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Note

“THE SOLDIER BEARS THE DEEPEST WOUNDS AND SCARS OF WAR”: MOBILIZING CONNECTICUT TO IMPLEMENT A VETERANS TREATMENT COURT

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The first Veterans Treatment Court (“VTC”) opened in 2004 and aimed to help veterans who ran afoul of the law. These problem-solving courts not only serve to treat the underlying issues many veterans suffer post-military service, but also hold veterans accountable. As a consequence of their incredible results, there are now over one hundred VTCs across the nation. Connecticut has none. This Note urges Connecticut to establish a VTC.

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“THE SOLDIER BEARS THE DEEPEST WOUNDS AND SCARS OF WAR”¹: MOBILIZING CONNECTICUT TO IMPLEMENT A VETERANS TREATMENT COURT

ROSENDO GARZA JR.*

I. INTRODUCTION

By now, sporting events without the presence of veterans² on the field or court would seem out of sorts. In this theatrical production, the field (the stage) in a football halftime show, for example, will often feature military servicemembers (the actors) holding an American flag (the prop) so thousands of fans (the audience) can cheer in recognition of the veterans’ sacrifices. This scene, played throughout the American sports landscape, creates a sense of patriotic euphoria.³ The veterans on the field

¹ The title of this Note is an adaptation of a famous line from General Douglas MacArthur’s acceptance speech titled *Duty, Honor, Courage*, which was given at West Point on the occasion of his receiving the Sylvanus Thayer Award. See Gen. Douglas MacArthur, USA, Remarks at the U.S. Military Acad. at West Point (May 12, 1962), available at <http://www.macarthurmilwaukeeforum.com/resources/macarthurs-speech-to-west-point-cadets-may-1962/> (“[T]he soldier, above all other people, prays for peace, for he must suffer and bear the deepest wounds and scars of war.”).

* United States Marine Corps Reserves, Major; University of Connecticut School of Law, J.D. Candidate 2015; University of Chicago, B.A. 2002. I am indebted to the members of the *Connecticut Law Review* whose diligence and insights were invaluable. To my father and mother, I am eternally grateful to them for having instilled in me a strong work ethic. For fifteen years of unconditional patience, unflinching support, and, most of all, love, I thank my wife, Juliana; to Sofia, Alejandro, and Matilda—you make it all worth it. Finally, this Note is dedicated to the fallen and to those who continue to struggle. Any errors are my responsibility.

² Throughout this Note, I will use the term “veteran” broadly so as to encompass any individual who served for any length of time in the Armed Forces. Also, I do not distinguish a veteran from a non-veteran based on whether the individual experienced combat or their type of discharge, i.e., honorable, general, or other.

³ A local production was staged at the University of Connecticut versus University of Louisville football game on November 8, 2013, at Rentschler Field in East Hartford, Connecticut. CTNow, *Giagantic [sic] American Flag Covers Field at UConn Louisville Football Game for Veterans Day*, YOUTUBE (Nov. 10, 2013), <https://www.youtube.com/watch?v=bzWDpke719U>. In that example, veterans and family members unfurled an immense American flag as the National Anthem played; the event was part of Veterans Appreciation Night. *Id.* For another example of a finely-crafted production, showing Sergeant First Class Scott Faile, USA, surprising his family by unexpectedly returning home in front of a sold out crowd watching the University of South Carolina versus University of Georgia football game at Williams-Brice Stadium, see GamecocksOnline, *Surprise Military Family Welcome Home at South Carolina Football Game*, YOUTUBE (Oct. 6, 2012), <https://www.youtube.com/watch?v=kUkKhRtk8VU>.

are surely grateful for the applause and recognition and, often times, for the free tickets; the crowd's boisterous cheering is its emblematic affirmation to the post-9/11 mantra: "Support Our Troops." However, this "symbolic solidarity . . . with those on whom the burden of service and sacrifice falls is about as far as the [audience] will go."⁴ For all intents and purposes, "[c]heering for the troops . . . provides a convenient mechanism for voiding obligation and perhaps easing guilty consciences."⁵ As a soldier-turned-journalist observed:

For many civilians, veterans are thought about in the span of football halftime shows, where we gawk at troops standing on the sidelines while the camera lingers on flags flapping in the wind. . . . The good intentions of civilians are rarely in question, but detached admiration has always been a stand-in for the impulse to do "something" for veterans.⁶

Admittedly, this is a cynical perspective. The perspective is, however, grounded in the belief that "[t]he wars in Afghanistan and Iraq placed unfair and extreme burdens on the professional military, especially reservists, and their families."⁷

History explains that the all-volunteer military force emerged in response to the Vietnam War.⁸ The 2010 Census documented that military personnel made up less than one percent of the total United States population,⁹ whereas in the World War II era, nine percent of Americans wore a military uniform.¹⁰ A consequence of this "growing generation gap" is that the "military [is] far less connected to the rest of society"¹¹ and vice versa.

⁴ ANDREW J. BACEVICH, *BREACH OF TRUST: HOW AMERICANS FAILED THEIR SOLDIERS AND THEIR COUNTRY* 5 (2013).

⁵ *Id.*

⁶ Alex Horton, *Help Veterans by Taking Them Off the Pedestal*, THE ATLANTIC (Nov. 10, 2013), <http://www.theatlantic.com/national/archive/2013/11/help-veterans-by-taking-them-off-the-pedestal/281316/>. Mr. Horton served fifteen months as an infantryman in Iraq. *Id.*

⁷ Josh Rogin, *McChrystal: Time to Bring Back the Draft*, FOREIGN POL'Y (July 3, 2012), http://thecable.foreignpolicy.com/posts/2012/07/03/mcchrystal_time_to_bring_back_the_draft (paraphrasing General Stanley McChrystal, USA Retired, during a speech given on June 29, 2012 at the Aspen Ideas Festival).

⁸ See BACEVICH, *supra* note 4, at 136 ("As a consequence of Vietnam, the American people had jettisoned the tradition of the citizen-soldier."). See *generally id.* at 47–61 (providing a historical and socio-political analysis of the establishment of the all-volunteer military force).

⁹ See *By the Numbers: Today's Military*, NAT'L PUB. RADIO (July 3, 2011), <http://www.npr.org/2011/07/03/137536111/by-the-numbers-todays-military> (citing U.S. Census Bureau data that 2,266,883 troops—including active duty, National Guard, Air National Guard, and Reserves—were serving as of March 31, 2010).

¹⁰ Sabrina Tavernise, *As Fewer Americans Serve, Growing Gap Is Found Between Civilians and Military*, N.Y. TIMES, Nov. 25, 2011, at A22.

¹¹ *Id.*

Once the immediate aftermath of 9/11 subsided, and without the hindrance of a draft, the American public reorganized so as to "pursu[e] their chosen conceptions of life, liberty, and happiness, unhindered and unencumbered."¹² Unlike the World War II era—when Americans paid more taxes, corporations were taxed at a forty percent tax rate, and corporations paid a ninety-five percent tax on "excess" profits¹³—President George W. Bush cut taxes.¹⁴ The inferences drawn here are simple: without a draft, families would not see parents, spouses, siblings, and children dragged to war; without a tax increase, Americans' standard of living would not require rationing or curtailment, in sharp contrast to the American World War II experience.¹⁵ After 9/11, the American people have not been hard-pressed to fulfill the obligation insisted upon by Robert Patterson, who stated: "In a democracy all citizens have equal rights and equal obligations. When the nation is in peril, the obligation of saving it should be shared by all, not foisted on a small percentage."¹⁶ More recently, General Stanley McChrystal opined, "[I]f a nation goes to war, every town, every city needs to be at risk. You make that decision and everybody has skin in the game."¹⁷ In the post-9/11 world, the American people have been allowed to save their "skin" while "avert[ing] their gaze from the consequences of actions undertaken in their name."¹⁸

One may wonder: what are the consequences? Easily understood is that, as a result of not having a draft coupled with a smaller all-volunteer force, military members are deployed more frequently. Further, as the active duty component was stretched thin, commanders increasingly resorted to the National Guard and Reserves.¹⁹ But the true consequences

¹² BACEVICH, *supra* note 4, at 31.

¹³ *Id.* at 26.

¹⁴ See Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27, §§ 101–07, 301–03, 117 Stat. 753–56, 758–64 (codified as amended in scattered sections of 26 U.S.C.) (continuing the tax cuts from the Economic Growth and Tax Relief Reconciliation Act of 2001, while also increasing tax reductions on investment income from dividends and capital gains).

¹⁵ The "Do with less—so they'll have enough!" poster printed by the Office of War Information in 1943 encouraged Americans to ration because "rationing gives you your fair share" while soldiers were off fighting. *Unifying a Nation: World War II Posters from the New Hampshire State Library*, N.H., <http://www.nh.gov/nhsl/ww2/ww12.html> (last visited July 15, 2014).

¹⁶ See KEITH E. EILER, *MOBILIZING AMERICA: ROBERT P. PATTERSON AND THE WAR EFFORT, 1940–1945*, at 282 (1997) (quoting Robert P. Patterson in 1944, testifying before the Senate Committee on Military Affairs in support of a National War Service Bill).

¹⁷ Rogin, *supra* note 7.

¹⁸ BACEVICH, *supra* note 4, at 35; see also *id.* at 14 ("The approach this nation has taken to waging war since Vietnam (absolving the people from meaningful involvement), along with the way it organizes its army (relying on professionals), has altered the relationship between the military and society in ways that too few Americans seem willing to acknowledge. Since 9/11, that relationship has been heavy on symbolism and light on substance, with assurances of admiration for soldiers displacing serious consideration of what they are sent to do or what consequences ensue.").

¹⁹ See OFFICE OF THE UNDER SEC'Y OF DEF. FOR ACQUISITION, TECH. & LOGISTICS, DEFENSE SCIENCE BOARD TASK FORCE ON DEPLOYMENT OF MEMBERS OF THE NATIONAL GUARD AND

of perpetual deployments have proved much more devastating. Use of anti-depressants, narcotics, sedatives, anti-psychotics, anti-anxiety drugs,²⁰ and, surprisingly, even stimulant medications²¹ skyrocketed among veterans. Constant deployments also equated to a constant absence from the home, and both domestic violence²² and divorce rates²³ jumped among military families. Recently, a Department of Veterans Affairs (“VA”) report on post-traumatic stress disorder (“PTSD”) indicated “that since 9/11, nearly 30 percent of the 834,463 Iraq and Afghanistan War veterans treated at V.A. hospitals and clinics have been diagnosed with PTSD.”²⁴ Moreover, the Defense and Veterans Brain Injury Center²⁵ reported 307,283 diagnoses of traumatic brain injury (“TBI”) from 2000 through the second quarter of 2014.²⁶ Most alarming are the suicides among veterans, which hit a record high in 2012.²⁷

A final consequence of sending men and women to war that must be addressed is the subsequent incarceration of veterans. A study providing

RESERVE IN THE GLOBAL WAR ON TERRORISM 6–8 (2007), available at <http://www.acq.osd.mil/dsb/reports/ADA478163.pdf> (discussing and providing data on the increased mobilizations of the National Guard and Reserves in support of operations in Afghanistan and Iraq).

²⁰ Kim Murphy, *A Fog of Drugs and War*, L.A. TIMES (Apr. 7, 2012), <http://articles.latimes.com/2012/apr/07/nation/la-na-army-medication-20120408>.

²¹ Richard A. Friedman, Op-Ed., *Why Are We Drugging Our Soldiers?*, N.Y. TIMES, Apr. 22, 2012, at SRS.

²² Nancy Montgomery, *Reports of Family Violence, Abuse Within Military Rise*, STARS & STRIPES (July 10, 2011), <http://www.stripes.com/reports-of-family-violence-abuse-within-military-rise-1.148815>.

²³ Luiza Oleszczuk, *Divorce Rate Among Afghanistan, Iraq War Vets Increases by 42 Percent*, CHRISTIAN POST (Jan. 2, 2012), <http://www.christianpost.com/news/divorce-rate-among-afghanistan-iraq-war-vets-hits-42-percent-66195/>; see Sebastian Negrusa et al., *Gone to War: Have Deployments Increased Divorce?*, 27 J. POPULATION ECON. 473, 494 (2014) (“[T]he hazard of divorce increases as a function of cumulative time deployed.”); Lizette Alvarez, *Long Iraq Tours Can Make Home a Trying Front*, N.Y. TIMES, Feb. 23, 2007, at A1 (reporting on how deployments stress a marriage and can lead to divorce).

²⁴ Jamie Reno, *Nearly 30% of Vets Treated by V.A. Have PTSD*, DAILY BEAST (Oct. 21, 2012), <http://www.thedailybeast.com/articles/2012/10/21/nearly-30-of-vets-treated-by-v-a-have-ptsd.html>; see also DEP’T OF VETERANS AFFAIRS, REPORT ON VA FACILITY SPECIFIC OPERATION ENDURING FREEDOM (OEF), OPERATION IRAQI FREEDOM (OIF), AND OPERATION NEW DAWN (OND) VETERANS CODED WITH POTENTIAL PTSD—REVISED 4 (2012), available at <http://www.publichealth.va.gov/docs/epidemiology/ptsd-report-fy2012-qr3.pdf> (finding that 239,174 OEF/OIF/OND veterans were given a diagnostic code for PTSD in VA medical centers and 51,173 veterans received service for PTSD at Veteran Centers).

