

VVA & PWVC Testimony on House Bill 231
House Veterans Affairs and Emergency Preparedness Committee Public Hearing
Room 140, Main Capitol Building
2 October 2023

Good morning, Chairmans Solomon and Gillen, committee members,

Introduction

Thank you for the opportunity to comment on House Bill 231.

We veterans from the Vietnam Veterans of America and organizations from the Pennsylvania War Veterans Council, seated behind me, involved with the Veterans Justice Project, started well over five years ago, applaud Representative Hills-Evans' effort to improve justice for veterans appearing before Pennsylvania's court system by ensuring that post traumatic stress disorder (PTSD) and traumatic brain injury (TBI) can be introduced as mitigating factors during a post-conviction review appeal.

Her bill closes a loophole which stops veterans from presenting PTSD and TBI as mitigating factors, if not considered during the time of trial. It requires a process for handling a claim of service-connected, mental disability. It also demands that the courts notify the Department of Corrections of a veteran with such a disability as part of that process.

We support the intent of her effort. But we wish more from the legislature also.

As Justinian once wrote over fifteen hundred years ago, "Legal Justice, the law, is the art of goodness and fairness." A problem exists in how to best guide the thinking of the judiciary towards building a robust system to expedite the proper handling of a not unusual condition amongst returning veterans who have been warriors on our behalf and appear before it – in an effort to ensure we are applying that art of goodness and fairness as completely as possible.

Overview of the Situation

Despite some advances in judicial and criminal justice thinking, such as veterans courts (also known as veterans treatment or divisionary courts) now operating in about half of the District Courts of Common Pleas jurisdictions -- more is needed; and in this instance -- the reason we are here today -- for specific mental impairments when a felony is involved.

Let me explain.

You might already know that higher incidences of PTSD and TBI among combat veterans can be expected than in the general population; and those with TBI are likely to have PTSD also. But did you know the prevalence of PTSD among male veterans may be up to four to five times higher than in the general population at any given time.

Yet not until 1980 did the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* include specific symptoms for a reliable PTSD diagnosis; and not until 2007 did the Department of Veterans Affairs (VA) field a mandatory TBI screening protocol.

Consequently, there are military veterans in the state prison system who have slipped through the cracks and were convicted without the possibility of PTSD and/or TBI affecting their actions ever being considered, as our own survey demonstrated. A significant number of our veterans facing felony convictions had their mental impairment issues unwittingly overlooked. The problem continues to this day for the system depends upon the accused or his attorney – when he has one – to bring them up.

Admittedly, the issue of PTSD and TBI and their effects as a root cause in the commission of a crime or misdemeanor are widely contested, but we are not arguing that -- as others have. We are not arguing the subject of guilt or innocence. Instead, we are arguing that the symptoms of PTSD and TBI increase the likelihood of justice system interaction and may affect the level of a crime.

A more recent study by the VA has pointed out a significantly higher likelihood of arrest has occurred among military veterans with PTSD who report high levels of anger and/or irritability symptoms when compared to those who did not report these symptoms [See <https://www.research.va.gov/currents/0820-Veterans-with-PTSD-more-likely-to-have-justice-system-involvement.cfm>.] That study states, "... Veterans with PTSD ... are about 60% more likely than Veterans without PTSD to have justice-system involvement." This is a statistically significant difference.

A reasonable person would infer that PTSD and/or TBI (many of its symptoms overlap) can significantly increase an encounter with the Court of Common Pleas.

And why would one not, then, want to investigate the effect of an impairment on at least the extent of a crime, that is, as a matter for consideration during the sentencing phase.

Unfortunately, the Courts of Common Pleas are not required to identify veterans appearing before them, let alone screen or assess them for the presence of these two maladies. It is generally left up to the judge's discretion to call for a psychiatric or psychological examination; and the actual performance of such evaluations may be affected by funding despite a judge's wishes. The prevalence of plea deals and, perhaps, the issue of attorney representation add to the problem.

While the Veterans Courts effort (Court of Common Pleas or magisterial) begun in 2008 is a fine step forward, it is not the final solution. Beyond the issue of statewide equity in access to them, they do not handle all the types of judicial cases encountered by the Courts of Common Pleas – their primary purpose being treatment and diversion involving misdemeanors it seems (there is a certain lack of uniformity of what offenses are addressed among them.).

