Leaving No Veteran Behind: Policies and Perspectives on Combat Trauma, Veterans Courts, and the Rehabilitative Approach to Criminal Behavior

Mark A. McCormick-Goodhart*

Abstract

As of June 2012, at least 104 jurisdictions spanning 28 states have created specialized criminal courts for veterans. Known as Veterans Treatment Courts (VTCs), these courts focus on rehabilitation, rather than incarceration, to address the root causes of criminal behavior. Although other articles have described the emergence of VTCs, few, if any, have focused on the jurisdictional differences between them. This Comment addresses the basic treatment process and jurisdictional differences among VTCs in the United States, with a particular focus on VTCs in Pennsylvania. This Comment also discusses trends in the VTC movement, the effectiveness of VTCs to date, perspectives from both critics and advocates, and the need for greater awareness efforts regarding the unique purposes of these courts.

Table of Contents

I. INTRODUCTION .............................................................. 896
II. PTSD AND THE PSYCHOLOGICAL CONSEQUENCES OF WAR .......... 898
   A. The History of Combat Trauma ........................................ 899
   B. Post-Traumatic Stress Disorder and Modern Warfare ............ 901
   C. Understanding PTSD: Symptoms and Diagnosis .................. 902
III. LINKING PTSD AND CRIMINAL BEHAVIOR .......................... 904
   A. Setting the Framework: PTSD and Criminal Behavior .......... 904

* First Lieutenant, U.S. Marine Corps; J.D. Candidate, The Dickinson School of Law of The Pennsylvania State University, 2013; B.A., Economics, Grinnell College, 2010, with honors. The author is indebted to his mother, father, and fiancée for their unconditional support. The author appreciates helpful feedback from William Fox, Mary Polacheck, George Pecchio, Nick Dienst, and Stephen Zimowski. Any errors are the author’s responsibility.
On a tour of this country . . . I have visited 18 governmental hospitals for veterans. In them are a total of about 50,000 destroyed men . . . men who were the pick of the nation 18 years ago. Boys with a normal viewpoint were taken out of the fields and offices and factories and classrooms and put into the ranks. There they were remolded; they were made over; they were made to “about face”; to regard murder as the order of the day. They were put shoulder to shoulder and, through mass psychology, they were entirely changed. We used them for a couple of years and trained them to think nothing at all about killing or being killed. Then, suddenly, we discharged them and told them to make another “about face!” We didn’t need them anymore.  

I. INTRODUCTION

The psychological consequences of war can be devastating. As Judge Charles Kornmann reflected during the sentencing of one veteran, “[N]ot all the casualties [of war] . . . come home in body bags.” For


2. See generally RAND CTR. FOR MIL. HEALTH POL’Y RES., INVISIBLE WOUNDS OF WAR: SUMMARY AND RECOMMENDATIONS FOR ADDRESSING PSYCHOLOGICAL AND COGNITIVE INJURIES (Terri Tanielian & Lisa H. Jaycox eds., 2008) [hereinafter INVISIBLE WOUNDS OF WAR].

some veterans, the greatest struggle they encounter is the return to a regular life.\footnote{Telephone Interview with Bradley Schaffer, coordinator of the Veterans Justice Outreach Program, Dep’t of Veterans Affairs, Butler Healthcare Ctr., Butler, Pa. (Sept. 13, 2011) [hereinafter Schaffer Interview].}

Indeed, “he came back different” is a shared refrain among the loved ones of many returning veterans.\footnote{See, e.g., ILONA MEAGHER, MOVING A NATION TO CARE: POST-TRAUMATIC STRESS DISORDER AND AMERICA’S RETURNING TROOPS 117 (quoting a friend of one veteran: “[W]hen he came back from Iraq the difference in him was so sad.”); Sontag, supra note 3 (documenting behavioral changes in veterans who committed homicide after returning from Iraq and Afghanistan); BRETT A. MOORE & CARRIE H. KENNEDY, WHEELS DOWN: ADJUSTING TO LIFE AFTER DEPLOYMENT 7-19 (2011) (discussing some of the changes that veterans should expect post-deployment).} For instance, U.S. Army Specialist (SPC) Shane Parham—like many others—returned from Iraq irritable, detached, and volatile.\footnote{See Moni Basu, Seven Months in Iraq, Six Years Back Home: A Soldier’s War on Two Fronts, CNN (May 22, 2011), http://bit.ly/zhCcvR.} He suffered from sleeplessness and excessive drinking, and he kept a weapon near him at all times.\footnote{See id.} He returned from Iraq as a war hero;\footnote{See id.} however, within one year of his diagnosis with post-traumatic stress disorder (PTSD), Parham had been charged with obstruction of an officer, disorderly conduct, and driving under the influence of alcohol (DUI).\footnote{Id.} He had also attempted suicide twice.\footnote{Id.; see also Other than Honorable, IN THEIR BOOTS, http://bit.ly/zJwCvT (last visited Jan. 10, 2013) (discussing the VTC in Orange County, California, and the struggles of three combat veterans in the criminal justice system); Robert T. Russell, Veterans Treatment Court: A Proactive Approach, 35 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 357, 363-64 (2009) (discussing the VTC in Buffalo, New York).}

In view of veterans like SPC Parham who struggle after returning from duty, both the military and the criminal justice system are tasked with finding ways to deal with veterans who commit crimes. The question remains whether incarceration is the most practical solution.

As of June 2012, at least 104 jurisdictions spanning 28 states have created specialized Veterans Treatment Courts (VTCs).\footnote{The History, NAT’L ASS’N OF DRUG CT. PROF’LS, http://bit.ly/Ru5eSz (last visited Jan. 10, 2013).} Rather than incarcerating veterans, these courts focus on rehabilitative treatment to address the underlying causes of criminal behavior.\footnote{Id.} This Comment focuses on that rehabilitative system. Although other articles have described the emergence of VTCs, few, if any, have focused on the jurisdictional differences among these courts and the major criticisms lodged against them.
This Comment begins with a discussion of PTSD, a major justification for the development of VTCs. Specifically, Part II will describe PTSD symptoms and the diagnostic history of this disorder. Part III will address the link between PTSD and criminal behavior, and Part IV will explore the development of VTCs to address this issue. Part IV will also discuss the VTC process, the effectiveness of maintaining a VTC, and perspectives on VTCs from both critics and advocates. Finally, Part V will conclude with a recommendation that, as the VTC movement continues to gain momentum, advocates should focus on awareness campaigns to emphasize the purposes of these courts.

II. PTSD AND THE PSYCHOLOGICAL CONSEQUENCES OF WAR

Since 2001, the U.S. military has deployed more than two million troops in support of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF). Although most soldiers function normally despite repeated deployments, roughly 10 to 20 percent of these returning troops exhibit psychological problems warranting treatment. Studies indicate that veterans are susceptible to aggression, risk-taking behavior, depression, and suicide.

In recent years, no psychological difficulty among veterans has received greater attention than PTSD. While estimates vary, studies...
indicate that 10 to 20 percent of OIF and OEF veterans develop significant PTSD symptoms following deployment. PTSD also coincides with other psychological and behavioral issues. Due to PTSD’s complexity, Part II provides an overview of the diagnostic history and symptoms of this disorder.