²⁵ The Center, founded by Congress in 1992, is the “traumatic brain injury (TBI) operational component of the Defense Centers of Excellence for Psychological Health and Traumatic Brain Injury.” *About DVVIC*, DEF. & VETERANS BRAIN INJURY CENTER, <http://dvbic.dcoe.mil/about-dvbic> (last visited July 15, 2014).

²⁶ *DoD Worldwide Numbers for TBI*, DEF. & VETERANS BRAIN INJURY CENTER, <http://www.dvbic.dcoe.mil/dod-worldwide-numbers-tbi> (last visited July 15, 2014).

²⁷ Robert Burns, *Military Suicides Hit a Record High of 349*, TULSA WORLD, Jan. 15, 2013, at A4 (“Suicides in the U.S. military surged to a record 349 [in 2012], far exceeding American combat deaths in Afghanistan.”).

statistics regarding incarcerated veterans shows that ten percent of state prisoners reported prior military service.²⁸ Thus, it is fair to deduce that when the large-scale presence of American troops in Afghanistan and Iraq comes to an end and veterans return home,²⁹ there will be an influx of veterans with a host of serious mental and emotional problems. Along with these problems, the "very nature of [veterans'] service . . . make[s] them more susceptible to a range of anti-social behavior."³⁰ Therefore, the prevalence of veterans in the criminal justice system will continue, and "[s]ince courts in America stand uniquely on the front lines of dealing with the unsolved problems of society, courts will bear the brunt of postwar mental health problems."³¹

This Note examines the national trend of implementing Veterans Treatment Courts ("VTC") as specialized problem-solving courts to address the unique circumstances surrounding veterans in the criminal justice system and urges Connecticut to follow suit. Part II discusses the nature of specialized drug courts as a framework for the VTC discussion. Part III reviews the various issues uniquely afflicting veterans and, thus, the need for VTCs. Additionally, Part III discusses the national best practices of VTCs, provides a narrow focus on two highly successful VTCs, and concludes with the critic's perspective of VTCs. Turning to Connecticut, Part IV starts with a discussion of veterans in the state, and then concludes that current practices in managing veterans who run afoul of the law come up short. Part V discusses the Hartford Community Court's successes as a problem-solving court in Connecticut, as well as the implications for a Connecticut VTC. Part V also suggests ideas for establishing a VTC and urges the Connecticut General Assembly to establish a legislative task force that would make recommendations on the best course of action to create a pilot VTC program. Finally, Part VI concludes by advocating for Connecticut to do more for its veterans by setting up its own VTC.

II. THE DRUG COURT MODEL

VTCs are modeled after and take a similar approach with offenders as

²⁸ MARGARET E. NOONAN & CHRISTOPHER J. MUMOLA, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: VETERANS IN STATE AND FEDERAL PRISON, 2004, at 1 (2007).

²⁹ It is estimated that more than 2.5 million members of the military, including the National Guard and Reserves, were deployed to Afghanistan and Iraq. Chris Adams, *Millions Went to War in Iraq, Afghanistan, Leaving Many with Lifelong Scars*, MCCLATCHY DC (Mar. 14, 2013), <http://www.mcclatchydc.com/2013/03/14/185880/millions-went-to-war-in-iraq-afghanistan.html>.

³⁰ Michael Daly Hawkins, *Coming Home: Accommodating the Special Needs of Military Veterans to the Criminal Justice System*, 7 OHIO ST. J. CRIM. L. 563, 564 (2010).

³¹ BARRY R. SCHALLER, VETERANS ON TRIAL: THE COMING COURT BATTLES OVER PTSD 20 (2012).

drug courts.³² An overview of drug courts therefore provides a contextual backdrop for discussing VTCs.

A. Adult Drug Courts

In the late 1980s, drug courts emerged in urban and predominantly minority-populated areas to address social issues that commonly afflicted the poor.³³ These courts understood that the “traditional arrest-conviction-incarcerate” model to drug enforcement did not address the underlying causes of drug abuse.³⁴ Rather, drug courts adopted a collaborative approach centered on the offender, who would be supported by a “team” composed of the judge, a prosecutor, a defense counsel, a case manager, and a treatment professional.³⁵ This new approach was a radical “departure from the traditional adversarial model,” as the prosecutor and defense counsel would pull in the same direction and the judge no longer refereed the trial.³⁶

There are more than 2700 drug courts throughout the United States,³⁷ and the courts provide a significant reduction in drug use and crime while substantially saving money.³⁸ Just as important, recidivism and relapse rates are lower in drug courts as compared to offenders facing traditional criminal courts.³⁹ As acknowledged by a senior judge in the Ninth Circuit, “[d]rug court professionals recognize that the earlier intervention occurs in

³² See Amanda Ruggeri, *New Courts Give Troubled Veterans a Second Chance*, U.S. NEWS & WORLD REP. (Apr. 3, 2009), <http://www.usnews.com/news/national/articles/2009/04/03/new-courts-give-troubled-veterans-a-second-chance> (reporting that veterans courts “work[] much like therapeutic drug courts”).

³³ See Eric J. Miller, *Drugs, Courts, and the New Penology*, 20 STAN. L. & POL’Y REV. 417, 420–21 (2009) (explaining that the “War on Drugs” was the “primary cause of the increased rates of arrest, conviction, and incarceration” afflicting racial minorities, and discussing the response of the judiciary instituting drug courts to help lessen the “impact upon vulnerable communities suffering from closing factories, spiraling unemployment, increasing residential segregation, underpolicing, and drug addiction” (footnotes omitted)).

³⁴ Hawkins, *supra* note 30, at 568.

³⁵ Jillian M. Cavanaugh, Note, *Helping Those Who Serve: Veterans Treatment Courts Foster Rehabilitation and Reduce Recidivism for Offending Combat Veterans*, 45 NEW ENG. L. REV. 463, 471 (2011).

³⁶ Hawkins, *supra* note 30, at 568.

³⁷ *Types of Drug Courts*, NAT’L ASS’N DRUG COURT PROF’LS, <http://www.nadcp.org/learn/what-are-drug-courts/types-drug-courts> (last visited July 15, 2014).

³⁸ DOUGLAS B. MARLOWE, NAT’L ASS’N DRUG COURT PROF’LS, RESEARCH UPDATE ON ADULT DRUG COURTS 1–3 (2010), available at http://www.nadcp.org/sites/default/files/nadcp/Research%20Update%20on%20Adult%20Drug%20Courts%20-%20NADCP_1.pdf. The data also shows that drug courts are cost effective for local communities. See *id.* at 3 (“The result has been net economic benefits to local communities ranging from approximately \$3,000 to \$13,000 per Drug Court participant.”).

³⁹ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-12-53, ADULT DRUG COURTS: STUDIES SHOW COURTS REDUCE RECIDIVISM, BUT DOJ COULD ENHANCE FUTURE PERFORMANCE MEASURE REVISION EFFORTS 19–24 (2011).

the dependency cycle, the greater the chance of success."⁴⁰ Therefore, by applying the principle of early intervention, the "same [should] be true of veterans courts"⁴¹ in helping veterans overcome the underlying problems landing them in the criminal justice system.

B. Juvenile Drug Courts

Following the success of adult drug courts, juvenile drug courts were developed with the same rehabilitative approach.⁴² Juvenile offenders in drug courts undergo a similar treatment plan as their adult counterparts.⁴³ However, two distinctions exist between adult and juvenile drug courts that are important to the discussion of VTCs.

Juvenile drug courts "place a greater emphasis on the role of the family" throughout the entire process.⁴⁴ Also, juvenile drug courts "usually include more significant outreach to each offender's home and community . . . to mobilize the efforts of other significant people in youths' lives to create teams of program partners that can teach, supervise, coach, and discipline youthful offenders."⁴⁵ Like family or other significant people in a juvenile drug offender's life, military veteran mentors are key to the success of a veteran undergoing treatment with the supervision of a VTC.⁴⁶

III. THE NECESSITY FOR VETERANS TREATMENT COURTS EXPLAINED

Arguably, a distinct dichotomy exists between veterans returning home from Vietnam and from Afghanistan and Iraq.⁴⁷ Today, there is a "widespread public acceptance of the notion that military veterans should be treated differently" and this "acceptance may be attributable to a general respect for the sacrifice of members of an all-volunteer force."⁴⁸ Public sentiment aside, the U.S. Supreme Court acknowledged the "long tradition of according leniency to veterans in recognition of their service, especially

⁴⁰ Hawkins, *supra* note 30, at 571.

⁴¹ *Id.*

⁴² Daniel M. Filler & Austin E. Smith, *The New Rehabilitation*, 91 IOWA L. REV. 951, 968 (2006). Circuit Judge John Parnham from Escambia County (Pensacola), Florida has been credited with establishing the first juvenile drug court in 1995. *Id.* at 968-69.

⁴³ Cavanaugh, *supra* note 35, at 473-74.

⁴⁴ Jeffrey A. Butts & John Roman, *Drug Courts in the Juvenile Justice System*, in JUVENILE DRUG COURTS AND TEEN SUBSTANCE ABUSE 1, 8 (Jeffrey A. Butts & John Roman eds., 2004).

⁴⁵ *Id.*

⁴⁶ See *infra* Part III.C-D (discussing the role and beneficial impact of veterans as mentors in the Anchorage Veterans Court and Buffalo Veterans Treatment Court).

⁴⁷ See Alan Cutter, *Learning to Come Home from War: No One Said "Thank You" to Vietnam Vets*, GUARDIAN (Apr. 13, 2013), <http://www.theguardian.com/commentisfree/2013/apr/13/vietnam-veterans-not-thanked-for-military-service> (discussing differences between the Vietnam era and the current military era in terms of how veterans are affected).

⁴⁸ Hawkins, *supra* note 30, at 569.

for those who fought on the front lines.”⁴⁹ Before discussing the need for more VTCs, one should gain a better appreciation for the men and women who make up our military and the issues that, while mainstream, affect them uniquely.

A. *Non-Unique Issues Uniquely Affecting Veterans*

1. *Veterans, in General*

Regardless of how a man or woman joins the military, i.e., by draft or on a voluntary basis, the military force “draw[s] from the general population” and is composed of members from “diverse backgrounds.”⁵⁰ Also, it is important to note that while many military members volunteer to serve out of a sense of patriotism, others join for “educational benefits, to gain a marketable skill, or merely for something to do.”⁵¹ Ultimately, whether due to patriotism, family tradition, or other more tangible reasons for joining, civilians are turned into soldiers.

Irrespective of the motivations to join, civilians undergo a metamorphosis as a result of rigorous training that “ingrain[s] [the civilians-turned-soldiers] with a sense of service, honor, and discipline.”⁵² This transformation alters a newly minted soldier’s thought process by placing mission accomplishment ahead of his or her own well-being.⁵³ Finally, the ultimate transformation is overcoming the “powerful combination of instinctive, rational, environmental, hereditary, cultural, and social factors” toward the resistance of killing another human being.⁵⁴ It is precisely this last change that creates the most difficulties for all veterans, particularly those who have seen the death and devastation of

⁴⁹ *Porter v. McCollum*, 558 U.S. 30, 43 (2009) (per curiam). The petitioner, a Korean War veteran, was convicted of two counts of first-degree murder and sentenced to death. *Id.* at 30–31. The Court granted habeas corpus relief because, in part, “the relevance of Porter’s extensive combat experience is not only that he served honorably under extreme hardship and gruesome conditions, but also that the jury might find mitigating the intense stress and mental and emotional toll that combat took on Porter.” *Id.* at 43–44.

⁵⁰ Judge Todd W. Bjerke, *Synopsis of the La Crosse Model of the Veterans Court 1*, LA CROSSE COUNTY VETERANS OFF. CVSO (Oct. 18, 2009), <http://www.co.la-crosse.wi.us/departments/veterans/docs/SynopsisOfLAXCoVetsCourt.pdf>.

⁵¹ B.P. MCCOY, *THE PASSION OF COMMAND: THE MORAL IMPERATIVE OF LEADERSHIP* 16 (2007).

⁵² U.S. MARINE CORPS, *LEADING MARINES 11* (2002), available at <http://www.au.af.mil/au/awc/awgate/usmc/mcwp611.pdf>.

⁵³ See Bjerke, *supra* note 50, at 3 (“[A veteran’s] sense of honoring human dignity has been altered to allow them to complete their mission at a high cost or even the ultimate cost of sacrificing their own lives.”).

⁵⁴ DAVE GROSSMAN, *ON KILLING: THE PSYCHOLOGICAL COST OF LEARNING TO KILL IN WAR AND SOCIETY* 39 (1995).

combat.⁵⁵

Another issue among veterans is a very pronounced aversion to seeking help. Mental health stigma is well documented and studied. It can be divided into two distinct types: (1) social stigma, which is "characterized by prejudicial attitudes and discriminating behaviour directed towards individuals with mental health problems"; and (2) self-stigma, which includes "the internalizing by the mental health sufferer of their perceptions of discrimination."⁵⁶ In the case of veterans, it is often reported that they will not seek help for fear of appearing weak,⁵⁷ a classic example of self-stigma. While harder to demonstrate, veterans also contend with social stigma, especially when trying to find a job in the civilian world, as an example.⁵⁸

2. Post-Traumatic Stress Disorder:⁵⁹ Invisible Wound I

A consequence of the combat trauma experienced by veterans is an immense amount of public awareness and attention to PTSD.⁶⁰ Nearly

⁵⁵ See Bjerke, *supra* note 50, at 1 ("No service member is immune to the effects of intense military training and the tragic impact of warfare.")

