

*Equal Justice Foundation*  
**The War Against Veterans: Why A Special Court Is Needed**

**UNDER CURRENT LAWS VETERANS ARE COMMONLY:**

- Barred from holding a job,
- Denied a security clearance,
- Unable to rent an apartment,
- Forbidden from obtaining school loans,
- Unable to hold any professional licenses,
- Unable to get or hold a teachers certificate,
- Cannot obtain credit or a financial bond,
- Unable to become police officers or firefighters,
- Cannot hold a commercial drivers license,
- Unable to obtain medical insurance,
- Cannot work with hazardous materials or explosives,
- Often have their children taken from them,
- Subjected to federal felony charges if they are even around a weapon or ammunition,
- Discharged from the service under less than honorable conditions and often lose all benefits, retirement, bonuses, and medical care.

The offense that results in these draconian and inhuman penalties against our country's finest and bravest often amounts to no more than swearing or slapping a table. Just a loud argument may be sufficient. Perhaps no more than a glare or looking mean is cause to see them jailed.

***And they are guilty unless and until they can prove their innocence.***

Tens of thousands of veterans have completed multiple combat tours in Iraq and Afghanistan and almost inevitably suffer from some level of post traumatic stress disorder (PTSD). Problems include: sleeplessness, suicidal ideation, flashbacks, violent awakenings, hypervigilance, nightmares, dissociation from events or reality, impotence, and other problems.

PTSD sufferers commonly self medicate with alcohol or drugs, finding the only way they can sleep is after imbibing heavily. DUI charges are one manifestation and family fights another.

Post traumatic means just that. Often these symptoms don't express themselves for months or years after the events. Or only one or two of the symptoms may be present initially with the problems getting worse with time if untreated or the veteran is redeployed.

Thousands of veterans have received head wounds or have been blown up but survived. Their injuries may or may not be visible and are referred to as traumatic brain injuries (TBI). Veterans with TBI frequently suffer from moderate to severe PTSD as well.

Common disabilities associated with TBI include problems with cognition (thinking, memory, and reasoning), sensory processing (sight, hearing, touch, taste, and smell), communication (expression and understanding), and behavior or mental health (depression, anxiety, personality changes, aggression, acting out, and social inappropriateness).

Moderate to severe TBI often impacts speech and language skills, and wounds may involve the jaw, tongue, vocal cords, or speech centers of the brain itself. Motor skills may also be affected and they may stagger when they walk. Convulsions and seizures may also make them appear crazy or drunk in public or private.

Clearly, within an intimate relationship PTSD and TBI are going to have many of the characteristics of abusive and violent behavior as defined by current domestic violence laws. When a wife or girlfriend becomes concerned or frightened by the erratic behavior, the seizures, or other symptoms, and dials 911 for help the police typically arrest the veteran. Their often slurred speech, socially inappropriate behavior, and aggression will all be used against them in court and in jail, where essential medications may be denied.

With current mandatory arrest laws for domestic violence (DV), frontline police officers are often left with little option but to make an arrest. And often an arrest is necessary for the public safety for veterans who commonly will not admit they have a problem until they've spent a night in jail and find themselves handcuffed before a judge in an orange jumpsuit.

*Federal employees can contribute through the Combined Federal Campaign in Colorado, Idaho, Wyoming, and Utah. The EJF agency number is 18855.*

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## **THERE HAS TO BE A BETTER WAY!**

After a cold and sleepless night in jail, or several, a disabled and disoriented veteran will be brought into court without ever having a chance to speak to a defense attorney. A prosecutor will then demand they agree to a plea bargain without any explanation of the lifetime consequences. Should the befuddled defendant sign what may amount to a death sentence, they will be given a restraining order forbidding them to go home, and cast into the street. If they plead not guilty, veterans are commonly told they will be held in jail until trial six months away.

### ***What manner of fiends treat our wounded and disabled veterans in this fashion?***

Since circa 1600, to convict a defendant of a crime English law has required the prosecution prove the defendant acted purposefully, knowingly, recklessly, willfully, and intentionally (*mens rea*); and prove the defendant voluntarily committed a criminal act (*actus reus*); and both must be proven beyond a reasonable doubt before a jury of one's peers.

The model penal code specifically describes what are considered involuntary acts and thus not criminal:

- (1) A reflex or convulsion;
- (2) A bodily movement during unconsciousness or sleep;
- (3) Conduct during hypnosis or resulting from hypnotic suggestion;
- (4) Bodily movement that is not a product of the effort or the determination of the actor, either conscious or habitual.

There is little question those suffering from PTSD and TBI often fail to meet these criteria for criminal intent and conduct. But no attempt was made by the legal system to help them until now.

## **VETERAN TRAUMA COURT**

The idea for a special veteran's court originated with Judge Robert Russell in Buffalo, New York in January 2008. He recognized that veteran's disabilities were often leading them ever deeper into the justice system and they were often being incarcerated unjustly.

The EJF effort to initiate a veteran trauma court in Colorado Springs began in July 2008 in cooperation with Judge Ronald Crowder, a retired Army National Guard Major General.

In August 2008 we began discussions with the Veterans Administration and took our outline to El Paso County Sheriff Terry Maketa. With four police agencies and five bases the only practical intercept point for these cases is the county jail and our sheriff has been very cooperative.

A full-time paid coordinator, Carrie Bailey, was hired in July 2009 under a SAMSHA grant. The Colorado Springs veteran trauma court pilot program began hearing cases in August 2009.

Defendants who are identified as active-duty military or veterans while in the county jail are screened by the coordinator for possible eligibility. The initial screening is partially on the basis of whether they have been in combat and their medical records show a history of PTSD or TBI.

The coordinator collects records and documentation and presents them to the district attorney (DA). The gatekeeper for the court is the DA and he makes the disposition as to whether to accept a defendant into the veteran trauma court. A basic objective is to monitor and reduce recidivism as well as ensure veterans receive needed treatment for their disabilities.

If the defendant is accepted the district attorney has several options. Assuming that their disability was a significant factor in the offense the DA might defer prosecution on the basis they seek and receive appropriate treatment for their condition, offer a plea bargain to a reduced charge with an alternative sentence that includes treatment, or, if no other option, proceed to trial.

However, in a DV case current state law does not permit the prosecutor to plea bargain to a charge that does not include DV as an add-on. A DV conviction, or plea bargain, however minor, invokes all the pains and penalties tabulated initially, and the veteran's life is destroyed.

### ***The lives and families of many veterans are at stake!***

*Colorado Springs veteran trauma court coordinator can be reached at 719-637-8957  
For additional information see Domestic Violence Against Men at [ejfi.org](http://ejfi.org) and [dvmen.org](http://dvmen.org)*