

Military Diversion Program- Penal Code 1001.80

Penal Code section 1001.80 establishes a pretrial diversion education program for those who are arrested for nonviolent misdemeanor offenses. A similar program, not covered by this article, applies to felony charges and is found in Penal Code section 1170.91. Under section 1170.91, current service members or veterans facing a felony are entitled to serve custody time in a treatment facility and receive credit for time served while in treatment. In contrast to the section 1001.80 program, the program for felonies is not technically diversion, as the person must be convicted to receive such benefits.

Criminal defense lawyers in Sonoma, Napa, Marin, Lake, Mendocino and Humboldt counties are convinced that this program is far better than a criminal prosecution because when the diversion program is successfully completed, all the criminal charges are dismissed. This puts the individual who successfully completed the program in a position to file a petition to seal their criminal record. Either or both successful completion of the diversion program and/or the acquisition of an order to seal the record will put an individual in a position to be able to deny the occurrence of the criminal incident.

The veteran does not need an honorable discharge to be eligible for pretrial diversion. Likewise, the veteran or the current service member does not need to be first accepted to Veteran's Court to be eligible. The veteran does not need to have combat service at all.

A number of attorneys in our firm are veterans. We also operate a Veterans Legal Clinic for veterans who cannot afford legal services located at the Santa Rosa VA Center.

To be eligible, the current service member or veteran must suffer from:

1. Sexual trauma;
2. Traumatic brain injury, post-traumatic stress disorder (PTSD); or,
3. Substance abuse or mental health problems as a result of military service.

Sexual Trauma - The definition of "military sexual trauma" used by the U.S. Department of Veterans Affairs ("VA") is set forth in 38 U.S. Code 1720D. 38 U.S.C. 1720D defines "military sexual trauma" ("MST") as: "Psychological trauma, which in the judgment of a VA mental health professional, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the Veteran was serving on active duty, active duty for training, or inactive duty training." Criminal defense attorneys can assist someone in determining both the qualifying aspects of the trauma and assist in providing experts to connect the trauma to the military service.

Traumatic brain injury (PTSD) - This is a type of cognitive impairment, which resulted from a violent blow or jolt to the head or body, which can be caused by a serious fall or an object, such as a bullet, penetrating brain tissue. Explosive blasts are also a common cause of traumatic brain injury in military personnel. As a criminal defense lawyer will attest to a Traumatic brain injury also results

from penetrating wounds, severe blows to the head with shrapnel or debris, and falls or bodily collisions with objects following a blast or vehicle accident.

Substance abuse or other mental health problems - The key question for the court is whether the condition resulted from the defendant's military service and whether the defendant would benefit from treatment.

To evidence the suffering from one of the required conditions as a result of military service, the defendant must provide medical records from any type of medical exam at time of separation, as well as one's DD-214. The medical records will usually note such a condition and the percentage of disability.

As the criminal defense attorneys in our Sonoma, Napa, Marin, Lake, Mendocino and Humboldt offices will tell you, military diversion depends on the existence of a condition and does not require that someone served in a hostile fire zone or combat while in the service. This diversion program is available to all veterans and/or active military who can establish a medical condition/disability regardless of whether they served in combat. The trauma must be "military service" related but does not require service in "combat".

The judge can consider other sources of trauma and mental illness in mitigation as well, especially those that may have been suffered before joining the service or after being discharged.

Procedure

The defendant charged with a misdemeanor (or a felony reduced to a misdemeanor) files and serves a petition or Motion for Imposition of Diversion under Penal Code section 1001.80. Attachments to the motion must include proof that the defendant is a veteran or current service member and has been medically diagnosed as suffering from one of the required mental health conditions as a result of military service (i.e. "service-related").

The defendant must first agree first to waive the right to a speedy trial, after which the judge can then order the defendant into a suitable federal or community-based treatment program for up to two years in place of time in custody. As long as the service member or veteran performs "satisfactorily," the court has the power then to dismiss the case and thereby allow the defendant to avoid a conviction.

No defendant will be required to make an admission of guilt as a prerequisite for placement in the pretrial diversion program. No statements made by the defendant in connection with the determination of his or her eligibility for diversion, shall be admissible in any action or proceeding,

Typical military diversion programs last 12-24 months. By law, the period during which criminal proceedings against the defendant may be diverted can be no longer than two years. During the course of the program, the court will conduct progress hearings at least every six months in order to monitor the defendant's progress, cooperation and commitment to treatment. If the judge concludes that the defendant is not benefiting from treatment, diversion can end, with the prosecution resuming as before diversion was ordered.

