

## TESTIMONY OF:

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**Criminal Defense Practice**

## BROOKLYN DEFENDER SERVICES

**Presented before New York City Council Committees on Veterans and Mental Health,  
Disabilities and Addiction**

**Oversight Hearing on Veterans Treatment Courts**

**December 13, 2022**

My name is Adam Cole and I am a Senior Attorney in the Criminal Defense Practice at Brooklyn Defender Services (BDS). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. Thank you to the Committees on Veterans and Mental Health, Disabilities and Addiction for the opportunity to testify today about Veterans Treatment Courts.

BDS represents approximately 21,000 people each year who are accused of a crime, facing the removal of their children, or deportation. BDS is fortunate to have the support of the City Council to supplement the services we provide as a public defender office in Brooklyn. Through specialized units of the office, we provide extensive wrap-around services that meet the needs of people with legal system involvement, including civil legal advocacy, assistance with educational needs of our clients or their children, housing and benefits advocacy, as well as immigration advice and representation.

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BDS' Veterans Unit was developed to serve the disproportionate number of Brooklyn veterans with criminal legal system involvement. An overlooked and often stigmatized population, the disproportionate rate of veterans' involvement with the criminal legal system is largely the result of trauma and injuries incurred during their time in the service. Our team includes specialized attorneys and a dedicated social worker practice in Brooklyn's Veterans Treatment Court parts, maintain relationships with the Department of Veterans Affairs, and work diligently to connect veteran clients with alternatives to incarceration, substance abuse and mental health treatment, as well as education, employment, and housing support in partnership with our Civil Justice team.

## **Problem Solving Courts**

In 2009, as part of the Rockefeller Drug Law Reforms, New York State passed the Judicial Diversion Program legislation. Under Criminal Procedure Law Article 216 (CPL 216), this legislation created a pathway for a small subset of people with substance use disorders to avoid prison and potentially have their charges reduced or dismissed after engaging in a course of treatment. This treatment is monitored by specialized courts in every county in New York. Judicial diversion has successfully enabled thousands of individuals to minimize or avoid a criminal record while receiving the benefit of potentially lifesaving substance use treatment. Judicial diversion has also realized the saving of tax dollars, from both reductions in recidivism and the decreased costs per capita of treatment versus incarceration.

That same year, Brooklyn's Veterans Treatment Court opened and has been expanding its services and incorporating more and more veterans into its eligible pool of participants ever since. The two specialized court parts that work with veterans or people with military experience who have been accused of a crime. The Felony Veterans Treatment Court accepts people charged with a felony who have a substance use disorder and whose alleged offense is connected to their status as a veteran. The Misdemeanor Veterans Treatment Court accepts people with any level of military experience and have been charged with a misdemeanor offense.

Veterans are arrested at a higher rate than the general public<sup>1</sup> and many of the veterans we represent live with a mental illness or substance use disorders as a result of their military career. The most prevalent diagnoses involve post-traumatic stress disorder (PTSD) and traumatic brain injuries (TBI). It is our strong belief that special consideration of veterans' experiences must be integrated into any court proceedings, in order to offer tailored solutions that meet the unique needs of this population and minimize the chances that veterans will be incarcerated.

## **Veterans Treatment Court**

In our experience, Veterans Treatment Court provides critical avenues for healing and recovery to individuals who require evidence-based treatment interventions in the community. Veterans with criminal legal system involvement have unique needs and the specialized focus is extremely helpful in reducing the long-term collateral consequences of a conviction, such as limited employment and educational options, loss of housing, deportation and loss of familial relationships. The targeted intervention of the Veterans Court also increases the likelihood of

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<sup>1</sup> Council on Criminal Justice, From Service through Reentry: A Preliminary Assessment of Veterans in the Criminal Justice System, August 2022, Available online at <https://counciloncj.org/vjc-preliminary-assessment/>

successful reintegration of veterans into community life, improves long-term treatment outcomes, and reduces the chances of re-arrest.

## Recommendations

### 1. Expand access to treatment courts for veterans

The Veterans Treatment Court part has been critically important for many of the people we serve, helping them connect to care and have a pathway out of the criminal legal system. While the misdemeanor Brooklyn Veterans Treatment Court is available to a wide breadth of people with military experience, for veterans who are charged with felonies, specific parameters—including military history, a nexus between the alleged offense and veteran status, and a substance use issue—are required to qualify for the treatment court. Veterans with PTSD may be eligible for the mental health court part, but the judges in the mental health court part do not specialize in the mental health needs of veterans. Participants do not receive the benefits of engaging in programming with their peers and, if they are not already connected to the VA, may not be referred to programs with an understanding of military experience. Veterans with Traumatic Brain Injuries may not be eligible for veterans court or mental health court at all, leaving them with few options for counseling, services, and alternatives to incarceration.

We believe any veteran should be able to participate in a Veteran's Court - regardless of the charges they face or their mental health or substance use history. Veterans Treatment Court will not be successful without buy-in from District Attorneys, who must consent for a veteran to access treatment court. New York City should follow the example of other Veterans Courts in the state and expand these courts to include all people with military experience.

