

Atlantic County Prosecutor's Office Veterans Diversion Program Directive

I. Purpose

To establish an Atlantic County Prosecutor's Office Veterans Diversion Program pursuant to P.L. 2017, c. 42 (C.2C:43-27), authorizing a County Prosecutor discretion to establish a county-based law enforcement diversion program for criminal offenders who are veterans or servicemembers of the United States military.

II. Policy

It is the policy of the Atlantic County Prosecutor's Office to review, on a case-by-case basis, criminal offenses committed by eligible veterans or servicemembers of the United States military to determine their eligibility to receive diversionary treatment in lieu of prosecution for those offenses.

III. Definitions relative to offenders who are veterans or servicemembers.

As used in this directive:

A. "Servicemember" means any veteran or enlisted person or officer of the United States Armed Forces, or a reserve component thereof, or the organized militia of the State of New Jersey pursuant to N.J.S.38A:1-3.

B. "Eligible offense" means a petty disorderly persons offense, disorderly persons offense, or crime of the second, third, or fourth degree.

C. "Eligible servicemember" means a servicemember who allegedly committed an eligible offense and who has a prior diagnosis of substance dependency and/or mental illness or for whom a law enforcement officer or prosecutor has a reasonable belief that the person has a substance dependency and/or mental illness based on behaviors and symptoms exhibited during the commission of the offense or while in custody, or based on information provided by family members or associates during the investigation of the offense.

D. "Veterans Diversion Resource entity" means a point of access or referral to case management and mental health services that are currently available from federal, State and local government agencies to eligible servicemembers.

E. "Mentor" means a volunteer current/former servicemember recruited by the Atlantic County Prosecutor's Office to assist an eligible servicemember who is a veteran in accessing assistance to resolve the underlying problems that led or contributed to the eligible servicemember's involvement with the criminal justice system.

F. "Mental illness" means a mental disorder classified within the current version of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM), including, but not limited to, anxiety disorders, cognitive disorders, adjustment

disorders, schizophrenia and other psychotic disorders, bipolar disorder, depression, and post-traumatic stress disorder (PTSD).

G. “Substance dependency” means a psychic or physical dependence, or both, arising from the use of a controlled dangerous substance or controlled substance analog, as defined in N.J.S. 2C:35-2, or alcohol on a continuous or repetitive basis. Drug or alcohol dependence is characterized by behavioral and other responses, including but not limited to a strong compulsion to take the substance on a recurring basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

H. “Veteran” means any enlisted person or officer who was discharged or otherwise released from active service in the United States Armed Forces, or any reserve component thereof, or the organized militia of New Jersey under conditions other than dishonorable.

IV. Countywide Veterans Diversion Program.

A. 1. There is hereby established a Countywide Veterans Diversion Program that shall have the purpose of diverting eligible servicemembers away from the criminal justice system and into appropriate case management and substance dependency and/or mental health services as early as possible following an interaction with law enforcement where the servicemember is alleged to have committed an eligible offense.

2. Each Veterans Diversion Resource entity shall serve as a point of entry to facilitate the law enforcement diversion or referral of eligible servicemembers who are veterans into existing case management and substance dependency and/or mental health services offered by the United States Department of Veterans Affairs, the New Jersey Department of Human Services, or other appropriate case management and substance dependency and/or mental health services that are available to veterans or persons with substance dependency and/or mental illness. A Veterans Diversion Resource entity, or an agency to which an eligible servicemember is referred to by the Veterans Diversion Resource entity, shall be capable of providing screening, counseling, treatment and case management for substance dependency and/or mental health issues and other co-occurring health disorders to eligible servicemembers who are veterans, or coordinating such services through the appropriate federal, State, and local government agencies that offer assistance to veterans. To the extent feasible, a Veterans Diversion Resource entity, or an agency to which an eligible servicemember is referred to by the entity, shall be capable of accepting emergent referrals of eligible servicemembers who are veterans and are being diverted from the criminal justice system. A Veterans Diversion Resource entity, or an agency to which a eligible servicemember is referred to by the Veterans Diversion Resource entity, that accepts the referral of an eligible servicemember who is a veteran shall be capable of providing law enforcement officials with periodic status reports regarding the participation and recovery progress of an eligible servicemember, when the servicemember consents to the release of such information, as a condition of diversion from prosecution. The department shall also prepare a similar resource directory to facilitate the law enforcement diversion and referral of non-veteran eligible servicemembers from the criminal justice system.

