

“IN WAR, THERE ARE NO UNWOUNDED SOLDIERS”^{*}: THE EMERGENCE OF VETERANS TREATMENT COURTS IN ALABAMA

ABSTRACT

In April 2012, former Alabama Supreme Court Chief Justice Charles Malone requested that Shelby County’s Eighteenth Judicial Circuit Court establish a Veterans Treatment Court to address the unique challenges facing the increasing numbers of military veterans involved with Alabama’s criminal justice system.¹ Renowned for its effective drug and mental health courts, Shelby County will serve as Alabama’s Veterans Treatment Court (VTC) pilot program, a concept judicial leaders, legislators, and veterans advocates hope to implement statewide. Shelby County’s VTC is the product of the Veterans Treatment Court Task Force, a collaborative effort coordinated by the Alabama Department of Veterans Affairs to explore the feasibility of implementing stand-alone VTCs in every jurisdiction.²

With Circuit Judge Bill Bostick presiding, Shelby County’s VTC works with federal and state veterans benefits officials, law enforcement, and local volunteer “mentors” to provide supervision, monitoring, and treatment for veterans facing criminal charges.³ Recognizing that targeted treatment for certain types of criminal offenders—such as drug users and mental health sufferers—reduces recidivism, decreases prison

^{*} José Narosky, *quoted in* Christopher Weiser, *Guaranteeing Health Benefits for America’s Wounded Soldier: Closing the Pre-Existing Personality Disorder Loophole*, 20 FED. CIRCUIT B.J. 101, 101 (2010).

1. Malcomb Daniels, *Shelby County Veterans Group in New York on Learning Trip*, BIRMINGHAM NEWS (Apr. 30, 2012), http://blog.al.com/spotnews/2012/04/shelby_county_veterans_court_g.html.

2. E-mail from Sandra Ingram Speakman, Gen. Counsel, Ala. Dep’t. of Veterans Affairs, to the author (Aug. 4, 2013, 16:26 CST) (on file with the author). In 2011, Rear Admiral W. Clyde Marsh, USN (Ret.), the State Commissioner of the Alabama Department of Veterans Affairs (ADVA), charged its General Counsel Sandra Ingram Speakman with the goal of establishing a statewide Veterans Treatment Court. At the time, the state had one veterans-related court (with Montgomery County Circuit Court Judge Tracy McCooey presiding), that referred veterans from its specialty court dockets to Veterans Affairs services. The ADVA helped form the Veterans Court Task Force, consisting of the Alabama Supreme Court Chief Justice, the Alabama State Bar President, court system personnel, legislators, law enforcement, and mental health representatives, to investigate and encourage the expansion of the VTC program to the various circuits. The task force now serves as a supporting entity to the VTCs.

3. Interview with Bill Bostick, Circuit Judge, Ala. Eighteenth Judicial Circuit, in Tuscaloosa, Ala. (Nov. 7, 2012).

overcrowding, and saves taxpayer money, the VTC initiative seeks to incorporate lessons learned from other specialized courts and capitalize on existing benefits incidental to military service. Shelby County's VTC currently has twenty-five participants, representing every branch of the military, and is based on the VTC model that has enjoyed success in other states confronted with the growing problem of military veterans suffering from the consequences of serving in an all-volunteer military during the nation's longest war.

This Note seeks to identify the systemic psychological issues facing veterans of the Global War on Terror (GWOT) that can lead to criminal behavior and examines how a comprehensive judicial response to veterans charged with particular crimes can potentially ease the burden on both society and veterans themselves, with a focus on Alabama's emergence in this arena. While the Iraq and Afghanistan conflicts are technically two separate operations, "GWOT veterans" includes service members who were deployed in support of Operation Iraqi Freedom (OIF) or Operation Enduring Freedom (OEF), the latter being the name assigned to the war in Afghanistan. Part I discusses how the current military force structure, nature of modern warfare, and common types of combat injuries have exacerbated the traumatic effects of war, thereby hindering veterans' reintegration back into civilian society after military service. Part II reviews the history of VTCs, compares these courts to other specialized courts, and argues why such individualized "problem-solving" courts are better suited to address the distinct needs of veteran offenders. Part III describes the conception, operation, eligibility requirements, and details of Shelby County's VTC and surveys the best practices of successful VTCs currently operating around the country. Cost savings, higher program participation, reduced recidivism, and other benefits associated with VTCs are examined in Part IV. Finally, criticisms of VTCs, such as unwarranted favorable treatment of veterans, unfairness to participants, and inadequate provision of services are discussed in Part V.

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I. CONSEQUENCES OF AMERICA’S LONGEST WAR

Approximately 2.5 million American troops have deployed to Iraq or Afghanistan in support of the Global War on Terror since September 2001, with nearly one million having served multiple combat tours.⁴ During this time, over 40,000 Alabamians have deployed,⁵ giving Alabama the sixteenth highest deployment rate among state residents per capita even though it ranks twenty-third in state population.⁶ This statistic takes on greater significance when accounting for Alabama’s lack of large active-duty infantry or armor military bases (which can add tens of thousands of sure-to-be-deployed nonnative residents to a state’s population) that are present in other states, meaning that Alabama residents have substantially contributed to and are disproportionately affected by the GWOT war effort.

A. *The Nature of Combat in Iraq and Afghanistan*

While war’s traumatic effects on its fighters have long been known, the circumstances surrounding the Iraq and Afghanistan wars have exacted particularly severe and devastating long-term costs on the American service

4. Luis Martinez & Amy Bingham, *U.S. Veterans: By the Numbers*, ABC NEWS (Nov. 11, 2011), <http://abcnews.go.com/Politics/us-veterans-numbers/story?id=14928136#1>.

5. DEF. MANPOWER DATA CTR., U.S. DEP’T OF DEF., LEGAL RESIDENCE/HOME ADDRESS FOR SERVICE MEMBERS EVER DEPLOYED AS OF MAY 31, 2012, *available at* http://dva.state.wi.us/WebForms/Data_Factsheets/ResDistribution-May12.pdf.

6. U.S. CENSUS BUREAU, U.S. DEP’T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012 19 tbl. 14 (2012), *available at* <http://www.census.gov/compendia/statab/2012/tables/12s0014.pdf>.

members prosecuting them.⁷ The composition and structure of today's military have concentrated the War's burden on a relatively small all-volunteer force, resulting in multiple deployments of longer duration.⁸ These repeated mobilizations leave little time for troops to properly decompress and reintegrate with their families, as the training for the next deployment begins shortly after the previous one concludes.⁹ Increased reliance on National Guard and Reserve forces has led to hundreds of thousands of part-time soldiers, sailors, airmen, and Marines being extracted from their normal daily civilian lives, deployed to violent combat zones for up to eighteen months, and then being thrown back into civilian society, far away from military installations and without the resources and support available to active duty service members.¹⁰

The distinct nature of combat operations in Iraq and Afghanistan has dramatically increased the scope and severity of combat exposure, compounding both psychological and physiological injuries. Unlike previous conflicts, there are no front lines from which troops can withdraw for rest and recuperation—the threat of death from mortars, rockets, and improvised explosive devices (IEDs) is constant, even for noncombat personnel.¹¹ The hallmark of counterinsurgency guerilla warfare is the lack of an identifiable enemy—every civilian is a potential terrorist and no area is “safe.”¹² Add the continuous danger from IEDs and suicide bombers (who are particularly terrifying since they are unafraid of death and will stop at nothing—even killing civilians—to destroy their targets), and it is clear that relentless paranoia is not only foreseeable, but a valuable survival tool. Aggressive behavior and perpetual suspicion needed to endure months

7. See Craig Logsdon & Michelle Keogh, *Homeland Justice for Veterans: Why Veterans Need Their Own Court: Uncommon Criminals*, 47 ARIZ. ATT'Y 14, 16 (2010). Former Arizona National Guard Gen. Gregg Maxon “believes that the pervasiveness and degree of the psychological stress in the War on Terror is like nothing the United States has ever seen before.” *Id.* at 16.

8. See Tiffany Cartwright, “To Care for Him Who Shall Have Borne the Battle”: *The Recent Development of Veterans Treatment Courts in America*, 22 STAN. L. & POL'Y REV. 295, 300 (2011).

9. See Michael Daly Hawkins, *Coming Home: Accommodating the Special Needs of Military Veterans to the Criminal Justice System*, 7 OHIO ST. J. CRIM. L. 563, 569 (2010) (“[T]he ‘uncertainty of deployment, repeated and extended tours of duty, and the constant peril’ involved in conducting anti-insurgent warfare in strange and distant lands” have been especially overwhelming for GWOT veterans. (quoting Katrina J. Eagle & Steve R. Binder, *Veterans Facing Criminal Charges: How a Community of Professionals Can Serve Those Who Served Our Country*, NEV. LAW. 16, 16–17 (2008))).