⁵⁶ Graham C.L. Davey, *Mental Health & Stigma: Mental Health Symptoms Are Still Viewed as Threatening and Uncomfortable*, PSYCHOL. TODAY (Aug. 20, 2013), <http://www.psychologytoday.com/blog/why-we-worry/201308/mental-health-stigma>.

⁵⁷ See VANESSA WILLIAMSON & ERIN MULHALL, IRAQ & AFG. VETERANS OF AM., INVISIBLE WOUNDS: PSYCHOLOGICAL AND NEUROLOGICAL INJURIES CONFRONT A NEW GENERATION OF VETERANS 4 (2009), available at http://iava.org/files/IAVA_invisible_wounds_0.pdf ("About 50 percent of soldiers and Marines in Iraq who test positive for a psychological problem are concerned that they will be seen as weak by their fellows servicemembers, and almost one in three of these troops worry about the effect of a mental health diagnosis on their career. Military culture plays a significant role in this stigma; 21 percent of soldiers screening positive for a mental health problem said they avoided treatment because 'my leaders discourage the use of mental health services.'"); Charlotte Tucker, *New Research Aimed at Mental Health: U.S. Veterans Struggle with Pain, Stigma of Post-Traumatic Stress*, 42 NATION'S HEALTH 1, 1 (Apr. 2012) (discussing a veteran's belief that his "depression was a sign of weakness and that it was his selfishness that let his friends die").

⁵⁸ See MARGARET C. HARRELL & NANCY BERGLASS, CTR. FOR A NEW AM. SEC., EMPLOYING AMERICA'S VETERANS: PERSPECTIVES FROM BUSINESSES 22 fig.4, 24 (2012), available at <https://www.naceweb.org/uploadedFiles/Pages/knowledge/diversity/diversity-best-practices-employing-americas-veterans.pdf> (finding that more than fifty percent of surveyed companies harbored negative perceptions of veterans "that can decrease the likelihood of employment for veterans").

⁵⁹ Post-traumatic stress disorder is diagnosed when a person experiences "a trauma or life-threatening event," and whose reactions thereto, such as "upsetting memories of the event, increased jumpiness, or trouble sleeping[...] . . . do not go away or . . . get worse." *PTSD Basics*, U.S. DEP'T VETERAN'S AFF., <http://www.ptsd.va.gov/public/PTSD-overview/basics/index.asp> (last visited July 15, 2014).

⁶⁰ See S. Res. 541, 111th Cong. (2010) (enacted) (establishing June 27, 2010, as National Post-Traumatic Stress Disorder Awareness Day). The resolution was also enacted in the two years subsequent. See S. Res. 202, 112th Cong. (2011) (enacted) ("Designating June 27, 2011, as 'National Post-Traumatic Stress Disorder Awareness Day.'"); S. Res. 455, 112th Cong. (2012) (enacted) ("Designating June 27, 2012, as 'National Post-Traumatic Stress Disorder Awareness Day.'"). The resolution was instituted to honor Staff Sergeant Joe Biel, ARNG, "who took his own life following two tours in Iraq." Steve Vogel, *National PTSD Awareness Day*, WASH. POST (June 27, 2011, 5:00

thirty percent of Afghanistan and Iraq War veterans treated at VA hospitals and clinics have been diagnosed with PTSD.⁶¹ Moreover, PTSD is associated with other psychological and anti-social behavioral issues.⁶² While some of these associated mental health issues can provide a link to criminal behavior and PTSD, a recent study by Dr. Eric B. Elbogen, published by the *Journal of Consulting and Clinical Psychology*, drew a direct correlation between “high irritability,” PTSD, and criminal behavior.⁶³

The ramification of linking PTSD to anger provides some explanations and a greater understanding on the cause-and-effect nature of PTSD and criminal behavior. Veterans experiencing combat trauma who “struggle with the anger and emotional outbursts . . . are more than twice as likely as other veterans to be arrested for criminal misbehavior.”⁶⁴ A separate study also conducted by Dr. Elbogen (the “Elbogen Study”) suggested that “veterans who perceive that they have control over their future and who have greater psychological resilience” are more capable of “refrain[ing] from . . . acting on aggressive impulses.”⁶⁵ The Elbogen Study also noted that “some of the protective factors (living stability, employment, social support, self-direction, basic needs met) are present when service members live on a military base but are not necessarily present when service members return home.”⁶⁶

Readjusting back to civilian life can be complicated for some veterans, in particular those suffering from PTSD. In the military, all veterans learn, at the most basic level, to kill and to “think and act in a manner necessary for survival in the battlefield.”⁶⁷ Other factors affecting veterans are

PM), http://www.washingtonpost.com/blogs/federal-eye/post/today-is-ptsd-awareness-day/2011/06/27/AGd4xenH_blog.html; see also Matthew J. Friedman, *Take the Step: Raise PTSD Awareness*, HUFFINGTON POST (June 4, 2013), http://www.huffingtonpost.com/dr-matthew-j-friedman/ptsd-awareness_b_3382965.html (“PTSD is in the headlines now more than ever before.”).

⁶¹ See *supra* note 24 and accompanying text.

⁶² See Peter W. Tuerk et al., *Combat-Related PTSD: Scope of the Current Problem, Understanding Effective Treatment, and Barriers to Care*, 29 DEV. MENTAL HEALTH L. 49, 50 (2010) (citing findings that “unemployment,” “increased levels of alcohol abuse, decreased physical health functioning, relationship dissatisfaction, and domestic violence” are linked to PTSD (citations omitted)).

⁶³ Eric B. Elbogen et al., *Criminal Justice Involvement, Trauma, and Negative Affect in Iraq and Afghanistan War Era Veterans*, 80 J. CONSULTING & CLINICAL PSYCHOL. 1097, 1099 (2012).

⁶⁴ David Wood, *Combat Veterans with PTSD, Anger Issues More Likely to Commit Crimes: New Report*, WORLD POST (Oct. 10, 2012), http://www.huffingtonpost.com/2012/10/09/veterans-ptsd-crime-report_n_1951338.html.

⁶⁵ Eric B. Elbogen et al., *Protective Factors and Risk Modification of Violence in Iraq and Afghanistan War Veterans*, 73 J. CLINICAL PSYCHIATRY e767, e771 (2012) [hereinafter *Elbogen Study*].

⁶⁶ *Id.*

⁶⁷ Thomas L. Hafemeister & Nicole A. Stockey, *Last Stand? The Criminal Responsibility of War Veterans Returning from Iraq and Afghanistan with Posttraumatic Stress Disorder*, 85 IND. L.J. 87, 105 (2010).

difficulties re-adapting from the extreme emotional highs and lows found in combat,⁶⁸ isolation caused by civilians misunderstanding their experiences,⁶⁹ and the mental health-related stigma discussed previously.⁷⁰

3. *Traumatic Brain Injury: Invisible Wound II*

Traumatic brain injury results from "a blow or jolt to the head that disrupts the normal function of the brain."⁷¹ Even though it has proven difficult to precisely diagnose and then treat TBI in a veteran,⁷² research suggests a link to suicides.⁷³ Because of the frequency of concussive blasts from improvised explosive devices ("IED") and combat-related incidents, TBI is "one of the signature injuries of troops wounded in Afghanistan and Iraq."⁷⁴

The symptoms of this "signature injury" are "subtle and may not surface for weeks or months [but] are often debilitating enough to hobble lives and livelihoods."⁷⁵ TBI can disrupt a veteran's life to the point where he may not be able to keep a job.⁷⁶ Without employment, a veteran's living stability will be jeopardized, his basic needs may not be met, and, arguably, he may become directionless. Thus, the protective factors discussed in the Elbogen Study vanish.⁷⁷

⁶⁸ *Id.*

⁶⁹ Samantha Walls, *The Need for Special Veteran Courts*, 39 DENV. J. INT'L L. & POL'Y 695, 710 (2011).

⁷⁰ See *infra* Part III.A.1.

⁷¹ *About TBI*, DEF. & VETERANS BRAIN INJURY CENTER, [https://dvbic.dcoe.mil/about-tbi?audience\[0\]=1](https://dvbic.dcoe.mil/about-tbi?audience[0]=1) (last visited July 15, 2014). The improvised explosive device ("IED") is the most casualty-producing weapon in the Afghanistan and Iraq Wars. See Asad Kharal, *Improvised Explosive Device: Terrorists' Weapon of Choice*, EXPRESS TRIB. (Oct. 20, 2013), <http://www.tribune.com.pk/story/619899/terrorists-weapon-of-choice/> (discussing the prevalence of IEDs and reporting that about "63% of coalition forces deaths in Iraq by the end of 2007" were caused by IEDs, while "[m]ore than 66% of coalition forces deaths in Afghanistan since 2001" were due to IEDs). For a first-person perspective and a greater appreciation of an IED blast, see *Helmet Cam: Marine Steps on IED*, MILITARY.COM (Oct. 11, 2011), <http://www.military.com/video/operations-and-strategy/afghanistan-conflict/helmet-cam-marine-steps-on-ied/1213142987001/>.

⁷² See David Wood, *Traumatic Brain Injury Treatment, Diagnosis Continues to Elude Military Doctors*, WORLD POST (Sept. 24, 2012), http://www.huffingtonpost.com/2012/09/20/traumatic-brain-injury-military_n_1900881.html (reporting that the military "cannot precisely diagnose concussion-related brain injuries resulting from the bomb blasts").

⁷³ See Craig J. Bryan & Tracy A. Clemans, *Repetitive Traumatic Brain Injury, Psychological Symptoms, and Suicide Risk in a Clinical Sample of Deployed Military Personnel*, 70 JAMA PSYCHIATRY 686, 690 (2013) (explaining the study's finding "that military personnel who have sustained more TBIs report more severe psychological symptoms and greater suicide risk").

⁷⁴ *Traumatic Brain Injury*, U.S. DEP'T DEF. (Jan. 23, 2014), http://www.defense.gov/home/features/2012/0312_tbi/.

⁷⁵ Lizette Alvarez, *Home From War, Veterans Say Head Injuries Go Unrecognized*, N.Y. TIMES, Aug. 26, 2008, at A1.

⁷⁶ See *id.* ("Take the case of Mr. Owsley, a father of three, whose brain injury so impaired his reaction time and memory that doctors advised him not to work.")

⁷⁷ See *supra* text accompanying 65.

4. *The Armed Force's Shame: Military Sexual Trauma*⁷⁸

The issue of military sexual trauma ("MST") has drawn a sharp rebuke from President Barack Obama, who indicated that "sexual assault in our armed forces undermines . . . trust."⁷⁹ The President asserted that MST is beyond criminal and is "shameful and disgraceful."⁸⁰ Moreover, President Obama linked MST to a less effective military, which is "dangerous to our national security."⁸¹

A recent Pentagon report shed light on the seriousness of MST by finding that sexual assault complaints increased by forty-six percent between October 2012 and June 2013.⁸² Disturbingly, the Pentagon acknowledged that "the actual number of assaults could be several times higher and that many assaults go uncounted because of reluctance in the military, as in the civilian sector, to report such crimes."⁸³ Turning up the heat on military commanders, President Obama stated that he did not "want . . . more speeches or awareness programs or training, or ultimately folks [that] look the other way."⁸⁴

The pervasiveness of sexual harassment and assault in the military can be attributed to four risk factors: (1) the military culture allows or does not discourage sexual harassment;⁸⁵ (2) the physical work environment in

⁷⁸ The VA defines military sexual trauma as a "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 or active duty for training." *Military Sexual Trauma*, U.S. DEP'T VETERAN'S AFF., <http://www.ptsd.va.gov/public/types/violence/military-sexual-trauma-general.asp> (last updated June 25, 2014) (internal quotation marks omitted) (citing 38 U.S.C. § 1720D (2012)). Moreover, sexual harassment is further defined as "repeated, unsolicited verbal or physical contact of a sexual nature which is threatening in character." 38 U.S.C. § 1720D(f).

⁷⁹ Bryant Jordan, *Obama: Sexual Assault Threatens National Security*, MILITARY.COM (May 17, 2013), <http://www.military.com/daily-news/2013/05/17/obama-sexual-assault-threatens-national-security.html>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Pauline Jelinek, *Military Sexual Assault Reports Up 46 Percent, Pentagon Says*, HUFFINGTON POST (Nov. 7, 2013), http://www.huffingtonpost.com/2013/11/07/military-sexual-assault_n_4233531.html.

⁸³ *Id.*

⁸⁴ Heidi Evans, *Root Out Military Sex Predators, Prez Says*, N.Y. DAILY NEWS, May 8, 2013, at 21. Highlighting the issue of MST, President Obama signed the National Defense Authorization Act for Fiscal Year 2014, which "expand[ed] efforts to prevent sexual assault and strengthen protections for victims." Presidential Statement on Signing the National Defense Authorization Act for Fiscal Year 2014, 2013 DAILY COMP. PRES. DOC. 876, at 1 (Dec. 26, 2013). The bill prevents commanders from overturning jury convictions for sexual assault, requires a "civilian review when commanders decline to prosecute, requires dishonorable discharge or dismissal for those convicted, eliminate[s] the statute of limitations for courts-martial in rape and sexual assault cases[,] and criminalizes retaliation against victims who report an assault." Josh Lederman, *Obama Signs Bipartisan Budget Deal, Defense Bill*, CAPITAL GAZETTE, Dec. 27, 2013, at A2.