B. Determination of eligibility.

When a person is taken into custody for an eligible offense, the responding law enforcement officer shall inquire whether the person is a servicemember and indicate if the person claims to be a servicemember on the complaint-summons or complaint-warrant at the time it is prepared. The form of complaint shall clearly indicate the person's status as a servicemember to facilitate future efforts to divert eligible servicemembers from prosecution into case management and substance dependency and/or mental health services or the assignment of the servicemember to appropriate post-adjudication supervisory and therapeutic services, where needed to support the servicemember's recovery.

C. Application to participate in Veterans Diversion Program.

1. At any time after the filing of a criminal complaint, but prior to the disposition of such complaint, an eligible servicemember, the public defender assigned to the eligible servicemember, or the servicemember's own legal counsel may make an application to the prosecutor to participate in the Veterans Diversion Program. The prosecutor may approve or conditionally approve an eligible servicemember's admission into the Veterans Diversion Program. An eligible servicemember may be conditionally approved for admission into the program pending verification of the person's veteran or servicemember status, review of the person's criminal history, and consideration of the findings of a clinical assessment of the person's substance dependency and/or mental health. Once admitted to the program, the prosecutor may move before the court to postpone proceedings while an eligible servicemember obtains a substance dependency and/or mental health assessment or participates in case management and substance dependency and/or mental health services. The court may grant the postponement of proceedings and release the servicemember on the person's own recognizance subject to compliance with the conditions specified in the prosecutor's diversion agreement. If the prosecutor's review of the person's records and the clinical assessment reveals that the person does not qualify for the program or if the servicemember does not comply with the requirements of the diversion agreement, the prosecutor may notify the court that the State is prepared to proceed with the prosecution of the offense and the court shall schedule court proceedings as appropriate.

2. (a) Except as provided in paragraph (b) of this subsection, the prosecutor shall have the sole discretion to determine if an eligible servicemember qualifies for and is admitted to the Veterans Diversion Program after consideration of the nature of the eligible offense, the causative relationship between the person's diagnosed or apparent substance dependency and/or mental illness and the commission of the offense, the amenability of the servicemember to participation in the services of the program, the availability of case management and substance dependency and/or mental health services, the desires of any victim, the person's history of prior convictions, and the probability that diversion will promote the servicemember's recovery, prevent future criminal behavior, and protect public safety.

(b) No eligible servicemember shall be admitted to the Veterans Diversion Program if the person has criminal charges pending for a crime of the first degree or if the person was previously convicted of a violent crime enumerated in subsection d. of section 2 of

P.L.1997, c.117 (C.2C:43-7.2). There shall be a presumption against admission into the Veterans Diversion Program, subject to the discretion of the prosecutor after consulting with any victim, for a servicemember charged with any violent crime enumerated in subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2) or any crime or offense involving domestic violence, as defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19) if the defendant committed the crime or offense while subject to a temporary or permanent restraining order issued pursuant to the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.). For purposes of this paragraph, a crime or offense involves violence or the threat of violence if the victim sustains a bodily injury as defined in subsection a. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens to inflict a bodily injury.

(c) The prosecutor shall consult with victims of an eligible offense prior to approving an eligible servicemember's admission into the Veterans Diversion Program. Nothing in this subsection shall be construed to alter or limit the authority or discretion of the prosecutor to admit an eligible servicemember into the Veterans Diversion Program which the prosecutor deems appropriate.

3. The prosecutor's approval of an application for admission into the Veterans Diversion Program pursuant to this section shall not be conditioned on an admission or plea of guilt by an eligible servicemember.

4. To qualify for prosecutorial diversion under this section, an eligible servicemember shall agree in writing to the following terms, where relevant to the eligible offense:

(a) Participate in case management and substance dependency and/or mental health services initiated through the Veterans Diversion Resource entity or other similar services and to cooperate with any recommended course of treatment, including the use of medications as prescribed and participation in counseling;

(b) Authorize the case management or substance dependency and/or mental health service provider to release to the prosecutor periodic status reports regarding the servicemember's participation, cooperation, and recovery progress with case management and substance dependency and/or mental health services;

(c) Cooperate with case management service providers to procure housing, education, and employment services, where appropriate;

(d) Pay restitution for damages that have resulted from the offense;

(e) Refrain from the use of alcohol or illegal drugs or frequent any place where alcohol or illegal drugs are sold and used;

(f) Refrain from the possession or use of firearms or other weapons;

(g) Refrain from further criminal activity;

(h) Refrain from any contact with a victim of the offense;

(i) Cooperate with a mentor, where assigned;

(j) Suspend the tolling of time for the purposes of the servicemember's right to a speedy trial while the servicemember is participating in the program;

(k) Advise the prosecutor of any change in the servicemember's residential address or any change in the provider of case management and substance dependency and/or mental health services; and

(l) Any other terms and conditions related to the servicemember's recovery and public safety deemed appropriate by the prosecutor.