10. See Cartwright, *supra* note 8, at 300.

11. See Steven Berenson, *The Movement Toward VTCs*, 44 CLEARINGHOUSE REV. 37, 38 (2010) (“[T]he counterinsurgency type of warfare blurs periods of battle and periods of rest, prompting the stressful constant vigilance that can lead to psychological ailments.”).

12. See Logsdon & Keogh, *supra* note 7, at 16 (“In Iraq and Afghanistan, the war has no ‘front lines,’ and battles do not follow any schedule. The threat of death is always present, and the enemy is anywhere and everywhere.”).

of harsh combat conditions, along with violent military training, can lead to problems when troops attempt to reintegrate back into civilian life.¹³

B. *Post-Traumatic Stress Disorder and Traumatic Brain Injury*

In addition to the force structure and unique characteristics of GWOT service, the predominant types of combat injuries sustained by veterans can be physically and mentally debilitating, negatively affecting veterans long after their military service. “[A]s a result of advances in armor and medicine . . . service members are surviving combat experiences that would have killed them in prior wars,” leaving many casualties psychologically traumatized in addition to their physical wounds.¹⁴ Routine exposure to IEDs, the enemy’s preferred method of attack, and other explosions “often cause[] traumatic brain injuries that are difficult to diagnose and treat and may not present symptoms until well after the injury.”¹⁵ These brain injuries frequently result in concurrent mental and physical conditions—post-traumatic stress syndrome (PTSD) and traumatic brain injury (TBI).¹⁶ While the exact number of veterans afflicted with either one or both of these conditions is unknown, statistical studies have estimated that anywhere from 25%–45% of returning veterans suffer from some type of mental illness incidental to their combat service, meaning that up to one million GWOT veterans could have a severe mental disorder.¹⁷ Using these

13. See Cartwright, *supra* note 8, at 300 (“Hypervigilance, aggressive driving, carrying weapons at all times, and command and control interactions, all of which may be beneficial in theater, can result in negative and potentially criminal behavior back home.”); see also Thomas L. Hafemeister & Nicole A. Stockey, *Last Stand? The Criminal Responsibility of War Veterans Returning from Iraq and Afghanistan with Posttraumatic Stress Disorder*, 85 IND. L.J. 87, 103–04 (2010) (“[S]oldiers are conditioned to survive harsh, threatening, and violent environments. They are taught to attack an enemy target dispassionately, quickly, and without hesitation. . . . This training can also result in the soldier becoming less focused on human suffering and more attuned to accomplishing an assigned military objective.”); Hawkins, *supra* note 9, at 569 (“A prosecutor with recent military experience put it this way: ‘You are unleashing certain things in a human being we don’t allow in civic society, and getting it all back in the box can be difficult for some people.’”).

14. Cartwright, *supra* note 8, at 301.

15. Berenson, *supra* note 11, at 37.

16. Logsdon & Keogh, *supra*, note 7, at 16 (“If PTSD is the hallmark psychological injury of the current war, professionals call TBI the ‘signature physical injury.’ Often closely related to PTSD, TBI results from a severe injury to the head and brain. The most common cause is a nearby explosion.”).

17. See TERRI TANELIAN ET AL., RAND CTR. FOR MILITARY HEALTH POL’Y RESEARCH, *INVISIBLE WOUNDS OF WAR: SUMMARY AND RECOMMENDATIONS FOR ADDRESSING PSYCHOLOGICAL AND COGNITIVE INJURIES* (2008), available at <http://justiceforvets.org/sites/default/files/files/RAND%20invisible%20wounds%20of%20war.pdf> (stating that up to 26% of GWOT veterans have mental health issues and 30% endure TBI from blast waves); see also CONG. BUDGET OFFICE, *THE VETERANS HEALTH ADMINISTRATION’S TREATMENT OF PTSD AND TRAUMATIC BRAIN INJURY AMONG RECENT COMBAT VETERANS* (Feb. 9, 2012), available at <http://www.cbo.gov/publication/42969> (stating that up to 25% exhibit PTSD and 23% experience TBI); Cartwright, *supra* note 8, at 299 (stating that one-third of those deployed had at least one condition); Logsdon & Keogh, *supra* note 7, at 18 (stating that 400,000–1 million veterans have psychological problems and 200,000–400,000 service members have

percentages, it is likely that anywhere from 10,000–18,000 Alabama GWOT veterans may be affected by PTSD or TBI or both. Other factors, such as “the effects of climate, compressive forces released by shell explosions, side effects of vaccinations, changes in diet, toxic effects of organophosphates, oil-well fires or depleted-uranium munitions” only compound existing mental and physical injuries.¹⁸

Why is a PTSD or TBI diagnosis significant and how can these disorders lead to criminal behavior?

PTSD . . . is characterized by the symptoms of re-experience, avoidance, and hypervigilance. Re-experience occurs when vivid memories of sights, sounds, smells, and the like, coupled with painful emotions, lead the person to believe that he is actually re-living the traumatic event. Avoidance means that the person consciously avoids people, places, or things that may remind him of the traumatic event. He may also shut himself off from close personal relationships with family, friends, and colleagues, and may also suffer from depression or survivor’s guilt. Hypervigilance means that the person is on “high alert” at all times and is easily startled.¹⁹

In contrast, TBI has a strong neurological component: “TBI is a mental defect that can cause ‘a number of deficits in intellectual and adaptive functioning, such as agnosia (failure to recognize or identify objects) and disturbances in executive functioning connected with planning, organizing, sequencing, and abstracting.’”²⁰

C. Veteran Involvement in the Criminal Justice System

It is easy to understand why a combat veteran, trained to be violent and suffering from injuries that confuse and anger him, requires intensive

TBI); Melissa Pratt, *New Courts on the Block: Specialized Criminal Courts for Veterans in the United States*, 15 APPEAL: REV. CURRENT L. & L. REFORM 39, 39–40 (2010) (stating that 30-40% of GWOT veterans “face serious mental-health injuries”).

18. Michael E. McCarthy, *Diversionary Tactics: Alternative Procedures for the Prosecution of Military Veterans*, 50 DUQ. L. REV. 475, 477 (2012) (quoting Edgar Jones, *Historical Approaches to Post-Combat Disorders*, 361 PHIL. TRANSACTIONS: BIOLOGICAL SCI. 533, 533 (2006)).

19. Jillian M. Cavanaugh, *Helping Those Who Serve: Veterans Treatment Courts Foster Rehabilitation and Reduce Recidivism for Offending Combat Veterans*, 45 NEW ENG. L. REV. 463, 467–68 (2011).

20. Anthony E. Giardino, *Combat Veterans, Mental Health Issues, and the Death Penalty: Addressing the Impact of Post-Traumatic Stress Disorder and Traumatic Brain Injury*, 77 FORDHAM L. REV. 2955, 2960 (2009) (quoting ABA Task Force on Mental Disability and the Death Penalty, *Recommendation and Report on the Death Penalty and Persons with Mental Disabilities*, 30 MENTAL & PHYSICAL DISABILITY L. REP. 668, 669–70 (2006)); see also Logsdon & Keogh, *supra* note 7, at 16 (“PTSD victims are also prone to unprovoked, sudden and uncharacteristic aggression and violence.”).

treatment for the safety of himself, his family, and the general public. An obvious question is to ask why these veterans are not receiving mental health care to help them deal with their issues and to mitigate potentially dangerous behavior, especially when considering that they are eligible for cost-free care from the Department of Veterans Affairs (VA). The answer is complicated. Returning veterans often face barriers to quality care, including: the fear of being branded a coward by a warrior culture that prizes bravado over seeking treatment, Reservists and Guardsmen being located far from treatment clinics, underreporting of mental issues for fear of delay in returning home, and inadequate treatment due to an overburdened and understaffed mental health system.²¹ In fact, the VA “drastically reduced its substance-use disorder treatment and rehabilitation services between 1996 and 2006,” just when the first large “waves” of Iraq veterans began redeploying and before the large Iraq troop “surge” was executed.²²

The nature of these psychological injuries and lack of sufficient treatment form a perfect storm that often leads to a veteran’s involvement with the criminal justice system. Faced with crushing anxiety caused by PTSD or TBI, “[many of] these veterans can have two possible outcomes: (1) either veterans will look to drugs and alcohol for self-medication; or (2) they will engage in sensation-stimulating conduct to compensate for the numbness that they feel.”²³ “[P]sychiatrists, law enforcement officials, and commentators agree that the traumas of combat can lead to addiction and criminality.”²⁴ An estimated one-sixth of GWOT veterans suffer from some form of substance abuse,²⁵ with many developing addictions to prescriptions drugs initially prescribed by the military to treat the symptoms of PTSD and TBI.²⁶ “[I]t is virtually automatic that a PTSD victim will self-medicate with alcohol, although sometimes patients turn to illegal or prescription drugs. Those who develop drug habits frequently resort to criminal behavior to finance their addictions.”²⁷ Along with drug offenses, substance abuse often serves as a catalyst for other types of illegal

21. Cartwright, *supra* note 8, at 301–02.

22. OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., THE N-SSATS REPORT: SUBSTANCE ABUSE TREATMENT FACILITIES OPERATED BY THE DEPARTMENT OF VETERANS AFFAIRS (NOV. 11, 2009), *available at* <http://www.samhsa.gov/data/2k9/213/213VAFacilities2k9.htm> (during this period, the number of veterans receiving substance abuse treatment decreased 18%).