⁸⁵ SCHALLER, *supra* note 31, at 173.

which the gender ratio is heavily male-dominated,⁸⁶ (3) the off-duty barracks and military base setting in which women have few places to escape,⁸⁷ and (4) the "unsupportive or offensive behavior of ranking officers."⁸⁸ Taking these factors into consideration, it is unsurprising that a report prepared by the Veterans Legal Services Clinic of Yale Law School found that female veterans "were disproportionately represented among claimants for benefits for PTSD arising from MST."⁸⁹ The implication is that women are the most likely victims of MST and, consequently, will need the most help.

The consequences of MST are significant. Research has found that sexual assault can cause severe psychological problems, and victims will often display PTSD symptoms.⁹⁰ It seems reasonable to suggest that veterans, particularly women, who experience MST will in turn increase the number of PTSD sufferers. To compound the problems for survivors of MST, obtaining help from the VA for "the enduring mental health effects of [MST] is an unfair fight in which veterans are often unsuccessful."⁹¹ The VA has granted PTSD claims caused by MST "at significantly lower rates than it has granted claims for PTSD arising from other causes,"⁹² such as combat trauma. Essentially, the VA is suggesting that to obtain help for PTSD, MST survivors should have hit an IED rather than being raped. Thus, MST victims, who faced a difficult battle while in the military,⁹³ will also face an intransigent barrier to seeking help (read:

⁸⁶ *Id.*

⁸⁷ *Id.* at 173-74.

⁸⁸ *Id.* at 174.

⁸⁹ VETERANS LEGAL SERVS. CLINIC, YALE LAW SCH., BATTLE FOR BENEFITS: VA DISCRIMINATION AGAINST SURVIVORS OF MILITARY SEXUAL TRAUMA 4 (2013), available at <https://www.aclu.org/sites/default/files/assets/lib13-mst-report-11062013.pdf>.

⁹⁰ See Christine Hansen, Exec. Dir., The Miles Found., Inc., A Considerable Sacrifice: The Costs of Sexual Violence in the U.S. Armed Forces, Presentation at the Military Culture and Gender Conference (Sept. 16, 2005), available at <http://dator8.info/pdf/considerable/0.pdf> (stating that sixty-six percent of victims suffer from PTSD, ninety percent experience PTSD symptoms within one month of the assault, and one-third show symptoms more than six months later).

⁹¹ VETERANS LEGAL SERVS. CLINIC, *supra* note 89, at 1.

⁹² *Id.*

⁹³ The MST problem is complicated and quite troublesome. The 2005 death of Private First Class Lavena Johnson, USA, is still today reported as an emblematic example of the complexities of MST in the armed services. Eight weeks after arriving in Iraq, Private First Class Johnson was allegedly raped and murdered. *Breaking the Silence*, ECONOMIST, Oct. 19, 2013, at 35. The photographs from the autopsy report revealed that Private First Class Johnson's injuries consisted of a "broken nose, loose teeth, a black eye, burns on her genitals caused by lye and a gunshot wound that seemed inconsistent with suicide." *Id.* In spite of the evidence, the Department of Defense ruled Private First Class Johnson's death a suicide. *Id.*; see also Ann Wright, *Is There an Army Cover Up of Rape and Murder of Women Soldiers?*, COMMON DREAMS (Apr. 8, 2008), <http://www.commondreams.org/views/2008/04/28/there-army-cover-rape-and-murder-women-soldiers> (discussing how Private First Class Johnson's father, Dr. John Johnson, and mother, upon seeing their daughter's body, had "grave suspicions about the Army's investigation into [their daughter's] death and the characterization of her death as suicide").

the VA). Therefore, survivors of MST who fall victim to military indifference and VA bureaucracy may develop PTSD, receive less treatment, and thereby potentially have more brushes with the law once they leave the military.

5. Homelessness Among Veterans

The U.S. Department of Housing and Urban Development estimates that, on any given night, there are 57,849 homeless veterans out of the 610,042 homeless people in the United States.⁹⁴ Despite homelessness among veterans declining by 24% since 2009,⁹⁵ “12% of the adult homeless population are veterans.”⁹⁶ Homeless people, in general, are “overwhelmingly uninsured and often lack access to the most basic health care services.”⁹⁷ One can infer then that a homeless veteran will likely lack the resources to treat the underlying issues that may have caused his homelessness in the first place.⁹⁸

6. The Shocking Unemployment Rates

In November 2013, the Labor Department reported that the national unemployment rate fell to 7%, the lowest in five years.⁹⁹ The unemployment rate for Gulf War II-era veterans, however, sits at 9%.¹⁰⁰ Even more shocking is that 21.4% of veterans aged eighteen to twenty-four are unemployed.¹⁰¹

These statistics are ominous when one considers that unemployed persons are “twice as likely as their employed counterparts to experience psychological problems such as depression, anxiety, psychosomatic

⁹⁴ MEGHAN HENRY ET AL., U.S. DEP’T OF HOUSING & URBAN DEV., THE 2013 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS: PART 1 POINT-IN-TIME ESTIMATES OF HOMELESSNESS 1 (2013), available at <https://www.onecpd.info/resources/documents/AHAR-2013-Part1.pdf>.

⁹⁵ *Id.*

⁹⁶ *Background & Statistics: FAQ About Homeless Veterans*, NAT’L COALITION FOR HOMELESS VETERANS, http://nchv.org/index.php/news/media/background_and_statistics/ (last visited July 15, 2014).

⁹⁷ NAT’L COAL. FOR THE HOMELESS, HEALTH CARE AND HOMELESSNESS: NCH FACT SHEET #8 (June 2006), available at <http://www.nationalhomeless.org/publications/facts/Health.pdf>.

⁹⁸ See Fernanda Santos, *Program to End Homelessness Among Veterans Reaches a Milestone in Arizona*, N.Y. TIMES, Jan. 16, 2014, at A14 (reporting that Mr. Robert Stone, a veteran, has remained sober for nine months partly because he has a “roof over [his] head” (internal quotation marks omitted)).

⁹⁹ Bill Chappell, *Eyes Turn to the Fed as Unemployment Rate Falls To 5-Year Low*, NAT’L PUB. RADIO (Dec. 6, 2013, 10:15 AM), <http://www.npr.org/blogs/thetwo-way/2013/12/06/249224096/203k-jobs-added-in-november-u-s-unemployment-at-7-percent>.

¹⁰⁰ The Econ. Daily, *Unemployment Rate for Veterans Edges Down in 2013*, U.S. DEP’T LABOR (Mar. 25, 2014), http://www.bls.gov/opub/ted/2014/ted_20140325.htm.

¹⁰¹ News Release, U.S. Dep’t Labor, *Employment Situation of Veterans—2013*, at 11, tbl.2A (Mar. 20, 2014), <http://www.bls.gov/news.release/pdf/vet.pdf>.

symptoms, low subjective well-being and poor self-esteem."¹⁰² Thus, unemployment, especially when taking into account issues such as PTSD, TBI, or MST, can compound the problems a veteran faces in civilian life. Though some progress has been made at the state level to lower the veteran unemployment rate, much is yet to be accomplished.¹⁰³

7. The Alarming Suicide Rates

Suicides in the military began to rise in 2006¹⁰⁴ and, in the case of the

¹⁰² *Psychological Effects of Unemployment and Underemployment*, AM. PSYCHOL. ASS'N, <http://www.apa.org/about/gr/issues/socioeconomic/unemployment.aspx> (last visited Mar. 4, 2014).

¹⁰³ Three states, New York, Illinois, and Maryland, have passed recent, robust legislative initiatives to combat the veteran unemployment rate. In 2011, New York Governor Andrew Cuomo spearheaded the charge with the "Experience Counts" campaign that set a mandate to state licensing and higher education institutions to ensure "military experience is appropriately credited when servicemembers return to civilian life." *Experience Counts*, N.Y. ST. DIV. VETERANS' AFF., <http://www.veterans.ny.gov/content/experience-counts> (last visited July 15, 2014). Recognizing that military spouses have difficulties transferring jobs because of the constant rotation of a service member's military career, Illinois passed the Illinois Military Family Licensing Act in 2012. Lisa Daniel & Amaani Lyle, *First Lady Touts Spouse Licensure Successes*, AM. FORCES PRESS SERV. (June 26, 2012), <http://www.defense.gov/News/NewsArticle.aspx?ID=116909>. Most recently, Maryland passed a bill that "helps veterans get credentials and college credit for work they have done in the service . . . [and] also streamlines the process to help military spouses get professional licenses as they transfer from another state." Michelle Janaye Nealy & Brian Witte, *Michelle Obama Naval Academy Visit Gives First Lady Chance to Praise Maryland Veteran Bill*, HUFFINGTON POST (Apr. 17, 2013), http://www.huffingtonpost.com/2013/04/17/michelle-obama-naval-academy_n_3103227.html. Essentially, Maryland's law combines both New York's "Experience Counts" and Illinois's licensing law. Moreover, Maryland's law sets—and will track progress toward—a lofty goal of reaching a veteran unemployment rate of three percent or lower by the end of 2015. *Full Employment for Maryland Veterans by the End of 2015*, MARYLAND.GOV, <https://data.maryland.gov/goals/veterans> (last updated Feb. 17, 2014).

In Connecticut, Governor Dannel Malloy joined the national movement to ease unemployment among veterans. See 2013 Conn. Acts 13-5 (Spec. Sess.) (establishing a task force to study the use of military occupational specialty training as a substitute for state licensing requirements). A resulting task force report made both legislative and regulatory recommendations, based on research regarding the best practices of such other states as New York, Illinois, and Maryland. See MILITARY OCCUPATIONAL SPECIALTY TASK FORCE, 2013 TASK FORCE TO STUDY THE USE OF MOS SPECIALTY TRAINING AS A SUBSTITUTE FOR STATE LICENSING REQUIREMENTS: FINAL REPORT 5-9 (2014). In the interests of full disclosure, the author of this Note was a member of the task force. More recently, Governor Malloy reinforced his effort to increase veteran employment by directing state agencies that issue certifications and licenses to review their policies to grant military veterans "appropriate recognition," requiring those agencies to "[i]dentify state and federal laws or regulations that pose potential barriers" to the process, and mandating "public institutions of higher education [to] consider the unique knowledge and experience of military service as they evaluate and award academic credit" toward degrees and certifications. Exec. Order No. 36 (Sept. 23, 2013), available at http://www.governor.ct.gov/malloy/lib/malloy/EO_36_Veterans.pdf [hereinafter Exec. Order No. 36]. Finally, the Connecticut Legislature recently adopted certain recommendations from the task force. An Act Concerning the Findings of the Military Occupational Specialty Task Force, No. 14-131, Conn. Acts (Reg.) Sess. (June 6, 2014), available at <http://www.cga.ct.gov/2014/act/pa/2014PA-00131-R00HB-05299-PA.htm>.

¹⁰⁴ Lolita C. Baldor, *Military Suicides Drop amid Array of New Programs*, HUFFINGTON POST (Nov. 11, 2013), http://www.huffingtonpost.com/2013/11/11/military-suicides_n_4256551.html.

Army, “[a] tragic milestone was reached [in 2012], when 185 active-duty Army soldiers died by suicide, surpassing the 176 soldiers killed in battle in Afghanistan that year.”¹⁰⁵ When a death is ruled a suicide, the resolution can seem clear and conclusive, but in reality the phenomenon is complex, unclear, and heartbreaking.

Take the tragic case of Marine Sergeant Bart Ryan, for example.¹⁰⁶ Before serving eight months in Iraq, Sergeant Ryan was “the kind of guy who brightened the room,” according to his brother.¹⁰⁷ After coming home, Sergeant Ryan had trouble sleeping and became dependent on painkillers.¹⁰⁸ His life began to spiral out of control after leaving the Marines, as evidenced by a string of accidents and drug-related arrests. On August 3, 2011, Sergeant Ryan was arrested for buying heroin, and twelve weeks later he was arrested for a moving violation.¹⁰⁹ As a consequence of this final arrest, Sergeant Ryan agreed to enroll in Phoenix House, a rehabilitation facility.¹¹⁰

On February 5, 2012, Sergeant Ryan left Phoenix House, presumably without authorization, claiming the program did not address his PTSD.¹¹¹ Consequently, Nassau District Judge Andrew Engel imposed a \$5,000 bail, which Sergeant Ryan could not afford.¹¹² He was taken to the Nassau County Jail, where he committed suicide that same night.¹¹³ The tragic irony was that had he been allowed to remain free, i.e., by means of a lower bail, Sergeant Ryan may have lived; he was trying to get his case transferred to the Nassau Veterans Court.¹¹⁴

While a suicide is always tragic by nature, the events that lead a veteran to commit to such a devastating decision can, in many cases, be traced not only to the emotional imbalance that a combat veteran might face, but also to the lack of emotional, financial, and physical support available to veterans because of the large disconnect between society at

¹⁰⁵ David Wood, *Army Chief Ray Odierno Warns Military Suicides “Not Going to End” After War Is Over*, HUFFINGTON POST (Sept. 25, 2013), http://www.huffingtonpost.com/2013/09/25/ray-odierno-military-suicides_n_3984359.html. Thankfully, suicide rates dropped twenty-two percent throughout the military in 2013. Baldor, *supra* note 104. The author can attest to the increased level of suicide-awareness training from when he began serving on active duty in 2002 to today.

¹⁰⁶ Martin C. Evans, *A Marine’s Private War*, NEWSDAY, Apr. 1, 2012, at A3.

¹⁰⁷ *Id.* (internal quotation marks omitted).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* Phoenix House’s mission is “to protect[] and support[] individuals, families, and communities affected by substance abuse and dependency.” *About Phoenix House*, PHOENIX HOUSE, <http://www.phoenixhouse.org/about/> (last visited July 15, 2014).