5. The prosecutor shall determine the duration of the servicemember's participation in the Veterans Diversion Program, except that the servicemember's participation in the program shall not exceed two years from the date of the diversion agreement. The term of the servicemember's participation shall be based on the initial clinical evaluation and recommendations, status reports of the servicemember's participation, and progress reports from the case management and substance dependency and/or mental health service providers, and, where assigned, the servicemember's mentor.

6. The servicemember shall be responsible for coordinating with the Veterans Diversion Resource entity or other case management and substance dependency and/or mental health service provider to ensure that the prosecutor receives periodic reports on the servicemember's participation, cooperation and recovery progress. The servicemember shall contact the Veterans Diversion Resource entity or other case management and substance dependency and/or mental health service provider within seven days of the date of the diversion agreement.

7. The court shall review the status of the deferred prosecution of the servicemember no later than six months from the date on which the court approved the prosecutor's initial request for a postponement of the proceedings, and, thereafter, every six months from the most recent review, to consider, based on information provided by the prosecutor, whether the postponement of court proceedings as requested by the prosecutor should continue.

8. To the extent that a sufficient number of mentors are available, the prosecutor shall assign a mentor to the eligible servicemember, except that an insufficient number of mentors available for assignment shall not in itself prevent a prosecutor from diverting an eligible servicemember pursuant to this directive.

9. The prosecutor shall notify the United States Department of Veterans Affairs Justice Outreach Specialist assigned to represent New Jersey when an eligible servicemember

who is a veteran has been admitted into the Veterans Diversion Program to facilitate outreach to the servicemember.

10. If, after a minimum of six months from the date of the diversion agreement, the prosecutor is satisfied that the servicemember has complied with the terms and conditions of the diversion agreement, has not been the subject of any subsequent criminal charges, and, based on clinical reports, continues to make progress with case management services and substance dependency and/or mental health recovery, the prosecutor may move before the court for the dismissal of the criminal charge pending against the servicemember and terminate the servicemember's participation in the Veterans Diversion Program. Alternatively, the prosecutor may require that the servicemember continue participation in the program until sufficient evidence of progress toward recovery is available, except that continued participation shall not exceed the two-year time limit as provided in subsection 5. of this section.

11. If, at any time, the prosecutor finds that the servicemember has failed to comply with any term or condition of the diversion agreement, the prosecutor may notify the court that the State is prepared to proceed with the prosecution of the offense and the court shall schedule court proceedings as appropriate.

12. No fee shall be assessed to a servicemember for participation in the Veterans Diversion Program.

13. An eligible servicemember may be admitted to the Veterans Diversion Program one or more times at the discretion of the prosecutor, subject to the restrictions in this section, if such diversion promotes the servicemember's recovery, prevents the commission of future offenses, and protects the safety of the public. Nothing in this directive shall preclude an eligible servicemember from applying for admission to a criminal justice diversion program, including a program of supervisory treatment pursuant to N.J.S.2C:43-12, conditional discharge pursuant to N.J.S.2C:36A-1, or conditional dismissal pursuant to section 1 of P.L.2013, c.158 (C.2C:43-13.1), as an alternative to the Veterans Diversion Program to the extent that the servicemember meets the eligibility criteria and qualifies for those programs. A dismissal of a criminal complaint resulting from successful participation in a Veterans Diversion Program pursuant to this section shall bar a servicemember's subsequent eligibility for a program of supervisory treatment pursuant to N.J.S.2C:43-12, conditional discharge pursuant to N.J.S.2C:36A-1, or conditional dismissal pursuant to section 1 of P.L.2013, c.158 (C.2C:43-13.1); however an eligible servicemember may seek subsequent admission to the Veterans Diversion Program and may be admitted at the sole discretion of the prosecutor.

14. The dismissal of charges based on a servicemember's successful participation in the Veterans Diversion Program pursuant to this section shall not be deemed:

(a) a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a petty disorderly persons, disorderly persons offense, or a crime, but shall be reported to the State Bureau of Identification criminal history record information files for purposes of determining future eligibility or exclusion from other diversion programs; or

(b) a conviction for the purpose of determining whether a second or subsequent offense has occurred under any law of this State.