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VETERANS COURTS:

EARLY OUTCOMES AND KEY INDICATORS FOR SUCCESS

by Justin Holbrook and Sara Anderson¹

Society felt no responsibility for the young men who filled the prisons before the [Civil War]. But when the prisoners of after-war days were the young ‘veterans’ of those grand armies of the Republic to whom a nation’s gratitude was due, there was a genuine desire to get them out if possible

Edith Abbott, *The Civil War and the Crime Wave of 1865-1870*²

INTRODUCTION

In April 2011, the Combat Veterans Court in Orange County, California received a Ralph N. Kleps Award for Improvement in Administration of the Courts, an award presented biennially by the Judicial Council of California to programs at the forefront of judicial innovation.³

Founded in late 2008, the Orange County veterans court offers “therapeutic treatment instead of incarceration for combat veterans with substance abuse issues or diagnoses of posttraumatic stress disorder, traumatic brain injury, or other psychological problems attributable to their service.” By placing troubled veterans under the supervision of a judge, probation officer, and case manager from the Department of Veterans Affairs, veterans “receive intensive mental health and substance abuse treatment” rather than time in prison or jail, a specialized approach to criminal justice encouraged by a 2006 amendment to California Penal Code § 1170.9 authorizing

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² Edith Abbot, *The Civil War and the Crime Wave of 1865-1870*, 1 SOC. SERV. REV. 212, 233 (1927).

³ Press Release, Judicial Council of California, *California Court Programs Win Top Awards: Judicial Council Honors First Combat Veterans Court and Other Innovative Programs* (Apr. 29, 2011), available at <http://bit.ly/m0Ggzi> [hereinafter *Orange County Veterans Court*]; COLLABORATIVE COURTS 2010 ANNUAL REPORT, Superior Court of California, County of Orange, at 27, available at <http://bit.ly/imKeTS> [hereinafter ORANGE COUNTY 2010 REPORT].

rehabilitative treatment over incarceration for eligible offenders.⁴ In 2010, the Orange County veterans court reported 28 new participant admissions (of 43 total participants), seven program graduates, and four early terminations.⁵ Along with veterans courts in Buffalo, New York, Tulsa, Oklahoma, and San Jose, California, the Orange County court was selected by the National Drug Court Institute (NDCI) as one of four “mentor courts” nationwide to assist courts in other jurisdictions in developing their own veterans court programs.⁶ The court also received feature coverage in the documentary film *Other Than Honorable*, an exploration of veterans caught in the criminal justice system after returning from war.⁷ By all accounts, the Orange County veterans court—and dozens of others like it spreading across the country—has shown early promise in rehabilitating veterans whose criminal misconduct is attributable, at least in part, to their military service.⁸

The growing trend within the judicial, treatment, and advocacy communities toward specialized courts for military veterans raises important questions about the effectiveness of such courts in rehabilitating veterans.⁹ As a matter of first principles, veterans courts observers may take opposing positions regarding the appropriateness of placing veterans in a specialized, treatment-based court program simply because of their military service. For example, treatment

⁴ *Orange County Veterans Court*, *supra* note 3, at 2; *see also* Cal. Penal Code §1170.9 (2011) (providing for treatment over imprisonment for offenders who are otherwise eligible for probation and who allege they committed an offense “as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from service in the United States military”).

⁵ ORANGE COUNTY 2010 REPORT, *supra* note 2, at 27-28.

⁶ *See id.* at 29; Nat’l Drug Court Institute, *Visit a Mentor Court*, <http://bit.ly/kV0k9D> (last visited May 5, 2011).

⁷ *Id.*; *see also* In Their Boots, *Other than Honorable*, <http://bit.ly/mAKIGo> (last visited May 5, 2011).

⁸ As of May 2011, nearly 60 jurisdictions in 24 states had established veterans courts, up from just over 40 veterans courts in October 2010. *See* Justin Holbrook, *Veterans’ Courts and Criminal Responsibility: A Problem Solving History & Approach to the Liminality of Combat Trauma*, TREATING YOUNG VETERANS, DIANN KELLY, ET AL., EDS. 259, 282 (2011); Nat’l Assoc. of Drug Court Prof., Justice for Vets: The Nat’l Clearinghouse for Veterans Treatment Courts, *Veterans Court Treatment and Statistics*, <http://bit.ly/IU8ccN> (last visited May 5, 2011); Delaware Docket, Delaware Administrative Office of the Courts, *New Court Offers Hope for Veterans with Mental Health or Substance Abuse Issues* (Spring 2011), available at <http://bit.ly/IKFL3P> [hereinafter Delaware Docket].

⁹ For a discussion of the history of veterans courts and their treatment methodologies, *see* Holbrook, *supra* note 8, at 277–285.

professionals might favor the veterans court model of rehabilitation because veterans courts ensure that veterans who engage in criminal misconduct following exposure to combat are evaluated and treated for post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) when these are etiologically related to post-combat criminal misbehavior. Alternately, victims' rights advocates might disfavor the veterans court model if, in practice if not by design, it confers status-based benefits that subordinate the retributive interests of victims to the rehabilitative interests of veterans. Faced with competing concerns, some veterans rights organizations might also oppose veterans courts based on the argument that they perpetuate a stereotype of traumatized veterans committing criminal misconduct after returning home from war—the so-called “wacko-vet myth.”¹⁰ On the other hand, other veterans rights organizations might favorably endorse veterans courts because they benefit a population for which, as the Supreme Court recently observed in *Porter v. McCollum*, “[o]ur Nation has a long tradition of according leniency . . . in recognition of their service, especially for those who fought on the front lines”¹¹ To date, serious, thoughtful dialogue about such first principle concerns has been sparse.

In addition to these foundational issues are others grounded in the practical effectiveness of the nearly 60 veterans courts currently in operation.¹² Certainly, studies from sister treatment courts (drug courts, community courts, DWI courts, and mental health courts) suggest positive outcomes for veterans courts utilizing tenet methodologies similar to those used in other treatment court models.¹³ Additionally, anecdotal evidence and self-reported data from

¹⁰ See *infra* text accompanying notes 19–29.

¹¹ *Porter v. McCollum*, 558 U.S. ___, 130 S. Ct. 447, 455 (2009) (per curiam).

¹² See *supra* note 8.

¹³ For a discussion of the efficacy of veterans courts in light of other courts' treatment models, see Holbrook, *supra* note 8, at 282–283.

individual veterans courts indicate that veterans courts' rehabilitation and recidivism rates compare favorably to those of other specialized treatment courts.¹⁴ Currently, however, little comprehensive research exists regarding the participant populations or outcome-based efficacy of veterans courts. Partly this research gap may be due to the neoteric nature of veterans courts, which garnered widespread attention only in 2008 after Judge Robert T. Russell opened the Buffalo Veterans Treatment Court in Buffalo, New York, often reported as the first court of its kind in the country "that specialized and adapted to meet the specific needs of veterans."¹⁵ The lack of evaluative data also may be attributable to the limited participant pools from which to draw meaningful conclusions. For example, the Buffalo veterans court reported in May 2010 that it had graduated 30 veterans.¹⁶ Similarly, the Orange County veterans court reported in its 2010 annual report it had graduated just seven veterans.¹⁷ Finally, the gap in outcome-based research may be due to the absence of shared reporting objectives and outcome protocols among veterans courts generally. Not all courts, for example, report participant data. Of those that do, some report recidivism rates while others do not.¹⁸ Given such limiting factors, any outcome-

¹⁴ *Id.* at 270, 282-293.

¹⁵ Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENG. J. ON CRIM. AND CIV. CONFINEMENT 357, 364 (2009). While the veterans court in Buffalo is often considered the "first" veterans treatment court, a less-well known veterans court had been established by Judge Sigurd Murphy and Judge Jack Smith in 2004 in Anchorage, Alaska four years earlier. *See infra* text accompanying notes 111–112. *See also* ANCHORAGE VETERANS COURT, POLICIES AND PROCEDURES FEBRUARY 2011, 3 (on file with authors) ("The [Anchorage] court was started . . . in 2004 in response to the number of veterans appearing in District Court suffering from medical, behavioral health or other socio-economic issues associated with previous military service."); Michael Daly Hawkins, *Coming Home: Accommodating the Special Needs of Military Veterans to the Criminal Justice System*, 7 OHIO ST. J. CRIM. L. 563 (2009) (discussing creation of court for veterans in Alaska in 2004); Steven Berenson, *The Movement Toward Veterans Courts*, 44 CLEARINGHOUSE REV. 37, 39 (2010) ("The first small-scale effort at starting a veterans court took place in Anchorage, Alaska, in 2004, but most commentators locate the beginning of the current movement toward specialty courts for veterans in Buffalo, New York.")

¹⁶ The World, *Trauma Courts for Vets* (PRI radio broadcast May 10, 2010), transcript available at <http://bit.ly/a5xCII>.

¹⁷ ORANGE COUNTY 2010 REPORT, *supra* note 3, at 28.

