The Soldier Bears the Deepest Wounds and Scars of War:
Mobilizing Connecticut to Implement a Veterans Treatment Court Note

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Note

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

ROSENDO GARZA JR.

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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I. INTRODUCTION

By now, sporting events without the presence of veterans\(^2\) 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

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\(^1\) 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.").

\(^2\) 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=kUkKhRdk8VU.
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.

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\(^5\) Id.


\(^7\) Josh Rogen, 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).


\(^11\) 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.”

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” profits—President George W. Bush cut taxes. 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. 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.”

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.” 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.”

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. But the true consequences

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12 BACEVICH, supra note 4, at 31.
13 Id. at 26.
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/nhslib/ww2/ww12.html (last visited July 15, 2014).
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, and, surprisingly, even stimulant medications skyrocketed among veterans. Constant deployments also equated to a constant absence from the home, and both domestic violence and divorce rates 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.” Moreover, the Defense and Veterans Brain Injury Center reported 307,283 diagnoses of traumatic brain injury (“TBI”) from 2000 through the second quarter of 2014. Most alarming are the suicides among veterans, which hit a record high in 2012.

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

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


\[\text{Jamie Reno, Nearly 30% of Vets Treated by V.A. Have PTSD, DAILY BEAST (Oct. 21, 2012), http://www.thedailybeast.com/articles/2012/10/21/nearly-30-of-vets-treated-by-v-a-have-ptsd.html; see also DEP’T OF VETERANS AFFAIRS, REPORT ON VA FACILITY SPECIFIC OPERATION ENDURING FREEDOM (OEF), OPERATION IRAQI FREEDOM (OIF), AND OPERATION NEW DAWN (OND) VETERANS CODED WITH POTENTIAL PTSD—REVISED 4 (2012), available at http://www.publichealth.va.gov/docs/epidemiology/ptsd-report-fy2012-qtr3.pdf (finding that 239,174 OEF/OIF/OND veterans were given a diagnostic code for PTSD in VA medical centers and 51,173 veterans received service for PTSD at Veteran Centers).}\]


\[\text{Robert Burns, Military Suicides Hit a Record High of 349, TULSA WORLD, Jan. 15, 2013, at A4 (“Suicides in the U.S. military surged to a record 349 [in 2012], far exceeding American combat deaths in Afghanistan.”).}\]
statistics regarding incarcerated veterans shows that ten percent of state prisoners reported prior military service.\(^2\) 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,\(^2\) 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.”\(^3\) 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.”\(^4\)

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


\(^2\) 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.

\(^3\) 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).

\(^4\) Barry R. Schaller, Veterans on Trial: The Coming Court Battles Over PTSD 20 (2012).
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, 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


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.


36 Hawkins, supra note 30, at 568.


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.”).

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

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40 Hawkins, supra note 30, at 571.
41 Id.
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).
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.


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.”).

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." In the case of veterans, it is often reported that they will not seek help for fear of appearing weak, 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.

2. Post-Traumatic Stress Disorder: Invisible Wound

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


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).

thirty percent of Afghanistan and Iraq War veterans treated at VA hospitals and clinics have been diagnosed with PTSD. Moreover, PTSD is associated with other psychological and anti-social behavioral issues. 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.

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.” 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.” 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.”

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.” Other factors affecting veterans are

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).
66 Id.
difficulties re-adapting from the extreme emotional highs and lows found in combat, \textit{id.} isolation caused by civilians misunderstanding their experiences, \textit{id.} and the mental health-related stigma discussed previously. \textit{id.}

3. \textit{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.” \textit{id.} Even though it has proven difficult to precisely diagnose and then treat TBI in a veteran, \textit{id.} research suggests a link to suicides. \textit{id.} 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.” \textit{id.}

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.” \textit{id.} TBI can disrupt a veteran’s life to the point where he may not be able to keep a job. \textit{id.} 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. \textit{id.}
4. The Armed Force’s Shame: Military Sexual Trauma

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.” The President asserted that MST is beyond criminal and is “shameful and disgraceful.” Moreover, President Obama linked MST to a less effective military, which is “dangerous to our national security.”

