

JOINT LEGISLATIVE PUBLIC HEARINGS

ON THE 2022/2023 EXECUTIVE BUDGET PROPOSAL

Written Testimony to

The New York State Senate Finance Committee
and
The New York State Assembly Ways and Means Committee on
the Human Services Budget

Gary A. Horton
Director
Veterans Defense Program
New York State Defenders Association, Inc.

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Thank you for the opportunity to submit written testimony on the Human Services section of the State Budget Fiscal Year 2022/2023 as it relates to veterans programs. I am Gary Horton, Director of the Veterans Defense Program (VDP), a statewide program of the New York State Defenders Association (NYSDA). The VDP provides assistance and expertise to attorneys and their veteran clients who are suffering with the invisible wounds of war and are involved in the criminal and family court systems.

I want to thank the Senate and Assembly for sponsoring the 2021/2022 Legislative add to the budget of \$500,000 for the statewide VDP (with a match of \$250,000 from the Assembly and \$250,000 from the Senate), and the Senate's sponsorship of \$220,000 for the VDP's Long Island office. The \$720,000 we received was instrumental to our ability to provide services to veterans. This year, we are again requesting \$720,000 (\$500,000 for the statewide VDP and \$220,000 for the VDP's Long Island office) for the VDP in the state budget so that we are able to continue to provide crucial legal support to public defense attorneys representing veterans and peer-to-peer mentoring services. NYSDA also presented this funding request its budget testimony regarding the Public Protection hearing last week.

The Veteran Experience and Justice System Involvement

Veterans returning home face difficulty readjusting to civilian life when suffering from a frontline military-related mental illness and, all too often, they do not receive timely treatment. After making tremendous sacrifices, many suffer from PTSD, TBI, major depression, and substance use disorder that negatively affect their cognitive abilities, judgment, and behavior – potentially drawing them into the criminal justice system and possibly leading to incarceration. Veterans often come into contact with the justice system because of the struggle of integrating back into society, including difficulty securing employment, unstable housing, and a lack of family connections, social networks, and supportive social services. Their unique challenges are often overlooked or ignored, and the resulting criminal charges can trigger a host of collateral consequences. As their lives derail, they may lose their homes and employment, become estranged from family, and, unfortunately, die of suicide. Those veterans charged with a crime end up lost in a criminal justice system that does not address their core problems nor treat their underlying condition(s). “Left untreated, the emotional wounds of war can have a dramatic and destructive impact on veterans,” said Melissa Fitzgerald, Director, Advancing Justice of the national organization, Justice for Vets. “If we don’t intervene at the critical point of arrest, we risk losing veterans to the system forever. We can hold accountable veterans who commit crimes while connecting them to the benefits and treatments they have earned. Men and women who, instead of languishing behind bars, are going back to school, working, raising children, and living as civic assets. Veterans have fought for our freedom—shouldn’t we fight for theirs?”

The VDP Helps Veterans and the Attorneys Who Represent Them

Most attorneys and judges are not veterans and are unlikely to understand the veteran experience. Defense attorneys are rarely trained or prepared to adequately represent veterans who suffer from the invisible wounds of war, or to translate the combat experience of their clients to explain resulting criminal behavior. Judges and prosecutors usually do not receive training that is specific to veterans. Defense attorneys need to be zealous advocates for therapeutic justice on behalf of their veteran clients. They need to be trained to develop strategies for dealing with their clients around the issues of trauma with a higher degree of psychological sensitivity. They need to understand that they are functioning as therapeutic agents in their interactions with their clients. To accomplish this, understaffed and overburdened public defenders need the support services of a resource such as the VDP. The VDP was the first program of its kind in the nation, and carries a goal of ensuring that each veteran in all 62 New York counties, has an effective advocate. The VDP is staffed with attorneys and support personnel with deep experience and commitment to working for veterans. Fifty percent of employees of the VDP are veterans including our Deputy Director, a US Army Lieutenant Colonel who retired from the Judge Advocate General's Corps (JAG). Our case managers, who are veterans, provide peer-to-peer mentoring and assistance to veterans and their families. The VDP ensures that every veteran's story is properly presented to a

judge and prosecutor; and these veterans get the treatment they need and deserve, in fact, many of the cases where the VDP attorneys provided substantial legal assistance, veteran clients received treatment and probation, and avoided incarceration. The Senate and Assembly should be proud of their role in fostering this innovative, effective program.

In addition to the direct work the VDP attorneys do with veteran clients, the VDP also trains defense attorneys in the best practices of representing veterans, including Military Culture and Cultural Competence, the effects of PTSD, TBI, and Military Sexual Trauma (MST), and Trauma-Informed Representation. Due to the ongoing COVID-19 pandemic, we were unable to continue in-person continuing legal education (CLE) trainings. Instead, through our parent organization, the New York State Defenders Association, and others such as the New York State Bar Association, the VDP presented CLE webinars on various topics concerning veteran representation in the justice system. In 2021, we trained 430 defense attorneys around the state. The VDP's other outreach programs reached 2,812 individuals.