¹⁸ For example, the Buffalo Veterans Court reported that none of its 30 graduates as of May 2010 had re-offended. *See* Trauma Courts for Vets, *supra* note 16. The Orange County court did not report recidivism rates of its seven graduates in 2010. *See* ORANGE COUNTY 2010 REPORT, *supra* note 3, at 28.

based conclusions about the effectiveness of veterans courts based on their present operations must necessarily be qualified.

This chapter explores these challenging issues in two parts. First, we undertake a discussion of first principle concerns related to veterans courts by reviewing research studies examining the link between veterans and criminal misconduct. The return of 1.6 million veterans from the wars in Iraq and Afghanistan has re-ignited the still unsettled controversy over whether veterans suffering from combat trauma are more likely than their non-veteran counterparts to commit criminal misconduct after returning home.¹⁹ While firm conclusions may be difficult (and unpopular) to draw, the issue warrants attention in any serious discussion about the merits and best practices of veterans court programs. Second, we present early findings from an assessment we conducted of the practices, procedures, and participant populations of certain veterans courts operating as of March 2011. Of the 53 courts invited to participate, 14 provided a response by completing either an online or paper survey. Of these, seven submitted sample policies and procedures, participant contracts, plea agreements, and mentor guidelines for our review. Drawing on these courts' common practices and procedures, we identify key operational components courts should consider in implementing veterans court programs. We also conclude that veterans court outcomes, at least at present, appear at least as favorable as those of other specialized treatment courts.

¹⁹ For a discussion of the number of veterans returning from Iraq and Afghanistan and their PTSD occurrence rates, see RAND CTR. FOR MILITARY HEALTH POLICY RESEARCH, *INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY* iii (Terri Tanielian & Lisa H. Jaycox eds., 2008) [hereinafter RAND REPORT].

I. COMBAT TRAUMA AND CRIMINAL MISCONDUCT

A. The Myth of Veteran Criminality

In January 2008, Deborah Sontag and Lizette Alvarez of *The New York Times* placed a spotlight on veterans who commit criminal misconduct after returning from war.²⁰ In an article titled, “Across America, Deadly Echoes of Foreign Battles,” Sontag and Alvarez explained how they uncovered “121 cases in which veterans of Iraq and Afghanistan committed a killing in this country, or were charged with one, after their return from war.”²¹ Based on their research, which included news reports, police, court, and military records, and personal interviews, Sontag and Alvarez found that the domestic homicide rate for active-duty military and recently discharged veterans had increased 89 percent (from 184 cases to 349 cases) from the six years prior to the Afghanistan invasion in 2001 to the six years after the Afghanistan invasion.²² The vast majority of these offenders had no prior criminal history.²³

The conclusion Sontag and Alvarez reached—that combat trauma played a causal factor in later criminal misconduct—drew heavy and immediate criticism. *The Wall Street Journal* columnist James Taranto pointed out flaws in Sontag and Alvarez’s methodology, arguing their research only proved an increase in news reports of veterans charged with murder, not an increase in such crimes themselves.²⁴ “[T]he Times is trying to prove the truth of a media stereotype by references to media reports,” Taranto wrote. “It might have proved nothing more than that it is a stereotype.”²⁵ Both the *Weekly Standard* and the *American Thinker* concurred,

²⁰ Deborah Sontag and Lizette Alvarez, *Across America, Deadly Echoes of Foreign Battles*, N. Y. TIMES (Jan. 13, 2008), available at <http://nyti.ms/9Mc3zV>.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ James Taranto, *We Stand Behind Our Stereotype*, THE WALL ST. J. (Jan. 14, 2008), available at <http://on.wsj.com/kLpD04>.

²⁵ *Id.*

panning Sontag and Alvarez for reviving the “wacko-vet myth.”²⁶ *The Weekly Standard* article, “The Wacko-Vet Myth,” echoed Taranto’s concern over the methodology Sontag and Alvarez employed,²⁷ while the *American Thinker* commentary, titled “The Return of the Wacko Vet Media Narrative,” critically observed, “[I]t’s yet another example of how statistics and facts can be tweaked to push whatever agenda or outcome a person desires.”²⁸ Such criticism echoed concerns voiced earlier by the *Veterans of Foreign Wars* magazine in April 2006, in which Richard K. Kolb commented negatively on media outlets’ coverage of veterans returning from the wars in Iraq and Afghanistan.²⁹ Quoting a New York Post editorial titled, “Return of the ‘Wacko-Vet’ Myth,” Kolb wrote: “That stereotype [of the Vietnam vet] was also a news-media lie to begin with The myth of the dysfunctional vet that began with Vietnam has been created and spread, in large measure, by groups bitterly opposed to all U.S. military action.”³⁰

The warp and woof of such rhetoric aside, social observers and community stakeholders have long expressed concern about the potential connection between combat and post-war criminal behavior. Sir Thomas More, writing in *Utopia* in 1516, referred to individuals who, in war, “had so inured themselves to corrupt and wicked manners [] that they had taken a delight and pleasure in robbing and stealing[.]”³¹ In Machiavelli’s *Art of War*, published in 1521, the

²⁶ See John J. DiLulio, Jr., *The Wacko-Vet Myth: Now Echoed by the New York Times*, WEEKLY STANDARD (Jan. 14, 2008), available at <http://bit.ly/jJlbax>; David Paulin, *The Return of the Wacko Vet Media Narrative*, AM. THINKER (Feb. 2, 2008), available at <http://bit.ly/m31vka>.

²⁷ DiLulio, *supra* note 26.

²⁸ Paulin, *supra* note 26.

²⁹ Richard K. Kolb, *Portraying Contemporary War Vets in Popular Culture*, VETERANS OF FOREIGN WARS, at 12–13 (Apr. 2006), available at <http://bit.ly/m8VWtp>.

³⁰ *Id.* In his article, Kolb observed that one television show had “resurrected the most damaging stereotypical characteristics” of traumatized veterans, including “psychotic, violent, suicidal, drug addicted, drunken, prone to spousal abuse, guilt-ridden over atrocities and thus anti-war, and finally the pitiful victim.” *Id.*

³¹ Abbot, *supra* note 2, at 46 (quoting THOMAS MORE, UTOPIA (1516)).

character Fabrizio similarly contends, “War makes thieves, and peace hangs them.”³² Edith Abbott, an early 20th century American economist and social worker, noted reports of “crime epidemics” in France after the Revolution of 1848, in France and Germany after the Franco-Prussian War (1870-1871), and in England after the Second Boer War (1899-1902).³³ In a detailed study of post-Civil War data, Abbott found “[a] marked increase occurred . . . in the number of commitments of men to prison during the years following the war.”³⁴ One prison warden of the time concluded that 90 percent of his new prisoners “had been more or less incapacitated and demoralized by an apprenticeship to the trade of war.”³⁵ Another historical commentator, writing in the *North American Review* in 1867, observed:

A year ago allusion was made in these pages to the rapid filling up of our prisons with men who had seen service in the army or navy. At that time, we were confident, at least two-thirds of all commitments to the state prisons in the loyal states were of this class. . . . If so, there cannot be less than five or six thousand soldiers and sailors who fought for the Union now confined in the state prisons of the Union; to say nothing of the tens of thousands besides, who during the year have been confined in lesser prisons.³⁶

While perhaps incomplete, such analyses at least indicate a historical concern with the connection between violent combat and the post-combat behavior of veterans.

Of course, the concern with veterans and criminal misconduct did not end with the Civil War. Following World War I, both France and the United States feared an increase in crime as battle-hardened veterans returned to the home front, with one French criminologist commenting that “[p]ersonal morality . . . has deteriorated during the years of war with the breaking-up of

³² NICCOLO MACHIAVELLI, *THE ART OF WAR* 14 (Christopher Lynch trans., University of Chicago Press 2003) (1520).

³³ Abbott, *supra* note 2, at 212–13.

³⁴ *Id.* at 216.

³⁵ *Id.* at 228.

³⁶ *Id.* at 223, n. 1.

homes and the perpetual vision of death, and has brought about a state of moral vertigo[.]”³⁷ So prevalent were World War I era news reports linking veterans to criminal misconduct that the American Legion requested 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.”³⁸ After the conclusion of World War II, researchers in New York City found a substantial increase in violent personal crime, though they disputed whether it was attributable to the effect of combat on returning veterans, or simply the great numbers of returning veterans themselves.³⁹

B. PTSD and Veteran Criminality

More recently, numerous studies have explored the relationship between combat trauma suffered by veterans and post-combat criminal misconduct. Summarized below, these studies suggest that veterans who suffer from the trauma now known as PTSD *are* more likely than non-veterans not suffering from PTSD to engage in criminal misbehavior—a conclusion, however unpopular, that is empirically grounded and diagnostically helpful for treatment professionals working with traumatized veterans.⁴⁰ Importantly, these studies do not suggest that either military service or military combat, in and of themselves, increase the likelihood of later criminal misconduct. Rather, they indicate that it is the trauma of combat—PTSD—which increases the potential for criminal misbehavior. Because veterans suffer from PTSD at rates greater than the

³⁷ Edith Abbot, *Crime and the War*, J. OF AM. INST. OF CRIM. L. & CRIMINOLOGY, at 40 (May 1918) (summarizing the arguments of M. Roux, professor of criminal law at the University of Dijon). *See also* Milton H. Erickson, *Some Aspects of Abandonment, Feeble-Mindedness, and Crime*, AM. J. OF SOC., (Mar. 1931) (finding a statistical correlation between military service and the commission of criminal offenses following World War I); JONATHAN SHAY, *ACHILLES IN VIETNAM: COMBAT TRAUMA AND THE UNDOING OF CHARACTER*, at 23–28 (1994) (discussing impact of war on soldiers’ “Social and Moral Horizon”).