23. Cavanaugh, *supra* note 19, at 468.

24. Pratt, *supra* note 17, at 39.

25. *What is a Veterans Treatment Court?*, JUSTICE FOR VETS, <http://www.justiceforvets.org/what-is-a-veterans-treatment-court> (last visited Aug. 2, 2013).

26. ALISON HOWELL & ZOE H. WOOL, THE WAR COMES HOME: THE TOLL OF WAR AND THE SHIFTING BURDEN OF CARE (2011), *available at* <https://www.escholar.manchester.ac.uk/api/datastream?publicationPid=uk-ac-man-scw:154807&datastreamId=FULL-TEXT.PDF>.

27. Logsdon & Keogh, *supra* note 7, at 17.

activity, such as driving under the influence, reckless driving, domestic violence, theft, and disorderly conduct.²⁸ While most crimes committed by veterans are nonviolent misdemeanors,²⁹ evidence exists suggesting that some veterans are prone to violent or homicidal behavior.³⁰

In addition to mental health issues, barriers to care, and substance abuse problems, many veterans experience difficulty transitioning from the military to civilian life, where they often feel abandoned and left to face their struggles alone.³¹ Other veterans are unable to navigate the complex VA benefits process or may be denied compensation or care for service-connected disabilities.³² Some are unable to jettison the aggressive behavior developed for survival on the battlefield and fail to properly conform their conduct to acceptable societal standards.³³ These problems can result in devastating outcomes, with veterans accounting for nearly 20% of all suicides, 10% of prisoners, and approximately one-fifth of America's homeless population.³⁴

The Global War on Terror has exacted a tremendous toll on America's service members and their families. The country's longest war has been fought repeatedly by a miniscule percentage of its population; never has such a monumental burden fallen on the shoulders of so few. The psychological trauma and ensuing problems caused by years in some of the most hostile conditions imaginable can lead to catastrophic consequences in all facets of an affected veteran's life, leading to broken family relationships, homelessness, unemployment, and even incarceration.³⁵ While PTSD and TBI certainly do not excuse criminal behavior, it is clear that imprisonment alone will not only fail to remedy the underlying causes

28. See Cartwright, *supra* note 8, at 302 ("Between 2005 and 2006, the rate of veterans involved in alcohol-related incidents . . . increased from 1.73 per 1000 veterans to 5.71 per 1000 soldiers."); see also HOWELL & WOOL, *supra* note 26 ("[V]ehicular mayhem . . . has risen 100 percent since 2004.").

29. Art Heinz, *Nation's First Online Training for VTCs Mentors Launched by Supreme Court of Pennsylvania*, 13 LAW. J. 5, 5 (2011).

30. Pratt, *supra* note 17, at 40 (stating that between 2002 and 2008, at least 121 GWOT veterans were charged with killings, ranging from involuntary manslaughter to first-degree murder); see also Cartwright, *supra* note 8, at 298 (noting that 57% of incarcerated veterans were convicted of violent crimes compared to 47% for non-veterans).

31. Hawkins, *supra* note 9, at 570 (stating that the cause of their anti-social behavior "is the cycle of their experience from civilian life, to the regimentation of military life with all its attendant support, to the intensity of life in a combat zone, then to what may be a rather swift and unsupported return to civilian life").

32. Pratt, *supra* note 17, at 43.

33. *Id.*; see also Cavanaugh, *supra* note 19, at 480 ("[C]ombat veterans are trained to be violent, and therefore it is difficult for them to readjust to civilian life when returning home from deployment.").

34. McCarthy, *supra* note 18, at 480; THE CMHS NAT'L GAINS CTR., RESPONDING TO THE NEEDS OF JUSTICE-INVOLVED COMBAT VETERANS WITH SERVICE-RELATED TRAUMA AND MENTAL HEALTH CONDITIONS 1, 1 (2008).

35. Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 N.E. J. ON CRIM. & CIV. CONFINEMENT 357, 357 (2009).

of some veterans' actions, but amounts to the abandonment of those who sacrificed so much so that their fellow Americans would not have to. Most troubled veterans have no previous criminal records and were model citizens committed to their country until their minds and bodies were ravaged by war. Denying suffering veterans the opportunity to rectify their wrongdoings and once again become productive members of society would be tantamount to a denial of the steep cost of war.

II. WHY DO VETERANS NEED THEIR OWN PROBLEM-SOLVING COURTS?

The Department of Justice estimated that in 2004 (the latest date for which figures are available), 140,000 veterans were incarcerated in the nation's prisons, with 20% of state prisoner-veterans and 26% of federal prisoner-veterans having experienced combat duty.³⁶ At that time, when the War on Terror was only two years old and most of the first Iraq veterans had not yet redeployed to the United States, veterans of the Iraq–Afghanistan era comprised 4% of all veterans in federal and state prison.³⁷ In the nine years since the time of the report (which is based on data collected in 2004 and published in 2007), millions of troops have deployed to Iraq and Afghanistan, making it a near certainty that the percentage of GWOT veterans currently imprisoned has increased substantially. One government report, published in 2008, estimates that “[o]n any given day, veterans account for nine of every hundred individuals in U.S. jails and prisons.”³⁸ Regardless of the exact number of GWOT veterans incarcerated today, it is clear that with up to one million GWOT service members suffering from mental disorders that can lead to criminality, the number of veteran offenders will continue to grow. The war will wind down, troops will come home, and the military will shrink by discharging hundreds of thousands of veterans into civilian society without an adequate support structure to address their mental health needs, difficulties with reintegration, unemployment, and a host of other issues. In fact, many troops may not even experience difficulties for several years after their service, suggesting that the worst may be yet to come.³⁹

36. MARGARET E. NOONAN & CHRISTOPHER J. MUMOLA, DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: VETERANS IN STATE AND FEDERAL PRISON, 2004 (2007), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/vsfp04.pdf>.

37. *Id.*

38. THE CMHS NAT'L GAINS CTR., *supra* note 34, at 1.

39. See Logsdon & Keogh, *supra* note 7, at 20 (remarking that one study found that most arrested former troops had been discharged from the military for over ten years prior to arrest); see also Berenson, *supra* note 11, at 38 (“[T]raumatic brain injuries . . . are difficult to diagnose and treat and may not present symptoms until well after the injury.”).

The prevalence of veterans afflicted with PTSD has led to increased societal awareness of the problem, including increased responsiveness on the part of the judicial system. As others have noted, the prevalence of PTSD-afflicted veterans has

result[ed] in mental health professionals and society, and subsequently the judicial system, becoming more (1) aware of related symptoms; (2) likely to recognize the validity of the diagnosis and the impact of PTSD on human behavior, even when criminal behavior is involved; and (3) willing to take it into account when assessing criminal responsibility and punishment.⁴⁰

Confronted with an increasing number of veteran offenders on their dockets, judges across the nation have begun to use VTCs as “an option for military veterans, charged with nonviolent crimes, to get supervised substance abuse or mental health treatment in addition to being held accountable for their actions.”⁴¹ This approach harmonizes with recent United States Supreme Court jurisprudence, where the Court recognized that “[o]ur Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines.”⁴²

A. *The Creation of Veterans Treatment Courts*

Judge Robert Russell established the first official VTC in Buffalo, New York in 2008 after realizing that veterans “shared unique needs that were not being addressed effectively in the existing treatment courts.”⁴³ Noting that veteran offenders differed from their civilian counterparts in their respect for authority, commitment to compliance with court directives, and willingness to assume responsibility for their actions, Judge Russell developed a structured treatment/supervision program that employs accountability and camaraderie—values with which veterans are both familiar and comfortable—to keep veterans out of prison while ensuring they receive the treatment they need.⁴⁴ The program “provides veterans suffering from substance abuse issues, alcoholism, mental health issues, and emotional disabilities with treatment, academic and vocational training,

40. Hafemeister & Stockey, *supra* note 13, at 138.

41. Heinz, *supra* note 29, at 28.

42. Porter v. McCollum, 558 U.S. 30, 30 (2009) (overturning the death sentence of a Korean War veteran convicted of murder because the trial court ignored mitigating evidence, such as the defendant’s psychological trauma related to his battlefield experience).