¹¹¹ Evans, *supra* note 106.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

large and the military.¹¹⁵ While one cannot predict how or if the Nassau Veterans Court could have helped Sergeant Ryan, it is fair to presume that it would have been better than his previous experience with the criminal justice system.

B. *Veterans Treatment Courts, Generally*

As of 2012, there were 104 VTCs across the nation—with many more in planning stages.¹¹⁶ While not all of these courts are identical, many share similar traits. The following Section highlights common attributes found in most VTCs.

VTCs are, in essence, hybrid drug and mental health courts.¹¹⁷ In general, these courts follow the ten key components of drug courts promoted by the U.S. Department of Justice¹¹⁸ or adhere to the ten essential elements of a traditional mental health court.¹¹⁹

In terms of eligibility, VTCs have similar restrictions by which a veteran's case can be adjudicated. For the most part, veterans who served on active duty, in the Reserves, or in the National Guard can access VTCs.¹²⁰ Importantly, VTCs will accept veterans who were discharged under honorable conditions to ensure that most "participants will be

¹¹⁵ In Sergeant Ryan's case, he was unable to keep a job and, according to his brother, was turned away from an outpatient VA facility. *Id.*

¹¹⁶ *The History*, JUST. FOR VETS, <http://justiceforvets.org/vtc-history> (last visited July 15, 2014).

¹¹⁷ *Honoring and Serving America's Veterans*, U.S. DEP'T JUST. (Nov. 10, 2009), <http://blogs.justice.gov/main/archives/328>.

¹¹⁸ See U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, *DEFINING DRUG COURTS: THE KEY COMPONENTS*, at iii (1997), available at <https://www.ncjrs.gov/pdffiles1/bja/205621.pdf> (listing the ten key components).

¹¹⁹ See MICHAEL THOMPSON ET AL., COUNCIL OF STATE GOV'TS JUSTICE CTR., *IMPROVING RESPONSES TO PEOPLE WITH MENTAL ILLNESSES: THE ESSENTIAL ELEMENTS OF A MENTAL HEALTH COURT*, at iii (2007), available at https://www.bja.gov/Publications/MHC_Essential_Elements.pdf (listing the ten essential elements). One VTC has captured the ten key elements/components as follows: (1) "[I]ntegrat[ing] alcohol, drug treatment, and mental health services with justice system case processing"; (2) "Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights"; (3) "Eligible participants are identified early and promptly placed in the Veterans Treatment Court program"; (4) "[P]rovid[ing] access to a continuum of alcohol, drug, mental health and other related treatment and rehabilitation services"; (5) "Abstinence is monitored by frequent alcohol and other drug testing"; (6) "A coordinated strategy governs Veterans Treatment Court responses to participants' compliance"; (7) "Ongoing judicial interaction with each veteran is essential"; (8) "Monitoring and evaluation measures the achievement of program goals and gauges effectiveness"; (9) "Continuing interdisciplinary education promotes effective Veterans Treatment Court planning, implementation, and operation"; and (10) "Forging partnerships among the Veteran Treatment Court, the VA, public agencies, and community-based organizations generates local support and enhances the Veterans Treatment Court's effectiveness." Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 357, 364–67 (2009).

¹²⁰ Tiffany Cartwright, "To Care for Him Who Shall Have Borne the Battle": *The Recent Development of Veterans Treatment Courts in America*, 22 STAN. L. & POL'Y REV. 295, 305–06 (2011).

eligible for federally funded services through the VA."¹²¹ If a veteran's discharge categorization was Other Than Honorable or Bad Conduct, the veteran may have forfeited medical benefits through the VA.¹²² This is an important component to a VTC because, without access to the VA, the burden of paying for the required treatment shifts from the federal government to the state. One final varying aspect is whether to make VTCs available only to combat veterans with mental health issues.¹²³ For example, California's Orange County's Combat Veterans Court is only eligible to veterans whose criminal transgression "stems from disorders arising from their combat experience."¹²⁴ On the contrary, many courts, such as Buffalo's court, accept all eligible veterans with "substance dependency and mental illness."¹²⁵

Another restriction that varies by jurisdiction is the nature of the crime that will be handled by a VTC. For instance, the Buffalo VTC will accept veterans who committed felony or misdemeanor non-violent crimes,¹²⁶ while the Anchorage VTC accepts felony offenses on a case-by-case basis to "ensure public safety."¹²⁷ For the most part, VTCs across the country only handle non-violent crimes; however, some courts do handle domestic violence.¹²⁸

¹²¹ *Id.* Generally, there are five types of discharges: (1) Honorable; (2) General; (3) Other Than Honorable; (4) Bad Conduct; and (5) Dishonorable. Bill Wicks, *Leaving on Good Terms: Types of Discharges, Their Consequences*, FORT HOOD SENTINEL (Feb. 16, 2012), <http://www.forthoodsentinel.com/story.php?id=8539>.

¹²² Wicks, *supra* note 121. However, the VA can review a veteran with an Other Than Honorable or Bad Conduct discharge for medical benefits on a case-by-case basis. See U.S. DEP'T OF VETERANS AFFAIRS, IB 10-448, OTHER THAN HONORABLE DISCHARGES: IMPACT ON ELIGIBILITY FOR VA HEALTH CARE BENEFITS 1 (June 18, 2013), available at http://www.va.gov/healthbenefits/resources/publications/IB10-448_other_than_honorable_discharges_061713.pdf ("The in-between categories, administrative 'Other than Honorable' discharges, and punitive 'Bad Conduct Discharges' issued by special courts-martial, may or may not be disqualifying for purposes of general VA benefit eligibility or VA health benefits eligibility specifically.")

¹²³ William H. McMichael, *Finding a New Normal*, MARINE CORPS TIMES, Feb. 21, 2011, at 10.

¹²⁴ *Orange County Combat Veterans Court*, CAL. CTS.: JUD. BRANCH OF CAL., <http://www.courts.ca.gov/13955.htm> (last visited July 15, 2014). Restricting access to Orange County Combat Veterans Court is dictated by state law. McMichael, *supra* note 123.

¹²⁵ Russell, *supra* note 119, at 367-68.

¹²⁶ *Id.* at 368.

¹²⁷ ALASKA CT. SYS., ANCHORAGE VETERANS COURT (2014), available at <http://courts.alaska.gov/forms/pub-121.pdf>. The Anchorage VTC considers several factors of the felony to include "the seriousness of the current offense, class of current offense, and offender's previous criminal history." *Id.*

¹²⁸ See, e.g., Tracy Carbasho, *Veterans Court Provides Support and Services for Local Veterans*, 12 J. ALLEGHENY CNTY. B.A., Jan. 29, 2010, at 4 (discussing the types of charges, to include domestic violence, handled by the Allegheny County Veterans' Court); see also Pamela Kravetz, Note, *Way Off Base: An Argument Against Intimate Partner Violence Cases in Veterans Treatment Courts*, 4 VETERANS L. REV. 162, 162-63 (2012) (summarizing the details surrounding the attack on Shayla Delgado by her husband Specialist Thomas Delgado, USA, whose case was considered in a veteran treatment court near Fort Carson, Colorado).

C. Alaska Spearheads the Effort: Anchorage Veterans Court

The Anchorage Veterans Court was established in 2004 with the goal of "reduc[ing] the number of criminal cases involving former members of the United States military."¹²⁹ Judge Sigurd E. Murphy, a retired U.S. Army Brigadier General, and Judge Jack W. Smith, a retired U.S. Air Force Colonel, led the efforts.¹³⁰

In this court, once the veteran-defendant is arraigned and charged with a misdemeanor (including misdemeanors reduced from felonies), the veteran is referred to the veterans court either through in-custody or out-of-custody referral.¹³¹ The defendant returns to court on the following Tuesday where, on motion from the defendant or the prosecution, the defendant can apply for the veterans court to handle his case.¹³² The presiding judge sets the conditions of bail or pretrial release and sends the defendant to a Veteran Service Representative ("VSR").¹³³ As a veteran, the VSR is a critical component of the Anchorage Veterans Court.¹³⁴ The VSR helps set up a treatment plan that may include referral to treatment centers for substance abuse or to mental health counseling.¹³⁵

Once the court agrees to the treatment plan, the defendant's counsel and the prosecution negotiate a plea agreement.¹³⁶ After the plea agreement is settled, the veteran-defendant "must formally opt in or opt out of the veterans courts participation."¹³⁷ If the defendant opts out, his case is referred back to the criminal court docket.¹³⁸ If the defendant opts in, the judge makes compliance with the treatment plan, "and observance of the plea agreement, conditions of bail pending sentencing."¹³⁹

Another crucial aspect of the Anchorage Veterans Court is that the same judge who agrees with the treatment plan will maintain a close eye over the defendant from beginning to end.¹⁴⁰ Moreover, the fact that the VSR is a veteran gives the veteran-defendant access to another person in the process with whom he may have similar experiences.¹⁴¹

¹²⁹ Jack W. Smith, *The Anchorage, Alaska Veterans Court and Recidivism: July 6, 2004–December 31, 2010*, 29 ALASKA L. REV. 93, 93 (2012).

¹³⁰ *Id.* at 93, 95–97.

¹³¹ Hawkins, *supra* note 30, at 565.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* For a visual representation of the Anchorage VTC's process in flowchart form, see *id.* at 573.

¹⁴⁰ *Id.* at 565.

¹⁴¹ *Id.*; see also Maria LaMagna, *Military Bonds Draw Veterans to Mental Health Jobs*, CNN (Aug. 9, 2012), <http://www.cnn.com/2012/08/08/health/military-veterans-psychology/> (discussing how

A fiscal benefit derived from the Anchorage Veterans Court is that the participating veteran-defendant receives treatment "at no cost to [the veteran-defendant], the Municipality of Anchorage, or the State [of Alaska]."¹⁴² By limiting participants only to those who are eligible for VA benefits, the veterans court thus eliminates most of the costs.¹⁴³

Judge Smith's limited study found that the recidivism¹⁴⁴ rate for graduates of the Anchorage Veterans Court (45%) was lower than the general rate in Alaska (50.4%).¹⁴⁵ Despite the high recidivism rate, Judge Smith characterizes the Anchorage Veterans Court as an important resource for veterans residing in Alaska.¹⁴⁶

D. *The Model to Follow: Buffalo Veterans Treatment Court*

Arguably, one of the most renowned and most successful courts is the Buffalo Veterans Treatment Court established by Judge Robert Russell in 2008.¹⁴⁷ By combining the key components of drug courts with the ten essential elements of mental health courts and adding its own modifications,¹⁴⁸ the Buffalo Veterans Treatment Court developed into a "hybrid of drug and mental health treatment courts, servicing veterans with addiction, serious mental illness, and co-occurring disorders."¹⁴⁹

The typical veteran-offender in the Buffalo Veterans Treatment Court committed non-violent felony or misdemeanor crimes.¹⁵⁰ Attempting to address the various issues that may surround a veteran, the court provides the "forum to deliver all of [the] needed services . . . based on the belief that individuals need *services, support, skills, and spirit* to be successful."¹⁵¹ This "four S principle" is a particularly powerful concept because in the experience of Judge Russell and his staff, "when one of these 'S' elements is weak or does not exist, then the alcohol, drugs, mental health, and criminal problems become exacerbated."¹⁵²

Like other VTCs, the Buffalo court has a well-established relationship

veterans can better relate to other veterans, as opposed to non-veterans, and emphasizing the increasing importance of programs in which veterans work to help other veterans).

¹⁴² Smith, *supra* note 129, at 102.

¹⁴³ *Id.*

¹⁴⁴ For the purposes of the study, "recidivism [was] defined as a new criminal offense or a formal petition to revoke probation within one to three years" of specified conditions. *Id.* at 107.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 109.

¹⁴⁷ Russell, *supra* note 119, at 363, 364.

¹⁴⁸ *Id.* at 364-65; see *supra* note 119 (listing the Buffalo Veterans Treatment Court's ten key components in full).

¹⁴⁹ Russell, *supra* note 119, at 365.

¹⁵⁰ *Id.* at 368.

¹⁵¹ *Id.*

¹⁵² *Id.* (internal quotation marks omitted).

with various organizations, including the VA.¹⁵³ In Judge Russell's opinion, however, the Buffalo Veterans Treatment Court's mentor program deserves singular recognition.¹⁵⁴ The mentors are exclusively veterans, and they volunteer to serve as a "coach, facilitator, advisor, sponsor, and supporter."¹⁵⁵ Mentors contribute to the veteran-offender's path toward treatment by "listen[ing] to the concerns and problems of participants and assist[ing] them in finding resolutions."¹⁵⁶ The mentor program succeeds in helping veterans in part because "behind every successful person, there is one elementary truth: somewhere, somehow, someone cared about their growth and development."¹⁵⁷

The Buffalo Veterans Treatment Court recidivism rate as of 2012: zero.¹⁵⁸

E. *The Critic's Perspective*

Any good idea needs to successfully withstand challenges. The Nevada American Civil Liberties Union ("ACLU"), for example, opposes the creation of a specialty court for veterans based on status, i.e., according different treatment between similarly situated non-veteran and veteran offenders.¹⁵⁹ Additionally, the Colorado ACLU argued that the term "veteran" is both "too broad and too narrow" because it includes veterans from past wars who may have "very different experiences" but excludes "nonveterans who also suffer from PTSD."¹⁶⁰ The crux of the ACLU's arguments can be boiled down to this: creating a specialty court is unfair if based solely on veteran status.