³⁸ Sontag and Alvarez, *supra* note 20 (quoting the American Legion Resolution).

³⁹ Harry Willbach, *Recent Crimes and the Veterans*, J. CRIM. L. AND CRIMINOLOGY, Jan.–Feb. 1948, at 508.

⁴⁰ For a historical discussion of combat trauma and PTSD, see Holbrook, *supra* note 8, at 261–266.

general population,⁴¹ and because PTSD is causally related to criminal misconduct,⁴² veterans of combat necessarily appear to offend at rates greater than the general population.

i. Wilson and Zigelbaum (1983)

In an influential study published in 1983, John P. Wilson and Sheldon D. Zigelbaum examined the relationship between PTSD and criminal behavior in 114 combat veterans who had served in Vietnam.⁴³ In their study, Wilson and Zigelbaum found that combat exposure significantly correlated to the crimes of manslaughter, disorderly conduct, assault, driving under the influence of alcohol, and weapons charges.⁴⁴ Study results also indicated a relationship between PTSD and the crimes of driving under the influence of alcohol, disorderly conduct, assault, and weapons charges.⁴⁵

In exploring how combat trauma may induce post-combat criminal behavior by altering the psychological state of veterans, Wilson and Zigelbaum proposed three possible theories. First, a veteran could enter a *dissociative state* in which he “is likely to function predominately in the survivor mode by behaving as he did in combat in Vietnam.”⁴⁶ Dissociative states are most commonly linked to violent criminal behavior.⁴⁷ Second, a veteran could display a *sensation seeking syndrome*, characterized by attempts to seek out the same level of excitement, exhilaration, and stimulation as that experienced in combat.⁴⁸ Sensation seeking syndrome often manifests itself in risk-filled activities, such as motorcycle riding, sky diving, and gambling.⁴⁹

⁴¹ For a discussion of PTSD rates among veterans, *see infra* text accompanying notes 102–110.

⁴² *See infra* text accompanying notes 43–100.

⁴³ John P. Wilson & Sheldon D. Zigelbaum, *The Vietnam Veteran on Trial: The Relation of Post-Traumatic Stress Disorder to Criminal Behavior*, 1 BEHAV. SCI. & L. 69, 70 (1983).

⁴⁴ *Id.* at 78.

⁴⁵ *Id.* at 80.

⁴⁶ *Id.* at 73.

⁴⁷ *Id.*

⁴⁸ Wilson & Zigelbaum, *supra* note 43, at 74.

⁴⁹ *Id.*

Third, a veteran could experience *depression-suicide syndrome*, which is accompanied by feelings of hopelessness, painful imagery, survivor guilt, and psychic numbing.⁵⁰ In an effort to end psychic pain, veterans with depression-suicide syndrome sometimes act out violently or recklessly knowing they will be caught or killed as a result of their actions.⁵¹

Wilson and Zigelbaum concluded by proposing that it is a veteran's "changed psychological state of being" resulting from the stress of combat which "predisposes the onset of a criminal act[.]"⁵² Based on their research, they found "a significant relationship between combat role factors, exposure to stressors in Vietnam, and criminal behavior after returning home from the war."⁵³ Though based on limited data obtained nearly 30 years ago, their study continues to influence discussions of PTSD and criminal responsibility.⁵⁴

ii. Collins & Bailey (1989)

In a 1989 study, James J. Collins and Susan L. Bailey explored the possible connection between PTSD and violence among a cohort of prisoners that included both veterans and non-veterans.⁵⁵ Collins and Bailey examined the histories of 1,140 male felons incarcerated in North Carolina prisons, reviewing three sets of data for each prisoner to determine the effect of PTSD on the commission of violent crimes by that prisoner.⁵⁶ In their study, Collins and Bailey found

⁵⁰ *Id.* at 74-75.

⁵¹ *Id.*

⁵² *Id.* at 82.

⁵³ *Id.*

⁵⁴ See, e.g., Lynne Peralme, Predictors of Post-Combat Violent Behavior in Vietnam Veterans 11-12 (1995) (unpublished Ph.D. dissertation, The Florida State University College of Arts and Sciences); Erin M. Gover, *Iraq as a Psychological Quagmire: The Implications of Using Post-Traumatic Stress Disorder as a Defense for Iraq War Veterans*, 28 PACE L. REV. 561, 567 (2008); Thomas L. Hafermeister & 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, 101 n. 77 (2010).

⁵⁵ James J. Collins & Susan Bailey, *Traumatic Stress Disorder and Violent Behavior*, 3 J. OF TRAUMATIC STRESS 203 (1990).

⁵⁶ *Id.* at 206. In their study, Collins and Bailey utilized three data sets: (1) A Diagnostic Interview Schedule (DIS) (Version III) to determine DSM-III diagnoses, with demographic and criminal history questions added; (2) detailed

that 2.3 percent of the studied cohort met the DSM-III criteria for PTSD at some point in their lives.⁵⁷ The most prevalent traumatic event witnessed by cohort members was seeing someone hurt or killed.⁵⁸ Combat trauma was listed as the second most prevalent traumatic event,⁵⁹ despite the fact that only 16 percent of the cohort had served in the military.⁶⁰ Including both inmates who did and did not meet the DSM-III diagnostic criteria, 25 percent of the studied cohort reported at least one PTSD symptom, a rate higher than that of the general public.⁶¹ Of inmates reporting at least one PTSD symptom who had been arrested at least once for homicide, rape, or assault, 85 percent first experienced symptoms of PTSD before or during the same year as their violent offense arrest.⁶² Significantly, Collins and Bailey found that those with PTSD were 6.75 times more likely than those not diagnosed with PTSD to have been arrested for a violent offense during the year prior to being imprisoned.⁶³

Summarizing their findings, Collins and Bailey determined that traumatic experiences—including those related to both combat and non-combat trauma—were “etiologically relevant” to later involvement in violence.⁶⁴ Drawing on similar studies detailing the effects of child abuse

data on criminal history and the type of offense(s) resulting in the current incarceration from North Carolina Department of Corrections; and (3) criminal history records from the N.C. Bureau of Investigation.

⁵⁷ *Id.* at 210. 2.3 percent of subjects = 26 inmates.

⁵⁸ *Id.* at 210–211. 53.8 percent of subjects with PTSD reported this traumatic event.

⁵⁹ *Id.* at 211. 30.8 percent of subjects with PTSD reported this traumatic event. Less than 1 percent without PTSD reported having been in combat duty

⁶⁰ Collins & Susan Bailey, *supra* note 55, at 205, 211, Table II. The symptoms reported by research participants were: (1) nightmares/flashbacks, (2) being jumpy and easily startled, (3) hypervigilance, (4) having trouble sleeping and concentrating, (5) having less feeling for others and less interest in activities, (6) being ashamed of still being alive, and (7) avoiding reminders of the traumatic event.

⁶¹ *Id.* at 212. The rate of service for the general public was reported as 15 percent for males in 1987.

⁶² *Id.* at 216.

⁶³ *Id.* at 215.

⁶⁴ *Id.* at 218.

and neglect on violence,⁶⁵ Collins and Bailey concluded by calling for additional studies into the relationship between PTSD and violent behavior.⁶⁶

iii. *Friel, White, and Hull (2007)*

In 2007, a trio of authors conducted a study of studies generally exploring the link between PTSD and violent behavior.⁶⁷ In their article, *Posttraumatic Stress Disorder and Criminal Responsibility*, Andra Friel, Tom White, and Alastair Hull observed that the lifetime prevalence for PTSD was 5 percent for men and 10.4 percent for women.⁶⁸ By contrast, the lifetime prevalence of PTSD for Vietnam veterans was 30.9 percent for men and 26.9 percent for women.⁶⁹ Individuals with PTSD also had a high comorbidity rate for additional mental health-related disorders, including depression and substance abuse.⁷⁰

Friel, White, and Hull then reviewed eight different studies of combat veterans, each of which examined the relationship between PTSD and violent criminal behavior.⁷¹ Of the eight studies, one found no direct link between PTSD and violent behavior.⁷² The remaining seven studies found either a link or possible link, though some cautioned that firm conclusions were difficult to draw because of the presence of additional potentially causal factors.⁷³ Friel, White, and Hull concluded that there “does appear to be a direct association” between PTSD and

⁶⁵ Collins & Susan Bailey, *supra* note 55, at 218

⁶⁶ *Id.*

⁶⁷ Andrea Friel, Tom White & Alastair Hull, *Posttraumatic Stress Disorder and Criminal Responsibility*, 19 J. OF FORENSIC PSYCHIATRY & PSYCHOL. 64 (2007).