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. 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.” 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.”

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; (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).
80 Id.
81 Id.
83 Id.
85 SCHALLER, supra note 31, at 173.
which the gender ratio is heavily male-dominated;\(^\text{86}\) (3) the off-duty barracks and military base setting in which women have few places to escape;\(^\text{87}\) and (4) the “unsupportive or offensive behavior of ranking officers.”\(^\text{88}\) 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.”\(^\text{89}\) 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.\(^\text{90}\) 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.”\(^\text{91}\) The VA has granted PTSD claims caused by MST “at significantly lower rates than it has granted claims for PTSD arising from other causes,”\(^\text{92}\) 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,\(^\text{93}\) will also face an intransigent barrier to seeking help (read:

\(^{86}\) Id.

\(^{87}\) Id. at 173–74.

\(^{88}\) Id. at 174.


\(^{90}\) 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.\(^4\) Despite homelessness among veterans declining by 24% since 2009,\(^5\) “12% of the adult homeless population are veterans.”\(^6\) Homeless people, in general, are “overwhelmingly uninsured and often lack access to the most basic health care services.”\(^7\) 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.\(^8\)

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.\(^9\) The unemployment rate for Gulf War II-era veterans, however, sits at 9%.\(^10\) Even more shocking is that 21.4% of veterans aged eighteen to twenty-four are unemployed.\(^11\)

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

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\(^5\) Id.


\(^8\) 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)).


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 2006 104 and, in the case of the...
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.” 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. Before serving eight months in Iraq, Sergeant Ryan was “the kind of guy who brightened the room,” according to his brother. After coming home, Sergeant Ryan had trouble sleeping and became dependent on painkillers. 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. As a consequence of this final arrest, Sergeant Ryan agreed to enroll in Phoenix House, a rehabilitation facility.

On February 5, 2012, Sergeant Ryan left Phoenix House, presumably without authorization, claiming the program did not address his PTSD. Consequently, Nassau District Judge Andrew Engel imposed a $5,000 bail, which Sergeant Ryan could not afford. He was taken to the Nassau County Jail, where he committed suicide that same night. 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.

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


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 Id. supra note 106.
112 Id.
113 Id.
114 Id.
large and the military. 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. 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. In general, these courts follow the ten key components of drug courts promoted by the U.S. Department of Justice or adhere to the ten essential elements of a traditional mental health court.

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. Importantly, VTCs will accept veterans who were discharged under honorable conditions to ensure that most “participants will be

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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.


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]roviding 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.”

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.”).


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 CNTRY. 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.” 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.

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. 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. The presiding judge sets the conditions of bail or pretrial release and sends the defendant to a Veteran Service Representative (“VSR”). As a veteran, the VSR is a critical component of the Anchorage Veterans Court. The VSR helps set up a treatment plan that may include referral to treatment centers for substance abuse or to mental health counseling.

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

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. 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.

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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.
140 Id.
141 Id. For a visual representation of the Anchorage VTC’s process in flowchart form, see id. at 573.
142 Id. at 565.
143 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 recidivism 144 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
with various organizations, including the VA. In Judge Russell’s opinion, however, the Buffalo Veterans Treatment Court’s mentor program deserves singular recognition. The mentors are exclusively veterans, and they volunteer to serve as a “coach, facilitator, advisor, sponsor, and supporter.” 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.” 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.”

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

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. 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.” 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).
any class of offenders with distinct privileges.”

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.”

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. 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.” 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. 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.

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. While the Veteran’s Center provides an incredible service to veterans, it should be an official partner of, and key player in, a VTC. State Senator John Kissel actually

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162 Veronica Flores-Paniagua, DA’s Position Makes Veterans Court DOA, SAN ANTONIO EXPRESS-NEWS, Mar. 30, 2010, at 11A.
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).
expressed some confusion with this informal relationship. 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” 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.

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 Congress and the Supreme Court 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.” 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), the American public promises to help them if and when they need it.

