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10 JOHN DOE

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

13 **THE PEOPLE OF CALIFORNIA,**

14 Plaintiff,

15 v.

16 **JOHN DOE,**

17 Defendant.

) Case No. _____

)

) **REPLY TO OPPOSITION**

) **TO MOTION FOR**

) **MILITARY DIVERSION**

) **(Pen. Code, § 1001.80);**

) **EXHIBIT B**

)

)

)

18 **TO THE COURT AND THE LOS ANGELES DISTRICT ATTORNEY:**

19 Defendant, JOHN DOE, through counsel, respectfully submits
20 this Reply to the prosecutor's Opposition to Military Diversion. Seventy-
21 one-year-old JOHN DOE qualifies for military diversion because he

1 honorably served the United States military and suffers from a military
2 service connected disability. (Pen. Code, § 1101.80)
3

4 DATED: April 30, 2020

5 Respectfully submitted,
6 FAY ARFA, A LAW CORPORATION

7 /s/ Fay Arfa

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Fay Arfa, Attorney for Defendant
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ARGUMENT

JOHN DOE QUALIFIES FOR MILITARY DIVERSION BECAUSE HE SERVED HIS COUNTY HONORABLY AND HE SUFFERS FROM A SERVICE CONNECTED DISABILITY

A. Introduction

The prosecutor incorrectly argues that 71-year-old JOHN DOE (DOB: XX/XX/XXXX) does not qualify for military diversion because JOHN DOE failed to prove that he served in the military, failed to prove that his disability has a connection to his alleged crime, and failed to submit properly authenticated documents. The prosecutor also argues that JOHN DOE fails to present a proper treatment plan. (Opposition 1)

Not so. The prosecutor misstates the Military Diversion law. JOHN DOE qualifies for military diversion because he served in the United States Navy from December 4, 1968 to September 10, 1976 and received an Honorable Discharge. He served as Navy Corpsman in Vietnam and experienced significant trauma. Mr. JOHN DOE is Service Connected at a 100% rating for injuries sustained during his service and a 50% rating for Post Traumatic Stress Disorder. (See Exhs. A¹, B,

¹JOHN DOE refers to Exhibit A (VA Social Worker _____) attached to his original motion, filed on February 18, 2020, for military diversion

1 C)

2 JOHN DOE qualifies for military diversion because he served in
3 the military and suffers from a military connected disability. The law
4 requires nothing more. (Pen. Code, § 1001.80)

6 **B. Military Diversion Focuses on Treatment and Rehabilitation**

7 Section 1001.80 was enacted in 2014 and amended in 2017.

8 Military diversion represents a relatively new addition to the state's
9 diversion programs, which generally authorize trial courts to divert
10 eligible persons charged with qualifying offenses from the normal
11 criminal process into treatment and rehabilitation. (*People v. Superior*
12 *Court (On Tai Ho)* (1974) 11 Cal.3d 59, 61; *People v. Bishop* (1992) 11
13 Cal.App.4th 1125, 1128.)

15 The primary purpose of diversion is rehabilitation. (*Bishop, supra*,
16 at p. 1130.) As described by the California Supreme Court in its
17 analysis of California's drug diversion statute, “[D]iversion is intended
18 to offer a second chance to offenders who are minimally involved in
19 crime and maximally motivated to reform, and the decision to divert is
20 predicated on an in-depth appraisal of the background and personality
21 of the particular individual before the court.” (*On Tai Ho, supra*, at p.
22 66.)

24 The rehabilitative purpose of military diversion requires the trial
25 court to assess whether an eligible candidate *might benefit* from

1 specialized treatment for veterans and potentially complete diversion in
2 furtherance of the statutory objectives. (*Wade v. Superior Court* (2019)
3 33 Cal. App. 5th 694, 715.)

4
5 **C. The Trial Court Has Discretion to Grant Military Diversion**

6 The prosecutor argues that the trial court has discretion to grant
7 military diversion. (Opposition at 3) JOHN DOE agrees. Section
8 1001.80 grants discretionary authority to the trial court. (§ 1001.80,
9 subd. (b) [“The court may place a defendant in military diversion upon
10 determining the person, charged with a misdemeanor offense, meets the
11 dual criteria for eligibility set forth in subd. (a)”].

12
13 **D. Martin satisfies the Dual Criteria for Eligibility**

14 Citing *Wade v. Superior Court*, 33 Cal.App.5th at 715, the
15 prosecutor argues that Martin must satisfy three criteria, namely, that
16 (1) he served in the military; (2) that he suffers from a service related
17 trauma or condition; and (3) the court must consider other factors
18 including sentencing guidelines, victim impact, and community safety.
19 (Opposition at 4) Absolutely, positively, not so.

