

Veterans Defense Project
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Monday, May 10, 2021

Co-Chair Kiffmeyer, Co-Chair Nelson, Committee Members
State Government Finance, Veterans & Military Affairs, and Elections Conference Committee

For as long as Veterans have returned from war, most have come back stronger and wiser from their experience – immediate assets to their communities. Some, though, have always brought their war home with them, bearing invisible wounds that, today, we call post-traumatic stress. Untreated, these echoes of war – manifesting in self-destructive, reckless and violent behavior – reverberate through society, destroying not only the lives of these heroes, but victimizing their families and the communities they fought to protect. In this way, large numbers of Veterans in past generations have fallen into and been left behind in the criminal justice system upon their return home.

A new generation of Veterans is now returning home and here is good reason to believe more of them will bring their war home with them than ever before, creating the risk of an unprecedented public health and public safety *crisis*. Unlike previous generations, this one is relatively small, yet it has fought the longest wars in our country's history – simultaneously. Without the draft we have relied on in past wars, the burden of the fighting has fallen on fewer shoulders, with many Veterans of this generation serving multiple combat tours – translating into higher rates of post-traumatic stress injuries than previous generations. This generation of returning Veterans is also the most lethal in our history. Having honed their modern psychological and combat skill training in the mountains of Afghanistan and the streets of Iraq over multiple tours, they pose a unique public safety risk if their trauma goes untreated and they are not properly reintegrated into their communities.

The rise and growth of Veterans Treatment Courts (VTCs) and veteran sentencing statutes across the country has been a welcome response to this *crisis* and they hold the promise to help seize this *opportunity* for reintegration. Unfortunately, VTCs are still relatively few in number, and they lack consistent protocols and practices, leading to disparate outcomes and many missed opportunities to bring justice-involved veterans the rest of the way home.

The process that led to the Veterans Restorative Justice Act (VRJA) began in 2017, over concerns about growing disparities among Minnesota's Veteran Treatment Courts (VTCs), along with the fact that the majority of Minnesota jurisdictions still lacked any special protocol for veterans. We became aware of dwindling numbers of veterans in several of Minnesota's VTCs, and concerns among staff that their courts would run out of participating veterans and be forced to shut down. Those disparities also led the Minnesota State Public Defenders to pull all their attorneys out of the VTCs, statewide in 2017, further threatening their viability. This downward trend was particularly concerning, as we were simultaneously witnessing an accelerating flow of veterans into Minnesota's criminal justice system – fueled by the ongoing wars in Iraq, Afghanistan, and elsewhere.

The working group that collaborated to draft the VRJA was convened by Court of Appeals Judge Renee Worke, who had hosted the working group that created Minnesota's first Veterans Treatment Court, in Hennepin County, a decade before. As before, this new working group met monthly at the Judicial Center and ultimately included:

Judge Renee Worke (Court of Appeals)
Judge Judy Tilsen (Ramsey County Veterans Court)
Judge Jenny Walker Jasper (Anoka County Veterans Court)
Mike Freeman (Hennepin County Attorney)
David Brown (Chief Deputy Hennepin County Attorney)
John Choi (Ramsey County Attorney)
Pete Orput (Washington County Attorney)
Bill Ward (State Public Defender)
Evan Tsai (Ramsey County Veterans Court Public Defender)
David Holewinski (U.S. Department of Veterans Affairs)
Ben Johnson (Minnesota Department of Veteran Affairs)
John Kingrey, Brock Hunter, and Ryan Else (Veterans Defense Project)

Over the next 18 months, our working group reviewed various Veterans Court protocols from across Minnesota and the rest of the country. Our focus gravitated towards two key issues: the range of offenses that were eligible for consideration and the legal incentives extended to veterans for their participation. We concluded that even some serious and violent offenses should be included for consideration because the veterans committing them are those most in need of intervention and, without it, pose the greatest threat to public safety. We also concluded that a significant legal incentive – a pre-adjudication model – is key to attracting veterans to participate, motivating them to complete difficult treatment, and to set them up to succeed after graduation. A pre-adjudication model would also be necessary to sway the State Public Defenders into returning their attorneys to staffing VTCs, statewide. Finally, we concluded that legislation would be the most effective way to establish a consistent set of criteria for eligibility and incentives across Minnesota's existing VTCs, as well as to provide a veteran protocol template that jurisdictions without VTCs could immediately follow to begin intervening with veterans, as they work to establish formal VTCs.

The working group (except for the judges, who cannot directly participate in bill drafting) collaborated to draft the language of the VRJA throughout 2018. That spring, Judge Worke arranged to have the working group brief the Treatment Court Initiative regarding our efforts and the legislation then being drafted. Once we had the VRJA drafted, members of the working group met three times with Chief Justice Gildea in January, September, and October of 2019. We also met with State Court Administrator, Jeff Shorba, and Janet Marshall in early 2020. In each instance, we addressed their questions and received no substantive objections.

Over time, we have gained support for the VRJA from a wide range of stakeholders, including the following organizations:

Minnesota County Attorneys Association (MCAA)
State Public Defenders
Minnesota Association of Criminal Defense Lawyers (MACDL)
Minnesota Social Services Association
Violence Free Minnesota
Veterans of Foreign Wars (VFW)
American Legion
Disabled American Veterans (DAV)
Paralyzed Veterans of America
American Veterans Association (AMVETS)
Vietnam Veterans of America (VVA)
Jewish War Veterans of the United States
Military Order of the Purple Heart
Marine Corps League.

We understand that concern has been raised regarding the “shall” language in the VRJA, and whether it unconstitutionally intrudes into judicial discretion. First, there are a number of laws in the Minnesota criminal code that require the courts to sentence offenders in particular ways. Mandatory minimum sentences are one example. Minnesota Statute 152.18, which mandates a stay of adjudication for certain qualifying drug offenders is another.

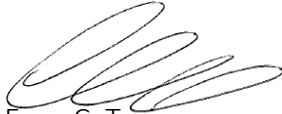
Second, the “shall” language in the VRJA is not just constitutional, it is good policy. It will bring consistency to the way veterans are treated across Minnesota. It will also better ensure public safety. All qualifying veterans will be given a path to redemption, but they will then have to earn it. They will be required to abstain, to complete all recommended treatment, and, at the end of the process, judges will have broad discretion to determine whether or not the veteran has earned their redemption.

The VRJA constitutes an admittedly different approach from the status quo, but one that is distilled from hard-won lessons, learned on the front lines of VTCs across Minnesota and the rest of the country. We believe this approach makes the most of our *opportunity* to honor and

reintegrate this next Greatest Generation of Veterans, to be assets, rather than ongoing liabilities to the communities they served.

Again, you have our heartfelt gratitude for your time and investment in ensuring the Veterans Restorative Justice Act will become law during this legislative session. Together, with the VRJA, we can ensure no Veteran is left behind in the criminal justice system.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Evan C. Tsai', with a stylized, cursive flourish.

Evan C. Tsai

Board Chair

Veterans Defense Project