A. The History of Combat Trauma

Stories of PTSD-like symptoms date back to ancient Greece. In Homer’s Iliad, Achilles’s grief after the death of his friend Patroclus, and his sense of betrayal at the hands of his commander Agamemnon, was so overwhelming that he renounced hope of returning from war alive.
Some scholars have commented that Achilles’s behaviors would likely warrant a PTSD diagnosis in a modern setting.27

During the American Revolutionary War, troops in the Continental Army suffered from “melancholia,” a condition referring to invasive flashbacks, and “nostalgia,” a depression allegedly caused by homesickness. 28 During the American Civil War, physicians recognized similar PTSD-like symptoms as “soldier’s heart” or “irritable heart.” 29

Throughout the nineteenth century, military commanders showed little sympathy towards combat-stressed troops. 30 Soldiers incapable of masking their symptoms were either reassigned or shot by firing squad. 31 Commanders believed that such executions would instill obedience within the ranks and eliminate “the contagion of weakness.” 32

During World War I, combat stress acquired the evocative diagnostic label “shell shock.” 33 Some shell-shocked soldiers suffered from “nervous instability” and “breathlessness”; 34 many showed odd symptoms such as the inability to see, smell, or taste, although they suffered no physical injury. 35 Initially, physicians theorized that artillery-shell explosions caused physical “shocks” to the nervous system. 36

Military physicians later replaced the term “shell shock” with “war neurosis.” 37 Physicians hypothesized that the cause of war neurosis was emotional, rather than physical, because explosive concussions failed to explain many “shell shock” cases. 38 Like their American Civil War

27. See id.
28. See Coleman, supra note 1, at 23.
30. Coleman, supra note 1, at 23 (describing how soldiers were “buried as they fell” in unmarked graves to “symbolically erase” their existence).
31. See Coleman, supra note 1, at 23-24; Dean, supra note 29, at 68-69; Meagher, supra note 5, at 15.
32. Coleman, supra note 1, at 23.
35. See Finley, supra note 24, at 90; Shephard, supra note 33, at 1-3.
36. See Shephard, supra note 33, at 1-3.
38. See id.; see also Dean, supra note 29, at 35; Finley, supra note 24, at 90. Indeed, some psychiatrists estimated that 90% to 95% of shell-shocked soldiers suffered from a “nervous breakdown brought about by fear, fatigue, and horrific experiences.”
counterparts, World War I commanders executed many combat-stressed troops; 39 one commander tied the “cowards” to front-line barbed wire to be shot by the enemy. 40

During World War II, the military sought to avoid combat-stress symptoms by closely screening draftees for any predisposition to mental illness. 41 This process disqualified 1.6 million of 20 million draftees; 42 however, over 1.3 million soldiers eventually developed a mental illness during World War II. 43

After screening procedures failed to reduce the “psychiatric casualty” rate, 44 the medical community began to recognize that anyone could develop combat stress. 45 One of World War II’s greatest Allied Forces commanders, General George Patton, might have even suffered from it. 46 By the end of World War II, physicians replaced war neurosis with the less stigmatizing term “combat fatigue.” 47

**B. Post-Traumatic Stress Disorder and Modern Warfare**

Although combat trauma received significant attention from military physicians during the first half of the twentieth century, the Vietnam War redefined the condition for both the medical community and society. 48 Dr. Matthew Friedman, Executive Director of the National Center for PTSD, identified the issue’s magnitude: “[Veterans] were

---


40. See Finley, supra note 24, at 92; Dean, supra note 29, at 35; Wanke, supra note 37, at 127.

41. See Finley, supra note 24, at 93; Shephard, supra note 33, at 201.

42. Meagher, supra note 5, at 13. Meagher asserts that General Patton was just one in a “long line of soldiers” affected by combat stress. *Id.* (quoting Carlo D’Este, *Patton: A Genius for War* 539 (1996) (“Patton’s difficulty was that he refused to acknowledge in himself the battle fatigue he deplored in his men.”)).

43. Wanke, supra note 37, at 142.

flooding the clinics, demanding that we do something for their distress. We had no clinical terminology for what we were seeing. Their suffering was so raw.49

In response, some clinicians proposed the formal recognition of “post-Vietnam syndrome”50 for an array of symptoms including rage, guilt, emotional numbness, and alienation.51 These advocacy efforts also collided with a revolutionary shift in modern psychiatry: an attempt to create standard diagnostic criteria for mental illnesses.52 By the late 1970s, the American Psychiatric Association (APA) considered adopting post-Vietnam syndrome in its Diagnostic and Statistical Manual of Mental Disorders (DSM).53 Some APA members were reluctant to do so because research did not support its distinction from other mental illnesses.54 That is, many psychiatrists argued that post-Vietnam syndrome’s cause—a traumatic event—was unique, but not its symptoms.55 Nevertheless, the APA officially recognized post-Vietnam syndrome in 1980, renaming it PTSD.56

C. Understanding PTSD: Symptoms and Diagnosis

By the late 1980s, PTSD had become an internationally recognized disorder.57 PTSD is currently associated with traumatic events such as childhood abuse, rape, automobile accidents, terrorist attacks, and natural disasters.58 The disorder currently affects between one and three percent of the U.S. population.59 Despite its widespread recognition, PTSD

50. MEAGHER, supra note 5, at 20.
51. See FINLEY, supra note 24, at 95.
52. Id.
53. Id.
54. See id. at 96.
55. See id.
56. See generally AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (3d ed. 1980); Hafemeister & Stockey, supra note 48, at 94.
59. See INST. OF MED. OF THE NAT’L ACDMS., supra note 21, at 26 (citing Ronald C. Kessler et al., Lifetime Prevalence and Age-of-Onset Distributions of DSM-IV Disorders in the National Comorbidity Survey Replication, 62 ARCH. GEN. PSYCHIATRY 593 (2005)); see also National Comorbidity Survey Replication, Dep’t of Health Care Pol’y,
remains hotly debated among clinicians who disagree about its causes, symptoms, and treatment. Notwithstanding these debates, the DSM establishes the generally accepted diagnostic criteria for PTSD. The DSM requires (1) a traumatic experience and (2) distress symptoms that fall into each of three categories: intrusive recollections, avoidant and numbing symptoms, and increased arousal symptoms. Such symptoms must persist for at least one month and significantly influence the patient’s daily life.

While medical opinions concerning PTSD diagnosis have diverged since its recognition, clinicians generally agree that the disorder is a serious mental illness. They also agree that PTSD is treatable. Some studies indicate that certain treatments can even eliminate PTSD symptoms.


60. FINLEY, supra note 24, at 2.
61. See DSM-IV-Tr, supra note 58, at 463-68; KINCHIN, supra note 57, at 15.
62. DSM-IV-Tr, supra note 58, at 467. The DSM defines a traumatic event as a subjective response involving “fear, helplessness, or horror.” Id.
63. Id. at 468 (describing recollections as dreams, memories, or feelings of reliving the trauma).
64. Id. at 464, 468. Avoidant behaviors refer to efforts to avoid thoughts or feelings associated with the traumatic event. Id. at 468. Symptoms in this category also include emotional distancing or “numbness.” Id. Numbing can lead to a lack of emotion, detachment from others, and the inability to imagine a future. Id.
65. DSM-IV-Tr, supra note 58, at 464, 468. Increased arousal symptoms often include symptoms of irritability, sleeplessness, and extreme vigilance. Id. at 464.
66. Id. at 468.
67. FINLEY, supra note 24, at 168-69.
68. See generally EFFECTIVE TREATMENTS FOR PTSD: PRACTICE GUIDELINES FROM THE INTERNATIONAL SOCIETY FOR TRAUMATIC STRESS STUDIES (Edna B. Foa et al. eds., 2d ed. 2009).
69. Studies suggest that effective PTSD treatments involve exposure-oriented therapies to overcome avoidance behaviors. See David P. Valentiner, Coping Strategies and Posttraumatic Stress Disorder in Female Victims of Sexual and Nonsexual Assault, 105 J. ABNORMAL PSYCHOL. 458 (1996); INST. OF MED. OF THE NAT’L ACADEMS., supra note 21, at 97. Exposure therapies involve deliberate encounters with traumatic memories until the intensity of the negative emotions subside. See INST. OF MED. OF THE NAT’L ACADEMS., supra note 21, at 97. Studies also indicate that these treatments are effective for OIF and OEF veterans. See, e.g., Sheila Rauch et al., Prolonged Exposure for PTSD in a Veterans Health Administration PTSD Clinic, 22 J. TRAUMATIC STRESS 62 (2009); Peter W. Tuerk et al., Diagnosis and Treatment of PTSD-Related Compulsive Checking Behaviors in Veterans of the Iraq War: The Influence of Military Context on the Expression of PTSD Symptoms, 166 AM. J. PSYCHIATRY 762 (2009).
III. LINKING PTSD AND CRIMINAL BEHAVIOR

The media has recently investigated whether veterans are more likely than civilians to commit crimes. In 2008, for example, *The New York Times* documented 121 cases in which American veterans were charged with homicide shortly after returning from Iraq or Afghanistan. The article drew heavy criticism for its statement that combat trauma sets the stage for later criminal misconduct. Despite this critical reaction, evidence suggests a causality that cannot be ignored.