Upon successful completion of the program, the arrest shall be deemed as if it never occurred. The defendant must only disclose it if applying to become a police officer.

1001.80.

(a) This chapter shall apply to a case before a court on an accusatory pleading alleging the commission of a misdemeanor offense if both of the following apply to the defendant:

(1) The defendant was, or currently is, a member of the United States military.

(2) The defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service. The court may request, using existing resources, an assessment to aid in the determination that this paragraph applies to a defendant.

(b) If the court determines that a defendant charged with an applicable offense under this chapter is a person described in subdivision (a), the court, with the consent of the defendant and a waiver of the defendant's speedy trial right, may place the defendant in a pretrial diversion program, as defined in subdivision (k).

(c) If it appears to the court that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is not benefiting from the treatment and services provided under the diversion program, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstated. If the court finds that the defendant is not performing satisfactorily in the assigned program, or that the defendant is not benefiting from diversion, the court may end the diversion and order resumption of the criminal proceedings. If the defendant has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed.

(d) If a referral is made to the county mental health authority as part of the pretrial diversion program, the county shall provide mental health treatment services only to the extent that resources are available for that purpose, as described in paragraph (5) of subdivision (b) of Section 5600.3 of the Welfare and Institutions Code. If mental health treatment services are ordered by the court, the county mental health agency shall coordinate appropriate referral of the defendant to the county veterans service officer, as described in paragraph (5) of subdivision (b) of Section 5600.3 of the Welfare and Institutions Code. The county mental health agency is not responsible for providing services outside its traditional scope of services. An order shall be made referring a defendant to a county mental health agency only if that agency has agreed to accept responsibility for all of the following:

(1) The treatment of the defendant.

(2) The coordination of appropriate referral to a county veterans service officer.

(3) The filing of reports pursuant to subdivision (h).

(e) When determining the requirements of a pretrial diversion program pursuant to this chapter, the court shall assess whether the defendant should be ordered to participate in a federal or community-based treatment service program with a demonstrated history of specializing in the treatment of mental health problems, including substance abuse, post-traumatic stress disorder, traumatic brain injury, military sexual trauma, and other related mental health problems.

(f) The court, in making an order pursuant to this section to commit a defendant to an established treatment program, shall give preference to a treatment program that has a history of successfully treating veterans who suffer from sexual trauma, traumatic

brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of military service, including, but not limited to, programs operated by the United States Department of Defense or the United States Department of Veterans Affairs.

(g) The court and the assigned treatment program may collaborate with the Department of Veterans Affairs and the United States Department of Veterans Affairs to maximize benefits and services provided to a veteran.

(h) The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years. The responsible agency or agencies shall file reports on the defendant's progress in the diversion program with the court and with the prosecutor not less than every six months.

(i) A record filed with the Department of Justice shall indicate the disposition of those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The defendant may indicate in response to a question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (j). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(j) The defendant shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to a peace officer application request and that, notwithstanding subdivision (i), this section does not relieve him or her of the obligation to disclose the arrest in response to a direct question contained in a questionnaire or application for a position as a peace officer, as defined in Section 830.

(k) (1) As used in this chapter, "pretrial diversion" means the procedure of postponing prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication.

(2) A pretrial diversion program shall utilize existing resources available to current or former members of the United States military to address and treat those suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of military service.

(l) Notwithstanding any other law, including Section 23640 of the Vehicle Code, a misdemeanor offense for which a defendant may be placed in a pretrial diversion program in accordance with this section includes a misdemeanor violation of Section 23152 or 23153 of the Vehicle Code. However, this section does not limit the authority of the Department of Motor Vehicles to take administrative action concerning the driving privileges of a person arrested for a violation of Section 23152 or 23153 of the Vehicle Code.

(Amended by Stats. 2017, Ch. 179, Sec. 1. (SB 725) Effective August 7, 2017.)

Remember, Ronald Dinan and Associates, is a firm of experienced and aggressive criminal defense lawyers, who can help in achieving the best outcome in your case. Many times criminal case dispositions will include reduction or outright dismissal of the number and/or severity of criminal charges, diversion programs, probation, reduced fines with installment payments, alternatives to jail, etc.

To get immediate help with your criminal matter, we invite you to call us to discuss your case. We answer all telephone calls in a polite, professional and helpful manner.

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