20
21 Penal Code section 1101.80 requires the court to make two, not
22 three, findings in a misdemeanor case. “(1) The defendant was, or
23 currently is, a member of the United States military. (2) The defendant
24 may be suffering from sexual trauma, traumatic brain injury,
25 post-traumatic stress disorder, substance abuse, or mental health
26

1 problems as a result of his or her military service. The court may
2 request, using existing resources, an assessment to aid in the
3 determination that this paragraph applies to a defendant.” (Pen. Code,
4 § 1101.80 subd. (b).)

6 *Wade* held that “[t]he rehabilitative purpose of military diversion
7 requires the trial court to assess whether an eligible candidate *might*
8 *benefit* from specialized treatment for veterans and potentially complete
9 diversion in furtherance of the statutory objectives.” (*Wade*, 33 Cal.
10 App. 5th at 715) (Italics added.) Trial court had no discretion to deny
11 Wade's request based on the inherently dangerous nature of driving
12 while intoxicated.) *Id.* at 717

14 **E. Military Diversion Applies to Any Misdemeanor**

15 The prosecutor improperly argues that JOHN DOE must show
16 how the disabilities he suffered from his military service caused him to
17 commit the crime and the treatment plan does not address sexual
18 misconduct. (Opposition at 4) Absolutely, positively, not so.

20 Section 1001.80 authorizes a trial court to grant pretrial diversion
21 to a defendant charged with a misdemeanor who was, or currently is, a
22 member of the United States military, and who may be suffering from
23 sexual trauma, traumatic brain injury, posttraumatic stress disorder
24 (PTSD), substance abuse, or mental health problems as a result of his
25 or her military service. (§ 1001.80, subd. (a).)

“The Legislature did not limit eligibility by type or category of misdemeanor crime, suggesting a broader intent than other diversion statutes which do exclude specific offenses or conduct. [Citation].”
(*Wade*, 33 Cal. App. 5th at 710-11) (Italics added.)

F. JOHN DOE Has Submitted an Appropriate Medical Plan

The prosecutor again incorrectly argues that JOHN DOE does not qualify for military diversion because (1) JOHN DOE's treatment plan does not address sexual conduct; (2) No evidence shows that JOHN DOE's alleged sexual misconduct and PTSD are connected. (Opposition at 7).

The prosecutor wants this Court to make JOHN DOE provide a medical and mental health treatment plan beyond what the VA already provides for JOHN DOE. (Opposition 7) The prosecutor faults JOHN DOE because he may already have received individual counseling at the _____ Valley Vet center. (Opposition at 7)

The statute does not support the prosecutor's position.

Penal Code section 1001.80 subdivision prefers that JOHN DOE be treated at a VA medical center. Penal Code section 1101.80 provides:

The court, in making an order . . . to commit a defendant to an established treatment program, *shall give preference to a treatment program that has a history of*

1 *successfully treating veterans who suffer from sexual*
2 *trauma, traumatic brain injury, post-traumatic stress*
3 *disorder, substance abuse, or mental health problems as a*
4 *result of military service, including, but not limited to,*
5 *programs operated by the United States Department of*
6 *Defense or the United States Department of Veterans*
7 *Affairs. (Pen. Code, § 1101.80 subd. (f).) (Italics added.)*

8 Penal Code section 1101.80 also provides:

9 The court and the assigned treatment program may
10 collaborate with the Department of Veterans Affairs and the
11 United States Department of Veterans Affairs to maximize
12 benefits and services provided to a veteran. (Pen. Code, §
13 1101.80 subd. (g).)

14 Penal Code section 1101.80 provides:

15 A pretrial diversion program shall utilize existing
16 resources available to current or former members of the
17 United States military to address and treat those suffering
18 from sexual trauma, traumatic brain injury, post-traumatic
19 stress disorder, substance abuse, or mental health problems
20 as a result of military service. (Pen. Code, § (k)(2).) (Italics
21 added.)

22 **G. Penal Code Section 1101.80 Does Not Require a Formal**
23 **Hearing**

24 The prosecutor argues that the trial court cannot rely on hearsay
25 at any hearing on military diversion. (Opposition at 4) Respondent
26 objects to JOHN DOE's exhibit A as hearsay. (Opposition 5) Exhibit A,
27 a statement by a _____, a Veteran's Administration
28 clinical social worker, describes JOHN DOE's military service and

1 states that JOHN DOE suffers from 100% disabilities for injuries
2 sustained during his service. (Opposition 5)_____ writes the letter in
3 her official capacity as a social worker on official Department of
4 Veterans Affairs stationary.

6 JOHN DOE also submits his declaration, under oath, in which he
7 declares that he served in the United States Navy and in combat with
8 the Marine Corps in Viet Nam. While in combat, JOHN DOE suffered
9 significant trauma. He has a 100% service connected disability rating
10 for injuries he sustained during his military service. He has a 50%
11 service connected disability rating for *Post Traumatic Stress Disorder*
12 (PTSD). JOHN DOE suffers from military connected disabilities
13 including degenerative arthritis, migraine headaches, sleep apnea,
14 *traumatic brain injury*, and tinnitus. (See Exh. B at p. 2, ¶¶ 3-6.)