A. Setting the Framework: PTSD and Criminal Behavior

In a seminal 1983 study, John P. Wilson and Sheldon D. Zigelbaum examined the possible connection between PTSD and criminal behavior in 114 Vietnam combat veterans. These researchers found a significant relationship between PTSD and crime. Specifically, their results indicated that PTSD correlated with weapons charges, DUI, disorderly conduct, and assault.

Wilson and Zigelbaum also provided an influential framework by which researchers could link crimes to PTSD symptoms. The authors proposed that PTSD-inflicted veterans re-experience trauma in a

---


72. One commentator criticized Sontag and Alvarez’s methodology, arguing that the research showed only a “dramatic increase in the number of news reports in which homicide defendants are identified as servicemen or recent veterans.” James Taranto, *We Stand Behind Our Stereotype*, WALL ST. J. (Jan. 14, 2008), http://on.wsj.com/w4qPJC. Similarly, another commentator observed that Sontag and Alvarez provide “another example of how statistics and facts can be tweaked to push whatever agenda or outcome a person desires.” David Paulin, *The Return of the Wacko Vet Media Narrative*, AM. THINKER (Feb. 2, 2008), http://bit.ly/wWyIWR.


75. Id. at 80.

76. Id.

77. See Holbrook, supra note 73, at 27 (asserting that the Wilson & Zigelbaum study continues to influence research on PTSD and criminal responsibility).
“survivor mode.” This mode can manifest in three distinct ways leading to crime: dissociative syndrome, sensation seeking syndrome, and depression-suicide syndrome.

First, the authors asserted that dissociative syndrome is commonly associated with violent behavior. Veterans with this syndrome will often react as they did in combat. That is, behaviors in this state tend to be aggressive and directed at perceived danger.

Second, veterans sometimes display sensation-seeking syndrome. Characterized by attempting to find excitement “similar to that experienced in combat,” this syndrome manifests in risk-taking activities such as parachute jumping, motorcycle riding, and gambling. Behaviors in this state are frequently associated with nonviolent crimes.

Finally, Wilson and Zigelbaum hypothesized that depression-suicide syndrome can motivate criminal behavior. Veterans in this state tend to experience painful imagery, hopelessness, and survivor guilt. To end their psychological pain, veterans in this state may attempt suicide or react violently toward perceived sources of suffering.

B. Supporting Evidence for the Framework

Subsequent research has corroborated Wilson and Zigelbaum’s findings. Notably, in 1983, Congress mandated an extensive study of
PTSD among Vietnam veterans. This four-year study culminated in the 1988 National Vietnam Veterans Readjustment Survey (NVVRS). The NVVRS showed that 45.7 percent of male combat veterans with active PTSD had been arrested at least once, compared to only 11.6 percent of male veterans without PTSD.

In 2007, researchers also examined the relationship between PTSD and violence in 1,140 incarcerated male felons. This study differed from past research in that many participants experienced traumatic events unrelated to combat. Nevertheless, compared to inmates without PTSD, those inmates with PTSD were 6.75 times more likely to have been arrested for a violent crime in the year before their imprisonment. After controlling for demographics, antisocial personality, and chronic drinking, the researchers concluded that PTSD was “causally important” to violent behavior.

Recently, researchers in the United Kingdom also reviewed nearly a dozen studies concerning PTSD prevalence rates in offender populations. The researchers acknowledged the difficulty of linking PTSD and violence because additional factors—substance abuse and personality traits, for example—contribute to aggressive behavior. Nevertheless, the researchers concluded that past studies supported a “direct association” between PTSD and violence.

IV. VETERANS TREATMENT COURTS: A REHABILITATIVE APPROACH

Given the percentage of veterans with PTSD, as well as the evidence to support a link between PTSD and crime, it is not surprising that many veterans find themselves in criminal courts. Concerned by the number of veterans appearing in their courtrooms, in

92. Id.
93. Id. at 186-87.
95. Id. at 205 (stating that two-thirds of the inmates were non-veterans).
96. Id. at 215.
97. Id. at 216.
99. Id. at 71.
100. Id. at 81.
101. See supra Part II.
102. See supra Part III.
103. See Russell, supra note 12, at 362-63 (noting the increased prevalence of veterans in criminal courts).
2004, Judges Sigurd Murphy and Jack Smith created a VTC in Anchorage, Alaska. This small-scale effort consists of alternative sentence arrangements based on rehabilitation for misdemeanor offenses.

According to Judge Smith, this alternative sentence arrangement is like “a contract” in which the prosecutor gives the defendant two options: “This is what’s going to happen with your criminal case if you follow through with treatment; this is what will happen if you don’t.” Judge Smith further commented that treatment usually requires the offender to commit more time and effort than is involved in a traditional sentence. One veteran, for example, chose to undergo 18 months of treatment instead of serving fewer than 30 days in jail.

In 2008, Judge Robert T. Russell developed the first official VTC in Buffalo, New York. While presiding over Buffalo’s Drug Treatment Court and its Mental Health Court, Judge Russell had noticed many veterans on his docket. Consequently, Judge Russell created a specific criminal docket for veterans. This court was the first of its kind, matching offenders with mentors who offer support “in a way that only other veterans can.”

In addition to providing mentors, the Buffalo VTC works closely with medical professionals and the U.S. Department of Veterans Affairs.


106. Ruggeri, supra note 104.

107. See id.

108. Id.

109. See Berenson, supra note 104, at 39 (discussing “the current [VTC] movement” beginning in Buffalo, New York); Russell, supra note 12, at 364. Many media reports have discussed the Buffalo VTC. See, e.g., Judge: Keep Vets Out of Jail, NAT’L PUB. RADIO (June 18, 2008), http://n.pr/AdjWZ7; The Today Show: A Courtroom Just for Veterans (NBC television broadcast Oct. 22, 2008); Matthew Daneman, N.Y. Court Gives Veterans Chance to Straighten Out, USA TODAY (June 1, 2008, 9:03 PM), http://usat.at/ww7ibi; Carolyn Thompson, Special Court for Veterans Addresses More than Crime, BOSTON GLOBE (July 7, 2008), http://bo.st/AEuNWm.


111. Id. at 368.

112. Id. at 370.
(VA) to address the needs of each veteran. Serving veterans who suffer from substance abuse and mental illness, the Buffalo VTC has some similarities to drug and mental health courts. In fact, all of these “problem-solving” courts have similar characteristics:

Problem-solving courts use their authority to forge new responses to chronic social, human, and legal problems including problems like family dysfunction, addiction, delinquency, and domestic violence that have proven resistant to conventional solutions. 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.

Simply put, problem-solving courts address risk factors associated with crime to reduce recidivism rates and improve the lives of criminal defendants. Communities are now establishing VTCs, the newest such problem-solving court, at a rate faster than any other treatment model in the United States.

A. VTCs in Pennsylvania

With the fifth largest veteran population in the United States, Pennsylvania is among the leaders of the VTC movement. Pennsylvania opened its first VTC in November 2009. As of April 11, 2011, 119 Pennsylvania had opened 12 VTCs.