What We Ask

Therefore, in the reviewing the Hill-Evans bill, we ask for the General Assembly to broaden the discussion among experts in the legal and medical fields in reviewing the Courts of Common Pleas system as to what can and should be done to improve justice for the veterans who are afflicted with PTSD and/or TBI. That requires looking beyond adjustments to the Post Conviction Relief Act (PCRA). The problem has gone on too long.

We believe that it must be ensured that PTSD and TBI are considered at the time of trial or plea, not after, as much as possible. The proper protocols in the medical field now exist. Yes, proceed

with moving HB 231 along, but do not become fixated on the Post Conviction Relief Act alone as the entire solution as it is dealing with justice after the fact. "Justice delayed is justice denied.", the cliché goes. [As a footnote, we are also proponents for consideration of these conditions during parole determination process.]

We think that every veteran passing through the Court of Common Pleas system should be identified. The VA has provided the verification tools needed. The Department of Corrections has demonstrated that it can be done.

Then, we believe every veteran should be screened for PTSD and TBI – and if needed, an assessment (diagnosis) be performed using subject-experienced mental health professionals – if it has not already been done. In the current era, the VA has often already made a diagnosis.

These two measures would ensure, when applicable, that the effects of PTSD and TBI on the severity of the criminal actions are considered at the time of sentencing. The added benefit is a systematic identification of those veterans requiring treatment while incarcerated.

Overcoming Resistance to Change

But I am wondering if there is a certain unwillingness in the unified judicial system in amending its procedures revolving around pre-sentencing investigations, under which mental impairment screenings and diagnoses would normally fall.

Chapter 7 of 234 PA Code, specifically its Rule 702 (Aids in Imposing Sentence), keeps being brought up as a barrier to any proposed legislation we have worked upon, because under the Constitution, the Supreme Court has the power to suspend any legislation to the extent they are inconsistent with their rules of procedure. That rule seems to take away the authority of the legislature on any matters pertaining to pre-sentence investigations, if we properly understand what we have been told.

The issue has also been raised that it is up to the individual to disclose if he/she is a veteran and whether or not he should submit to a screening for PTSD and TBI. Yet Rule 702's subsection (B) on "Psychiatric or Psychological Examination" states, "After a finding of guilt and before the imposition of sentence, after notice to counsel for both parties, the sentencing judge may, as provided by law, order the defendant to undergo a psychiatric or psychological examination. For this purpose, the defendant may be remanded to any available clinic, hospital, institution, or state correctional diagnostic and classification center for a period not exceeding 60 days." Apparently, the individual's personal desires can be overridden when sentencing is involved.

We have been open to court rules changes when preferable to legislation and have inquired of this, but with no response from the Administrative Office of the Pennsylvania Courts (through former Senator Browne's Office of Council at the time).

There must be some way of getting to "yes" other than the doubling down on negatives to spare costs and labor (another argument that has been brought up), for the sake of goodness and fairness to being applied to those few veterans who have sacrificed themselves more than most of us sometimes can truly understand. We owe them our caring. We ask for your committee to take on our issue as a cause.

Summary

To summarize, we would like action on these subject areas:

- A systematic, proof-positive identification of all U.S. Armed Forces veterans appearing before the Courts of Common Pleas.
- The use of presentence investigation reports, particularly psychiatric/mental impairment screenings and, if need be, assessments, if the individual has not been previously assessed for the presence of PTSD or TBI.
- The clinical assessment be conducted by a professional who is specially trained or certified in trauma assessment or traumatic brain injury or neurology.
- Authorization for an appropriation line item to be created to ensure PTSD/TBI clinical assessments are performed when the individual is unable to pay for the assessment at the very least.
- Allow incarcerated veterans to petition their sentencing courts or the parole board if the presence of PTSD or TBI was not previously considered.

Representative Hill-Evans is trying to address many of these thoughts through the appeal process.

We are asking that, in addition, the consideration of the effects of PTSD and TBI should not be done by exception after trial as a matter of good and fair law and procedure.

We recognize this is a complex subject for some. Therefore, again, we ask that this committee [and its Senate sister] pull the necessary parties together to fully resolve the matter, as only effective government can. It has been dragging on far too long.

/s/

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Time: 15-20 minutes