43. Cartwright, *supra* note 8, at 303.

44. See Logsdon & Keogh, *supra* note 7, at 18.

job skills, and placement services [and] . . . provides further ancillary services . . . such as housing, transportation, medical, dental, and other supportive services.”⁴⁵ In the two years following the Buffalo court’s creation (the latest date for which figures are available), none of the twenty-four defendants who completed the program had committed subsequent offenses and over one hundred veterans were participating in the program.⁴⁶

B. Drug and Mental Health Court Success in Alabama

While VTCs are distinct from other alternative treatment programs available to civilian offenders, these courts are modeled on traditional drug and mental health courts (as veterans face similar issues), which are manifestations of the criminal justice theories of therapeutic justice and problem-solving courts.⁴⁷

Therapeutic justice addresses the root cause of an offender’s criminality and treats the offender to remove the problems and returns the offender to the community as a responsible citizen. Problem-solving courts are “specialized courts that seek to respond to persistent social, human, and legal problems, such as addiction, family dysfunction, domestic violence, mental illness, and quality-of-life crime.”⁴⁸

In the cases of many veteran lawbreakers, their crimes are incidental to mental health or substance abuse issues resulting from their military service, making problem-solving courts an appropriate forum for addressing their antisocial behavior rather than simply focusing on consequences and criminal procedure.⁴⁹

As alternatives to imprisonment, drug and mental health courts have proven to be effective in reducing recidivism and yield other benefits, especially when intervention occurs early following minor offenses.⁵⁰ “The

45. Russell, *supra* note 35, at 364.

46. See Logsdon & Keogh, *supra* note 7, at 18.

47. Pratt, *supra* note 17, at 46.

48. *Id.* (quoting John Feinblatt et al., *Judicial Innovation at the Crossroads: The Future of Problem Solving Courts*, 15 CT. MANAGER 28, 29 (2010)).

49. Andrew D. Leipold, *What’s Wrong With the Criminal Justice System and How We Can Fix It*, 7 OHIO ST. J. CRIM. L. 515, 519 (2010).

50. Hawkins, *supra* note 9, at 571 (“Drug court professionals recognize that the earlier intervention occurs in the dependency cycle, the greater the chance of success.”); see also *Addicted to Courts: How a Growing Dependence on Drug Courts Impacts People and Communities* (Justice Pol’y Inst., Wash. D.C.) Mar. 2011, available at http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_addicted_to_courts_factsheet_final.pdf. [hereinafter *Addicted to Courts*] (“[I]ntensive supervision programs focused on treatment reduced [drug] crime by about 18 percent.”).

drug court alternative costs less, enhances public safety, and compassionately offers nonviolent first time offenders, who are not drug dealers, a better chance of turning their life around.”⁵¹

Alabama has been particularly successful in establishing drug courts, with 69 drug courts operating in 66 of the state’s 67 counties as of February 2013.⁵² In addition to drug courts, the Alabama Administrative Office of Courts administers the Court Referral Officer (CRO) Program, which provides CROs with substance abuse and criminal justice training to work with substance abusers within the courts.⁵³ Alabama’s Mandatory Treatment Act of 1990 “requires all defendants in alcohol and drug cases to be evaluated, referred, and monitored by the CRO and to pay for such services.”⁵⁴ A critical attribute of Alabama’s CRO and drug court programs is the requirement that defendants consistently appear before a judge throughout the program for continuous monitoring and evaluation to ensure compliance with the court’s directives.⁵⁵ Statistical studies indicate (and Judge Bill Bostick agrees) that just three minutes of periodic defendant interaction with judges reduces recidivism.⁵⁶ Repeated violations of the court’s “no drug or alcohol” policy can result in a defendant’s dismissal from drug court and the imposition of the same sentence the defendant would have incurred with an initial guilty plea.⁵⁷

Alabama’s drug courts have enjoyed enormous success, with defendant-participants “far[ing] much better than those who were arrested, went to court, were adjudicated guilty, fined, sanctioned, and released

51. Susan Pace Hamill, *An Argument for Providing Drug Courts in All Alabama Counties Based on Judeo-Christian Ethics*, 59 ALA. L. REV. 1305, 1320 (2008).

52. Email from Kelly Saucer, Drug Court Specialist, Ala. Admin. Office of Courts, to the author (Aug. 2, 2013, 13:25 CST) (on file with the author).

53. MARTIN A. RAMSAY, ALA. ADMIN. OFFICE OF COURTS, SUBSTANCE ABUSE AND CRIMINAL JUSTICE: ALABAMA’S COURT REFERRAL PROGRAMS, A SUCCESSFUL MODEL FOR REHABILITATING OFFENDERS, 17, 22 (2000), available at <http://nsc.contentdm.oclc.org/cdm/singleitem/collection/criminal/id/79/rec/9>.

54. *Id.* at 18.

55. ALLEN L. TAPLEY ET AL., ALA. SENTENCING COMM’N, ALABAMA’S CRIMINAL JUSTICE SYSTEM UPDATE 9 (2003), available at <http://sentencingcommission.alacourt.gov/Publications/AL%20Criminal%20Justice%20Sys%20Update.pdf>.

56. See NAT’L ASS’N OF DRUG COURT PROF’LS, ADULT DRUG COURT BEST PRACTICE STANDARDS, 23 (2013) (citing SHANNON M. CAREY ET AL, EXPLORING THE KEY COMPONENTS OF DRUG COURTS: A COMPARATIVE STUDY OF 18 ADULT DRUG COURTS ON PRACTICES, OUTCOMES AND COSTS (2008)) (“In a study of nearly seventy adult Drug Courts, outcomes were significantly better when the judges spent an average of at least three minutes, and as much as seven minutes, interacting with the participants during court sessions. Shorter interactions may not allow the judge sufficient time to gauge each participant’s performance in the program, intervene on the participant’s behalf, impress upon the participant the importance of compliance with treatment, or communicate that the participant’s efforts are recognized and valued by staff.”) (internal citations omitted); see also Bostick, *supra* note 3.

57. TAPLEY ET AL., *supra* note 55, at 10.

without having to attend a program.”⁵⁸ Defendants are highly incentivized to participate in the program since successful completion usually results in dismissal of charges and the avoidance of a criminal record.⁵⁹ In addition to reducing participants’ substance abuse, these noncustodial treatment/supervision programs alleviate prison overcrowding, save taxpayer money,⁶⁰ and often avoid the possibility that the prison environment will cause nonviolent offenders to commit more serious crimes upon release from prison.⁶¹

Mental health courts were also created under the principle of therapeutic justice, where courts offer treatment to mentally ill defendants accused of minor offenses.⁶² “The underlying belief of this approach is that the charges these individuals face are more a result of their mental illness than an inherent criminality.”⁶³ Since approximately one-fifth of veterans experience a mental health disorder,⁶⁴ causing many to fail “to fully appreciate the nature or wrongfulness of [their actions] or . . . to conform [their] conduct to the requirements of the law,”⁶⁵ the same rationale exists for treating veteran offenders suffering from cognitive impairment. Mental health courts have experienced success similar to drug courts, with reduced recidivism for program participants, a 62% decrease in probation violations, and graduates who were 3.7 times less likely to commit additional offenses than non-graduates.⁶⁶

While both drug courts and mental health courts are largely viewed as viable alternatives to incarceration for qualified offenders accused of minor or nonviolent crimes, neither concept completely escapes criticism. Defendants who are eligible for drug court would usually receive shorter prison sentences or probation for their crimes, and long drug court sentences may increase risk of failure, leading to ultimately longer prison sentences.⁶⁷ Critics also note that drug court completion rates vary across jurisdictions, graduation from drug court may not result in complete deletion of a criminal record, and failing drug court may result in a criminal

58. RAMSAY, *supra* note 53, at 25, 34; *see also* Bostick, *supra* note 3 (Shelby County’s drug court experiences an 18% recidivism rate, which includes any encounter with law enforcement that leads to custody, even if the alleged offender is not ultimately charged with a crime).

59. TAPLEY, ET AL., *supra* note 55, at 10.

60. *Id.* at 3 (noting that over 14,000 nonviolent offenders are incarcerated, with an annual cost \$10,000 per inmate); *see also* Hamill, *supra* note 51, at 1316 (“The actual cost of handling drug offenders in drug courts is far less than sending these defendants to prison.”).

61. Hamill, *supra* note 51, at 1317.

62. Sarah L. Miller & Abigail M. Perelman, *Mental Health Courts: An Overview and Redefinition of Tasks and Goals*, 33 LAW & PSYCHOL. REV. 113, 113 (2009).

63. *Id.*

64. HOWELL & WOOL, *supra* note 26.

65. Hafemeister & Stockey, *supra* note 13, at 105.

66. Miller & Perelman, *supra* note 62, at 117.

67. *Addicted to Courts*, *supra* note 50.

conviction and harsher punishment than if the defendant had simply pleaded guilty.⁶⁸ While mental health courts have improved criminal justice outcomes, there appears to be no difference between mental health court participants and traditional court defendants regarding symptom severity, and participants are no more likely to actually receive mental health treatment.⁶⁹

Although not perfect, the success of drug and mental health courts is undeniable. These types of alternative treatment programs have generated positive outcomes for both their participants and society by reducing recidivism through addressing the root causes of minor, nonviolent crimes.