⁶⁸ *Id.* at 65

⁶⁹ *Id.*

⁷⁰ *Id.* at 66. Comorbidity is generally defined as “two or more coexisting medical conditions or disease processes that are additional to an initial diagnosis.” MOSBY’S MEDICAL DICTIONARY, 8th ed., available at <http://bit.ly/iBcAKt>.

⁷¹ Friel, *supra* note 67, at 71–74.

⁷² *Id.* at 71–72, citing D.M. Shaw, C.M. Churchill, R. Noyes & P.L. Loeffelholz, *Criminal behavior and post-traumatic stress disorder in Vietnam veterans*, 28 COMPREHENSIVE PSYCHIATRY 403 (1987).

⁷³ *Id.* at 71–73.

violence which is “mediated either by anger or the core features of PTSD... as well as the phenomenon described... as combat or action addiction.”⁷⁴

iv. David Daniel (2008)

In a monograph prepared in 2008 at the United States Army Command and General Staff College, Major David L. Daniel also reviewed the correlation between PTSD and violent behavior among veterans, focusing specifically on veterans who had recently returned from Iraq and Afghanistan.⁷⁵ To support his hypothesis of “a correlation between PTSD and criminal behavior in soldiers that [sic] have been incarcerated after returning from the GWOT,” Daniel reviewed three primary sources.⁷⁶ First, he analyzed the findings of Collins and Bailey, using their study to establish a general causal link between PTSD and violent criminal behavior.⁷⁷ Second, he reviewed statistical data compiled by the Bureau of Justice Statistics (BJS) for trends in incarceration rates among veterans.⁷⁸ Third, Daniel assessed the validity of his hypothesis using data collected by the administrative and mental health staff of the United States Disciplinary Barracks at Fort Leavenworth, Kansas in a detailed study of 440 military inmates.⁷⁹

After taking a historical look at PTSD,⁸⁰ Daniel relied on Collins and Bailey to find “significant causal links between the onset of PTSD symptoms and the increased risk of and

⁷⁴ *Id.* at 81. Combat addiction occurs when a person “seeks to re-experience previous combat experiences by engaging in a repeated pattern of aggressive behavior. The individual effectively ‘lives on the edge’ both physiologically and psychologically to create a state parallel to the original trauma. These individuals are usually aware that they are engaging in antisocial behavior, and there is not the impairment in reality testing sometimes seen in flashback states.” *Id.* at 74.

⁷⁵ David L. Daniel, *Post-Traumatic Stress Disorder and the Casual Link to Crime: A Looming National Tragedy* (2008) (unpublished paper, School of Advanced Military Studies, United States Army Command and General Staff College), available at <http://1.usa.gov/iBhUMW>.

⁷⁶ *Id.* at 44.

⁷⁷ *Id.* at 4.

⁷⁸ *Id.* at 5.

⁷⁹ *Id.* at iii.

⁸⁰ Daniel, *supra* note 75, at 8–15.

commission of violent criminal acts.”⁸¹ He then reviewed BJS data, citing reports from 1986 to 2007 for the proposition that the percentage of combat veterans in state and federal prisons and, among incarcerated veterans, the percentage convicted of violent acts evidenced a link between combat exposure and violent behavior.⁸² Especially troubling to Daniel was the percentages of incarcerated veterans who had little or no prior criminal record and who had been imprisoned for committing violent acts.⁸³ As shown in Table 1, BJS data published in 2007 suggests that veterans imprisoned in state and federal prisons in 2004 had shorter criminal histories than non-veterans but were more likely than non-veterans to have committed violent offenses, including homicide and sexual assault, leading to longer sentences than non-veterans.⁸⁴ Veterans also were less likely than non-veterans to report recent drug use, but were more likely to report recent mental health problems.⁸⁵ Finally, veterans were more likely than non-veterans to victimize females they knew.⁸⁶

⁸¹ *Id.* at 44.

⁸² *Id.* at 45. Based on BJS data, Daniel found that 20 percent of veterans incarcerated in state and federal correctional facilities and 21 percent incarcerated in local jails had served in combat. Also, of the incarcerated veterans, over half of those in state facilities and about a quarter of those in federal institutions had been imprisoned for violent acts. *Id.*

⁸³ *Id.* at 36–38.

⁸⁴ Margaret E. Noonan & Christopher J. Mumola, *Veterans in State or Federal Prison, 2004*, Bureau of Justice Statistics, U.S. Dep’t of Justice 1, 11–13, May 2007, available at <http://bit.ly/dxfBcc>.

⁸⁵ *Id.* at 1.

⁸⁶ *Id.* at 4, 12.

Table 1: Comparison of percent of veterans in prisons, 2004 ⁸⁷				
	State		Federal	
	Veterans	Nonveterans	Veterans	Nonveterans
Violent Offenses	57.4	46.8	19.0	14.1
Homicide	14.9	11.8	3.2	2.3
Sexual Assault	22.5	9.4	3.3	0.6
Gender of victims				
Male	33.2	48.6		
Female	60.4	40.9		
Victim Relationship				
Knew Victim	70.9	54.3		
Did Not Know	29.9	45.7		
Mental Health				
Any Problem	54.4	56.5	42.9	45.0
Recent Services	29.9	23.6	20.7	13.0
Criminal History				
None	29.8	22.8	40.0	34.7
Prior	70.2	77.2	60.0	65.3
Maximum Sentence				
<12 mos.	2.9	3.5	0.9	1.6
12-35 mos.	9.8	14.8	16.4	10.5
36-59 mos.	9.6	14.1	9.3	13.7
60-119 mos.	20.1	23.2	22.9	26.6
120-179 mos.	12.1	11.9	18.7	20.2
180-239 mos.	24.0	16.7	19.1	14.7
Life/death	13.2	8.1	3.1	2.8
Mean ⁸⁸	147 mos.	119 mos.	138 mos.	127 mos.

Turning to an examination of veterans incarcerated in military prisons, Daniel then reviewed USDB data from a survey of 440 military inmates. Of those surveyed, 45 percent reported exhibiting one or more symptoms of PTSD.⁸⁹ Of the 23 inmates with prior diagnoses of PTSD, 92 percent had been convicted of committing a violent offense and 87 percent had been in

⁸⁷ *Id.* at 11–13.

⁸⁸ Data in this table excludes sentences to life or death. *See* Noonan and Mumola, *supra* note 84.

⁸⁹ Daniel, *supra* note 75, at 42, 46. In answering questions about PTSD, “199 (45%) reported one or more symptoms associated with PTSD, 157 (36%) reported no symptoms and 84 (or 19%) refused to participate in the research.” *Id.* at 42. Of those responding to the survey, therefore, 55 percent reported one or more PTSD symptoms.

combat.⁹⁰ Also, an overwhelming majority (>91%) of total inmates at USDB during the study period had been convicted of committing a violent offense.⁹¹ Tying together this data with deployment data from the target population, Daniel concluded by finding a “significant correlation” between PTSD and post-combat violent behavior in incarcerated veterans.⁹²

v. *Other Studies*

Other studies of Vietnam-era veterans suggest a measurable link between PTSD and criminal behavior, with one study finding a heightened disposition toward violent crimes in incarcerated Vietnam veterans compared to incarcerated non-veterans⁹³ and another finding a relationship between PTSD and “self-reported aggression, hostility, and anger[.]”⁹⁴ Researchers elsewhere estimated that 25 percent of Vietnam veterans who experienced heavy combat were charged with committing a criminal offense after returning home.⁹⁵ Perhaps the most comprehensive assessment comes from the National Vietnam Veterans Readjustment Study, which determined the rate of violent acts in Vietnam veterans with PTSD to be nearly four times that of veterans without PTSD.⁹⁶ Study results further showed nearly half (45.7%) of veterans suffering from PTSD had been arrested or imprisoned, compared to only 11.6 percent of veterans

⁹⁰ *Id.* at 43.

⁹¹ *Id.* at 46.

⁹² *Id.* at 46, 53.

⁹³ Bruce Pentland & James Dwyer, *Incarcerated Viet Nam Veterans*, in *THE TRAUMA OF WAR: STRESS AND RECOVERY IN VIET NAM VETERANS* 406 (1985).

⁹⁴ Peralme, *supra* note 54, at 13, citing Natasha B. Lasko, et al., *Aggression and Its Correlates in Vietnam Veterans With and Without Chronic Posttraumatic Stress Disorder*, 35 *COMPREHENSIVE PSYCHIATRY* 373 (1994). *See also* Elizabeth J. Delgado, *Vietnam Stress Syndrome and the Criminal Defendant*, 19 *LOY. L.A. L. REV.* 473, 478-82 (1985).