113. Id. at 368-70; see also BUFFALO VETERANS COURT, MENTORING AND VETERANS HOSPITAL PROGRAM AND POLICY AND PROCEDURE MANUAL, available at http://bit.ly/AdSz3i.
115. Problem-solving courts began in 1989 with the first drug court in Dade County, Florida. See DRUG STRATEGIES, DRUG COURTS: A REVOLUTION IN CRIMINAL JUSTICE 8 (1999). Since then, jurisdictions have developed dozens of different treatment court models. See id. at 31-36.
117. See id. at 131-32.
120. Interview with Chief Justice Ronald D. Castille, Pa. Supreme Court, in Harrisburg, Pa. (Nov. 29, 2011) [hereinafter Castille Interview].
2012, VTCs operate in thirteen counties, and six additional counties are currently in the process of planning them.\textsuperscript{122} As with other problem-solving courts, no two VTCs are identical.\textsuperscript{123} Most VTCs follow the Buffalo court model, but key differences have emerged in jurisdictions throughout both Pennsylvania and the United States.\textsuperscript{124} A brief case study illustrates these differences.

1. Montgomery County, Pennsylvania

The Montgomery County VTC opened in April 2011.\textsuperscript{125} The following information derives from the\textit{ Montgomery County Veterans Treatment Court Policy and Procedure Manual}.\textsuperscript{126}

a. Eligibility

Participants must qualify for VA benefits\textsuperscript{127} and suffer from Traumatic Brain Injury (TBI),\textsuperscript{128} PTSD, substance abuse, or some other psychological problem.\textsuperscript{129} In addition, the court often handles “non-violent offenses” but considers each offense on a “case-by-case basis.”\textsuperscript{130} The VTC does not consider murder or manslaughter under any circumstances.\textsuperscript{131}


\textsuperscript{123} Interview with Justice Seamus P. McCaffery, Pa. Supreme Court, in Harrisburg, Pa. (Nov. 29, 2011) [hereinafter McCaffery Interview].

\textsuperscript{124} See discussion infra Part IV.A.1.

\textsuperscript{125} MONTGOMERY CNTY., VETERANS TREATMENT COURT POLICY AND PROCEDURE MANUAL 1 (2011) [hereinafter MONTGOMERY PROCEDURE MANUAL], available at http://bit.ly/wWKjR0.

\textsuperscript{126} See id.


\textsuperscript{128} TBI is a physiological injury caused by explosive impacts to the brain. See Finley, supra note 24, at 98. TBI symptoms may be difficult to distinguish from PTSD. See Charles W. Hoge et al., Mild Traumatic Brain Injury in U.S. Soldiers Returning from Iraq, 358 NEW ENG. J. MED. 453, 457 (2008) (concluding that TBI is strongly associated with PTSD); Deborah Warden, Military TBI During the Iraq and Afghanistan Wars, 21 J. HEAD TRAUMA REHAB. 398, 400 (2006) (discussing overlapping symptoms of PTSD and TBI). Although this Comment does not address TBI, the arguments supporting VTCs for veterans with PTSD may be extended to veterans with TBI.

\textsuperscript{129} MONTGOMERY PROCEDURE MANUAL, supra note 125, at 2.

\textsuperscript{130} Id.

\textsuperscript{131} Id.
Like the Montgomery court, VTCs in other jurisdictions generally restrict eligibility to veterans with mental illnesses or substance abuse issues.\textsuperscript{132} Some VTCs restrict eligibility solely to combat veterans.\textsuperscript{133} In addition, some VTCs accept veterans who are not eligible for VA benefits.\textsuperscript{134} Finally, some VTCs exclude veterans with substance abuse issues, limiting eligibility to veterans with mental illnesses.\textsuperscript{135}

With respect to eligible offenses, the Montgomery VTC follows the standard approach.\textsuperscript{136} That is, most VTCs focus on non-violent crimes,\textsuperscript{137} although some VTCs handle low-level domestic violence charges.\textsuperscript{138} In addition, some VTCs limit eligibility to misdemeanor offenses.\textsuperscript{139} All VTCs appear to exclude sexual assault, child abuse, and serious violent crimes.\textsuperscript{140}

\begin{itemize}
    \item 132. See Holbrook & Anderson, supra note 105, at 25-27. This restriction makes sense considering the primary purpose of VTCs is to provide treatment for mental illness and other risk factors associated with crime.
    \item 133. Blackburn Interview, supra note 121. For example, the VTC in Orange County, California, only accepts combat veterans eligible for probation. See Melissa Pratt, New Courts on the Block: Specialized Criminal Courts for Veterans in the United States, 15 APPEAL 39, 54 (2010).
    \item 134. Blackburn Interview, supra note 121 (stating that some VTCs, such as the VTC in Philadelphia, Pennsylvania, do not require defendants to be eligible for VA benefits). However, even when VTCs do not require veterans to be eligible for VA benefits, VA involvement is critical. See Holbrook & Anderson, supra note 105, at 25.
    \item 135. For example, the VTC in Tarrant County, Texas, limits eligibility to veterans with “brain injury, mental illness, or mental disorder, including post-traumatic stress disorder.” See Veterans Court Diversion Program: Criteria, Tarrant Cnty., http://bit.ly/A54TxZ (last updated Nov. 30, 2011).
    \item 136. See Holbrook & Anderson, supra note 105, at 26 (finding that some VTCs will consider certain felonies but most exclude serious violent offenses).
    \item 138. McCaffery Interview, supra note 123 (describing the VTC in Allegheny County, Pennsylvania); see also Tracy Carbasho, Veterans Court Provides Support and Services for Local Veterans, J. Allegheny Cnty, B. Ass’n, Jan. 29, 2010, at 4. Although the Allegheny VTC considers low-level domestic abuse charges, it excludes violent crimes such as homicide, sexual offenses, drug trafficking, assault with a deadly weapon, and burglary of a residence. Cnty. of Allegheny Office of the Dist. Att’y, A Guide to Allegheny County Veterans Court 2 (2010) (on file with author).
    \item 139. For example, the VTC in Anchorage restricts eligibility to misdemeanor offenses. See Alaska Court Sys., supra note 105. Nevertheless, many VTCs will consider certain felonies. See Holbrook & Anderson, supra note 105, at 38.
    \item 140. See Holbrook & Anderson, supra note 105, at 26.
\end{itemize}
b. Application Process

The Montgomery VTC accepts referrals from sources such as law enforcement, the prosecutor, defense counsel, or the actual offender. Referrals are initially directed to the Adult Probation Office after criminal charges have been filed against the defendant or after the offender violates an existing probation or parole sentence.

Once the VTC receives a referral, a Veterans Justice Outreach (VJO) specialist meets with the offender to determine his or her eligibility for VA benefits. The VJO specialist determines the offender’s suitability for medical treatment and other VA programs. The VJO specialist then provides the VTC with a report outlining the offender’s criminal history and a proposed treatment plan.

The VTC Team ultimately determines whether the offender may enter the program. The team considers the type of offense, the offender’s behavioral health issues, and the likely success of treatment. To a lesser degree, the Montgomery team also considers whether the offender assumed responsibility for his or her actions and whether the offender has a strong sense of military identity.