C. *Why Veterans Require Specialized Courts*

Although drug and mental health courts may be appropriate for civilian offenders, veterans suffering from PTSD and substance abuse as a consequence of their traumatic combat experiences are better served by a dedicated court capable of handling their unique situations. Judges in dozens of states acknowledge that traditional mental health and drug courts are not equipped to manage PTSD and substance abuse problems caused by combat trauma⁷⁰ and that veterans are “better served when they are separated from others because [they] share a common bond, understand each other and are accustomed to structure.”⁷¹ Encouraged by the success of Buffalo’s VTC, these judges have followed Roberts’s lead by creating similar courts to

hold struggling veterans accountable for their alleged offenses and . . . provide the treatment for the invisible injuries that are often a major factor in the alleged criminality . . . [T]hus break[ing] the cycle of conviction-incarceration-recidivism that occurs so often when the underlying causes of criminal behavior are ignored.⁷²

In addition to recognizing that tailored treatment for combat-related conditions leads to superior outcomes, other justifications for offering veterans an individualized alternative to incarceration or other programs generally available to civilian offenders include: (1) veterans’ ailments are

68. *Id.*

69. Miller & Perelman, *supra* note 62, at 117.

70. See Cartwright, *supra* note 8, at 303.

71. Eileen C. Moore, *Saluting Our Veterans: Never Again Shall One Generation of Veterans Abandon Another*, 52 ORANGE CNTY. LAW. 8, 9 (2010).

72. Berenson, *supra* note 11, at 42.

a result of their service to America;⁷³ (2) professionals who understand battlefield trauma can better treat veterans;⁷⁴ (3) substance abuse treatment programs will not resolve PTSD;⁷⁵ (4) incarceration without treatment of the underlying illness can lead to higher rates of recidivism;⁷⁶ and (5) veterans generally have lower rates of recidivism than other criminals and specialized treatment has been shown to further reduce recidivism.⁷⁷

As of June 30, 2012, there were 104 VTCs in 33 states⁷⁸ with hundreds more in their planning stages.⁷⁹ Colorado, Florida, Illinois, Maine, and Texas have enacted legislation establishing statewide VTCs.⁸⁰

Alabama has a well-established alternative treatment system that could allow VTCs—with the right mix of judges, practitioners, and community support—to experience the same levels of success as its drug and mental health court programs. The drug court concept can be applied to VTCs, where specialists from the many veterans organizations can assist both veterans and the court in obtaining treatment and resolving outstanding criminal issues. In the words of Judge Russell, the “father” of VTCs, “service members and their families experience unique stressors as part of the military experience[,] . . . [thus] the delivery of high quality care for psychological health, including prevention, early intervention and treatment, requires providers who are knowledgeable about and able to empathize with the military experience.”⁸¹

73. Logsdon & Keogh, *supra* note 7, at 24 (“They are victims of PTSD, brain injuries, depression, mental problems, flashbacks and sleepless nights because of their duty, loyalty and service to us.”); *see also* Giardino, *supra* note 20, at 2962 (“Because there is often a clear link between combat- and service-related PTSD or TBI, one can easily distinguish these combat veterans from other offenders with PTSD or TBI because of the government’s involvement in sending them to war where these disabilities were incurred.”).

74. Logsdon & Keogh, *supra* note 7, at 20 (“Veterans need a comprehensive treatment program run by people and professionals who understand the psychological injuries that are inflicted on the battlefield.”); *see also* Berenson, *supra*, note 11, at 39 (“Incarcerating [a veteran] . . . for conduct related to ailments caused by his military service would fail to recognize the sacrifices he made in service to his country . . .”).

75. Logsdon & Keogh, *supra* note 7, at 20 (“[I]t would be a mistake to refer a PTSD victim to a standard drug-treatment program. Instead, the PTSD patient must be treated for PTSD, not just drug abuse, which is merely a symptom of the PTSD. Taking the veteran off of drugs does not cure him of his real problem and the source of the deviant behavior.”).

76. Berenson, *supra*, note 11, at 39.

77. Pratt, *supra* note 17, at 39 (“[V]eterans . . . return to the correctional system at less than 80 percent of the rate at which similarly situated non-veterans return.” (quoting *Veterans’ Program Follow-Up* (State of N.Y. Dep’t of Corr. Servs., New York, N.Y.) (July 1993))).

78. *VTCs State Links*, NAT’L CTR. FOR STATE COURTS, <http://www.ncsc.org/Topics/Problem-Solving-Courts/Veterans-Court/State-Links.aspx> (last visited Aug. 2, 2013).

79. JUSTICE FOR VETS, <http://www.justiceforvets.org/vtc-history> (last visited Aug. 2, 2013).

80. JUSTICE FOR VETS, <http://www.justiceforvets.org/state-legislation> (last visited Aug. 2, 2013).

81. Russell, *supra* note 35, at 363 (quoting DEP’T OF DEF. TASK FORCE ON MENTAL HEALTH, AN ACHIEVABLE VISION: REPORT OF THE DEPARTMENT OF DEFENSE TASK FORCE ON MENTAL HEALTH, at ES-1, 41 (2007) available at <http://www.health.mil/dhb/mhtf/MHTF-Report-Final.pdf>).

III. HOW DO VETERANS TREATMENT COURTS FUNCTION?

While VTCs are usually judicially created, as they are in Alabama, some states have enacted legislation to implement statewide programs, and a handful of states, such as California, have even amended their penal codes to allow defendants who can demonstrate that their crime was caused by combat-related issues to apply for treatment rather than incarceration.⁸² Recognizing the success of veteran-specific courts, the federal government enacted the Services, Education, and Rehabilitation Act (SERV Act), which authorizes the United States Attorney General to make grants to state and local courts and governments to establish VTCs or expand existing drug courts for veteran treatment.⁸³ As part of the White House's *Strengthening Our Military Families* initiative, the Departments of Justice and Health and Human Services have partnered to further develop the VTC concept, and the National Drug Control Institute is creating a "veterans only" drug court curriculum, with funds having been allocated for training and technical assistance.⁸⁴

A. *Partners in Success*

Similar to the integrated treatment and multi-stakeholder collaboration proven effective in drug and mental health courts, VTCs unite "the efforts of the judge, prosecutor, defense attorney, mental health experts, [and] case managers . . . whose focus is on treatment for offending veterans rather than incarceration."⁸⁵ What separates VTCs from traditional problem-solving courts is the addition of state and federal Veterans Affairs personnel, local veterans organizations, and volunteer veteran mentors to the interdisciplinary team (a concept created by Judge Russell's Buffalo court) to deliver veterans-tailored treatment through their VA benefits and provide constant supervision to ensure compliance with court directives.⁸⁶ Using a non-adversarial approach, the partnership works together to provide mental health and substance abuse rehabilitative care as well as other services, such as primary health care, housing, educational assistance, vocational training and job placement, and family counseling to help

82. See Hawkins, *supra* note 9, at 567; JUSTICE FOR VETS, *supra* note 80; see also Cartwright, *supra* note 8, at 310, 315–16; Wendy S. Lindley, *The Promise of Veterans Court*, 51 ORANGE CNTY. LAW. 29, 29 (2009) (stating that California defendants whose crimes are caused by psychological disorders resulting from combat can apply for diversionary treatment.).

83. See Cartwright, *supra* note 8, at 312; see also Lindley, *supra* note 82, at 29.

84. EXEC. OFFICE OF THE PRESIDENT, STRENGTHENING OUR MILITARY FAMILIES: MEETING AMERICA'S COMMITMENT (Jan. 2011), available at http://www.whitehouse.gov/sites/default/files/rss_viewer/strengthening_our_military_families_meeting_americas_commitment_january_2011.pdf.

85. Cavanaugh, *supra* note 19, at 482.

86. JUSTICE FOR VETS, *supra* note 79.

veterans reintegrate into civilian society.⁸⁷ Shelby County’s inaugural VTC team travelled to Buffalo to learn Judge Russell’s “best practices.” Assembled to develop a holistic and comprehensive program to preserve veterans’ rights while also ensuring the protection of the public’s safety, the team consisted of Judge Bostick, an assistant district attorney, a public defender, a drug court coordinator, a director of community corrections, a sheriff’s department captain, a treatment professional, a representative from Alabama’s Veterans Council, and a Veterans Justice Outreach (VJO) specialist (a VA employee who serves as the liaison between the court and the VA and who tracks the status of jailed veterans within an assigned geographical area of responsibility).⁸⁸

Once a veteran-offender is accepted into a VTC and agrees to the conditions of participation, the court’s team converges to “guide the veteran through the . . . recovery program.”⁸⁹ In both Judge Russell’s and Judge Bostick’s courts, a VJO specialist with access to the VA records system is present during court sessions to determine a defendant’s eligibility and facilitate registration and enrollment into the VA’s various benefits programs and services.⁹⁰ Alternatively, if the veteran has commenced treatment, the VJO specialist is able to provide the judge with the status of a defendant’s progress.⁹¹ “This commitment by the VA is critical, because it will be a primary location for treatment of veterans who need mental health and substance abuse treatment while on probation.”⁹²

In addition to receiving treatment recommended by the interdisciplinary team, the judge may require offenders to attend therapeutic group meetings, obtain employment or pursue education, or undergo individual or family counseling.⁹³ According to Judge Bostick, it is crucial for the same judge to develop each defendant’s personalized treatment program and maintain supervision throughout the entire process since doing so, in the words of Judge Russell, “communicates to veterans that someone with authority cares about them and is closely monitoring them.”⁹⁴ The continuous support and motivation of veterans’ families are

87. Cartwright, *supra* note 8, at 307.

88. Bostick, *supra* note 3.

89. Berenson, *supra* note 11, at 37.

90. Adam Caine, *Fallen From Grace: Why Treatment Should Be Considered for Convicted Combat Veterans Suffering from Post Traumatic Stress Disorder*, 78 UMKC L. REV. 215, 233 (2009).