### 2. Increase access to permanent, affordable housing

Safe, permanent, affordable housing is critical for all New Yorkers. Veterans experience homelessness at higher rates than those without military experience<sup>2</sup> and veterans with criminal legal system involvement face additional barriers to accessing housing. For people who are living with serious mental illness, substance use disorder, or court mandated to receive services, homelessness or housing insecurity creates additional barriers to access treatment. People experiencing homelessness may have difficulties connecting to providers, affording treatment or medication, or accessing transportation to appointments. The Mayor has instructed NYPD to remove people experiencing homelessness from the subway, while simultaneously divesting from the Department of Homeless Services.

In the midst of the COVID-19 pandemic, as the city worked to decarcerate and public defenders fought to get clients out of jail, Mayor's Office of Criminal Justice opened several hotels to

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<sup>2</sup> Joy Moses, 5 Key Facts About Homeless Veterans, *National Alliance to End Homelessness*, November 9, 2020, Available at <https://endhomelessness.org/blog/5-key-facts-about-homeless-veterans/>.

provide emergency transitional housing to people leaving jail. This safe, stable housing addressed an unmet need that began far before the pandemic began. Jail populations have risen to pre-pandemic levels. They are overcrowded and deadly. This setting has proven to be life-changing for many of the people we serve. In lieu of loud, chaotic and often violent congregate shelters, people have private rooms in clean, comfortable buildings where they are treated with dignity and respect. We urge the city and this Council to baseline funding in the city budget for permanent emergency reentry housing. This critical resource must be maintained as a part of a continuum of housing options for New Yorkers. We urge the city to concurrently work to expand access to supportive housing and permanent affordable housing options for all New Yorkers.

### **3. Pass a resolution in support of the Treatment Not Jail Act (S2881B/A8524A)**

Over the past few years, the New York State Legislature has championed and won historic legislative change in the criminal legal system. We call on the City Council to follow their lead and pass a resolution calling on the legislature to pass and the governor to sign the Treatment Not Jail Act (S2881B - Ramos/A8524A - Forrest).

As previously stated, New York's current treatment court model has many restrictions on who is able to participate in a diversion program, based on their changes, diagnoses, or personal history. The Treatment Not Jail Act (TNJ) will substantially expand access to judicial diversion and create tangible steps toward ending the criminalization of mental health and cognitive impairments in New York. TNJ will create parity in the court system for vulnerable populations who need support and opportunity, and promote public safety by opening avenues of appropriate, individualized treatment where currently the default is incarceration. TNJ will:

- Create equitable access to judicial diversion by making the current judicial diversion law inclusive of people with mental health challenges and neurological, intellectual, and other disabilities.
- Allow New Yorkers to access treatment regardless of where they live. Currently, some counties will not allow people to participate in treatment court unless they are a county resident. TNJ will enable people to engage in treatment court within their county of residence, regardless of where the offense with which they are charged took place.
- Provide due process protection by ensuring that judicial diversion participants are not jailed without due process by requiring there be some substantiation of violations of judicial diversion conditions.
- End automatic exclusions based on level of charge. Currently, some people are excluded from participating in judicial diversion because of the section of the Penal Law with which they are charged regardless of their personal circumstances and background. TNJ will expand access to judicial diversion to people accused of any criminal offense. Research shows that diversion programs promote public safety, and that the nature of the

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charge does not impact treatment outcomes. TNJ will provide judges with the discretion to give people appearing before them individual consideration.

- Increase likelihood of success by embracing a clinical rather than punitive approach. TNJ will allow individuals to participate in treatment court without requiring them to plead guilty to access treatment. Judges will be trained in the best practices for mental health treatment within the judicial system. These practices will be grounded in providing support for participants and guided by treatment providers' individualized recommendations rather than over relying on punitive sanctions. TNJ will promote collaboration between participants and treatment providers, offering participants the best chance of achieving their treatment goals.

The number of people living with or having experienced mental health issues is at an all-time high, and jails and prisons have become the de facto mental health facilities across New York State. Treatment Not Jail seeks to put an end to this untenable condition and to redirect people out of jails and the criminal legal system and into evidence-based treatment programs that can offer the medical care and support they need.

## Conclusion

Brooklyn has some of the best problem solving courts in the state and New York is a leader in the creation and use of drug, mental health, and other treatment courts. Our experience has shown that these courts can provide non-jail alternatives for veterans who are living with substance use disorders or mental health conditions. However, more access is needed for these courts, and the city can help by increasing funding for more programs, more providers, and more beds. These programs must also be flexible, utilize harm reduction models, and increase privacy protections for its participants. Lastly, while problem solving courts can be a successful method to provide services for our community members *after* they've been arrested, we ask the Council to continue to address the problems in our communities that create the risk of criminal justice involvement in the first place, such as lack of stable housing, access to gainful employment and access to substance use and mental health care.

Thank you for the opportunity to testify today. If you have any questions, please feel free to contact Kathleen McKenna, Senior Policy Social Worker, at [kmckenna@bds.org](mailto:kmckenna@bds.org).