16 The prosecutor describes JOHN DOE's military background,
17 based on _____'s statement as "hearsay, indeed multiple hearsay."
18 (Opposition at 5) Not so. For example, in *People v. Wade*, at Wade's
19 hearing, the prosecutor argued the case without presenting any
20 witnesses. The prosecutor also submitted a written opposition brief.
21 *Wade* did not hold that the hearing on Wade's military diversion
22 required live witnesses. (*Id.* at 717)

24 Here, JOHN DOE submitted a report from _____ who opined
25 that JOHN DOE meets the criteria for military diversion. The
26

1 prosecutor has not submitted any information to disprove _____'s
2 written statement. JOHN DOE also submits a declaration showing
3 that he qualifies for military diversion. (Exh. B)
4

5 The prosecutor argues that this Court must hold a proper
6 evidentiary hearing to decide whether to grant JOHN DOE pretrial
7 diversion. (Opposition at 4) JOHN DOE disagrees. Penal Code section
8 1101.80 does not contemplate a formal evidentiary hearing. Penal Code
9 section 1101.80 states only that, if the court finds JOHN DOE to be
10 qualified for pretrial military diversion, "the court, with the consent of
11 the defendant and a waiver of the defendant's speedy trial right, may
12 place the defendant in a pretrial diversion program . . . " (Pen. Code, §
13 1101.80 subd. (b); see also *Wade, supra*, 33 Cal. App. 5th at 701 [Wade
14 submitted a brief and letters from an army superior and from his
15 treating psychiatrist].) (*Wade* at 702.)
16
17

18 Only if the court finds that a defendant is performing
19 unsatisfactorily in the program or not benefitting from the treatment
20 and services of the program, "after notice to the defendant, the court
21 shall hold a hearing to determine whether the criminal proceedings
22 should be reinstituted . . . " (Pen. Code § 1001.80 subd. (c).)
23

24 **H. This Court Should Grant JOHN DOE Military Diversion**

25 JOHN DOE is eligible for military diversion. In her letter dated
26

1 January 30, 3030, VA clinical social worker _____ writes, “Mr.
2 JOHN DOE is eligible for VA medical, mental health, and substance
3 abuse treatment. He is currently engaged in individual counseling
4 service at the _____ Valley Vet Center . . .” (Exh. A)

5
6 _____ also proposes a VA treatment plan pending Court
7 approval:

- 8 1. Veteran to abide by the conditions of Lancaster Court.
- 9 2. Maintain medical, mental health and medication
- 10 compliance.
- 11 3. Abstain from illicit drugs and alcohol use.
- 12 4. Engage in individual and group counseling services at
- 13 the _____ Valley Vet Center. (Frequency and
- 14 duration per clinician's recommendation. (See Exhibit
- 15 A)

16 “*As a Combat Veteran*, Mr. JOHN DOE is eligible to participate in
17 both Combat PTSD individual and ‘Seeking Safety’ group counseling
18 services at the _____ Valley Vet Center. The Vet Centers are
19 staffed by licensed psychologists, marriage and family therapists, and
20 social workers. The Vet Centers provide the sense of community and
21 camaraderie that service members develop in Military, allowing for a
22 safe place to work on all reintegration problems.” (See Exhibit A)
23 (Italics added.)
24
25
26

1 JOHN DOE is currently enrolled at the Veterans Center for
2 treatment with MSW JANE DOE.. The Veterans Center provides “. . .
3 counseling for all War Zone Veterans (specifically those veterans
4 presenting with symptoms of Posttraumatic Stress Disorder.” (Exh. B
5 at 5) JOHN DOE has attended nine individual counseling sessions and
6 nine PTSD group counsel sessions on a biweekly basis since November
7 2019. (Exh. B at 2, ¶¶ 7, 8; Exh. B at 5.)

8 Mr. JOHN DOE is retired, stable and lives with his wife, Nancy.
9 He is 71 years old. (DOB: xx/xx/xxxx) (See Exhs. A, B at 2 ¶10)

10 CONCLUSION

11 Mr. JOHN DOE respectfully requests that this Court grant him
12 Military Diversion. (Penal Code § 1001.80.)

13 DATED: April 29, 2020

14 Respectfully submitted,
15 FAY ARFA, A LAW CORPORATION

16 *s/ Fay Arfa*

17 _____
18 Fay Arfa, Attorney for Defendant

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I declare under penalty of perjury that the foregoing is true and correct. Executed on May 4, 2020 at Los Angeles, CA.

Fay Arfa, Attorney