91. *Id.* at 234; Bostick, *supra* note 3.

92. Logsdon & Keogh, *supra* note 7, at 24; *see also* OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 22 (stating that the VA’s 183 substance abuse treatment facilities offer treatment for veterans with co-concurring psychological/substance abuse problems, disease testing, and counseling).

93. Tracy Carbasho, *Veterans Court Celebrates Its First Anniversary with Graduation Ceremony*, 12 LAW. J. 3, 3 (2010).

94. Bostick, *supra* note 3; *see also* Russell, *supra* note 35, at 367.

also essential to this process. “[T]he ‘significant people’ in veterans’ lives are their families—they are the ones whom veterans had to leave behind in order to fight in combat, and they are the ones who veterans come home to.”⁹⁵ Finally, veterans who are incarcerated for more than sixty days are likely to lose their VA benefits, incentivizing VTC participation since they are transferred from traditional dockets to VTCs, where the judge has the flexibility to release them from jail upon the condition that veterans promise to comply with VTC requirements.⁹⁶ Of course, veterans may have their benefits revoked upon incarceration for any subsequent offenses.⁹⁷

The addition of veteran mentors is an element unique to VTCs. Volunteer mentors, who are similar to the “sponsors” found in Alcoholics Anonymous, meet defendants in court and assist with interactions between veterans and the court, VA, and other applicable agencies.⁹⁸ Many mentors are themselves veterans who understand the challenges of transitioning from military to civilian life. These mentors advocate for the veterans, assist them with understanding and complying with court directives, help them make appointments, assist with locating housing and employment, facilitate benefits requests, counsel them on ways to resolve life’s everyday problems, work with them to set goals and create plans of action, and provide moral support.⁹⁹ While some mentors in some courts are not veterans, many commentators believe that “those who have a shared experience, other veterans, offer the most easily accepted and effective ‘tough love’ support,” which increases the probability of successful completion of a treatment program.¹⁰⁰ Many courts provide training for their mentors “so that during meetings with veteran offenders they can do more for them than merely relate to them on a personal level,”¹⁰¹ and Shelby County is currently working to establish a mentor certification curriculum that will provide training to mentors.¹⁰² Shelby County’s mentors include law enforcement officers, attorneys, educators, and other

95. Cavanaugh, *supra* note 19, at 483.

96. Bostick, *supra* note 3.

97. *Id.*

98. Cavanaugh, *supra* note 19, at 476–77.

99. See Carbasho, *supra* note 93, at 9; Cavanaugh, *supra* note 19, at 484; Russell, *supra* note 35, at 370.

100. Hawkins, *supra* note 9, at 570; see also Carbasho, *supra* note 93, at 9 (“The mentors often turn into confidants because the veterans know they are talking to someone who understands what they have endured.”); Cartwright, *supra* note 8, at 304 (“[V]eterans respond better to treatment when they work with other veterans.”); Russell, *supra* note 35, at 366 (“Active support from a veteran peer mentor throughout treatment increases the likelihood that a veteran will remain in treatment and improves the chances for sobriety and law-abiding behavior in the future.”).

101. Cavanaugh, *supra* note 19, at 484; see also Heinz, *supra* note 29, at 5 (Pennsylvania authorities developed an online VTC mentor training program to enhance access and increase the number of trained mentors.).

102. Bostick, *supra* note 3.

volunteers, all of whom are veterans themselves, who work with substance abuse and mental health professionals to coordinate VA appointments, provide encouragement, and assist veterans with implementing solutions to their problems.¹⁰³ Critical to the mentor–defendant relationship is its informal and confidential nature—the defendant can speak freely to and confide in the mentor without worrying about his or her statements being reported to the court.¹⁰⁴ The “[c]onstant . . . support . . . offer[s] encouraging signs that the particularized needs of returning military veterans will be met with an understanding heart, a firm hand, and a watchful eye.”¹⁰⁵

B. A Proactive Approach

While personal accountability is the hallmark of VTCs, consistent monitoring and evaluation of a participant’s compliance is essential to gauge the program’s effectiveness and make necessary adjustments.¹⁰⁶ In Shelby County’s VTC, where a program can last from twelve months to several years depending on a particular individual’s situation and charges, a defendant is initially required to report to Judge Bostick weekly, with continuous satisfactory participation reducing the frequency of appearances.¹⁰⁷ Regular drug and alcohol testing ensures that defendants remain substance-free and fulfill their obligations to those who spend their time and energy helping them turn their lives around. Successful completion through compliance with the judge’s attendant conditions results in reduced charges or sentences in the case of a post-conviction program, while charges may be completely dismissed in a pre-conviction diversion program.¹⁰⁸ Noncompliance, such as failure to maintain appointments, attend mandatory meetings, or remain drug and alcohol free, can lead to graduated sanctions or total removal from the VTC and imposition of the original sentence or traditional adjudication.¹⁰⁹ In Shelby County, re-arrest or committing “fraud upon the court” (such as lying to a case manager or forging a group therapy sign-in sheet) can result in expulsion from the program.¹¹⁰

103. *Id.*

104. *Id.*

105. Hawkins, *supra* note 9, at 572.

106. Russell, *supra* note 35, at 367.

107. Bostick, *supra* note 3.

108. *See generally* Berenson, *supra* note 11, at 41; Cartwright, *supra* note 8, at 306.

109. Cartwright, *supra* note 8, at 306–07; Bostick, *supra* note 3.

110. Bostick, *supra* note 3.

C. Eligibility Requirements

When creating a VTC, organizers must first determine which categories of cases will be eligible for transfer from the traditional criminal court system. Most VTCs restrict eligibility to misdemeanors or nonviolent crimes since these courts employ volunteer mentors and external treatment providers in public settings and are not structured to rehabilitate violent offenders.¹¹¹ A California VTC accepts offenders “who had no problems during school and no contacts with the criminal justice system when they joined the military.”¹¹² The Buffalo court receives nonviolent felonies, but requires that eligible defendants’ charges stem from a substance abuse or mental health problem “associated with a medical, behavioral, or socioeconomic issue that can be treated through the VA.”¹¹³ Some courts accept low-level domestic violence charges due to their prevalence.¹¹⁴ It has been argued that even violent offenders, who suffer from the same issues as their nonviolent counterparts and whose military training and aggressive combat behavior often lead to their crimes, should also be afforded equal access to specialized treatment.¹¹⁵

The Shelby County VTC has established formal eligibility criteria that are substantially similar to the county’s existing drug and mental health courts, including the requirement that the District Attorney consent to an offender’s participation.¹¹⁶ Judge Bostick has worked with the presiding judges of the county’s drug and mental health courts to harmonize the VTC’s admission criteria with those courts, but notes that eligibility standards are fluid and transfer from traditional criminal court depends on the facts of each particular case.¹¹⁷ A previous criminal record, including violent crimes, does not automatically foreclose adjudication in the VTC, though the District Attorney has final veto authority.¹¹⁸ Even violent offenders may be eligible for the Shelby County VTC if the prosecution recommends transfer and the victim and appropriate agency agree for the defendant’s case to be transferred to a problem-solving court, as this is the

111. See Berenson, *supra* note 11, at 41; see also Caine, *supra* note 91, at 236 (noting that some VTCs accept all eligible defendants except those accused of sex, violent, or weapons offenses); Cartwright, *supra* note 8, at 306.

112. Moore, *supra* note 71, at 9.

113. Cartwright, *supra* note 8, at 306.

114. *Id.*

115. Cavanaugh, *supra* note 19, at 486–87 (“The violent offenders need help more than anybody . . . [D]oes it make sense to give special services only to those who need help the least?”).