⁹⁵ C. Peter Erlinder, *Paying the Price for Vietnam: Post-Traumatic Stress Disorder and Criminal Behavior*, 25 *B.C. L. REV.* 305, 306, n. 5 (1984).

⁹⁶ Peralme, *supra* note 54, at 14. *See also* Ann R. Auberry, Comment, *PTSD: Effective Representation of a Vietnam Veteran in the Criminal Justice System*, 68 *MAR. L. REV.* 647, 650 (1985) (25 percent of Vietnam veterans involved in heavy combat had been charged with a crime, a rate higher than that of veterans not in heavy combat or non-veterans).

without PTSD.⁹⁷ Outside the context of criminal misbehavior, numerous researchers have found a significant correlation between combat exposure and alcohol abuse, including binge drinking, daily drinking, and lifetime alcohol dependency.⁹⁸

Not surprisingly, emerging studies of Iraq and Afghanistan veterans show similar trends in post-combat behavior. A longitudinal study of Iraq and Afghanistan veterans six months after deployment revealed that “27 to 35 percent reported symptoms placing them at mental health risk, including symptoms of PTSD, depression, alcohol misuse, and suicidal ideation, as well as self-reported aggression.”⁹⁹ Other reports have suggested an increase in drug abuse by Iraq and Afghanistan veterans,¹⁰⁰ and noted that veterans between the ages of 20 to 24 years are reportedly four times more likely to commit suicide than their nonveteran counterparts.¹⁰¹ Without regard to veteran status, individuals who suffer from PTSD are also more likely to report DUI recidivism than the participants who do not suffer from PTSD.¹⁰²

C. Veterans and PTSD Incident Rates

However strongly we might otherwise wish, these studies suggest a statistically significant correlation between combat trauma and post-combat criminal misconduct—a

⁹⁷ Peralme, *supra* note 54, at 14.

⁹⁸ See, e.g., Sherry H. Stewart, *Alcohol Abuse in Individuals Exposed to Trauma: A Critical Review*, 120 PSYCHOLOGICAL BULLETIN 83 (1996) (discussing numerous studies involving alcohol abuse and exposure to combat trauma).

⁹⁹ Debra A. Pinals, *Veterans and the Justice System: The Next Forensic Frontier*, J. AM. ACAD. PSYCHIATRY AND L. 163, 164 (2010).

¹⁰⁰ See *Serious Psychological Distress and Substance Use Disorder among Veteran*, THE NATIONAL SURVEY ON DRUG USE AND HEALTH REPORT, U.S. DEP'T OF HEALTH & HUMAN SERVICES, Nov. 2007 [hereinafter NSDUH REPORT], available at <http://bit.ly/c1uxq9> (“One quarter of veterans age 18 to 25 met the criteria for [substance use disorder] in the past year compared with 11.3 percent of veterans aged 26 to 54 and 4.4 percent of veterans aged 55 or older.”).

¹⁰¹ Rick Little & Stacy Garrick Zimmerman, *Helping Veterans Overcome Homelessness*, 43 CLEARINGHOUSE REV. 292, 295 (2009).

¹⁰² Allyson J. Peller, et al., *PTSD Among a Treatment Sample of Repeat DUI Offenders*, 23 J. OF TRAUMATIC STRESS 468, 471 (2010). Peller reports that among the sampled population “13% qualified for lifetime PTSD” and “12% qualified for past-year PTSD.” *Id.* at 470, citing H. J. Shaffer, et al, *The Epidemiology of Psychiatric Disorders Among Repeat DUI Offenders Accepting a Treatment-Sentencing Option*, 75 J. OF CONSULTING AND CLINICAL PSYCHOL. 795 (2008). The leading traumatic events for men were violent crime and combat. *Id.*

correlation key to any discussion of veterans courts because of the high incident rate of PTSD among veterans. In an April 2008 study titled “Invisible Wounds of War,” the RAND Corporation approximated that 300,000, or nearly 20 percent, of the 1.64 million veterans who have served in Iraq and Afghanistan since 2001 suffer from PTSD.¹⁰³ These figures generally accord with a 2004 study finding that 15.6 to 17.1 percent of veterans of Iraq met the screening criteria for major depression, generalized anxiety, or PTSD.¹⁰⁴ Incident rates of PTSD were directly tied to the number of combat experiences, from a rate of 9.3 percent for soldiers involved in one or two firefights to 19.3 percent for those involved in five or more firefights.¹⁰⁵ This finding directly correlates to the findings of Wilson and Zigelbaum regarding the *combat roles* veterans played and the *severity* of the combat stressors they faced, both of which were critical indicators for later criminal misconduct.¹⁰⁶

More recently, the Department of Veterans Affairs (VA) disclosed that 44 percent of Iraq and Afghanistan war veterans seeking treatment at VA medical facilities had been diagnosed with mental health disorders, with 23 percent diagnosed with possible PTSD.¹⁰⁷ In 2009, the National Center for PTSD published a bibliography of studies in which it found an overall PTSD rate of 10 to 18 percent for combat troops serving in Iraq and Afghanistan.¹⁰⁸ While these figures

¹⁰³ RAND REPORT, *supra* note 19 at iii. See also Anthony E. Giardino, *Combat Veterans, Mental Health Issues, and the Death Penalty*, 77 FORDHAM L. REV. 2955, 2958 (2009). For a discussion of the possible over-diagnosis of PTSD, see Harold Merskey and August Piper, *In Debate: Posttraumatic Stress Disorder Is Overloaded*, 52 CAN. J. OF PSYCHIATRY 499 (2007) (discussing, *inter alia*, the evolution of combat trauma diagnosis from shell shock to combat neuroses to PTSD). See also Hafermeister & Stockey, *supra* note 54, at 90, n. 12 (same).

¹⁰⁴ Charles W. Hoge, et al, *Combat Duty in Iraq and Afghanistan, Mental Health Problems, and Barriers to Care*, 351 NEW ENG. J. MED. 1, 13 (2004).

¹⁰⁵ *Id.* at 13.

¹⁰⁶ Wilson & Zigelbaum, *supra* note 43, at 77–79.

¹⁰⁷ William H. McMichael, *VA Diagnosing Higher Rates of PTSD*, MARINE CORPS TIMES, Jan. 18, 2009, available at <http://bit.ly/cA8Qj5>.

¹⁰⁸ Brett T. Litz and William E. Schlenger, *PTSD in Service Members and New Veterans of the Iraq and Afghanistan Wars: A Bibliography and Critique*, PTSD RESEARCH QUARTERLY, Winter 2009, at 1–3. By contrast, historical studies on Vietnam veterans following conclusion of the conflict indicate PTSD rates of 30 percent. See Hafermeister & Stockey, *supra* note 54, at 100.

are lower than reported PTSD incident rates for Vietnam veterans ($\geq 30\%$),¹⁰⁹ they are markedly higher than those of non-veterans. One author we reviewed placed the lifetime prevalence of PTSD among non-veterans at 5 percent for men and 10.4 percent for women,¹¹⁰ while another author placed the incident rate of PTSD among the adult population generally at between 1 percent and 2 percent.¹¹¹

II. THE VETERANS COURT MODEL

A. A Brief History of Veterans Courts

The first veterans court opened in Anchorage, Alaska in 2004 under the direction of District Court Judges Sigurd Murphy and Jack Smith.¹¹² Concerned by the number of veterans in their court who suffered from behavioral, medical, and socio-economic challenges associated with prior military service, the Anchorage Veterans Court coupled close judicial monitoring with rehabilitative treatment from community service providers to provide alternative sentencing arrangements for troubled veterans.¹¹³ Four years later, Judge Robert T. Russell presided over the first session of the Buffalo Veterans Treatment Court in Buffalo, New York,¹¹⁴ an idea which grew out of Judge Russell's experience as a sitting judge in city court where he observed that a rising number of defendants on his docket were military veterans.¹¹⁵ Having seen that veterans in both the Buffalo Drug Treatment Court and the Buffalo Mental Health Court responded more favorably to other veterans, Judge Russell developed a court model designed to pair veteran-

¹⁰⁹ See Hafermeister & Stockey, *supra* note 54, at 100; SHAY, *supra* note 37, at 168

¹¹⁰ Friel, *supra* note 67, at 65.

¹¹¹ Stewart, *supra* note 98, at 85, citing J.E. Helzer, L. N. Robins, and L. McEvoy, *Posttraumatic Stress Disorder in the General Population: Findings of the Epidemiologic Catchment Area survey*, 317 NEW ENG. J. MED. 1630 (1987).

¹¹² ANCHORAGE VETERANS COURT POLICY AND PROCEDURES 3 (2011) (on file with authors) [hereinafter ANCHORAGE POLICY AND PROCEDURES].