---

141. See MONTGOMERY PROCEDURE MANUAL, supra note 125, at 3; Telephone interview with Stephanie Landes, VTC Court Coordinator, Montgomery Cnty. (Jan. 3, 2011) [hereinafter Landes Interview].
142. Id.
143. The VJO specialist is a representative from the VA who coordinates VA programs for veteran offenders in local courts and jails. Schaffer Interview, supra note 4; see also Veterans Justice Outreach Initiative, DEP’T OF VETERANS AFFAIRS, http://1.usa.gov/yU779D (last visited Jan. 12, 2013).
144. The VA has three major subdivisions: The Veterans Health Administration (VHA), the Veterans Benefits Administration (VBA), and the National Cemetery Administration (NCA). See generally OFFICE OF HUM. RES. & ADMIN., DEPARTMENT OF VETERANS AFFAIRS ORGANIZATIONAL BRIEFING BOOK (2010), available at http://1.usa.gov/x2V7J0. The VHA is critical to VTCs because it provides treatment for mental illness, substance abuse, and PTSD. Schaffer Interview, supra note 4. The VHA has regional divisions known as Veterans Integrated Services Networks (VISNs). Id. Each VISN has VA medical centers, and each VA medical center has a VJO specialist. Id. Aside from healthcare, the VA provides other benefit programs. For instance, the VBA offers five main programs including Home Loan Guaranty, Insurance, Vocational Rehabilitation and Employment, Education, and Compensation and Pensions. Id.
145. Schaffer Interview, supra note 4; see also discussion supra note 144.
146. MONTGOMERY PROCEDURE MANUAL, supra note 125, at 3.
147. The VTC team includes the judge, court coordinator, the DA, defense counsel, a probation officer, and a VA representative. See discussion infra Part IV.A.1.c.
148. MONTGOMERY PROCEDURE MANUAL, supra note 125, at 3.
149. Id. at 2.
150. Landes Interview, supra note 141 (stating that veterans with a strong sense of military identity tend to be more successful in the program).
the offender must plead guilty to certain charges, which the prosecutor will either reduce or drop upon program completion. Like the Montgomery VTC, many VTCs in other jurisdictions require offenders to plead guilty to certain charges. However, even when the offender pleads guilty, VTCs usually permit the District Attorney (DA) to reduce the charges and, in certain cases, to dismiss them entirely. By contrast, some VTCs defer charges and dismiss them once the defendant completes the program. Still other courts adopt one of these two approaches on a case-by-case basis.

Like the Montgomery VTC, most VTCs accept veterans into the treatment program on a case-by-case basis. VA representatives, usually VJO specialists, are instrumental in developing and administering the treatment plans for most VTCs.

151. MONTGOMERY PROCEDURE MANUAL, supra note 125, at 2.
152. Id.
153. For example, to enter the VTC in Tarrant County, Texas, the veteran must “admit to the commission of the offense, and agree that this admission may be used against the defendant in court as provided by law.” TARRANT CNTY., supra note 135; see also Holbrook & Anderson, supra note 105, at 28.
154. For example, the Tarrant County VTC requires the veteran to plead guilty. However, the prosecutor drops the charges upon program completion. See Veterans Court Diversion Program: Structure of the Program, TARRANT CNTY., http://bit.ly/wn30Qc (last updated Nov. 30, 2011); see also Holbrook & Anderson, supra note 105, at 28 (“[N]early all [of the VTCs in the survey] appeared to allow at least some participants to withdraw any previously entered guilty pleas and have any pending charges dismissed following successful completion of the program.”).
156. For example, the VTC in Lancaster County, Pennsylvania, set to open in early 2012, will use both approaches. Some offenders will plead guilty, and the prosecutor will reduce the sentence after the defendant completes the program. Others will have charges deferred pending completion of the program. Telephone interview with Joshua Parsons, Clerk of Courts of Lancaster Cnty. (Dec. 29, 2011) [hereinafter Parsons Interview].
157. Telephone interview with Justin G. Holbrook, Assoc. Professor of Law and Dir. of the Veterans Law Clinic, Widener Law Sch. (Sept. 26 2011) [hereinafter Holbrook Interview]; Blackburn Interview, supra note 121; Parsons Interview, supra note 156.
158. Holbrook & Anderson, supra note 105, at 26, 32. Indeed, Chief Justice Ronald Castille stated that he is “astounded by the level of commitment from the VA.” Castille Interview, supra note 120.
c. The VTC Team

A team of professionals manages the Montgomery VTC. This team includes the judge, court coordinator, DA, defense counsel, probation officer, VJO specialist, and representatives from both the County VA Department and the correctional facility. The team meets weekly for about one hour and is present at VTC proceedings. The judge leads the VTC team, holding team meetings and administering sanctions or incentives to offenders as needed. The court coordinator assists the judge by gathering information for the meetings.

The DA plays an important role in determining whether a veteran may participate in the program. The DA reviews the offender’s criminal history, consults with victims, and considers the appropriate disposition of the charges. The entire VTC team votes on whether a veteran may participate, but the judge makes the final decision.

Defense counsel also contributes to the process by protecting the veteran’s constitutional rights. Counsel must seek solutions that “mitigate the consequences of a criminal conviction.” Another team member, the probation officer, works closely with the defendant to ensure compliance with program terms. The correctional facility representative further assists the team by acting as the liaison between the prison and the VTC. The VJO specialist serves as the link to VA services and, in addition, helps develop treatment plans.

The final team member is a representative from the Montgomery County VA Department who manages the mentor program. Mentors

159. Blackburn Interview, supra note 121; see also Russell, supra note 12, at 367-70 (describing how the VTC team works together to provide veterans with treatment).
160. MONTGOMERY PROCEDURE MANUAL, supra note 125, at 5-6.
161. Id. at 4; Landes Interview, supra note 141.
162. MONTGOMERY PROCEDURE MANUAL, supra note 125, at 4.
163. Sanctions include increased court appearances, community service, and increased participation in treatment activities. Id. Incentives include decreased court appearances and positive verbal feedback. Id.
164. Id. The coordinator is sometimes an unpaid volunteer such as a local attorney or a veterans group representative. Blackburn Interview, supra note 121. However, the Montgomery VTC coordinator is an experienced probation officer. Landes Interview, supra note 141.
165. MONTGOMERY PROCEDURE MANUAL, supra note 125, at 4.
166. Id. at 4-5.
167. Landes Interview, supra note 141.
168. MONTGOMERY PROCEDURE MANUAL, supra note 125, at 5.
169. Id.
170. Id.
171. Id. at 6.
172. Id. at 5.
173. MONTGOMERY PROCEDURE MANUAL, supra note 125, at 4-5.
are community volunteers who are also veterans. \(^{174}\) The representative pairs each defendant with a mentor who serves as an “unofficial probation officer.” \(^{175}\) Mentors, although not part of the criminal justice system or the medical community, provide additional support for the defendant. \(^{176}\)

Most VTC teams in other jurisdictions include members similar to those of the Montgomery team. \(^{177}\) For example, most teams have a VA representative who oversees treatment services, and prosecutors frequently serve a critical role in the admission process. \(^{178}\) Most VTCs also have volunteer mentors. \(^{179}\) The local VA office manages the mentor program for some VTCs; \(^{180}\) for others, the court coordinator manages this program. \(^{181}\)

d. Graduation Requirements

The Montgomery program has three phases. \(^{182}\) Although program completion averages 12 to 24 months, the length of each phase depends on the individual case. \(^{183}\) Offenders move to the next phase by showing consistent improvement. \(^{184}\) During Phase I, offenders must appear in court and meet with a probation officer every week. \(^{185}\) They must also comply with additional program terms, such as maintaining stable housing. \(^{186}\) During Phases II and III, offenders appear in court biweekly and monthly, respectively. \(^{187}\) The VTC recognizes offenders who complete Phase III at a short graduation ceremony. \(^{188}\)

Many VTCs in other jurisdictions have distinct progress phases similar to those at the Montgomery court. \(^{189}\) Each VTC has different

---

\(^{174}\) Id.

\(^{175}\) Castille Interview, supra note 120.


\(^{177}\) See id.

\(^{178}\) Holbrook Interview, supra note 157.

\(^{179}\) Volunteer mentors are essential to most VTCs. See Russell, supra note 12, at 370; Holbrook & Anderson, supra note 105, at 34; McCaffery Interview, supra note 123; Castille Interview, supra note 120.

\(^{180}\) Online Training Program, supra note 176.

\(^{181}\) Id.

\(^{182}\) MONTGOMERY PROCEDURE MANUAL, supra note 125, at 7-8.

\(^{183}\) Id. at 6.

\(^{184}\) Id. at 7-8; Landes Interview, supra note 141.

\(^{185}\) MONTGOMERY PROCEDURE MANUAL, supra note 125, at 7.

\(^{186}\) Id.

\(^{187}\) Id. at 7-8.

\(^{188}\) Id. at 8.

\(^{189}\) See Holbrook & Anderson, supra note 105, at 29.
graduation requirements, which often require sobriety, consistent employment, and stable living arrangements on behalf of the veteran undergoing treatment. VTCs usually involve 12 to 24 months of court participation.