116. Bostick, *supra* note 3.

117. *Id.*

118. *Id.*

county’s current practice for defendants facing domestic violence and driving under the influence charges.¹¹⁹

D. Identifying Qualified Participants

After establishing which categories of cases are eligible for transfer to the VTC, authorities must determine which types of defendants are qualified for alternative adjudication. Identification of eligible veterans may occur during a defendant’s preliminary hearing.¹²⁰ In Shelby County, an arrestee is asked about prior military service during booking, thereby providing the District Attorney with a list of veteran-arrestees during preliminary hearings so that qualified offenders can be immediately docketed to the VTC.¹²¹ A significant requirement for many VTCs is that the veteran must have been discharged under honorable conditions so that he or she is eligible for VA benefits (access to VA health services is dependent on discharge status).¹²² An honorable discharge also “reflects the sense that participants deserve the help provided in the treatment court because of their honorable service.”¹²³ As previously mentioned, some courts require that veterans be diagnosed with mental health or substance abuse issues or that their criminal conduct be a result of psychological issues incurred in combat,¹²⁴ while many courts allow any honorably discharged veteran to participate.¹²⁵ Participation in a VTC is voluntary, and defendants must agree to comply with the court’s conditions, such as undergoing mandatory treatment for substance abuse or mental health issues, obtaining housing and employment, and attending any requisite therapy sessions for the duration of the program.¹²⁶

The Shelby County VTC does not require participants to be diagnosed with mental health or substance abuse issues resulting from their service, though a service-connected diagnosis can help inform the level of treatment to be provided by the VA and other practitioners.¹²⁷ Also, any veteran is presumably eligible, regardless of their combat service or lack thereof.¹²⁸ In addition to the streamlined booking and identification process, Judge Bostick’s court does not immediately disqualify a dishonorably discharged

119. *Id.*

120. Hawkins, *supra* note 9, at 568.

121. Bostick, *supra* note 3.

122. Cartwright, *supra* note 8, at 306.

123. *Id.*

124. Cavanaugh, *supra* Note 19, at 479.

125. Hawkins, *supra* note 9, at 565.

126. Spectrum Dep’t, *Second Chance for Vets*, 73 TEX. B. J. 810, 810 (2010).

127. Bostick, *supra* note 3.

128. *Id.*

veteran from participation.¹²⁹ Although not eligible for VA benefits, veterans with dishonorable discharges may qualify for admission into drug court since the State of Alabama and user fees subsidize the county's drug court.¹³⁰ Judge Bostick may impose individualized stipulations, such as that the defendant perform community service or avoid "the people, places, and things" that led to their involvement with the criminal justice system.¹³¹ This restriction on certain activities and locations is particularly familiar to veteran offenders, who are already well-accustomed to the military's restraints on conduct and its "off-limits" policy for certain places and establishments.

E. Pre- and Post-Conviction Programs

The manner of adjudication of cases is an important element of VTCs, for the timing of the diversion determines whether offenders are left with a criminal record upon successful completion. Some courts offer a post-conviction program to veterans that requires guilty or no contest pleas before treatment; these programs result in sentences being suspended or reduced upon successful completion.¹³² This approach allows judges to leverage the threat of the suspended sentence to encourage participation, but leaves veterans who successfully complete the program with criminal records, further hampering their reintegration into society.¹³³

Other courts employ a truly diversionary model by deferring adjudication until the conclusion of treatment, with charges dismissed upon successful completion, allowing the veteran to avoid a criminal record.¹³⁴ Some courts that accept a wider variety of crimes, such as the Buffalo and Shelby County courts, condition the manner of adjudication on the type of crime—more severe crimes can lead to reduced or non-confinement sentences for successful program completion, while charges for minor crimes may be completely dismissed.¹³⁵ Regardless of the timeliness of a VTC's intervention, a defendant's failure to comply with the court's conditions can result in traditional adjudication or imposition of the same sentence as if a defendant had plead guilty.¹³⁶

129. *Id.*

130. *Id.*

131. *Id.*

132. Cartwright, *supra* note 8, at 306.

133. Berenson, *supra* note 11, at 37.

134. *Id.*

135. Cartwright, *supra* note 8, at 306–07; Bostick, *supra* note 3.

136. Cartwright, *supra* note 8, at 306–07; Bostick, *supra* note 3.

IV. BENEFITS OF VETERANS TREATMENT COURTS

While the concept is less than five years old, preliminary data suggests that VTCs may be an answer to the ageless question of how to effectively deal with combat-traumatized veterans and their attendant issues. “It is impossible to deny the frequent connection between combat trauma and subsequent criminal behavior. The United States must recognize this as a direct societal cost of war and do everything it can to rehabilitate veterans and return them to society as law-abiding citizens.”¹³⁷ Since many veterans’ afflictions are the consequence of their volunteer service to America and because incarceration has proven ineffective, targeted treatment that addresses the root cause of veterans’ problems is not only a moral obligation, but can result in “[l]ong-term benefits . . . in the form of less crime, a healthier community, more employed individuals, less need of government assistance, and fewer people contributing to the drug industry and more to the economy.”¹³⁸

A. *Saving Local Tax Dollars*

The problem-solving court model has proven to reduce recidivism, improve public safety, and cost less money than traditional adjudication of offenders with substance abuse or mental health issues.¹³⁹ “If you put someone in jail, you limit their access to opportunities that could help them address the problem that got them to this point in their life . . . treatment dollars are less than jail dollars.”¹⁴⁰ One study revealed that mentally ill offenders who were properly transferred to mental health courts rather than being imprisoned saved a Pennsylvania county \$9,500 per offender over a two-year period.¹⁴¹ The Buffalo court’s VTC costs less than 10% of the cost of incarceration.¹⁴² Alabama pays over \$17,000 per year to incarcerate each inmate for a total annual cost of \$462.5 million for the state’s prison system.¹⁴³ Each nonviolent offender who participates in mental health, drug, or veteran treatment court instead of going to prison can potentially save the state thousands of dollars, especially when considering that such problem-solving courts are supported by user fees.

137. Pratt, *supra* note 17, at 57.

138. Russell, *supra* note 35, at 371.

139. Lindley, *supra* note 82, at 29; *see also* Berenson, *supra*, note 11, at 40 (“[T]he financial cost of problem-solving courts is still less than the financial costs of incarceration and recidivism.”).

140. Carbasho, *supra* note 93, at 3 (internal quotations omitted).

141. *Id.*

142. Cavanaugh, *supra* note 19, at 478.

143. VERA INST. OF JUSTICE, THE PRICE OF PRISONS: ALABAMA (2012), <http://www.vera.org/files/price-of-prisons-alabama-fact-sheet.pdf> (last visited Aug. 5, 2013).

B. *Enhanced Efficacy*

The greatest financial advantage of VTCs is the VA's financing of myriad health, counseling, housing, and employment benefits and services for eligible veterans, "sav[ing] counties 'hundreds of thousands of treatment dollars while providing the best therapeutic environment — that is an environment where the care providers are specifically trained to assist veterans who suffer from PTSD and TBI.'"¹⁴⁴ With supplemental funding from the Substance Abuse and Mental Health Services Administration, the Department of Health and Human Services, and court-levied user fees, states and counties employing the VTC concept incur no additional expenses, and their veteran-offenders avoid costly and ineffective incarceration while receiving high quality care.¹⁴⁵ Since VTCs like Shelby County's require no additional staff, local resources are then available for use in civilian drug and mental health courts.¹⁴⁶ "Helping veterans turn their lives around . . . saves local taxpayers money by saving the high cost of incarceration, state support services, and the likely continued involvement with the criminal justice system."¹⁴⁷

C. *Treatment Is More Effective than Incarceration*

In addition to initial financial benefits to communities, VTCs have proven to help veterans regain control of their lives in ways that prison could never do. Speaking of one veteran suffering from severe PTSD and other emotional problems, one observer noted:

Had he been sent to prison, his withdrawal, his repressed anger, and his alienation would surely have gotten worse; and upon his release, our society—having sown the wind—would surely have reaped a devastating whirlwind. Instead, he has been participating in Veterans Court—receiving counseling, attending group and individual therapy, and accessing a wide range of resources tailored to meet his needs.¹⁴⁸

When compared to other voluntary problem-solving courts, the characteristics of the participants seem to result in particularly high rates of success of VTCs, with veterans staying in treatment longer, keeping more

144. Spectrum Dep't, *supra* note 126, at 810 (quoting Marc Carter, Veterans Court Judge, Harris Cnty., Pa.).

145. Pratt, *supra* note 17, at 46, 52.

146. Bostick, *supra* note 3.

147. Carbasho, *supra* note 93, at 3.

148. Lindley, *supra* note 82, at 29.

appointments, being re-arrested less frequently, and generally having a reduced recidivism rate.¹⁴⁹ Since its inception, graduates of the Buffalo court have made tremendous strides in their personal lives, which likely could not have occurred with incarceration or traditional adjudication.¹⁵⁰ Of the twenty-five participants in Judge Bostick’s VTC, only one participant has re-offended, and on the district attorney’s recommendation and his family’s request, he was allowed to continue to participate in the program for the benefit of his family and himself.¹⁵¹ According to Judge Bostick, these positive outcomes flow from constant interaction with the judge, whereas a common drug charge results in 30–60 days of probation, after which the defendant is generally unsupported and unsupervised, leaving him or her susceptible to bad habits. In contrast, VTC participants must submit to weekly monitoring, intensive treatment, and vigorous judicial supervision.¹⁵²

V. CRITICISMS OF VETERANS TREATMENT COURTS

Although the reaction to VTCs has largely been favorable, the concept is not immune from criticism. The four-year-old movement is not perfect and it, like any criminal justice program, can certainly be improved upon. That being said, the drive to treat underlying issues that lead to criminality has enjoyed success in other formats, producing far more benefits to offenders and society than simple incarceration.