The ACLU is not the only critic, however. The concept of a VTC has been met with "resistance from prosecutors and judges leery of creating

¹⁵³ See *id.* at 368–69 (listing the various community organizations that partner with the Buffalo Veterans Treatment Court).

¹⁵⁴ See *id.* at 369 ("One particularly unique and vital component of the Buffalo Veterans Treatment Court is the mentor program.").

¹⁵⁵ *Id.* at 370.

¹⁵⁶ *Id.*

¹⁵⁷ See *id.* at 370 n.68 (quoting Jack O'Connor, Buffalo Veterans Treatment Court's Mentor Coordinator) (internal quotation marks omitted).

¹⁵⁸ Donna Brown, Op-Ed., *Veterans Treatment Courts a Step Forward*, BANGOR DAILY NEWS (Mar. 26, 2012), <http://bangordailynews.com/2012/03/26/opinion/contributors/veterans-treatment-court-s-a-step-forward/>.

¹⁵⁹ See, e.g., *Hearing on Assembly Bill 187 of 2008 Before the S. Comm. on the Jud.*, 2009 Leg., 75th Sess. 21–22 (Nev. 2009) (testimony of Lee Rowland, ACLU of Nevada), available at <http://www.leg.state.nv.us/75th2009/Minutes/Senate/JUD/Final/914.pdf> (comparing the possible disparate treatment between a military veteran drug offender and a police officer, non-military veteran drug offender).

¹⁶⁰ Dahlia Lithwick, *A Separate Peace*, SLATE (Feb. 11, 2010), http://www.slate.com/articles/new_s_and_politics/jurisprudence/2010/02/a_separate_peace.html.

any class of offenders with distinct privileges."¹⁶¹ In 2010, for example, it was reported that the Bexar County (Texas) District Attorney Susan Reed "cited fiscal concerns and an aversion to, in essence, letting someone charged with a crime go scot-free."¹⁶²

In Connecticut, Raised Bill 6708, An Act Concerning Criminal Cases of Persons who have Returned from Service with the Armed Forces, was proposed in 2009 with the goal of establishing a veterans court.¹⁶³ On one end of the spectrum, Mr. Stephen Ment opposed the legislation on behalf of the Connecticut Judicial Branch, arguing that a veterans court would reduce available resources that are "particularly problematic during [a] time of financial crisis."¹⁶⁴ Continuing along the spectrum, Dr. Michael Norko of the Connecticut Department of Mental Health and Addiction Services ("DMHAS") gave, at best, lukewarm support, suggesting that R.B. 6708 could wait because of an already existing, federally funded program between DMHAS and the federal Substance Abuse and Mental Health Services Administration.¹⁶⁵ The most support given to R.B. 6708 came from Connecticut VA Commissioner Linda Schwartz, whose support was "contingent on [the bill's] design to utilize *existing, already funded* alternatives to incarceration and veterans' treatment programs available" through various state agencies.¹⁶⁶

Opponents of a veterans court in Connecticut are unable to see the forest for the trees. Commissioner Schwartz testified to an unofficial partnership between the Sgt. John L. Levitow Veteran's Health Center (the "Veteran's Center") and the Judicial Branch.¹⁶⁷ While the Veteran's Center provides an incredible service to veterans,¹⁶⁸ it should be an official partner of, and key player in, a VTC. State Senator John Kissel actually

¹⁶¹ Deborah Sontag & Lizette Alvarez, *Combat Trauma Takes the Witness Stand*, N.Y. TIMES, Jan. 27, 2008, at A1.

¹⁶² Veronica Flores-Paniagua, *DA's Position Makes Veterans Court DOA*, SAN ANTONIO EXPRESS-NEWS, Mar. 30, 2010, at 11A.

¹⁶³ Raised Bill No. 6708, Reg. Sess. (Conn. 2009), available at <http://www.cga.ct.gov/2009/TOB/H/2009HB-06708-R00-HB.htm>.

¹⁶⁴ *An Act Concerning Criminal Cases of Persons Who Have Returned from Service with the Armed Forces: H.B. 6708 Before the Judiciary Comm.*, 2009 Sess. 6104 (Conn. 2009) [hereinafter *Committee Hearing*] (testimony of Stephen N. Ment, on behalf of the Judicial Branch).

¹⁶⁵ *Id.* at 6102-03 (testimony of Michael Norko, Director of Forensic Sciences, DMHAS). For further discussion of the federally funded DMHAS program, see Part IV.B.

¹⁶⁶ *Committee Hearing*, *supra* note 164, at 6105 (testimony of Linda S. Schwartz, Comm'r, Connecticut's Department of Veterans' Affairs).

¹⁶⁷ *See id.* at 5566-67 (testifying that courts use Connecticut veteran's home in lieu of incarceration because of the presence of an in-home substance abuse program).

¹⁶⁸ The Veteran's Center "provides long term care to veterans with chronic and disabling medical conditions" including, but not limited to, "heart and lung disease, stroke, Parkinson's, Alzheimer's and other dementias. The program also provides End-of-Life care, Palliative care and Respite care." *Healthcare Center Information*, CONN. DEP'T VETERANS' AFF., <http://www.ct.gov/ctva/cwp/view.asp?a=2005&q=482380> (last modified Jan. 14, 2014).

expressed some confusion with this informal relationship.¹⁶⁹ It would seem that establishing a VTC, with a direct partnership with the Veteran's Center, would be both less confusing and more fruitful. To address Mr. Ment, it seems disingenuous to state that a VTC would not "provid[e] a significant benefit to veterans"¹⁷⁰ in light of the successes of other VTCs—particularly Buffalo's. In all fairness, though, Mr. Ment's testimony was in 2009, before more robust studies and research found that VTCs were incredibly successful and *beneficial* to veterans.¹⁷¹

While critics make valid points, they fall short. Veterans—particularly those injured in combat—have sacrificed and made an extraordinary commitment to the nation. It is no mystery then that Congress¹⁷² and the Supreme Court¹⁷³ recognize and acknowledge the notion that those who volunteer to serve the county should be treated differently. Justice Seamus McCaffery of the Pennsylvania Supreme Court provided an enlightening perspective: "It is important that we as a society give veterans back to their families the way we got them."¹⁷⁴ When young men or women raise their right hand to give the oath of enlistment, a "patriotic contract" is created between the volunteers and the American public. While the volunteers swear to "support and defend the Constitution" (among other things),¹⁷⁵ the American public promises to help them if and when they need it.

¹⁶⁹ *Committee Hearing, supra* note 164, at 5571 (testimony of Sen. John Kissel, Connecticut State Sen. from the 7th District).

¹⁷⁰ *Id.* at 6104.

¹⁷¹ *See, e.g.,* ANNE CARON, MINN. JUDICIAL BRANCH, FOURTH JUDICIAL DISTRICT VETERANS COURT—TWO YEAR REVIEW: JULY 2010—JUNE 2012, at 3–4 (2013), available at http://www.justiceforvets.org/sites/default/files/gallery/Fourth%20Judicial%20District%20Veterans%20Court_Two%20Year%20Review_July2010-June2012%20-%20Copy.pdf (summarizing statistical findings quantifying the benefits and results of a VTC in Minnesota).

¹⁷² As an example, consider the SERV Act, whose acronym morphed over time. The first SERV (which stood for Services, Education, and Rehabilitation for Veterans) was introduced in 2008 by Representative Patrick Kennedy (D-RI) to help establish VTCs, but enactment failed twice. H.R. 7149, 110th Cong. (2008); H.R. 2138, 111th Cong. (2009). The second SERV (which stands for Support Earned Recognition for Veterans) is a bipartisan bill co-sponsored by Representatives Darrell Issa (R-CA) and Tammy Duckworth (D-IL). H.R. 3469, 113th Cong. (2013). The bill intends to prevent abuse of the federal contract system by ensuring that only veterans who actually served get priority in federal contracts. *See* Darrell Issa & Tammy Duckworth, Op-Ed., *Eliminate Fraud in the Veterans Contract System*, THE HILL (Nov. 11, 2013), <http://thehill.com/opinion/op-ed/189904-eliminate-fraud-in-the-veterans-contract-system> (describing the case of Braulio Castillo, who "parlayed an ankle injured while at a military prep school into a service-disabled-veteran designation that gave his business a significant advantage in getting contracts with the federal government").

¹⁷³ *See supra* note 49 and accompanying text.

¹⁷⁴ Mark A. McCormick-Goodhart, Note, *Leaving No Veteran Behind: Policies and Perspectives on Combat Trauma, Veterans Courts, and the Rehabilitative Approach to Criminal Behavior*, 117 PENN ST. L. REV. 895, 922 (2013) (quoting Justice Seamus P. McCaffery) (internal quotation marks omitted).

¹⁷⁵ *Oath of Enlistment*, U.S. ARMY, <http://www.army.mil/values/oath.html> (last visited July 15, 2014).

IV. THE CASE FOR A VETERANS TREATMENT COURT IN CONNECTICUT

A. *Connecticut's Veterans*

There are nearly 250,000 veterans who call Connecticut home, as well as another 9000 active duty members.¹⁷⁶ Out of that population, more than 14,000 served in Afghanistan, Iraq, and other parts of the world since September 11, 2001.¹⁷⁷ Moreover, Governor Dannel P. Malloy forecasts that nearly 8000 veterans are likely to come to Connecticut as a result of both the military drawdown and future budget cuts to the Department of Defense.¹⁷⁸

Connecticut veterans are not immune from the unique and significant challenges that many veterans face across the nation. They too suffer from invisible wounds such as PTSD and TBI.¹⁷⁹ Some veterans who call Connecticut home also struggle with substance abuse and homelessness,¹⁸⁰ as they often lose the structure and support that is provided in the military.¹⁸¹ And some of these veterans may find themselves facing state court proceedings—in part because of PTSD, substance abuse, unemployment, or homelessness.

A DMHAS survey of Connecticut's Gulf War II veterans from 2008, while a bit dated, is illuminating. It found that 21.5% and 22.3% of Connecticut veterans who completed the survey met the criteria for probable PTSD and probable partial PTSD, respectively.¹⁸² Not surprisingly, when you compare this group of veterans to others without either partial or full PTSD, "those with partial PTSD reported poorer health, a higher rate of screening positive for possible mild traumatic brain injury (MTBI), and greater difficulties in family, relationship, work and financial functioning."¹⁸³ The survey also found that, among these Connecticut veterans, "[t]he only significant predictors of increased stigma and barriers to mental health care were negative beliefs about

¹⁷⁶ Exec. Order. No. 36, *supra* note 103.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ See, e.g., THOMAS A. KIRK, JR., CONN. DEP'T OF MENTAL HEALTH & ADDICTION SERVS., FINDINGS ON THE AFTEREFFECTS OF SERVICE IN OPERATIONS ENDURING FREEDOM AND IRAQI FREEDOM AND THE FIRST 18 MONTHS PERFORMANCE OF THE MILITARY SUPPORT PROGRAM 36–37 (2008), available at <http://www.ct.gov/dmhas/lib/dmhas/publications/mspreport101608.pdf> (summarizing findings regarding instances of PTSD and TBI among returning veterans) [hereinafter DMHAS SURVEY].

¹⁸⁰ See CONN. COALITION TO END HOMELESSNESS, 2013 HOMELESS POINT IN TIME COUNT: CT PIT 2013, at 13 (2013).

¹⁸¹ See *Elbogen Study*, *supra* note 65, at e771 (discussing protective factors in the military community).

¹⁸² DMHAS SURVEY, *supra* note 179, at 36–37.

¹⁸³ *Id.* at 37.

psychotherapy and decreased military unit support."¹⁸⁴ The point about a veteran's military unit is particularly important in Connecticut. Even though Connecticut is home to the Naval Submarine Base New London, the Coast Guard Academy, Bradley Air National Guard Base, Camp Niantic, and Camp Hartell,¹⁸⁵ there is no major U.S. Army, U.S. Air Force, U.S. Navy, or U.S. Marine Corps installation.¹⁸⁶ Thus, the Connecticut veterans who served most directly in combat, i.e., Army Soldiers, Sailors, and Marines, will either be in the National Guard, in the Reserves, or will come off of active duty and return to Connecticut from a base in another state. The implication for veterans returning home to Connecticut is that they will not have a large, easily accessible military community. For Connecticut's Guard and Reserve veterans, the effects are more severe because they often have "little time to readjust to their home and families before being required to work in as little as eighteen days."¹⁸⁷ Finally, the DMHAS survey found that a sizeable number of Connecticut's Gulf War II veterans were "returning from their deployments with psychiatric conditions that impair psychosocial functioning and quality of life."¹⁸⁸

B. Connecticut's Pretrial Diversionary Program: Inadequate Substitute

Public Act No. 12-42, An Act Concerning Services for Veterans in Pretrial Diversionary Programs, was enacted in 2012 to establish a supervised diversionary program to specifically include veterans accused of crimes or motor vehicle violations that are not of a serious nature and could carry a prison sentence.¹⁸⁹ In short, the Public Act directly addressed veterans in the criminal justice system.

The legislative lineage of Public Act No. 12-42 begins in 2009. Connecticut was the recipient of a \$2 million, five-year grant from the federal Substance Abuse and Mental Health Services Administration.¹⁹⁰

¹⁸⁴ *Id.* at 38.