As this brief case study demonstrates, each VTC is unique. In general, jurisdictions tailor VTC programs to meet the needs of their communities, and they often model VTCs based on existing drug or mental health courts.

2. Additional Efforts in Pennsylvania

In addition to community efforts, Pennsylvania has coordinated statewide assistance for VTCs. Justice Seamus McCaffery of the Pennsylvania Supreme Court and Michael Moreland, director of the Veterans Integrated Service Network, lead the Veterans Justice Statewide Task Force. This 28-member task force increases awareness for VTCs and helps recruit veteran mentors.

The Administrative Office of the Pennsylvania Courts (AOPC) has also developed an online training program for volunteer mentors. Believed to be the first such program in the country, the online training program is hosted by Robert Morris University at no cost to the state. VTCs throughout Pennsylvania use this 90-minute program, and other states have expressed interest in using it.

B. Emerging State Legislation and Other Developments

Besides Pennsylvania, other states have encouraged the VTC movement. At least seven states—Texas, California, Colorado,
Illinois, Oregon, Nevada, and Virginia—have passed legislation authorizing counties to establish VTCs. Like individual VTC procedures, each statewide measure is unique.

For instance, 2009 Texas legislation permits county VTCs to handle felony and misdemeanor offenses. However, the DA must consent to the defendant’s participation. In addition, the following conditions must be met: (1) the defendant must suffer from “brain injury, mental illness, or mental disorder”; (2) the disorder must stem from service in a “combat zone or other similar hazardous duty area”; and (3) the disorder must have “materially affected the defendant’s conduct at issue in the case.”

By contrast, Oregon legislation passed in 2010 permits the DA to consider a diversionary VTC program if it “would be in the interests of justice and of benefit to the defendant and community.” However, VTCs are unavailable for DUI charges, certain felonies, or any offense involving “serious physical injury to another person.”


203. 730 ILL. COMP. STAT. 167/15 (2010). A defendant shall be excluded from VTC if (1) the charged offense was a “crime of violence,” (2) the defendant had been convicted of a “crime of violence” in the past ten years, or (3) the defendant had previously completed or has been discharged from a VTC within three years. Id. at 167/20.
204. OR. REV. STAT. ANN. § 135.886 (West, Westlaw through Ch. 12 of the 2011 Reg. Sess.).
207. In addition, a few states have enacted laws that do not address VTCs but require existing courts to consider a special process at sentencing if the defendant is a veteran with a mental illness. See MINN. STAT. § 609.115 Subdiv. 10 (2008); N.H. REV. STAT. ANN. § 651:4-b (2009).
208. See infra notes 209-17 and accompanying text.
209. TEX. HEALTH & SAFETY CODE ANN. § 617.002(a) (West 2010).
210. Id.
211. Id. § 617.002(a)(2).
212. Id. § 617.002(a)(2)(A).
213. Id. § 617.002(a)(2)(B).
214. OR. REV. STAT. ANN. § 135.886(1).
215. Id.
216. Id. § 135.886(3). Ineligible offenses include any Class A or B felony, such as first degree assault and murder. See generally OR. REV. STAT. ANN. § 161.
217. Id.
At the federal level, the VA has provided significant support for VTCs.\(^{218}\) For instance, the VA established the VJO program to help offenders receive VA treatment services.\(^{219}\) These VJO workers are critical to the success of VTCs throughout the nation.\(^{220}\)

The National Association for Drug Court Professionals (NADCP) also advocates for VTCs.\(^{221}\) NADCP created Justice for Vets, a clearinghouse for information on VTCs.\(^{222}\) In addition, NADCP launched the Veterans Treatment Court Planning Initiative (VTCPI), a federally funded training program that helps communities establish VTCs.\(^{223}\)

Other VTC advocates include federal agencies such as the U.S. Department of Health and Human Services and the U.S. Department of Justice.\(^{224}\) Similarly, in January 2011, President Barack Obama released the report “Strengthening Our Military Families: Meeting America’s Commitments.”\(^{225}\) Signed by all 14 Cabinet Secretaries, this report pledges to develop VTCs to “[m]ake court systems more responsive to the unique needs of veterans.”\(^{226}\)

C. Early Signs of Success

Although comprehensive data is not available, preliminary findings suggest that VTCs have been effective at reducing recidivism rates.\(^{228}\)

---

218. Schaffer Interview, supra note 4.
219. Id. See generally VETERANS HEALTH ADMIN., UNDER SECRETARY FOR HEALTH’S INFORMATION LETTER: INFORMATION AND RECOMMENDATIONS FOR SERVICES PROVIDED BY VHA FACILITIES TO VETERANS IN THE CRIMINAL JUSTICE SYSTEM (2009).
220. See supra Part IV.A.1.a.
221. See NAT’L ASS’N OF DRUG CT. PROF’LS, supra note 11.
222. See id.
227. Id. at 12.
228. See discussion infra Part IV.C.
For instance, 34 veterans went through the Anchorage VTC between 2004 and 2006,\(^{229}\) according to Judge Smith, only one had been rearrested within two years.\(^{230}\) Similarly, in 2008, over 100 veterans participated in the Buffalo VTC, but only two veterans had been returned to the traditional court system by March 2009.\(^{231}\)

Other recent results seem equally promising. By 2011, the Orange County VTC had 43 participants, 7 graduates, and only 4 early terminations.\(^{232}\) Similarly, in one survey of 14 VTCs throughout the country, 11 VTCs responded with a total of 59 graduates and 404 current participants.\(^{233}\) Of those 59 graduates, only one had reoffended—a recidivism rate of less than two percent.\(^{234}\) By contrast, the recidivism rate for all state prisoners (which includes veterans) is nearly 70 percent after three years.\(^{235}\)

Admittedly, a lack of evaluative data makes drawing firm conclusions premature.\(^{236}\) As of May 2010, the Buffalo VTC had graduated 30 veterans.\(^{237}\) Similarly, of the 14 VTCs participating in Holbrook and Anderson’s survey, only two VTCs had graduated ten or more veterans.\(^{238}\) Nevertheless, when compared to recidivism rates in the traditional justice system,\(^{239}\) the present data is encouraging.\(^{240}\)

\(^{229}\) Ruggeri, supra note 104.

\(^{230}\) Id.

\(^{231}\) Nicholas Riccardi, These Courts Give Wayward Veterans a Chance: The First Veterans Court Opened Last Year in Buffalo, N.Y.: Its Success Stories Have led to More Across the Country, L.A. TIMES (Mar. 10, 2009), http://lat.ms/ACySWE.


\(^{233}\) Holbrook & Anderson, supra note 105, at 40.

\(^{234}\) Id.


\(^{236}\) See Holbrook, supra note 73, at 41 (discussing the lack of present data regarding VTC results).

\(^{237}\) Holbrook & Anderson, supra note 105, at 4.

\(^{238}\) Id. at 31.