¹¹³ *Id.*

¹¹⁴ Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENG. J. ON CRIM. AND CIV. CONFINEMENT 357, 364 (2009).

¹¹⁵ *Id.* at 363.

defendants with veteran-mentors and directly link defendants with service providers who understood veterans' unique challenges and needs.¹¹⁶ Implicit in the methodology of both the Anchorage Veterans Court and the Buffalo Veterans Treatment Court was an understanding that the risk factors for criminal behavior exhibited by some veterans—including alcohol and substance use, homelessness, broken relationships, unemployment, and mental health—would, if left unaddressed, likely result in future involvement with the criminal justice system.¹¹⁷

Seeing the Buffalo Veterans Treatment Court's early success, other jurisdictions began implementing their own veterans court programs, including Orange County, California in late 2008 and Cook County, Illinois in early 2009. Since then, approximately 24 states have established some 60 veterans courts across the country, with courts currently operating or under development in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Louisiana, Michigan, Minnesota, Missouri, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Washington, and Wisconsin.¹¹⁸ The vast majority of these follow the Buffalo Veterans Treatment Court methodology by using the foundational tenets of drug courts to build comprehensive, community-based treatment plans for program participants. Some differences among courts, however, do exist. For example, some veterans courts operate as pre-conviction diversion programs, while others only accept veterans who already have pled guilty.¹¹⁹ Many hear only non-violent criminal cases,¹²⁰ though a few

¹¹⁶ *Id.* at 364.

¹¹⁷ *See id.* at 357-63.

¹¹⁸ Nat'l Assoc. of Drug Court Prof., Justice for Vets: The Nat'l Clearinghouse for Veterans Treatment Courts, <http://bit.ly/bK67tT> (last visited May 26, 2011).

¹¹⁹ For example, the Veterans Court Diversion Program in Tarrant County, Texas, requires admission of guilt before entry to the program. Conditions for Veterans Court Diversion Program, Veterans Court Diversion Program, Tarrant County, Texas, <http://bit.ly/9iMKrr> (last visited Oct. 28, 2010). By contrast, the veterans court in Delaware, the first state-wide veterans court in the nation, defers charges against participating veterans "pending successful completion of a treatment plan, at which time the charges will be dismissed." Delaware Docket, *supra* note 8.

hear low-level violent criminal cases as well.¹²¹ The veterans court in Tarrant County, Texas limits program participants to veterans with brain trauma, mental illness, or a mental disorder such as PTSD.¹²² The Buffalo Veterans Treatment Court, by contrast, accepts veterans with either substance dependency or mental illness.¹²³ In a third iteration, the veterans court in Orange County, California accepts only combat veterans eligible for probation.¹²⁴

In many courts, veterans who successfully complete their treatment program may have the charges against them dismissed. In the Anchorage Veterans Court, for example, “[e]ach criminal case . . . is individually negotiated by the parties. There is no standard resolution. Examples of resolution range from dismissal of charges to charge consolidation or reduction, elimination or reduction of jail time, fines, community work service, etc.”¹²⁵ In Delaware, program participants also have the opportunity to have their charges dismissed:

Once a referral is made, the veteran is offered the opportunity to participate in the Court on a voluntary basis. If the veteran chooses to participate, the veteran will have his or her charges deferred pending successful completion of a treatment plan, at which time the charges will be dismissed. To reach this point, veterans must comply with court ordered treatment and appear in court for progress assessments on a regular basis. Failure to comply will result in sanctions which can range from an admonishment all the way to termination from the program.¹²⁶

¹²⁰ See, e.g., LA Opens New Criminal Court for Troubled Veterans, BBC News (Sept. 19, 2010), <http://bbc.in/9B1312> (last visited May 26, 2011).

¹²¹ See, e.g., Kevin Graman, *Special Courts Divert Wash. Veterans from Jail*, TRI-CITY HERALD, Sept. 19, 2010, available at <http://bit.ly/aD4NAB> (cases of domestic violence and fourth-degree assault heard by veterans court judge); Amy Gillentine, *4th Judicial District Creating Special Court for Veterans*, CO. SPRINGS BUS. J., Feb. 2, 2010, available at <http://bit.ly/cLYdu1> (same); Lewis Griswold, *Valley Vets Get Court of Their Own: Tulare County Offers Victims of PTSD a Second Chance*, FRESNO BEE, June 19, 2010, available at <http://bit.ly/d0dKQI> (same).

¹²² Veterans Court Diversion Program, Tarrant County, Texas, <http://bit.ly/axkMDY> (last visited Oct. 28, 2010).

¹²³ See Russell, *supra* note 114, at 364.

¹²⁴ See Melissa Pratt, *New Courts on the Block: Specialized Criminal Courts for Veterans in the United States*, 15 APPEAL 39, 54 (2010).

¹²⁵ ANCHORAGE POLICY AND PROCEDURES, *supra* note 112, at 16.

¹²⁶ Delaware Docket, *supra* note 8.

The focus is on tailoring court outcomes to the offenses committed, the individuals who committed them, and the treatment plans most likely to help veterans avoid future criminal misconduct.

Paralleling developments within state and local judiciaries, policy makers at the community, state and federal levels have proactively encouraged the establishment of veterans treatment courts. For example, the National Association for Drug Court Professionals has created a clearinghouse for information related to veterans treatment courts and launched a cooperative training program between the National Drug Court Institute (NDCI), the Bureau of Justice Assistance (BJA), the U.S. Department of Veterans Affairs (VA), the GAINS Center, the Battered Women's Justice Project, and four "mentor" courts in California, Oklahoma, and New York to assist additional locales in establishing their own veterans treatment court programs.¹²⁷ The Department of Veterans Affairs has placed Veterans Justice Outreach officers in each of its regional medical facilities to work with courts in providing frontline mental health and substance services to veteran-defendants in the criminal justice system.¹²⁸ Embracing a community-based approach, the American Bar Association House of Delegates adopted a policy in February 2010 supporting veterans courts and setting forth key principles for their establishment.¹²⁹

In addition to these actions, both state and federal legislatures have considered or enacted legislation relating to veterans' courts. At the state level, at least five states—California, Colorado, Illinois, Nevada, and Texas—have passed legislation establishing veterans courts or requiring existing courts to considering military-connected factors, such as PTSD, in

¹²⁷ See Nat'l Assoc. of Drug Court Prof., Justice for Vets: The Nat'l Clearinghouse for Veterans Treatment Courts, <http://bit.ly/bK67tT> (last visited May 26, 2011).

¹²⁸ See Veterans Justice Outreach Initiative, U.S. Dep't of Veterans Affairs, <http://bit.ly/beCyd0> (last visited May 26, 2011).

¹²⁹ Policy 105A, House of Delegates, American Bar Association, House of Delegates (February 8–9, 2010), available at <http://bit.ly/bygdsz> [hereinafter ABA Policy]. See also Rhonda McMillion, *Lingering Wounds: The ABA Enlists In Efforts to Help Homeless Veterans Deal with their Burdens*, A.B.A. J., Oct. 2010, at 66.

adjudicating criminal cases.¹³⁰ At the national level, legislators in both the U.S. House of Representatives and the Senate have introduced legislation to support the creation of additional veterans courts throughout the country.¹³¹ Entitled the Services, Education, and Rehabilitation for Veterans (SERV) Act, the proposed legislation would provide grants to states, state courts, and local courts “for the purpose of developing, implementing, or enhancing veterans’ treatment courts or expanding operational drug courts to serve veterans.”¹³²

B. Survey Results and Veterans Courts Practices

To assess the participant populations and outcome-based efficacy of veterans courts currently in operation, we undertook an assessment of the practices, procedures, and participant populations of veterans courts operating as of March 2011. Of the 53 courts invited to participate in our survey, 14 provided a response by completing either an online or paper survey. Of these, seven also submitted court policies and procedures, participant contracts, plea agreements, and mentor guidelines for our review. Participants were invited to submit “any internal reports, operating procedures, or other information” they believed would be helpful. They also were assured anonymity in published findings and that “[a]ll information collected [would] be used in aggregate” Lastly, participants were informed that aggregate survey results would be shared to encourage courts in adopting best practices. We grouped survey questions into three broad areas: (1) Court Process, Eligibility and Enrollment; (2) Court Methodology/Model; and (3) Community Interests. Where appropriate, we invited participants

¹³⁰ See Lewis Griswold, *Valley Vets Get Court of Their Own: Tulare County Offers Victims of PTSD a Second Chance*, FRESNO BEE, June 19, 2010, available at <http://bit.ly/d0dKQI>; Marc A. Levin, *Policy Brief: Veterans’ Court*, TX. PUB. POL. FOUND., Nov. 2009, available at <http://bit.ly/b6jQTr>; Pratt, *supra* note 124, at 50–51 (discussing California’s statute requiring consideration of PTSD in mitigation).

