issues that may be connected to his or her military service. The mentor will help the veteran overcome obstacles preventing contact with the CVSO or VA services, including the stigma associated with seeking help.

When the veteran accepts VA services, he or she will be screened for service connected emotional or mental health disorders, and if any such exist, will be referred for treatment. The intent of the Veterans Network is to facilitate the veteran's identification of any service connected disorder and to assure that it is treated so that the risk of future criminal conduct or potential criminal conduct is reduced. Since all veterans are exposed to the effects of indoctrination into the military and/or the effects of warfare, to some varying degree, all veterans entering the criminal justice system should be subjected to this process. The diagnosis and recommended treatment for those suffering from a service connected emotional or mental health issue will be relevant to a prosecutor seeking to appropriately resolve a criminal case, as well as to the court imposing a sentence. It is envisioned that the mentor will continue to be available to the veteran until resolution of any criminal case.

The mentor will be selected by a group of mentor coordinators through an application process that includes an interview and a background check. Mentors will be trained on the arts of persuasion, compassion, and empathy to properly motivate the veteran to seek assistance for any potential service connected emotional or mental health issues. If the veteran is unable to secure VA benefits, the mentor will assist the veteran in seeking alternative community based benefits that are identified through the Veterans Network. The mentor will explain the judicial process to the veteran and assure that the veteran's needs are presented to the defense attorney, the prosecutor, or the judge, as necessary.

The La Crosse Veterans Network intends to ensure that the veteran is properly held accountable. The risk for recidivism is reduced by properly diagnosing and treating any service connected emotional or mental

health issue that afflicts the veteran and underlies his or her atypical behavior. The results of the work of the Veterans Network with any particular veteran would be available to a sentencing judge so that risk reduction can be assured by any sentence imposed. The goal of the Veterans Network is not to have veterans avoid liability for their negative behaviors, but rather to make sure that this is the last time they display such behaviors. The way in which mentors are utilized in the La Crosse model is the main difference from the Buffalo model.

The second tier being developed by the Veterans Court Initiative members concerns the interaction between the courts and the veterans. The judiciary, the prosecutors and the defense bar will be educated on the goals of the Veterans Network. It is anticipated that the prosecutor will be aware of the unique needs of the veteran when charging decisions are made or a charged offense is resolved. Furthermore, a defense attorney will be able to advocate that the needs of his or her client are being met through treatment and thereby risk has been correspondingly reduced. A judge should be aware of the veteran's needs and risks when determining bond or imposing a sentence. A judge may, in a particular case, bring the sentenced veteran back before the judge on a regular basis with other veterans for court reviews of ongoing treatment progress, which would be more consistent with the Buffalo model. But, the court, cognizant of the veteran's status, could also accomplish any necessary judicial reviews by assigning the veteran, as appropriate, to the Domestic Violence Review Court, the Drug Treatment Court, the OWI Court, or a series of individual appearances before the judge. With identification of the underlying problem, the results of the diagnosis, and a treatment plan in place, courts can use evidence-based practices to impose an appropriate sentence that balances the needs of the veteran with the risks the veteran might pose to the community. Hopefully, this process will result in better understanding of the veteran, greater safety for the community, successful treatment for the veteran, and that the extra effort will also honor the service the veteran gave to this country.

The La Crosse model will be implemented on January 1, 2010. Once underway, it will hopefully be expanded into the other counties of the Tomah VA Catchment Region, which includes Adams, Clark, Crawford, Jackson, Juneau, La Crosse, Marathon, Monroe, Portage, Price, Taylor, Trempealeau, Vernon and Wood Counties in Wisconsin, and Houston County, Minnesota. The La Crosse Model would create consistency for the Tomah VA Catchment Region, and it would not burden veterans by requiring them to attend Veterans Court in one county. The VA will be better able to serve veterans pending criminal actions in each veteran's home county. The La Crosse model should be successful, but only if the troubled veteran can be identified at the earliest possible moment. It is hoped that all law enforcement jurisdictions in the Tomah VA Catchment Region will be able to document veterans during each police contact. It is also envisioned that the Veterans Network will assist in educating the public, especially the families of veterans, on the emotional and mental health issues veterans suffer from, so that even earlier intervention may be accomplished. The mentors will be available to assist troubled veterans whether they are referred to the CVSO through police contact or through non-law enforcement channels.

Millions of men and women have honorably served this nation in the military. Many have borne physical and emotional or mental health scars for years following their service. In the past, veterans suffering these problems have been overlooked or even ignored and often ridiculed. The veteran must be helped to overcome service connected emotional or mental health issues that affect the quality of his or her life. The time has come to correct this tragic omission and to ensure that the value the veteran provided to his or her country is appreciated.

Endnotes

¹Evidence-based Practices:

A progressive, organizational use of direct, current scientific evidence to guide and inform efficient and effective correctional services.