¹⁸⁵ *Getting Here*, NAVAL SUBMARINE BASE NEW LONDON, http://www.cnic.navy.mil/regions/cnrma/installations/navsubbase_new_london/about/getting_here.html (last visited July 15, 2014); *Directions, Hours and More*, U.S. COAST GUARD ACAD., <http://www.cga.edu/campus2.aspx?id=677> (last visited July 15, 2014); *Facility List*, CONN. MILITARY DEP'T, <http://www.ct.gov/mil/cwp/view.asp?a=1345&Q=257140&milNav=|> (last visited July 15, 2014).

¹⁸⁶ There are two Marine Reserve Units in Connecticut. *United States Marines Corps Reserve Units*, MARINE CORPS RES. ASS'N, <http://www.usmcra.org/Default.aspx?pageId=855167> (last visited July 15, 2014).

¹⁸⁷ KATE CAHOY ET AL., CONN. VETERANS LEGAL CTR., YALE L. SCH., SB 114: IMPROVING PRE-TRIAL DIVERSION TO MEET THE UNIQUE NEEDS OF CONNECTICUT'S VETERANS 4 (2012) [hereinafter CVLC REPORT], available at http://www.law.yale.edu/documents/pdf/Clinics/SB114White_Paper.pdf.

¹⁸⁸ DMHAS SURVEY, *supra* note 179, at 39.

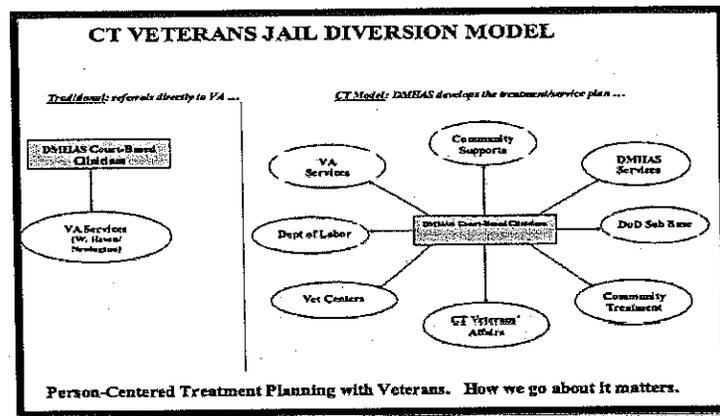
¹⁸⁹ 2012 Conn. Acts, 112 (Reg.) Sess. [hereinafter Pretrial Diversionary Program Act].

¹⁹⁰ *DMHAS Veteran's Services: Veteran's Jail Diversion and Trauma Recovery Services*, DEP'T MENTAL HEALTH & ADDICTION SERVS., <http://www.ct.gov/dmhas/cwp/view.asp?a=3833&Q=453950>

The grant's goal was to help Connecticut establish a jail diversion program for veterans "struggling with war trauma-related problems."¹⁹¹ Connecticut's Veterans Diversion and Trauma Recovery ("VDTR") Program endeavored to "identify, engage and divert justice-involved veterans from arrest and incarceration into a seamless, community-based system of treatment and recovery support services."¹⁹² Even though the VDTR Program focuses on veterans from the wars in Afghanistan and Iraq, all veterans are eligible.¹⁹³

The VDTR Program has three key elements to help it achieve its goals: (1) "Identify, engage, refer and divert veterans"; (2) "Systems Integration"; and (3) "Service Planning/Services Coordination."¹⁹⁴ Element 1 is based on a formal relationship between the DMHAS and participating agencies to "divert[] veterans with trauma-related symptoms to a seamless system of treatment and recovery support services."¹⁹⁵ It is worth highlighting that in Connecticut's pretrial diversionary model, depicted in Figure 1 below, the DMHAS court-based clinicians are in the center of a spoke, which tethers a "seamless system of treatment and recovery support services . . . that brings together the service offerings of each participating federal, state and community-based provider."¹⁹⁶ Like many intricate systems, a picture is worth a thousand words.

FIGURE 1¹⁹⁷



&dmhasNav=0%7C (last modified Apr. 24, 2012).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *CT Veterans Jail Diversion Model*, DEP'T MENTAL HEALTH & ADDICTION SERVS., <http://www.ct.gov/dmhas/lib/dmhas/veteransservices/jaildiversionmodel.pdf> (last visited May 15, 2014).

Ultimately, the outcome the VDTR Program tries to achieve is that "through *person-centered, strength-based planning* that provides veterans' the *choice to access integrated services in their community*[,] treatment outcomes are enhanced and the likelihood that veterans' will successfully fulfill the expectations of the Court is strengthened."¹⁹⁸

The success rates of the VDTR Program are unavailable, but there are fiscal and recidivism estimates for diversion programs. Treating an individual saves Connecticut \$59.69 per day.¹⁹⁹ This figure is based on subtracting Connecticut's average cost of supervising an offender (\$32.66 per day) from the average cost of incarcerating a person (\$92.35 per day).²⁰⁰ One report estimated that the annual cost to incarcerate a veteran is \$33,000, while the annual cost to treat a veteran is \$12,000.²⁰¹

Connecticut has "three forms of alternative incarceration programs ["AIP"]: (1) pre-trial diversion; (2) alternative sanctions; and (3) specialized courts."²⁰² A report analyzing these programs defined recidivism "as new criminal activity by an AIP client after admission to a pre-trial diversion, alternative sanction, or specialized court program."²⁰³ New criminal activity were offenses defined by the Connecticut Penal Code as well as "failure to appear . . . , violation of probation . . . , a motor vehicle infraction, or a violation of state law or local ordinance, all of which [could] result in a court-imposed sanction ranging from prison or probation to a fine or community restitution."²⁰⁴ The same report found that recidivism rates for offenders who participated in an AIP were lower than for those who were directly sentenced.²⁰⁵

Having explained both the background and benefits of Connecticut's pretrial diversionary program, the obvious question follows: why change it? A complete answer is developed below in Part V.B, but a preview follows on why change is required. First, the current model incorrectly establishes the DMHAS as the hub while keeping the Judicial Branch on

¹⁹⁸ DMHAS *Veteran's Services: Veteran's Jail Diversion and Trauma Recovery Services*, *supra* note 190.

¹⁹⁹ See CVLC REPORT, *supra* note 187, at 7.

²⁰⁰ *Id.*

²⁰¹ *Id.* at 8.

²⁰² LEGIS. PROGRAM REVIEW & INVESTIGATIONS COMM., PRE-TRIAL DIVERSION AND ALTERNATIVE SANCTIONS 1 (2004), available at http://www.cga.ct.gov/2004/pridata/Studies/pdf/Alternative_Sanctions_Final_Report.pdf [hereinafter PRE-TRIAL DIVERSION REPORT]. For a more complete discussion of specialized courts and diversionary programs in Connecticut, see JUDICIAL BRANCH OF CONN., SUPERIOR COURT CRIMINAL DIV., A GUIDE TO SPECIAL SESSIONS & DIVERSIONARY PROGRAMS IN CONNECTICUT (2013) [hereinafter COURT GUIDE], available at <http://www.jud.ct.gov/Publications/cr137P.pdf>.

²⁰³ PRE-TRIAL DIVERSION REPORT, *supra* note 202, at 3.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 61 tbl.IV-2.

the periphery. Second, the Court Support Services Division (“CSSD”)²⁰⁶ is not the equivalent to the Anchorage Veterans Court’s VSR, or the Buffalo Veterans Treatment Court’s mentor group, or the Hartford Community Court’s social service team.²⁰⁷ Finally, Public Act No. 12-42 excludes many veterans on the basis of not having a diagnosed mental disorder, and the statutory language of the accelerated rehabilitation statute may inadvertently keep veterans from participating in accelerated rehabilitation.²⁰⁸

V. ESTABLISHING A VETERANS TREATMENT COURT IN CONNECTICUT

A. *Hartford Community Court: A Model of “21st Century Justice”*²⁰⁹

When the Hartford Community Court first opened its doors as a pilot program in November 1998, it was among national trendsetters.²¹⁰ From its inception, the court sought to “address ‘quality of life’ crimes that contribute[d] to the deterioration of local neighborhoods.”²¹¹ The Hartford Community Court combined the efforts of “court-supervised community service and social services to promote responsibility among defendants for their actions while simultaneously offering a helping hand to address the social issues that may be contributing to their behavior.”²¹² The notion of offenders investing back into the community they aggrieved is a restorative justice concept that mixes accountability through opportunity.²¹³ In other words, if an offender completes the community service they earn a dismissal of the case and, thus, the court is not criminalizing them for life.²¹⁴

²⁰⁶ The CSSD “oversees pretrial services, family services, divorce and domestic violence, probation supervision of adults and juveniles as well as juvenile residential centers including Juvenile Detention, . . . [and] also administers a network of statewide contracted community providers that deliver treatment and other support services.” *Court Support Services Division*, JUD. BRANCH CONN., <http://www.jud.ct.gov/cssd/> (last visited July 15, 2014).

²⁰⁷ See discussion *infra* Part V.A (discussing the Hartford Community Court).

²⁰⁸ See discussion *infra* Part V.B.3 (discussing Public Act No. 12-42).

²⁰⁹ The quote is attributed to Judge Raymond R. Norko, presiding judge of the Hartford Community Court. Interview with Chris Pleasanton, Court Coordinator, Hartford Community Court, in Hartford, Conn. (Jan. 6, 2014) (notes on file with author).

²¹⁰ See Quintin Johnstone, *The Hartford Community Court: An Experiment that Has Succeeded*, 34 CONN. L. REV. 123, 123–24 (2001) (noting that only two other community courts existed prior to the Hartford Community Court). Since 1998, thirty-seven other community courts have opened across the United States, as well as three community courts overseas. Carolyn Turgeon, *Community Courts Around the World*, CENTER FOR CT. INNOVATION, <http://www.courtinnovation.org/research/community-courts-around-world?mode=4&url=research%2F4%2Farticle> (last visited July 15, 2014).

²¹¹ *Special Sessions of the Superior Court: Community Court in Hartford*, CONN. JUD. BRANCH, <http://www.jud.ct.gov/external/super/spsess.htm> (last visited July 15, 2014).

²¹² *Id.*

²¹³ Interview with Chris Pleasanton, *supra* note 209.

²¹⁴ *Id.*

The Hartford Community Court is particularly effective because each defendant is "required to meet with the court's social service team" to discuss "substance abuse treatment, education services, health care, and housing options."²¹⁵ This centralized, complete outreach to people in need is the most unique aspect of the Hartford Community Court.²¹⁶

The Hartford Community Court can serve as a model to establish a VTC in Connecticut. Of note, the Hartford Community Court, selected by a competitive peer-review process, is one of three community courts in the nation designated as a mentor court.²¹⁷ As a mentor court, it can "host site visits, participate in conferences and workshops, and provide advice to practitioners . . . seeking either to launch their own community court projects or to replicate community court practices."²¹⁸ The implication of having a mentor court, albeit a community court, is that a newly forming VTC in Connecticut would have the benefit not only of adapting the best practices from other VTCs across the nation, but also of gaining valuable insight on how to overcome Connecticut-specific issues in setting up a problem-solving court. Through the framework established by the Hartford Community Court, a Connecticut VTC can gain ready access to the court's social service team as well as understand the best approach to lobby support from various agencies such as the States' Attorneys, the Division of Public Defender Services, local law enforcement, and local non-profit or community organizations. It is obvious that a VTC requires the sincere commitment—as shown by the Hartford Community Court—of various stakeholders beyond the court.

B. *A Veteran-Centric Problem-Solving Court in Connecticut*

Problem-solving courts use their authority to forge new responses to chronic social, human, and legal problems. . . . They seek to broaden the focus of legal proceedings, from simply adjudicating past facts and legal issues to changing the future behavior of litigants and ensuring the future well-being of communities.²¹⁹

²¹⁵ JULIUS LANG, CTR. FOR CT. INNOVATION, WHAT IS A COMMUNITY COURT?: HOW THE MODEL IS BEING ADAPTED ACROSS THE UNITED STATES 10 (2011), available at <http://www.courtinnovation.org/sites/default/files/documents/What%20is%20a%20Community%20Court.pdf>. The social service team consists of members from the City's Department of Human Services, the State's Department of Social Services and Department of Mental Health and Addiction, and the Capitol Region Mental Health Center. *Id.*

²¹⁶ Interview with Chris Pleasanton, *supra* note 209.

²¹⁷ *Mentor Community Courts*, CENTER FOR CT. INNOVATION, <http://www.courtinnovation.org/mentor-community-courts> (last visited July 15, 2014).

²¹⁸ *Id.*

²¹⁹ Greg Berman & John Feinblatt, *Problem-Solving Courts: A Brief Primer*, 23 LAW & POL'Y 125, 126 (2001).

As it stands today, Connecticut's approach to helping veterans who have become entangled in the criminal justice system is irresolute at best. Therefore, Connecticut is falling behind the national VTC trend. It is true that the VDTR Program, coupled with the Veteran's Center, helps many veterans in need. Furthermore, the accelerated rehabilitation statute permits veterans two opportunities to keep a clean criminal record.²²⁰ However, these measures are Band-Aids when, in reality, a pressure dressing is required.

1. *The Judge Should Be the Hub*

The first, and arguably most important, problem to address is the relationship between the DMHAS and the court. After a judge grants a veteran-offender accelerated rehabilitation, the CSSD will coordinate the link-up between the veteran and the DMHAS. Once the DMHAS accepts the veteran, for all intents and purposes it becomes the sole supervisor.²²¹ Put differently, the veteran is out of sight, out of mind, with the court. Even though the DMHAS has a supervisory role, it does so without any teeth. The DMHAS does not have any ability to hold the veteran accountable other than by reporting his failures to the court.²²² Because it is unclear if the DMHAS reports any of the veteran's progress to the court, the court may not know the status of the veteran. This arrangement is in stark contrast to what was characterized as "[a]n important if not essential part" of the Anchorage Veterans Treatment Court's operation, where the judge supervises the entire process.²²³

Therefore, the first issue to be settled in a Connecticut VTC should be ensuring the court is at the center. By doing so, the judge approves the treatment plan, supervises its progress, and, if needed, can use his judicial power to motivate a less than enthusiastic veteran. Rather than waiting for a report from the DMHAS, the judge could threaten to remove the veteran to the regular docket for failing to continue with his treatment.