\(^{240}\) See Holbrook & Anderson, supra note 105, at 41.
In addition to preliminary data, results from other treatment courts suggest positive outcomes for VTCs.241 The Bureau of Justice Statistics estimates that two-thirds of drug offenders are rearrested within three years,242 but two decades of research corroborates lower recidivism rates for drug court participants.243 In one national study of over 2000 drug court graduates, the recidivism rate was just 27 percent after two years.244

Positive outcomes also reach beyond recidivism rates. Treatment courts save money because incarceration is far more expensive.245 One authoritative study found that treatment saved taxpayers more than 79 million dollars over ten years.246 Moreover, the researchers asserted that these estimates were conservative because cost savings would likely accumulate beyond the ten-year mark.247

Aside from positive economic indicators, VTCs benefit society in non-quantifiable ways. Judge Russell explains such benefits from first-hand experience:

241. See e.g., Holbrook, supra note 73, at 41-44.
242. See LANGAN & LEVIN, supra note 235, at 8.
245. See M. SUSAN RIGDELY ET AL., RAND CORP., RAND INFRASTRUCTURE, SAFETY, AND ENVIRONMENT (ISE), JUSTICE, TREATMENT, AND COST: AN EVALUATION OF THE FINANCIAL IMPACT OF ALLEGHENY COUNTY MENTAL HEALTH COURT (2007), available at http://bit.ly/x6jZMF. The RAND Center conducted a fiscal impact study of the Mental Health Court (MHC) in Allegheny County, Pennsylvania. The study reported high initial costs due to mental health services; however, by the end of the second year, the lower cost associated with MHC was statistically significant. Id. at 20. Cost savings were largely due to a “dramatic decrease” in jail costs. Id.; see also AOS ET AL., supra note 243, at 9 (reporting drug courts result in net cost-benefit of $4,767 per client); Shannon M. Carey, California Drug Courts: Outcomes, Costs and Promising Practices: An Overview of Phase II in a Statewide Study, 1 J. OF PSYCHOACTIVE DRUGS 354, 353 (2006) (reporting that California realized a combined net benefit of more than 9 million dollars per year based on nine different drug courts); U.S. GOV’T ACCOUNTABILITY OFFICE, supra note 243, at 73 (reporting net benefits of seven drug courts ranged from $1,000 to $15,000 per participant).
247. Id. at IV (estimating actual cost savings might be at least 111 million dollars).
The successes of these veterans may not be adequately expressed simply by the inexistence of recidivism and relapse. Rather, their successes may be better understood by the positive changes in their individual lives. Participants emerge from the process standing tall, smiles on their faces, with a renewed sense of hope, pride, accomplishment, motivation, and confidence in their ability to continue to face challenges and better their lives. Thus, it may be difficult and premature to measure VTC outcomes. Nonetheless, early indications point to success.

D. Criticisms of Veterans Treatment Courts and Responses

Despite early signs of success, VTCs are not without their critics. Generally, critics have questioned (1) whether status-based courts are fair, (2) whether such courts are necessary, and (3) whether such courts perpetuate harmful stereotypes.

1. Courts for Veterans

Some critics have argued that it is unfair to create special courts based on veteran status. For instance, representatives from several American Civil Liberties Union (ACLU) chapters have argued that veterans should not receive preferential treatment—a “get out of jail free card”—simply because of their service in the military.

The most pointed ACLU critiques are as follows: First, the Nevada ACLU has expressed concerns about the disparity in treatment between similarly situated veteran and non-veteran offenders. Second, the Colorado ACLU has argued that the term “veteran” is both “too broad

249. See discussion supra Part IV.D.1-3.
252. See Hearing on Assembly Bill 187 of 2008 Before the S. Comm. on the Judiciary, 75th Sess. 24-28 (Nev. 2009) (statement of Lee Rowland, ACLU of Reno, Nev.), available at http://bit.ly/wPHFOG. Rowland argues that it is unfair for a veteran and a non-veteran to have similar drug or mental health issues, but only the veteran will be eligible for VTC. Id. at 212.
Specifically, this term encompasses former service members with “very different experiences” and excludes “non-veterans who also suffer from PTSD.”

In response, advocates have argued that VTCs should treat veterans differently. Veterans already receive many status-based benefits: medical care, loan guarantees, employment preferences, and educational support, to name a few. These benefits reflect society’s appreciation for those who “sacrifice life and limb” for their country.

The 2009 U.S. Supreme Court case Porter v. McCollum lends credence to this view. A “strikingly sympathetic” Court overturned a veteran’s death sentence because his attorney failed to introduce mitigating evidence of his combat experience. The Court observed, “Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines.”

Advocates have also argued that VTCs do not provide “special treatment.” Instead, these courts provide appropriate treatment that, ideally, should be made available for all criminal defendants who need it. Hence, many proponents argue that VTCs should be viewed in the context of a broader shift in criminal justice toward rehabilitation instead of punishment.

253. Lithwick, supra note 251.
254. Id. (“Should the criminal justice system take into account PTSD when it arises from military service but disregard it when it stems from different but nevertheless horrific life experiences?”).
255. Berenson, supra note 104, at 40.
256. Schaffer Interview, supra note 4.
257. See Berenson, supra note 104, at 40.
258. See Michael Day Hawkins, supra note 104, at 569.
260. See Robert Barnes, Death-Row Inmate’s Military Service Is Relevant, Justices Say, WASH. POST, Dec. 1, 2009, at A6 (“[T]he justices were strikingly sympathetic [and the Court] seemed to go out of its way . . . to move beyond the issue of counsel to express the seriousness with which it views post-traumatic stress disorder.”); Linda Greenhouse, Op-Ed, Selective Empathy, N.Y. TIMES (Dec. 3, 2009, 9:11 PM), http://nyti.ms/z6lAHa (“[T]he most notable feature of [the case] was the sympathy that all nine justices displayed . . . [but] I am concerned about a Supreme Court that dispenses empathy so selectively.”).
261. Porter, 130 S. Ct. at 455.
262. Id.
263. Berenson, supra note 104, at 40.
264. Id.
265. See generally Ben Kempinen, Problem-Solving Courts and the Defense Function: The Wisconsin Experience, 62 HASTINGS L.J. 1349, 1349 (2011) (noting that treatment courts have become “one of the fastest growing innovations in the criminal justice system”); Developments in the Law—The Law of Mental Illness, 121 HARV. L.
Critics raise a legitimate concern that VTCs serve a special class of citizen. Nevertheless, as stated by Justice Seamus McCaffery of the Pennsylvania Supreme Court, “It is important that we as a society give veterans back to their families the way we got them.” In view of society’s obligations to its veterans, it is arguably fair that VTCs serve a special class of citizen. Furthermore, following the equality logic, it is arguable that all problem-solving courts are unfair because it is impossible to serve every similarly situated criminal defendant equally.

In reality, criticisms about fairness have more to do with leniency than with equal opportunity. Simply put, critics seem to view rehabilitation as a “free pass.” However, as stated by Judge Smith, rehabilitation often requires “more time and more effort” than jail for the offender. Due to the rigor of most VTCs, some offenders choose criminal sentences instead of treatment programs. Therefore, once critics understand that VTCs do not provide “free passes” to participants, fairness concerns should subside.

2. The Necessity of a Separate System

Critics have also questioned the necessity of VTCs. One ACLU representative suggested that VTCs are no different from courts for “police officers, teachers, or politicians.” Along these lines, some critics suggest that courts should place veterans in existing mental health or drug courts rather than in some new specialty court. However, one must keep in mind the underlying treatment purposes of VTCs. For many veterans, the primary source of their criminal

Rev. 1114, 1168 (2008) (“[Treatment courts] indicate that an important step has been taken toward a more rehabilitation-focused justice system as a whole.”).

266. McCaffery Interview, supra note 123.


268. Ruggeri, supra note 104.

269. Id.

270. For example, the Illinois ACLU now supports the VTC in Cook County, Illinois. See Debra Weiss, ACLU Likes Veterans Courts If It Doesn’t Include Special Sentencing Deals, A.B.A. J. (July 15, 2009, 12:43 PM), http://bit.ly/xrTe22 (“[V]ets don’t get special treatment under the law, but they get assistance with drug treatment, housing, health care and job training.”).


272. See Cartwright, supra note 251, at 302-03; Russell, supra note 12, at 363.
misconduct is combat trauma. This cause is unique to veterans, and other problem-solving courts do not adequately address this trauma because other specialty courts have no inherent measures in place that are sensitive to or cognizant of combat trauma.

Another justification for the necessity of VTCs—including those VTCs that treat non-combat veterans—is that they serve important efficiency purposes. The VTC team develops necessary expertise in handling veteran cases. VTCs also make it practical for VA staff to attend court proceedings. By taking advantage of a consolidated court docket, a VA staff member can attend court once per week and help coordinate treatment services for all veterans during the same visit.