¹³¹ See Services, Education, and Rehabilitation for Veterans Act, H.R. 2138, 111th Cong. (2009), available at <http://bit.ly/cXT1eW>; Services, Education, and Rehabilitation for Veterans Act, S. 902, 111th Cong. (2009), available at <http://bit.ly/chSGWZ>. See also Pratt, *supra* note 124, at 50 (discussing congressional legislation).

¹³² H.R. 2138, 111th Cong. § 2(b)(2009), available at <http://bit.ly/cXT1eW>.

to submit supplemental comments in order to fully capture their intended response. We also asked participants about their willingness to participate in follow-up interviews about their court.

i. Court Process, Eligibility and Enrollment

Eligibility

Because of the diversity of veterans courts' practices, we first surveyed courts' approaches to identifying and enrolling eligible veterans and disposing of charges against veterans who completed courts' rehabilitative requirements. The majority of survey respondents sought to identify potential program participants at three early stages in the criminal justice process: at arrest (79%), arraignment (64%), and the initial probable cause determination hearing (57%). Other identification points for potential participants included the initial defense attorney meeting, at booking by law enforcement personnel, and after conviction. Similarly, courts relied on multiple stakeholders in identifying potential participants, including the police (57%), pre-trial judges (64%), officials from the Department of Veterans Affairs (64%), and prosecutors (57%). Some courts also were assisted by defense attorneys, corrections officers, probation officers, and court personnel in identifying program participants. Two courts (14%) indicated they accepted self-referrals into their veterans court treatment programs.

Eligibility criteria for program participants differed. In verifying veteran status, eight courts (57%) required veterans to submit a copy of their DD Form 214, Report of Separation, while four courts (29%) did not. Most courts (64%) did not require a veteran to have been discharged with an "honorable" discharge for program consideration, meaning veterans discharged administratively or punitively with less than an "honorable" discharge could be eligible. Similarly, when asked whether program participants must first be eligible for VA benefits, which statutorily are unavailable to veterans who have been discharged under

dishonorable conditions,¹³³ ten courts (71%) did not require program participants to be eligible for VA benefits. (Even among these courts, however, VA involvement remained critical. A full 86 percent of responding courts reported that VA representatives are present in court when in session to assist with VA benefits, link veterans to VA services, and provide updates on veterans' progress in VA-supported treatment programs).

Courts also differed in the types of offenses eligible to be heard. Among survey respondents, thirteen courts (93%) reported limiting eligibility based on type of offense. The majority of courts heard both misdemeanor (86%) and felony (79%) cases, including violent offenses (71%), though most courts appeared to base eligibility for felony-level offenses on the severity of the charged offense. For example, at least two courts (14%) would not hear felony offenses with presumptive or mandatory sentences of confinement. One court indicated it heard only lower-level felonies, and one court would not hear any child sexual assault felonies. One court also would not hear drug delivery or manufacturing cases. In their survey comments, courts frequently mentioned screening felony-level offenses for eligibility, with local district attorneys playing a key role in determining which offenses would and would not be referred to veterans court. Of the ten courts that heard violent offenses, seven courts (70%) required prior victim consent. All courts appeared to exclude serious offenses such as sexual assault, felony-level child abuse, stalking and strangulation offenses, and offenses involving serious bodily injury. Depending on the court, eligible offenses included DUI, fleeing from police, terroristic threats, and misdemeanor and felony domestic assaults.

In determining eligibility, courts looked carefully at the nature of veterans' underlying problems, if any. Five courts (36%) required veterans to have a treatable behavioral health

¹³³ To be eligible for benefits from the Department of Veterans Affairs, veterans must have received a military discharge under other than dishonorable conditions. *See* 38 U.S.C. §1110 (2010).

condition, such as a mental health or substance abuse issue, to be eligible for participation in veterans court. As one court noted in requiring all program participants to undergo an initial risk assessment, “[I]f the assessment indicates there are no services needed for the individual, then there would be no reason for them to participate in [veterans treatment court].” One court specifically required a nexus between a diagnosed mental health condition and the charged offense before allowing a veteran to enroll in the veterans court program. Another court only accepted veterans which had PTSD or Traumatic Brain Injury (TBI) which required counseling or treatment. Yet another court was willing to accept all veterans except those charged with serious offenses and otherwise ineligible for disposition in veterans court, regardless of whether the veterans’ mental health was at issue.

Enrollment

Respondents differed when asked at what stage in the criminal justice process they allowed eligible veterans to enroll in their veterans court treatment programs. Three courts (21%) enrolled veterans solely at the pre-plea stage of criminal proceedings (i.e., before the defendant is required to enter a plea of guilty or not guilty), eight courts (57%) enrolled veterans solely at the post-plea stage of criminal proceedings (i.e., after a plea has been entered), and three courts (21%) allowed veterans to enroll at either the pre-plea or post-plea stages. Generally, courts with post-plea enrollment processes accepted veterans into their veterans court treatment programs as part of a negotiated plea arrangement, in which some or all of the sentence was deferred. For example, one court reported, “The participant is required to enter a guilty plea and as part of the sentence [is] enrolled in the program.” Another court similarly commented, “Individuals are referred to the Vet court for screening. They officially enroll when the VA presents a treatment plan and a negotiated plea agreement is entered (alternate plea agreements

for graduation or failure).” Survey respondents uniformly indicated that participation by eligible veterans was voluntary. When asked whether program participants were required to sign a participation “contract,” seven courts (50%) responded in the affirmative, five courts (36%) responded in the negative, and two courts (14%) did not respond.

Disposition of Charges

With respect to disposition of charges, courts tended to take an individual approach to cases, with some offering multiple disposition options depending on the veteran and charged offense. For example, seven courts (50%) reported disposing of veterans’ charges with “guilty plea and/or conviction prior to enrollment required” and eight courts (57%) reported disposing of veterans’ charges through “dismissal and/or withdrawal of charges upon program completion.” Based on courts’ additional comments, nearly all 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. Notable exceptions were one court which did not allow Driving Under the Influence (DUI) charges to be dismissed, and another court which provided for substitution of a lower offense (i.e., felony to misdemeanor, or misdemeanor to ordinance violation) rather than outright dismissal of the initial charge.

Supervision and Coordination

A key component of all respondents was the supervisory role courts played throughout the course of participants’ treatment. All courts routinely met with program participants to assess their progress, with courts roughly divided between meeting weekly, bi-weekly, or monthly with enrolled veterans. Several courts utilized a “phase” program in which veterans met with court personnel weekly during Phase I, bi-weekly during Phase II, monthly during Phase III, and as directed during Phase IV. All courts involved multiple stakeholders in these meetings,

including at least the judge (100%) and VA representative (100%). Other participants included a veteran-mentor (50%), probation officer (50%), prosecutor (43%), defense attorney (36%), and, in a minority of cases, personnel from Veterans Services Organizations, the local VA Medical Center, and other community service providers. In addition to meeting frequently with the veteran, courts also tended to hold frequent internal meetings with key stakeholders, including veterans court judges, prosecuting attorneys, defense attorneys, VA personnel, probation officers, court clerks, and, in one case, the assigned behavioral health team. One court also included assigned mentors in these internal meetings.

Graduation Criteria

A review of the graduation criteria for survey respondents revealed both similarities and dissimilarities. When asked whether they required participants to complete the veterans court treatment program within a specified time frame, five courts (36%) responded in the affirmative and nine courts (64%) responded in the negative. Of the five courts answering in the affirmative, two required completion within two years, one required completion within 15 months to two years, and one required an initial 12 month probation with three phases followed by a six month post-graduation probation phase. The remaining court simply observed, “They [veterans] have to be on supervision for the duration of their participation in [the] VTC. Each of the phases has a timeframe attached to it; however, we assume that different individuals may take more time in each phase based on their individual issues.”

Courts had markedly different graduation criteria for program participants to successfully complete the program. Most courts required program participants to complete a pre-approved treatment plan, which often had distinct phases of progress. Several courts required a lengthy period of sobriety (i.e., one year), consistent employment or significant progress in

vocational/rehabilitation training, or simply participation in the program without termination for a specified period of time. The response of one court was indicative of the general approach adopted by the others:

No positive drug test results (including missed, tampered, or diluted tests) for 180 consecutive days. No unexcused absences from scheduled services for 45 consecutive days. Gainful employment or productive use of time including community service or school attendance. Take non-narcotic medication as directed. Maintain consistent attendance at all court appearances and treatment team appointments. Achievement of stable living arrangements and healthy interpersonal relationships. A definitive aftercare plan, which may include recovery support/self-help meetings. VA outpatient counseling, group attendance at a former residential program, or active participation in a Combat Veterans Court alumni group. Fulfillment of goals as stated in the individual treatment plan. Proof of attendance at all other events or courses as required by the Judge.

Survey respondents indicated they removed program participants from their programs based on voluntary withdrawal or termination for failure to comply with treatment plan requirements (though voluntary withdrawal was not permitted by one court after participants entered the program). Other bases for removal included new charges, arrests, or, in one case, an inability to link the veteran to the appropriate service provider.