The VDP has helped justice-involved wounded warriors suffering from mental health conditions to obtain treatment and receive just, trauma-informed dispositions in the court system. Additionally, thanks to legislation that the Senate and Assembly passed in 2021, Veterans Treatment Courts and their benefits are now available to veterans across the State of New York. We have already started to train defense attorneys on how to effectively use this legislation to help their veteran clients.

Over the past five years, the VDP helped justice-involved veterans be diverted into treatment and probation, with a cost saving to the State of up to \$93 million. The cost saving is calculated by taking the maximum number of incarceration years for the original charge and subtracting the number of years imposed at sentencing. The estimated cost of incarcerating a person for a year is \$60,000.

VDP Services Throughout the Pandemic

The uniqueness of the current pandemic has affected the well-being of our clients in a number of ways. This past year has continued to be challenging for veterans suffering from mental health diagnoses where anxiety is symptomatic. Moreover, veterans, especially those suffering the mental health consequences of their service, including Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI) and clinical depression, also continue to be especially hard hit in these times. . In addition to the general stresses our veteran's see due to the ongoing COVID-19 pandemic, we, as attorneys, have seen significant administrative delays in getting necessary military and medical records. These delays in getting critical records means that our VDP attorneys cannot quickly provide mitigation reports to veterans' attorneys and the courts, which are reluctant to order alternatives to incarceration in the absence of a mitigation report. Additionally, due to COVID-19, the VA Health Systems had to close many in-patient treatment programs and telemedicine appointments replaced in-person outpatient treatment. The cumulative delays and limited access to treatment exponentially intensified the anxiety of veterans involved in the justice system.

Participants in the Veterans Treatment Courts (VTCs) were particularly hard hit as they rely on the supervision and support of regular appearances before the court to foster success. VTCs are most successful when they have strong peer-to-peer support provided by veteran mentors. When virtual VTC appearances did take place, such appearances were unable to replicate the human connections and support that exist between all those who are usually present during those proceedings. During the pandemic, the length of time participants have spent in VTCs has doubled, at least.

All of these delays increased the workload for the VDP staff. For example, our case managers needed to spend more time mentoring veterans who had an understandably difficult time coping with the delays. With cases being open much longer than usual and the regular influx of new cases never diminishing, the caseloads of our attorneys increased.

Despite these significant additional stresses and unprecedented conditions, the VDP staff knew that we needed to continue to function at full capacity to continue to address the critical needs of veterans in the justice system. Since March of 2020, the VDP maintained all staff at their regular hours, in all three office locations, through a combination of remote work and reduced office presence. We're also very proud to say that regardless of the increased workload, the VDP did not reject any requests for service and assistance.

Funding for the VDP Must be Restored

The VDP's budget request is modest, particularly in light of the impact we have on veteran representation, reduced incarceration, and increased treatment and services that veterans deserve. We ask the Legislature to restore the VDP's funding to \$720,000.

Our budget request is supported by over 70 veteran and mental health organizations, including the American Legion, AMVETS, Disabled American Veterans, Marine Corps League, Military Order of the Purple Heart, New York State Council of Veterans Organizations, United War Veterans Council, National Alliance for Mental Illness-NYS, Veterans of Foreign Wars, and county public defense programs, such as Brooklyn Defender Services, Legal Aid Society of Suffolk County, Ontario County Public Defender's Office, and the Legal Aid Bureau of Buffalo.

The VDP Strongly Supports Funding for Other Veteran Programs

The VDP has developed excellent working relationships with a large number of veteran agencies and groups across the state, including the VA Health Administration, Veteran Justice Outreach offices, county Veterans Service Officers, longstanding not-for-profit organizations such as the Rochester Veterans Outreach Center and the Buffalo Veterans One Stop Center of Western New York, and the New York State Council of Veterans' Organizations. We strongly endorse the Council's budget priorities. Those priorities include increased funding for the Joseph P. Dwyer Veterans Peer to Peer Program so that the counties that have not received funding in the past for this worthy program are funded at an amount commensurate with the veteran population in their county. Another priority is for increased funding for Veterans Service Officers (VSO). Greater funding for VSOs would allow them to expand their training and reach, which in turn can bring added federal dollars into New York as VSOs assist veterans with discharge upgrades and benefit applications.

State Funding for the VDP Helps Guarantee Justice for Veterans

The VDP is committed to giving veterans access to the best possible legal representation. Veterans with battle-borne illnesses need treatment and an alternative resolution process in the criminal justice system. We need your help to continue this work.

This year, we request restoration of the \$500,000 for the statewide VDP (with a match of \$250,000 from the Assembly and \$250,000 from the Senate), and restoration of the Senate's sponsorship of \$220,000 for the Long Island office, which supports veterans in Nassau and Suffolk counties, as well as the five boroughs of New York City.

Thank you for the opportunity to submit this written testimony.

Gary A. Horton

Director

Veterans Defense Program

New York State Defenders Association, Inc.

ghorton@nysda.org

585-219-4862