A different and more subtle aspect of having the DMHAS as the focal point is that the Department may become an obstacle to treatment. As discussed in Part III.A.1, mental health stigma is a persistent problem in military culture. Placing the court at the center of the process rather than

²²⁰ CONN. GEN. STAT. § 54-56e (2013); see also COURT GUIDE, *supra* note 202, at 8 (discussing the accelerated rehabilitation program as it applies to veterans).

²²¹ See *About DMHAS*, DEP'T MENTAL HEALTH & ADDICTION SERVS., <http://www.ct.gov/dmhas/cwp/view.asp?a=2899&q=334082> (discussing the agency's mission and objectives) (last modified Sept. 26, 2013); see also CONN. GEN. STAT. § 17a-450 (2013) (describing DMHAS's statutory functions and duties).

²²² See CONN. GEN. STAT. § 17a-450(c)(7) (stating that DMHAS may only act under the authority expressly granted to it, which does not include punishing veterans or other patients).

²²³ Hawkins, *supra* note 30, at 565.

the DMHAS may lessen the stigmatic barriers to treatment.²²⁴

Rather than having the court pass off its problems to the DMHAS, a VTC team composed of the judge, the prosecutor, and the public defender could develop expertise on veterans and their needs. The composition of this VTC team "communicates to veterans that someone with authority cares about them and is closely monitoring them."²²⁵ Moreover, when veteran-offenders are assembled in the same docket and in the same courtroom, they in turn support each other.²²⁶ The veteran-offenders will see that they are not alone and share similar problems with other veterans, resulting in another means to break down a barrier to treatment.²²⁷ In essence, a VTC can "replicate[] the camaraderie of the military"²²⁸ and provide similar stability to veterans that they relied upon throughout their military careers.

2. Create a Veteran Mentor Team²²⁹

Next, the CSSD should not serve in the same capacity as a Veterans Mentor Team ("VMT"). Connecticut should adopt a model similar to the courts in Buffalo and Anchorage that pairs veteran-offenders with a mentor. The mentor should be a veteran and, to keep costs down, a volunteer. By seeking volunteers, there will be a large sector of the community represented, thereby allowing pairings based on special skills or needs.²³⁰ There is no reason to believe that Connecticut could not find enough veterans to form part of the VMT.²³¹ Unsurprisingly, a veteran will feel more at ease with another veteran who can better relate to his or her experiences. Thus, a VMT composed of veterans would also help break down stigmatic barriers.

The VMT should also include members of various state agencies and the VA. Similar to the Hartford Community Court's social service team, the VMT needs to establish relationships with various organizations that

²²⁴ See Cartwright, *supra* note 120, at 301-04 (discussing stigma as a barrier to treatment and stating that a specialized veterans court would help minimize mental health stigma).

²²⁵ Russell, *supra* note 119, at 367.

²²⁶ Cartwright, *supra* note 120, at 303-04.

²²⁷ *Id.* at 304.

²²⁸ *Id.*

²²⁹ A title, suggested by the author of this Note, that identifies both the subject (veterans) and the activity (mentoring).

²³⁰ See Cartwright, *supra* note 120, at 304 (discussing the Buffalo VTC's "wide pool of volunteers" that are paired with veterans based on shared experiences or special skills).

²³¹ For example, the Buffalo program has thirty-five volunteers. *Id.* For a non-exhaustive list of veteran organizations in Connecticut, see *Organizations*, CONN. DEP'T VETERANS' AFF., http://www.ct.gov/ctva/taxonomy/ct_taxonomy.asp?DLN=45342&ctvaNav=4534 (last visited July 15, 2014); *Veterans' Service Organizations*, CONN. DEP'T LABOR, <http://www.ctdol.state.ct.us/veterans/ser-vice-org.htm> (last visited July 15, 2014); *Connecticut Veteran Organizations*, VETFRIENDS, <http://www.vetfriends.com/organizations/directory.cfm?state=CT> (last visited July 15, 2014).

can address veterans' needs. Through discussion with the Hartford Community Court and the VDTR, a comprehensive list of state agencies could be obtained. More importantly, a staff member of the local VA should be readily available to a Connecticut VTC to confirm whether a veteran is eligible for VA benefits.²³² If the veteran is eligible for VA benefits, the state can save on the costs of treatment. If the veteran is not eligible for VA benefits, he should be able to receive state-level help offered to any Connecticut resident.

3. Amend the Statutory Language

Public Act No. 12-42 specifically excluded veterans who do not have a mental health disorder diagnosis.²³³ The obvious second order effect is that any veteran who went undiagnosed while in the service will not be eligible for accelerated rehabilitation. Therefore, the first legislative act in establishing a VTC would be not to rely on Public Act No. 12-42, but to expand the statutory language to include more veterans.

First, the legislature should not base eligibility to the VTC exclusively on a mental health disorder diagnosis. Rather, eligibility should be based on veteran status and the nature of the crime. Drawing the eligibility line around a diagnosed mental health disorder may deny veterans with substance abuse problems access to the VTC. Thus, it makes more sense to limit eligibility based on the nature of the crime. In addition, Connecticut should not require a nexus between the veteran's crime and exposure to combat. This myopic requirement would essentially bar any veteran who may suffer PTSD from MST, for example.

Section 54-56e of the Connecticut General Statutes provides a good foundation for the legislature to establish which offenses are eligible for the VTC. The accelerated rehabilitation statute does not limit eligibility to non-violent crimes; however, a key improvement to the statutory language would be to either remove or further develop the term "not of a serious nature."²³⁴ For example, this term may bar some veterans whose offense involves a firearm. In this regard, *State v. Lombardi*²³⁵ is instructive. In *Lombardi*, the offender was charged with disorderly conduct under General Statutes § 53a-182, a class C misdemeanor, for pointing a gun at a fellow employee while asking, "Why is your friend working and so are you, and I'm sitting home not working?"²³⁶ The defendant's employer stated to the

²³² In Connecticut, there are two large VA medical centers—one in Newington and the other in West Haven—as well as various outpatient clinics throughout the state. *VA Connecticut Healthcare System*, U.S. DEP'T VETERANS AFF., <http://www.connecticut.va.gov/> (last visited Mar. 11, 2014).

²³³ Pretrial Diversionary Program Act, *supra* note 189, at 112.

²³⁴ CONN. GEN. STAT. § 54-56e (2013).

²³⁵ Nos. H13WCR120162767S, H13WCR30199825T, 2013 WL 2350504 (Conn. Super. Ct. May 8, 2013).

²³⁶ *Id.* at *1 (internal quotation marks omitted); CONN. GEN. STAT. § 53a-182 (2013).

Windsor Police Department that the defendant was being treated for anxiety.²³⁷ After the execution of a search warrant of the defendant's home, the police found ten firearms, including a prohibited one.²³⁸ The judge summarily denied the defendant's request for accelerated rehabilitation.²³⁹ Without explicitly stating so, the judge in *Lombardi* seems to have categorized this crime as one of a serious nature. Hypothetically, if the defendant in *Lombardi* had been a veteran, there could be some underlying issues that need to be addressed. In a Connecticut VTC, the hypothetical veteran in *Lombardi* could have had a process that actually provided help instead of simply throwing him in jail.

4. Establish a Task Force

Recognizing that Connecticut's fiscal house is not entirely in order,²⁴⁰ the General Assembly should first establish a task force to analyze the best method to implement and fund a VTC. The task force can be composed of the following:

- Members of the legislative Veterans' Affairs Committee and the VA
- A representative from the Division of Criminal Justice and Division of Public Defender Services
- Members of the state and local police departments
- A staff member of the Hartford Community Court
- An open-minded representative from the Judicial Branch
- Members of local state agencies such as the DMHAS, the Departments of Labor, Housing, and Veterans' Affairs, and the Office of Military Affairs
- Members of local veteran organizations, to include the CVLC and Yale's Veterans Legal Services Clinic, if interested

The task force's mandate would be to research other VTCs and find model legislation to recommend to the General Assembly in establishing a pilot program in Connecticut. Additionally, the task force can seek out budgetary ideas to fund the VTC. Starting with the premise that any new court is not likely to be revenue neutral, there can be ways to offset the costs. For example, a reasonable filing fee can be imposed on veterans to have their case placed on the VTC docket. It should go without saying that

²³⁷ *Lombardi*, 2013 WL 235054, at *1.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ See Sarah Amett, *State Fiscal Condition: Ranking the 50 States* 38 tbl.9 (Mercatus Ctr., George Mason Univ., Working Paper No. 14-02, 2014), available at <http://www.hartfordbusiness.com/assets/pdf/HB9896115.PDF> (showing that Connecticut's fiscal condition was the second worst in the nation).

a fee waiver system would be developed for indigent veterans. Nevertheless, as discussed above in Part IV.B, it is important to keep in mind that treatment rather than incarceration will save Connecticut approximately \$21,000 annually per veteran.²⁴¹

Based on public data, it would seem most appropriate to start a pilot program either in Hartford County or New Haven County. For starters, Hartford County has approximately 55,785 veterans²⁴² and New Haven County has approximately 53,753.²⁴³ Also, the crime rates for select offenses in both counties are similar, as depicted in Table 1 below.

TABLE 1
CRIME RATE IN HARTFORD AND NEW HAVEN COUNTIES²⁴⁴

County	Simple Assault	Weapons Charges	Drug Abuse Violations	Driving Under Influence
Hartford	6,655	331	3,698	2,458
New Haven	5,366	296	2,527	1,452

Further, a Hartford County-based VTC should encompass both the Hartford and New Britain Judicial Districts to cover the entire county. This would be particularly useful because the Newington VA is located within the New Britain Judicial District.²⁴⁵ For New Haven County, a VTC should have jurisdiction over both the New Haven-Meriden and Ansonia-Milford Judicial Districts to have the West Haven VA in its jurisdiction.²⁴⁶

VI. CONCLUSION

Nearly 150 years ago, President Abraham Lincoln proclaimed that our nation shall always strive "to care for him who shall have borne the battle, and for his widow, and his orphan."²⁴⁷ Despite the passage of time,

²⁴¹ See *supra* text accompanying note 201.

²⁴² *State & County QuickFacts: Hartford County, Connecticut*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/09/09003.html> (last revised Jan. 6, 2014).

²⁴³ *State & County QuickFacts: New Haven County, Connecticut*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/09/09009.html> (last revised Jan. 6, 2014).

²⁴⁴ See CONN. DEP'T OF EMERGENCY SERVS. & PUB. PROT., *CRIME IN CONNECTICUT 2012*, at 30, 36 (2013), available at <http://www.dpsdata.ct.gov/dps/ucr/data/2012/Crime%20In%20Connecticut%20COMPLETE%202012.pdf>.

²⁴⁵ See *Towns in CT Judicial Districts and Geographical Areas*, CONN. JUD. BRANCH, http://www.jud.ct.gov/statistics/JD_GA.pdf (last visited July 15, 2014) (listing the towns within the New Britain Judicial District).

²⁴⁶ See *id.* (listing the towns within the Ansonia-Milford Judicial District).

²⁴⁷ Pres. Abraham Lincoln, *Second Inaugural Address* (Mar. 4, 1865), available at [http://memory.loc.gov/cgi-bin/query/r?ammem/mal:@field\(DOCID+@lit\(d4361300\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/mal:@field(DOCID+@lit(d4361300))).

historical hindsight, and current events, Connecticut has not fully undertaken President Lincoln's edict, even though it provides generous educational²⁴⁸ and property²⁴⁹ tax benefits to veterans. Other states, however, have made both policy and legislative changes to help veterans whose service-connected trauma or problems resulted in brushes with the law. To date, Connecticut has not done enough and should go further moving forward.

If a Soldier, Airman, Sailor, or Marine is killed in battle, it is final. The family can, in time, move on with their lives. While sad and tragic, it is—to some degree—more heartbreaking when servicemembers return with demons that they struggle to overcome. In most instances, servicemembers will successfully conquer their struggles, but too many will not. A VTC must be established especially for those men and women who were strong (and to some extent lucky) enough to survive, but whose problems post-military service land them on the wrong side of the law. Rather than discard them through a quagmire of judicial bureaucracy, a VTC can provide the help necessary to set them back onto the right path, the path that does not lead to self-destruction. In this sense, Connecticut currently, and tragically, falls short.

²⁴⁸ CONN. GEN. STAT. § 10a-77(d) (2013) (waiving the tuition to regional community-technical colleges for eligible veterans); CONN. GEN. STAT. § 10a-99 (2013) (waiving the tuition to Connecticut State University colleges for eligible veterans); CONN. GEN. STAT. § 10a-105 (2013) (waiving the tuition to the University of Connecticut schools for eligible veterans).

²⁴⁹ CONN. GEN. STAT. § 12-81(19)–(21) (2013) (property tax exemption); CONN. GEN. STAT. § 12-81f (2013) (municipal option to provide additional property tax exemption); CONN. GEN. STAT. § 12-93a (2013) (tax exemption for certain vehicles).