

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

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To: Assignment Judges **Directive #05-18**
Trial Court Administrators

From: Glenn A. Grant, J.A.D. 

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Subj: Veterans Diversion Program (N.J.S.A. 2C:43-23 to -31)

This Directive is being promulgated to provide information on a recently developed diversionary program entitled the Veterans Diversion Program, enacted by L. 2017, c. 42, and codified at N.J.S.A. 2C:43-23 to -31. The Veterans Diversion Program, effective December 1, 2017, is a prosecutorial program developed to divert eligible military service members into appropriate case management and mental health treatment services as early as possible, thus avoiding criminal records, sanctions and stigma, while expediting the person's recovery and wellness.

The law provides prosecutors with the sole discretion to determine if an eligible service member qualifies for and is admitted to the Veterans Diversion Program (hereinafter program), rather than just providing the court with a recommendation for admission like other diversionary programs, such as the Pretrial Intervention Program or the Conditional Dismissal Program. Therefore, interested defendants should contact the prosecutor's office where they are charged for information on applying to this program.

Because this is a prosecutorial program and to conform with the statutory requirements, the Office of the Attorney General (OAG) has developed a webpage with information on this program. The OAG webpage also includes a directory of the County Prosecutors' Offices, as well as other resources for service members, and is located at <https://www.nj.gov/oag/vdp>. The Judiciary's website has also been updated to include the internet addresses for the OAG webpage and the New Jersey Department of Military and Veterans Affairs for additional resources for service members. This information is located on the Criminal Practice Division webpage at <https://www.njcourts.gov/courts/criminal/criminal.html>, and the Municipal Courts webpage at <https://www.njcourts.gov/courts/mcs.html>.

Overview of the Requirements for the Veterans Diversion Program

This program is available to an eligible service member who: (1) allegedly has committed a non-violent petty disorderly persons offense, disorderly persons offense, or a crime of the third

or fourth degree; and (2) has a prior diagnosis of mental illness or for whom a law enforcement officer or prosecutor believes has a mental illness based on behaviors and symptoms exhibited during the commission of the offense or while in custody, or information provided during their investigation. An eligible service member is defined as any veteran or enlisted person or officer of the United States Armed Forces, or a reserve component thereof, or the organized militia of New Jersey pursuant to N.J.S.A. 38A:1-3. A veteran is defined as 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.

A person is not eligible for this program if he or she has: (1) pending charges for a first or second degree crime, (2) a prior conviction for a crime under the No Early Release Act (N.J.S.A. 2C:43-7.2), or (3) the crime or offense committed involved violence or the threat of violence. Additionally, there is a presumption against admission for a person charged with any crime or offense involving domestic violence, while subject to a domestic violence restraining order. N.J.S.A. 2C:43-26(b)(2).

In determining whether to admit a service member, prosecutors consider certain criteria such as: (1) the nature of the eligible offense, (2) the causative relationship between the mental illness and the commission of the offense, (3) amenability of the person to participate in the services of the program, (4) the availability of case management and mental health services, (5) the desires of any victim, (6) history of prior convictions, and (7) the probability that diversion will promote recovery, prevent future criminal behavior, and protect public safety. N.J.S.A. 2C:43-26(b)(1).

The law also authorizes prosecutors to determine the duration of an individual's participation in the program, which cannot exceed two years. The length of participation is based on the initial clinical evaluation and recommendations, status reports on the defendant's participation, and progress reports from case management, mental health service providers, and the person's mentor, if applicable.

Case Processing

When a person is taken into custody for an eligible offense, the law enforcement officer will inquire whether the person is a service member or has ever served in the United States military. This information will be included on the complaint in the electronic Complaint Disposition Report (eCDR) system. Enhancements have been made to the Automated Complaint System (ACS) and PROMIS/Gavel (PG) systems to assist in processing these cases.

To maintain the confidentiality of a person's military status, the Judiciary will redact this information from court records and documents that are within its custody and control and that are generally accessible to the public under Court Rule 1:38 ("Public Access to Court Records and Administrative Records"). This is an interim step until the Supreme Court can consider whether Rule 1:38 should be amended to specifically provide for such confidentiality.

Defendants appearing in Municipal Court will be informed by Municipal Court judges in the opening statement about the Veterans Diversion Program, and advised to consult with the

prosecutor for information on applying. Similarly, those appearing in Superior Court will be informed at the centralized judicial processing/first appearance court event.

Defendants may apply to the prosecutor for admission to the program at any time prior to disposition of the charges. Admission shall not be conditioned on the person's admission or plea of guilt. The prosecutor will ask the court for a postponement of the proceedings when a person is admitted to the program. Upon postponement of the proceedings, the court may release the defendant on his or her own recognizance subject to compliance with the conditions specified in the prosecutor's diversion agreement. For information on the types of conditions that can be included in the diversion agreement, see N.J.S.A. 2C:43-26(d).

The court shall review the status of the deferred prosecution no later than six months after approval of the postponement, and every six months thereafter, to consider whether the postponement should continue. After a minimum of six months from the date of the diversion agreement, the prosecutor may move for dismissal of the pending criminal charges if the defendant: (1) has complied with the terms and conditions of the diversion agreement, (2) has not been charged with any other criminal charges, and (3) based on clinical reports continues to make progress with case management services and mental health recovery.

The prosecutor may also ask the court at the time of the dismissal to expunge all records and information relating to the arrest or charge and the diversion. In the alternative, the person may seek an expungement of the records at any time after the dismissal order pursuant to N.J.S.A. 2C:52-6(c)(2). Since municipal court judges are not authorized to grant expungements, municipal courts should provide these defendants with the municipal court expedited expungement form, along with the information to apply for this expungement. No fee will be charged for this expungement. Information on filing an expungement of criminal records is included in the pro se expungement packet, which can be downloaded from the Judiciary's website at https://njcourts.gov/forms/10557_expunge_kit.pdf.

When the defendant fails to comply with any conditions in the diversion agreement, the prosecutor may seek to terminate a defendant's participation in this program. In these instances, the prosecutor will notify the court that the State is ready to proceed with prosecution of the case.

Questions or comments may be directed to Sue Callaghan, Assistant Director for Criminal Practice, at 609-815-2900 extension 55300 or sue.callaghan@njcourts.gov or to Steven A. Somogyi, Assistant Director for Municipal Court Services, at 609-815-2900 extension 54850 or steven.somogyi@njcourts.gov.

cc: Chief Justice Stuart Rabner
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Municipal Presiding Judges
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Clerks of Court
Melaney S. Payne, Special Assistant
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