In addition to efficiency benefits, VTCs provide a unique experience for veterans. Unlike drug or mental health courts, VTCs are unique because they match defendants with mentors who are also veterans. According to VTC representatives, these mentors are essential to the treatment process. Furthermore, VTCs enable veterans to undergo the treatment process with other veterans. A key rationale behind VTCs is that veterans respond more favorably to other veterans who have common experiences and needs. Such an approach likely provides the empathy that is necessary for treatment, which veterans might not receive in mainstream society.

3. The “Wacko-Vet” Myth

An entirely different concern raised by some critics, including a few veterans groups, is that VTCs perpetuate the stereotype that all veterans

273. Holbrook Interview, supra note 157.
274. As previously discussed, some V TCs only require veteran offenders to be in need of mental health treatment. See discussion supra Part IV.A.1.a.
275. See, e.g., NAT’L SEC. STAFF & DOMESTIC POL’Y COUNCIL, supra note 226, at 1 (discussing the unique challenges faced by veterans and their families); DEP’T OF DEF. TASK FORCE ON MENTAL HEALTH, AN ACHIEVABLE VISION: REPORT OF THE DEPARTMENT OF DEFENSE TASK FORCE ON MENTAL HEALTH 41 (2007) (“[S]ervice members and their families experience unique stressors. . . . The delivery of high-quality care for psychological health . . . requires providers who are knowledgeable about and able to empathize with the military experience.”).
276. Schaffer Interview, supra note 4; see also Cartwright, supra note 251, at 305 (“By consolidating all of the veterans into a single docket . . . [the VTC] made it worthwhile for the VA to send an employee with a secure VA computer to every court session.”).
277. See Russell, supra note 12, at 363; see also discussion supra Part IV.A.1.
278. See discussion supra Part IV.A.1.c.
279. See discussion supra Part IV.A.1.c.
280. See Russell, supra note 12, at 370. Indeed, peer mentoring provided by other veterans in the court is important. According to Patrick Welch, director of the Erie County Veterans Service Agency, “One reason [VTCs] work[] is the camaraderie that comes with serving in the military.” Zremski, supra note 271.
return from war with mental health problems.\textsuperscript{281} This so-called “wacko-vet”\textsuperscript{282} myth is a concern among veterans groups who claim that the stereotype contributes to poor employment prospects for veterans.\textsuperscript{283}

Although the “wacko-vet” myth dates back to World War I,\textsuperscript{284} critics argue that VTCs help promulgate that stigma.\textsuperscript{285} For instance, one Army veteran stated:

> It’s been popular to create this illusion of these people coming home from the war who are now somehow deficient. . . . They’re not wacky wing nuts that have to come home to be treated differently than the average American. If you have veterans courts, what does that say about veterans?\textsuperscript{286}

Critics make a valid point. Many veterans will never attend a VTC or need any mental health services. Furthermore, veterans should have self-interest in avoiding negative stereotypes, and it is understandable that some advocates might be concerned about the potential message projected by VTCs for the overall image of the military.

In response, however, advocates argue that these critics should direct their efforts at helping to publicize the many accomplishments of returning veterans.\textsuperscript{287} Rather than denying assistance to those veterans who need it, a more responsible solution is to educate society about the psychological effects of war and to recognize veterans for their many achievements.

As Part II of this Comment illustrates, society has often ignored the hidden wounds of combat. Veterans amplify this problem by refusing to

\textsuperscript{281} See Ruggeri, supra note 104.
\textsuperscript{282} See Cartwright, supra note 251, at 308; Ruggeri, supra note 104.
\textsuperscript{283} See Vanessa Williamson & Erin Mulhall, Iraq & Afg. Veterans of Am., Careers After Combat: Employment and Education Challenges for Iraq and Afghanistan Veterans (2009), available at http://bit.ly/zvs10V (citing “wacko-vet” myth as an obstacle to employment); Hope Yen, War Veterans Face Job Search Woes, USA TODAY (Feb. 8, 2008, 5:08 PM), http://usat.ly/wmyryO (quoting Joe Davis, spokesman for Veterans of Foreign Wars: “The issue of mental health has turned into a double-edged sword. . . . [P]ublicity has generated more public awareness and federal funding for those who return home different from when they left. However, more publicity—especially stories that perpetuate the ‘wacko vet’ myth—has also made some employers more cautious to hire a veteran.”).
\textsuperscript{284} Sontag, supra note 71 (“After World War I, the American Legion passed a resolution asking the press ‘to subordinate whatever slight news value there may be in playing up the ex-service member angle in stories of crime or offense against the peace.’”).
\textsuperscript{285} Ruggeri, supra note 104. Note that commentators have also criticized the media for perpetuating the “wacko-vet” myth by selectively reporting violent crimes committed by veterans. See sources cited supra note 72.
\textsuperscript{286} Ruggeri, supra note 104 (quoting Kevin Creed, an Army veteran who served in OIF and OEF).
\textsuperscript{287} Berenson, supra note 104, at 41.
acknowledge that such wounds exist or that some veterans return from war as changed people.\textsuperscript{288} In addition, research suggests that veterans who suffer from combat trauma are at a higher risk for committing crimes,\textsuperscript{289} and it is vitally important that those veterans suffering from combat trauma receive treatment.

This Comment does not suggest that the heightened risk for crime is due to military service or combat. Rather, evidence suggests that this heightened risk of crime is due to the symptoms of combat trauma.\textsuperscript{290} Until society understands this critical distinction, as well as the fact that combat trauma is treatable, the wacko-vet myth will persist in American society with or without VTCs. Finally, VTCs may help educate the public, thereby helping to dispel the myth rather than to promulgate it.

V. CONCLUSION

As a large number of veterans return from Iraq and Afghanistan with serious mental health problems, courts face difficult decisions regarding how to handle veterans who commit crimes. The prevalence of veterans on criminal court dockets is uncontroverted.\textsuperscript{291} Indeed, some veterans have fallen into a justice system unprepared to address their unique needs.

Since 2008, jurisdictions have created VTCs that help facilitate the necessary treatment for struggling veterans. Joining forces with the VA, VTCs hold veterans accountable for their actions while also addressing the psychological trauma that contributes to criminal behavior.\textsuperscript{292} Although each VTC is unique, most rely on established VTCs and local drug or mental health courts for guidance.\textsuperscript{293}

In general, VTCs include veterans charged with misdemeanors or non-violent felonies, but most VTCs restrict eligibility to veterans who qualify for VA benefits.\textsuperscript{294} Arguably, VTCs that restrict eligibility to veterans with VA benefits are denying treatment to those veterans whom it would benefit most. Nevertheless, VTCs should be lauded for their efforts to provide a better future for many veterans.

Critics have argued that VTCs unfairly serve a special class of citizen, that drug and mental health courts are better equipped to serve veterans, and that VTCs project a stereotype that all veterans have

\textsuperscript{288} See discussion supra Part I.
\textsuperscript{289} See discussion supra Part III.
\textsuperscript{290} See discussion supra Part III.B.
\textsuperscript{291} See supra notes 115-23 and accompanying text.
\textsuperscript{292} See supra Part IV.D.1.
\textsuperscript{293} See supra Part IV.A.1; see also supra notes 192-93 and accompanying text.
\textsuperscript{294} See supra Part IV.A.1.a.
Advocates defend VTCs based on their early signs of success, their rigorous programs, the unique needs of veterans, and the societal tradition of affording care to those who sacrifice for their country. Concerns will likely fade as the benefits of VTCs become more apparent to the public.

In a short period, VTCs have sparked the interest of judges, court administrators, and legislators. As VTCs become increasingly common, advocates should help raise awareness for their unique purposes. Veterans often return from combat with psychological wounds. VTCs address each offender’s emotional injuries as well as their other individual needs. As a result, these courts are quickly becoming a vital component in the criminal justice system and an overarching symbol for the rehabilitative movement.

295. See discussion supra Part IV.D.
296. See discussion supra Part IV.D.
297. See supra Part IV.B.
298. See supra Part II.