The Carey Group, 2008, www.thecareygroup.com

Evidence-based sentencing relies on scientific data to balance the interests of public safety, cost and the psychosocial impacts of various dispositions on individuals coming before the courts. Rather than over-apply any one policy, the goal is to match individuals to specific programs and services that are most likely to improve their outcomes in the most cost-efficient and safety-conscious manner. Evidence of success is gauged by reducing recidivism, reducing substance abuse and related dysfunction, and doing so with a better cost/benefit ratio than alternative programs. In addition to (not instead of) considering issues of incapacitation and general deterrence, judges, defense counsel and prosecutors are encouraged to include effectiveness and cost-effectiveness in their calculus of decision-making when advocating for or rendering dispositions. The empirically determined effects of alternative dispositions become explicit factors to be considered in the sentencing process. The intent is not to limit judicial discretion, but rather to extend it to encompass a wider range of relevant considerations.

National Association of Drug Court Professionals, Principles of Evidence-Based Sentencing & Other Court Dispositions for Substance Abusing Individuals, www.nadcp.org

² Criminogenic Factors:

Criminogenic factors are those attributes of a person which, if present, tend to increase that person's risk to commit future criminal acts. By addressing the criminogenic factors, courts and treatment providers can target specific areas of an individual offender to lessen the risk of recidivism. Criminogenic factors have been classified into eight criminogenic needs:

CRIMININOGENIC NEEDS:

1. ANTI-SOCIAL COGNITION (BELIEFS)
2. ANTI-SOCIAL COMPANIONS
3. ANTI-SOCIAL PERSONALITY (TEMPERAMENT)
4. FAMILY ISSUES/PARENTAL FACTORS
5. SUBSTANCE ABUSE
6. EDUCATION
7. EMPLOYMENT
8. LEISURE AND/OR RECREATION

NON-CRIMININOGENIC NEEDS:

1. MENTAL ILLNESS
2. HEALTH ISSUES
3. INTELLIGENCE
4. SELF-ESTEEM
5. PERSONAL DISTRESS

³ The Buffalo, New York Veterans Court:

Information obtained from the Buffalo Veteran's Court Manual and from training presented by Buffalo Veteran's Court Mentor Coordinator Jack O'Connor.

⁴ Drug Treatment Court Concept:

The Drug Court concept is based on an innovative program that was first developed in Miami, Florida in 1989. The Drug Court concept has since received widespread attention as an effective treatment strategy for drug-involved criminal offenders. There are more than 1,000 such programs now in operation in jurisdictions throughout the nation.

Drug Courts are built upon a unique partnership between the criminal justice system and drug treatment community, one which structures treatment intervention around the authority and personal involvement of a single Drug Court Judge. Drug Courts are also dependent upon the creation of a non-adversarial courtroom atmosphere where a single judge and a dedicated team of court officers and staff work together toward a common goal of breaking the cycle of drug abuse and criminal behavior.

Because of the unique problems and opportunities that present themselves in working with drug-involved criminal offenders, treatment and rehabilitation strategies must be “reality-based.” Drug Court Programs must therefore recognize:

- Addicts are most vulnerable to successful intervention when they are in the crisis of initial arrest and incarceration, so intervention must be immediate and up-front.
- Preventing gaps in communication and ensuring offender accountability are critically important. Therefore, court supervision must be highly coordinated and very comprehensive.
- Addiction to drugs is a longstanding, debilitating and insidious condition; so treatment must be long-term and comprehensive.
- Addiction to drugs seldom exists in isolation from other serious problems that undermine rehabilitation, so treatment must include integration of other available services and resources such as educational assessments, vocational assessments and training and job placement.
- Relapse and intermittent advancement are part of the recovery process; so progressive sanctions and incentives must be integral to the Drug Court strategy.

The goals of a Drug Court Program are:

- Reduce drug related crimes,
- Reduce offender contacts with the criminal justice system,
- Reduce costs associated with criminal case processing and rearrest,
- Introduce offenders to an ongoing process of recovery designed to achieve total abstinence from illicit/illegal drugs; and
- Promote self-sufficiency and empower substance abusers to become productive and responsible members of the community.

§ Members of the La Crosse County Veterans Court Initiative:

Judge Todd Bjerke, La Crosse County Circuit Court Judge

Deputy District Attorney Brian Barton, La Crosse County District Attorney Office

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Deputy Dean Sorenson, La Crosse County Sheriff's Department
Becky Spanjers, Supervisor, Justice Sanctions Program
Duane Teschler, Amos member
Captain Gary Uting, City of La Crosse Police Department
Members identified in bold print are veterans and/or current members of the Army Reserve.

6 Benefits:

The CVSO is actually employed by the Wisconsin Department of Veterans Affairs (WDVA) and is responsible for assisting the Veteran in applying for benefits not only from the VA, but also from the WDVA. Some benefits unique to the State, include tuition assistance and admission to the State run King retirement home. Veterans may also utilize the services of a local VA funded Vet Center. Vet Centers fall outside the normal VA Chain of Command. The concept is to provide professional counseling to veterans who may not feel comfortable using the VA system. The Vet Center may be utilized by a veteran in conjunction with or separately from any treatment provided by a CBOC or a VA hospital. ■