A. *Unwarranted Favorable Treatment of Veterans*

Critics have suggested that VTCs treat veterans as a “special class” of defendants who receive a “get out of jail free” card for having served in the military, while similarly situated non-veteran defendants (who can be considered victims of their circumstantial poverty, abuse, or mental illness) are unfairly excluded from such preferential and necessary treatment.¹⁵³ However, many civilians whose crimes stem from substance abuse or mental health issues are afforded specialized treatment in the form of

149. See Cartwright, *supra* note 8, at 315; Cavanaugh, *supra* note 19, at 478.

150. Russell, *supra* note 35, at 370 (“[T]hese same individuals are substance free, dealing with mental health concerns, have a place to live, and have stable employment or are actively engaged in furthering their education. Many have also managed to repair damaged relationships with family and friends.”).

151. Bostick, *supra* note 3.

152. *Id.*

153. See Cartwright, *supra* note 8, at 307; Hawkins, *supra* note 9, at 570–71; Pratt, *supra* note 17, at 56.

mental health and drug courts. Furthermore, service members often require different treatment for their unique issues—separate courts are a more effective allocation of resources. Veterans are also held to the same levels of accountability as their civilian counterparts, with incarceration being used when necessary.¹⁵⁴ According to Judge Bostick, veterans do not receive *preferential* treatment—they receive *targeted* treatment for their particular issues.¹⁵⁵ The veteran-offender is already the state's responsibility, so it makes sense to use the resources provided by the VA, mentors, and drug and mental health courts to reduce the state's burden as well as the veteran's potential recidivism.¹⁵⁶ Finally, some have argued, including the Supreme Court, that veterans who served their country honorably do in fact deserve preferential treatment to counter the harmful effects of that service.¹⁵⁷

B. *Unfairness to Veteran-Participants*

While some critics consider VTCs to be unfair to civilians, others believe such courts to be disadvantageous to veteran-participants. Most nonviolent minor offenses result in several days in county jail followed by probation; VTCs involve long periods of intense judicial supervision, provoking many veterans (particularly young GWOT service members) to decline much needed treatment for their issues and accept traditional adjudication.¹⁵⁸ For those veterans who opt to participate in VTCs, the protracted length of the program, while necessary, increases the risk of failure, which leads to the imposition of the original or harsher sentence.¹⁵⁹ Finally, if admission into VTC requires a guilty plea, even successful completion of the program results in a criminal record, further hindering a veteran's reintegration.¹⁶⁰

Courts can employ graduated responses to reduce the possibility of the long duration of a VTC program leading to failure, with noncompliance with the court's conditions leading to increased supervision or other sanctions rather than immediate expulsion.¹⁶¹ Courts have developed alternatives to permanent criminal records in jurisdictions where a

154. See Caine, *supra* note 91, at 239; Cartwright, *supra* note 8, at 307.

155. Bostick, *supra* note 3.

156. *Id.*

157. See Porter v. McCollum, 558 U.S. 30, 30–31, 43 (2009); Logsdon & Keogh, *supra* note 7, at 20 (“Another reason that veterans deserve special treatment is that while they are sick, most of them are not bad people. . . . [They] literally put [their] li[ves] on the line for fellow soldiers and complete strangers.”).

158. Cartwright, *supra* note 8, at 310.

159. *Addicted to Courts*, *supra* note 50.

160. Cartwright, *supra* note 8, at 308.

161. Russell, *supra* note 35, at 366.

defendant-veteran is required to plead guilty before admission into a VTC—judges can suspend proceedings or refrain from entering a judgment of conviction, with documents being sealed or charges expunged after successful completion of the program.¹⁶² Other courts afford judges the discretion to determine the outcome of a defendant’s criminal charges, including complete dismissal at the conclusion of treatment or sentencing the defendant to treatment rather than prison.¹⁶³

C. *Not Enough Veterans are Getting Help*

An additional critique of VTCs is that they are not helping enough veterans who desperately need their services. Many courts are established near large cities, prohibiting access by eligible National Guard and Reserve service members who are more likely to reside in rural or suburban areas.¹⁶⁴ The “discharge under honorable conditions” eligibility requirement means that many needy defendants are precluded from VTC, even though a veteran’s PTSD may have led to his dishonorable discharge when a medical (rather than dishonorable) discharge for PTSD may have been the appropriate condition of discharge and would have allowed him to retain his eligibility.¹⁶⁵ The restriction of VTCs to nonviolent offenders “might fence out many of the veterans whose crimes are most tied to their combat trauma.”¹⁶⁶ Paranoia and habit cause many veterans to carry weapons, leading to more severe charges for minor offenses. Additionally, substance abuse and aggression associated with PTSD can result in domestic violence, assaults, and serious driving offenses, leading to a veteran’s ineligibility for VTC participation.¹⁶⁷

Statewide legislative implementation of VTCs and judicial discretion to consider a veteran’s combat service during sentencing would increase accessibility to treatment for afflicted veterans. VTCs could accept a broader range of crimes (including violent crimes), “but require a tighter nexus between the criminal behavior and the defendant’s combat experience.”¹⁶⁸ Rather than simply denying them treatment, defendants charged with more serious crimes can be required to plead guilty with the possibility of a reduced sentence or reduced charges upon completion of

162. Cartwright, *supra* note 8, at 311.

163. *Id.*

164. *Id.* at 308–09.

165. *Id.* at 309.

166. *Id.*

167. *Id.* at 309, 316 (“[F]encing out offenders who carried a gun or got into a bar fight right after coming home from Iraq seems to miss the point.”).

168. *Id.* at 316.

the program,¹⁶⁹ or a violent offender requiring incarceration can receive treatment in prison.

CONCLUSION

With more than 40,000 Alabamians¹⁷⁰ having deployed to either Iraq or Afghanistan or both, resulting in over 100 service members killed and over 700 wounded,¹⁷¹ the State of Alabama and its citizens have contributed substantially to the GWOT effort. Statistically, as many as 10,000–18,000 of these Alabama veterans are likely suffering from mental health and substance issues stemming from their service to America, which could lead to criminal behavior upon their return to society. Alabama’s prison system is woefully overburdened, with nearly 31,000 inmates currently incarcerated in facilities designed to house 16,000 prisoners¹⁷² and 190 prisoners being added monthly.¹⁷³ VTCs offer a pragmatic and compassionate solution to the growing crisis of veteran criminality by addressing their unique needs through early diversion programs before their problems fester, causing further strain on Alabama’s overtaxed criminal justice system. Tailored treatment as an alternative to incarceration in Alabama has proven successful in civilian mental health and drug courts, costs less than prison, and reduces recidivism.

Alabama has taken steps in the right direction by following the lead of thirty-one other states in creating Shelby County’s VTC. To maximize the benefits of this program, the state should employ the “best practices” outlined above, such as harnessing the expertise gained from its effective drug and mental health courts, taking advantage of federally funded veterans benefits, and using a flexible approach to meet the needs of individual defendants while holding them rigidly accountable for their actions. Judge Bostick’s willingness to consider all veteran-offenders for admission into Shelby County’s program, as well as his commitment to devote the time and effort to tailor the conditions and treatment to each individual veteran’s situation, increases the likelihood of his court’s success and should be adopted throughout Alabama. In fact, Shelby

169. *Id.* at 316.

170. DEFENSE MANPOWER DATA CTR., *supra* note 5.

171. ICASUALTIES.ORG, <http://icasualties.org/OEF/USCasualtiesByState.aspx>. (last visited Aug. 5, 2013) (click both the “Iraq” and “Afghanistan” links on the top banner and add together the listed Alabama casualties).

172. Ed. Board, *Behind Bars in Alabama: Lawmakers Must Address State’s Prison Overcrowding Issue*, THE ANNISTON STAR (Jan. 30, 2013), http://annistonstar.com/view/full_story/21569571/article-Behind-bars-in-Alabama--Lawmakers-must-address-state%E2%80%99s-prison-overcrowding-issue?instance=opinion_secondary.

173. RAMSAY, *supra* note 53, at 8.

County’s admissions standards rank among the most inclusive in the country, ensuring that those veterans whose crimes may be most connected to their combat service have the opportunity to turn their lives around. State-wide implementation of the VTC concept and even legislation allowing for consideration of combat service during criminal proceedings would recognize veterans’ sacrifices while acknowledging that their crimes may result from underlying issues caused by their service. VTCs benefit society by reducing financial costs associated with incarceration, increasing public safety, and providing justified individualized treatment to men and women who, in the words of Judge Bostick, volunteered to “go anywhere I am sent, do anything I am commanded, and signed that blank check to Uncle Sam, payable with my life if necessary, in service of our country.”¹⁷⁴

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174. Bostick, *supra* note 3.

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