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170 Id. at 6104.
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.
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, as they often lose the structure and support that is provided in the military.180 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.
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.”

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, there is no major U.S. Army, U.S. Air Force, U.S. Navy, or U.S. Marine Corps installation. 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.” 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.”

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. 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.

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184 Id. at 38.
188 DMHAS SURVEY, supra note 179, at 39.
The grant’s goal was to help Connecticut establish a jail diversion program for veterans “struggling with war trauma-related problems.” Even though the VDTR Program focuses on veterans from the wars in Afghanistan and Iraq, all veterans are eligible.

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.” 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.” 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.” Like many intricate systems, a picture is worth a thousand words.

FIGURE 1

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.”

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. 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). 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.

Connecticut has “three forms of alternative incarceration programs [“AIP”]: (1) pre-trial diversion; (2) alternative sanctions; and (3) specialized courts.” 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.” 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.” The same report found that recidivism rates for offenders who participated in an AIP were lower than for those who were directly sentenced.

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. at 8.
201 Id. at 8.
203 PRE-TRIAL DIVERSION REPORT, supra note 202, at 3.
204 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).


\(^{212}\) Id.

\(^{213}\) Id.

\(^{214}\) 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.


218 Id.

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. 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. 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. Because it is unclear if the DHMAS 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.

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 DHMAS, 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

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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).


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.  

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.” Moreover, when veteran-offenders are assembled in the same docket and in the same courtroom, they in turn support each other. 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. In essence, a VTC can “replicate[] the camaraderie of the military” and provide similar stability to veterans that they relied upon throughout their military careers.

2. Create a Veteran Mentor Team

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. There is no reason to believe that Connecticut could not find enough veterans to form part of the VMT. 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).
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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{234} For example, this term may bar some veterans whose offense involves a firearm. In this regard, \textit{State v. Lombardi}\textsuperscript{235} is instructive. In \textit{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?”\textsuperscript{236} The defendant’s employer stated to the

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\textbf{Row 1} & \textbf{Row 2} \\
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\end{table}

\begin{itemize}
\item \textsuperscript{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. \textit{VA Connecticut Healthcare System}, U.S. DEP’T VETERANS AFF., http://www.connecticut.va.gov/ (last visited Mar. 11, 2014).
\item \textsuperscript{233} \textit{Pretrial Diversionary Program Act, supra} note 189, at 112.
\item \textsuperscript{234} \textit{CONN. GEN. STAT. § 54-56e} (2013).
\item \textsuperscript{236} \textit{Id.} at *1 (internal quotation marks omitted); \textit{CONN. GEN. STAT. § 53a-182} (2013).
\end{itemize}
Windsor Police Department that the defendant was being treated for anxiety.\textsuperscript{237} After the execution of a search warrant of the defendant’s home, the police found ten firearms, including a prohibited one.\textsuperscript{238} The judge summarily denied the defendant’s request for accelerated rehabilitation.\textsuperscript{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,\textsuperscript{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 Harford 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

\begin{footnotesize}
\begin{enumerate}
\item Lombardi, 2013 WL 235054, at *1.
\item Id.
\item Id.
\item See Sarah Arnett, 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).
\end{enumerate}
\end{footnotesize}
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**

<table>
<thead>
<tr>
<th>County</th>
<th>Simple Assault</th>
<th>Weapons Charges</th>
<th>Drug Abuse Violations</th>
<th>Driving Under Influence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hartford</td>
<td>6,655</td>
<td>331</td>
<td>3,698</td>
<td>2,458</td>
</tr>
<tr>
<td>New Haven</td>
<td>5,366</td>
<td>296</td>
<td>2,527</td>
<td>1,452</td>
</tr>
</tbody>
</table>

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,

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241 See supra text accompanying note 201.
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)).
historical hindsight, and current events, Connecticut has not fully undertaken President Lincoln’s edict, even though it provides generous educational\textsuperscript{248} and property\textsuperscript{249} 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.

\textsuperscript{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).

\textsuperscript{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).