

MEMORANDUM OF UNDERSTANDING
Between the
Department of Veterans Affairs, Southeast Network
and Shelby County Circuit Court, 18th Judicial Circuit

Background:

The Shelby County Circuit Court, 18th Judicial Circuit, established a Veterans Treatment Court to work with to divert select members of the Veteran population, charged with non-violent misdemeanor and felony crimes, away from jail and into appropriate rehabilitative programs. The Veterans Treatment Court (“VTC”) program is a collaborative effort of the Shelby County Circuit Court, the Shelby County District Attorney, the Shelby County Public Defender, Shelby County Community Corrections, the Shelby County Sheriff’s Office and the Department of Veterans Affairs, Southeast Network.

The VTC has encountered Veterans charged with non-violent misdemeanors and felonies who face challenges in their lives. Many of these Veterans have medical, mental health and other problems, including those resulting from their military service. Veterans who are charged with non-violent misdemeanors and felony crimes often need rehabilitative services which can be provided by combining resources of the Court, clinical treatment through the Department of Veterans Affairs (VA) and community programs.

The VTC seeks to provide treatment services to Veterans through a program of pretrial diversion or probation supervision. As the ultimate goal, the VTC seeks to improve the lives of the offending Veterans and promote public safety by supporting sobriety and law-abiding behavior through reducing relapse and recidivism for moderate risk individuals.

The VA Veteran Justice Outreach (VJO) Initiative is to avoid the unnecessary criminalization of mental illness and extended incarceration among Veterans by ensuring that eligible justice-involved Veterans have timely access to VHA mental health and substance use services when clinically indicated, and other VA services and benefits as appropriate.

Through the VTC, the Court, probation, prosecution, defense, treatment professionals, and VJO Specialists (VJOS) will work collaboratively to provide a direct link between a Veteran in VTC, the court and treatment resources at the VA.

Purpose:

The purpose of this Memorandum of Understanding (“MOU”) between the Shelby County Circuit Court, the Shelby County District Attorney, the Shelby County Public Defender, Shelby County Community Corrections, Shelby County Sheriff’s Office and the Department of Veteran Affairs, Southeast Network (“VISN7”) is to establish the rights and responsibilities of each stakeholder involved in the VTC program and to maximize the ability to provide qualified Veteran offenders an opportunity to realize better outcomes in their contact with the criminal justice system through utilization of community and VA-sponsored rehabilitative programs.

Authority:

The Court has the authority to operate the VTC as a specialty court within the circuit and district courts of Shelby County. The VA has the authority to administer programs and provide healthcare to eligible Veterans pursuant to Title 38 of the United States Code. This MOU is not intended to confer or create authority not already in existence for the parties.

Eligibility:

The VTC is intended to serve Veterans charged with non-violent misdemeanors and felonies in the 18th Judicial Circuit who meet certain criteria. Among the factors considered for entry in the VTC are:

- Mental health diagnosis
- Substance abuse diagnosis
- Motivation to make lifestyle changes
- Eligibility for healthcare through the VA*
- Availability of healthcare through the VA**
- Nature of offense charged
- Prior criminal history
- Social and treatment history

*VA eligibility statutes will govern whether Veteran-Defendants who appear in the VTC are authorized to receive VA health care. Decisions related to a Veteran's eligibility for VA health care will be made exclusively by the VA.

** Decisions related to the nature and accessibility of VA treatment options/services will be made exclusively by the VA.

The Parties to this MOU agree as follows:

1. The VTC will include representatives of the Court, any contractors of the Court, Shelby County Community Corrections, Shelby County Sheriff's Office, the VA, the Shelby County District Attorney's Office and the Shelby County Public Defender's Office who will assist in the planning, development and application of the same.
2. Veterans charged with non-violent misdemeanor and/or felony crimes may be eligible to enter the VTC program.
3. The VTC is a voluntary program, which requires Veterans charged with non-violent misdemeanor and/or felony crimes to agree, in writing during a hearing, to enter into the VTC. The VTC is currently scheduled every Thursday afternoon at 2:00 p.m.
4. The VJOS shall be responsible for having the Veteran-Defendant sign all necessary forms for participation provided by the Court, including those allowing a release of health information from the VA to the Court and the Veteran-Defendant's current charges from the County Jail to the VA. The parties understand and agree that if the consent to release information is revoked by the Veteran-Defendant at any time, the VA will be unable to provide any information to the VTC directly or through its contractor, or any other team member pursuant to federal privacy laws.

5. The parties will collaborate and cooperate for the purpose of developing and implementing necessary forms to be utilized to fulfill the requirements of the VTC and to create a viable data collection process for a review of the efficacy of the VTC at the conclusion of the 1-year trial period.

6. Referral Process: The Shelby County District Attorney will make a preliminary determination as to whether the Veteran appears to be an appropriate candidate for the VTC. The Court will request an assessment from the VJO. If the Veteran is willing to participate and is a candidate for available treatment, the Veteran will be placed on the docket.

7. The VA shall provide one VJO whose responsibilities shall include:

- a. Obtaining consents for Releases of Information between VTC and its contractors and the VA for each Veteran defendant so that information can be released by the VA Privacy Act Officer;
- b. Appearing at the VTC's docket regularly to respond to court inquiries concerning VA Programs and availability and assisting with scheduling of treatment appointments;
- c. Appearing with Veterans who are providing treatment status reports to the VTC on a regular basis as requested;
- d. Assisting in treatment planning (via teleconference) and placement for Veteran-Defendants;
- e. Providing assistance to Veteran-Defendants with VA enrollment and eligibility determinations.

8. The VA agrees to adopt the treatment recommendation proposed by the VTC Team on a regular basis as long as the treatment recommendation is consistent with the VA's standard of care. If the VA does not adopt the treatment recommendation proposed by the Court's independent evaluator, the parties shall attempt to reach an agreement as to the proposed level of treatment to be provided by the VA; however, in the absence of such an agreement, the Court's independent evaluator shall seek alternative treatment options existing within the community.

9. To preclude the appearance of or an actual conflict of interest, the VTC understands and agrees that the VA is not required to accept recommendations by the Court's independent evaluator that would result in a referral to the independent evaluator's own agency/employer.

10. The parties understand and agree that the VA may provide an assessment of a Veteran-Defendant when the Veteran applies to the VTC.

11. The VA lacks authority to furnish hospital and outpatient care for a Veteran who is an inmate in an institution of another government agency if that agency has a duty to give the care or services. 38 U.S.C. §1710(h); 38 C.F.R. § 17.38(c)(5).

12. The VTC agrees that the referral for treatment shall be general as to the level of treatment and it is within the discretion of the VA to develop a specific treatment plan for each Veteran-Defendant. The VA shall provide treatment to the degree and duration needed in accordance with the standard of care.

13. The parties understand that the VA may only provide treatment through programs and services the VA has available and to which a Veteran is eligible and entitled to receive under federal law, and that the VA may be limited in its treatment options due to budget and availability of providers. The parties also understand that the Veteran-Defendants participating in the VTC may not receive priority over Veterans who are not participating in the VTC.

14. The Court's independent contractor agrees to locate alternative treatment options existing within the community if:

- a. The Veteran-Defendant is not eligible for VA care,
- b. The VA is unable to provide treatment within the time frame mandated by the VTC,
- c. The VA is unable to provide treatment at the level established by the VTC, or
- d. The VA is unable to provide treatment for any other reasons.

15. VA's authority to pay for care for the Veteran-Defendant at non-VA facilities is limited to those specific situations set forth in 38 U.S.C. §1703.

16. In order to assist in treatment planning, the VTC, the VTC's independent contractor, the Shelby County Sheriff's Office, the Shelby County Community Corrections, and the DA agree to provide the VA with the Veteran defendant's criminal history and current charges at the time of the referral to the VA.

Confidentiality of Veteran Records:

The VA medical and claims records are and shall remain the property of VA and shall not be removed or transferred from VA except in accordance with 5 U.S.C. §552a (Privacy Act), 38 U.S.C. §5701 (Confidentiality of Claimants Records), 5 U.S.C. §552 (FOIA), 38 U.S.C. §5705 (Confidentiality of Medical Quality Assurance Records), 38 U.S.C. §7332 (Confidentiality of Certain Medical Records) and federal laws, rules and regulations. Subject to applicable federal confidentiality and privacy laws, Veterans or their designated representatives may have access to information from VA's records, upon request during normal business hours.

All individually identifiable health information shall be treated as confidential by the parties in accordance with all applicable federal, state, and local laws, rules and regulations governing the confidentiality and privacy of individually identifiable health information, including, but without limitation, the Health Insurance Portability and Accountability Act of 1996 (HIPPA).

Independent Contractors:

For the purposes of this MOU, the relationship of the parties shall not be construed or interpreted to be a partnership, association, joint venture, or agency. The relationship of the parties is an independent contractor relationship and not agents, representatives, or employees of the other party. No party shall have the authority to make any statements, representations, or commitments of any kind or to take any action that shall be binding on another party, except as may be expressly provided for herein or authorized in writing.

Liability:

Each party shall retain all the rights and remedies available under applicable Federal and state laws. Each party shall be responsible and liable for the errors and omissions of their employees, agents and representatives. VA employees performing under this MOU are covered by the Federal Tort Claims Act and do not carry separate insurance.

Notices:

Any notices required or resulting from this MOU shall be in writing and made to the following:

Term of Agreement: The term of this MOU is one (1) year commencing on _____ . Thereafter, for all parties who do not opt out by written notification to all parties, it will automatically renew for consecutive one (1) year terms commencing on _____, of each year until amended. Any party may terminate its participation in this MOU at any time by providing written notice to all other parties not less than thirty (30) days prior to the effective date of such termination. If a party terminates its participation in the MOU, the parties agree to honor any and all agreements entered into with participating Veteran defendants until the conclusion of their criminal case.

Accepted for VISN-7 Southeast Network, Birmingham VAMC:

_____ Date: _____
Acting Director

Accepted for the Shelby County Circuit Court, Veterans Treatment Court:

_____ Date: _____
Honorable William H. Bostick, III, Circuit Court Judge, 18th Judicial Circuit

Accepted for the Shelby County District Attorney, 18th Judicial Circuit:

_____ Date: _____

Accepted for the Shelby County Community Corrections, 18th Judicial Circuit:

_____ Date: _____
David Horn, Executive Director

Accepted for the Shelby County Public Defender's Office, 18th Judicial Circuit:

_____ Date: _____
Barry Woodham, Esq.

Accepted for the Sheriff's Office, Shelby County

_____ Date: _____
CPT Christopher George