Participation and Graduation Rates

Eleven of fourteen courts responding to our survey provided detailed participant enrollment and graduation data. In aggregate, these eleven courts reported a total of 404 current program participants. Since most opened in either 2009 or 2010, the total historical number of program participants among responding courts was only slightly higher at 465 (with one court unable to provide data on total number of historical participants). Responding courts also reported a total of 59 graduates, eight voluntary withdrawals from the program, and 21 early terminations. Of the 59 reported graduates among all responding courts, only one had re-offended following graduation, a recidivism rate under 2 percent.

Table 2: Respondents' Participation and Graduation Rates					
Current Participants	Total Participants	Total Graduates	Early Withdrawals	Early Terminations	Re-Offenders
404	465	59	8	21	1

The number of total veterans served by each veterans court that responded to our survey varied greatly, with courts ranging from having served one veteran to more than 100 veterans. Six of the eleven courts providing participant data had fewer than 30 total program participants, four had between 50 and 70 total program participants, and only one court had more than 100 total participants. With respect to the number of veterans court graduates, only two courts had graduated more than 10 veterans from their veterans court treatment programs. The rest had either graduated none or fewer than 10.

Courts also were asked about the ages of the veterans in their programs. Not all courts provided responsive data, but the eight courts that did respond reported a total of 90 participants ages 18 to 35 years old, 37 participants ages 36 to 50 years old, and 63 participants over 50 years old. Three of these courts reported that the majority of their veterans were older than 50 years of age. The other courts reported that the majority of their veterans were under 35 years of age.

Table 3: Enrolled Participants Ages		
18 – 35	36 – 50	50 +
90	37	63

ii. Methodology / Model

Following in the footsteps of other specialized treatment courts programs, the Buffalo Veterans Treatment Court adopted a modified version of the ten key drug court components the Department of Justice described in its publication, *Defining Drug Courts: The Key*

*Components.*¹³⁴ Now a model for other veterans courts, these components have served as guideposts in developing comprehensive treatment plans for veterans throughout the country:

1. Key Component One: Veterans Treatment Court integrates alcohol, drug treatment, and mental health services with justice system case processing
2. Key Component Two: Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights
3. Key Component Three: Eligible participants are identified early and promptly placed in the Veterans Treatment Court program
4. Key Component Four: The Veterans Treatment Court provides access to a continuum of alcohol, drug, mental health and other related treatment and rehabilitation services
5. Key Component Five: Abstinence is monitored by frequent alcohol and other drug testing
6. Key Component Six: A coordinated strategy governs Veterans Treatment Court responses to participants' compliance
7. Key Component Seven: Ongoing judicial interaction with each veteran is essential
8. Key Component Eight: Monitoring and evaluation measures the achievement of program goals and gauges effectiveness
9. Key Component Nine: Continuing interdisciplinary education promotes effective Veterans Treatment Court planning, implementation, and operation
10. Key Component Ten: Forging partnerships among the Veterans Treatment Court, the VA, public agencies, and community-based organizations generates local support and enhances the Veterans Treatment Court's effectiveness¹³⁵

In an effort to assess the extent to which veterans courts were utilizing this or a similar treatment model, we asked survey respondents whether their veterans court followed a particular court model (i.e., drug court, mental health court, the American Bar Association's veterans treatment court guidelines, etc.). Of the thirteen courts that responded to this question, all

¹³⁴ Russell, *supra* note 114, at 364 (citing NAT'L ASS'N OF DRUG COURT PROF., U.S. DEP'T OF JUSTICE, DEFINING DRUG COURTS: THE KEY COMPONENTS (1997), available at <http://bit.ly/drBEyz>).

¹³⁵ *Id.* at 365-67.

reported following a particular court model, with six (46%) reportedly utilizing a drug court model, three (23%) utilizing a mental health court model, and five (38%) utilizing a hybrid drug court/mental health court model. Eight of thirteen respondents (62%) also reported following the same court model as the Buffalo Veterans Treatment Court, an indication of the influence of the Buffalo Veterans Treatment Court's methodological and procedural approach within the veterans court movement. When asked whether they had consulted with other veterans courts in developing their court, ten of twelve courts (83%) reported visiting or communicating with other veterans courts. The Buffalo Veterans Treatment Court was consulted by eight of the ten courts that consulted with other courts in developing their own veterans court program. Respondents also reported consulting veterans courts in California, Oklahoma, Texas, Minnesota, and Michigan.

Because veterans courts routinely work with community stakeholders, we also asked whether survey respondents had executed written memoranda of understanding (MOUs) with community stakeholders. Six of the twelve courts (50%) that responded to this question reported having MOUs with stakeholders, while six did not utilize or had not yet developed MOUs. Among the courts utilizing MOUs, two courts had developed MOUs specifically with the VA. With respect to written operating procedures, five of eleven respondents (45%) reported having written operating procedures, while six did not (55%). Two of the courts without written operating procedures were in the process of developing them.

iii. Community Interests

The veterans court model utilizes a community-based approach to rehabilitative treatment, drawing upon community service providers from both the federal, state, and local levels. Attempting to assess which of these stakeholders veterans courts viewed as most critical

to the success of their courts' programs, we asked survey respondents to identify those stakeholders they viewed as being essential for their success. As shown in Table 4 below, the community stakeholders most frequently perceived as being required for success were the Department of Veterans Affairs (92%), defense attorneys (85%), and prosecuting attorneys (85%). Mentors (54%) and police (31%) were also listed by multiple courts as essential for their courts' success. Other key stakeholders named by survey respondents included mental health court teams, court clerks, mentor and court coordinators, and domestic abuse stakeholders.

Mentors	7
VA	12
Prosecutor	11
Defense	11
Police	4
Other	9

Respondents also were asked whether they utilized mentors as part of their veterans court treatment program, a component the Buffalo Veterans Treatment Court has cited as a key to its success.¹³⁶ Eight of eleven courts (72%) responding to this question answered in the affirmative. Of those courts utilizing mentors to assist veterans enrolled in their veterans court treatment programs, all indicated their mentors are unpaid volunteers. Six of the eight courts (75%) utilizing mentors required mentors to be veterans themselves. When asked how courts match mentors to program participants, courts responded that mentors were assigned based on age, branch of service, gender, and past common experiences. Most courts screened or performed a background check on mentors prior to allowing them to participate as a volunteer in their veterans court program. Some courts provided formal training for mentors, while others simply

¹³⁶ Russell, *supra* note 114, at 369–70.

had new mentors sit in on court sessions and speak with current mentors before being assigned to support a program participant.

With respect to court composition, most courts (92%) were presided over by one judge, though some courts had two or three judges assigned to hear veterans court cases. In nine of twelve courts (69%), the judges were themselves veterans. All responding courts reported working proactively with prosecutors, who often were responsible for approving admission to veterans court and determining disposition of charges following successful completion of the treatment plan. Defense attorneys were also integral to courts' operations. One court reported that the initially assigned defense attorney withdrew after the veteran was successfully admitted to veterans court in order for a dedicated Veterans Court Attorney to be substituted as defense counsel. Another court reported that dedicated public defenders were assigned to the court to represent program participants. Both prosecutors and defense attorneys were active participants throughout veterans' entire treatment programs.

When asked what helping agencies beside the VA were involved in supporting their courts, respondents listed community treatment providers (64%), housing (57%), and social services (50%) agencies. Other helping agencies included local veterans organizations, law enforcement, and jobs programs. Respondents' comments about the role of these agencies centered on the spectrum of treatment services they provided to program participants. "A huge role," one court responded. "[W]e are able to offer services to vets that need it." Another court observed how such helping agencies were key in "[p]lanning, implementation and oversight."

Courts also were asked about their annual budget and the source of their funding, if any. Ten courts (71%) reported not having a separate budget, having a budget of \$0, or, in one case,

operating as a subset of the local mental health court. One court reported having an independent budget to fund its staff and operations. Another court responded:

The program is funded through a grant by the local VA partner, with budgeted line items for the case manager, who is a GS 11/12 with benefits, and drug testing supplies, which total \$51,620 per year for 50 participants. Other services are provided as in-kind contributions from the partnering agencies, from their general operating budgets. These include ancillary services from the local VA partner; the Judge and the Collaborative Court Coordinator, each provided by the Court with an allocation of about ½ day per week to the program; the district attorney and public defender, provided by their respective agencies with an allocation of about ¾ day per week; and the full-time probation officer, provided by that agency.

Five of the responding courts (36%) reported operating out of a general court operating budget. Others relied on local/city funding, state funding, competitive grants, in-kind resources, and donations. Interestingly, when asked whether their court operated pursuant to state legislation, six courts (43%) responded in the affirmative, a response which suggests that states may be passing “goodwill” legislation authorizing the operation of veterans courts without concomitantly authorizing state funding for such programs.

C. Survey Conclusions

Our study provides an initial assessment of the practices and procedures of veterans courts currently in operation, as well as an early indicator of veterans courts’ success in treating veterans whose criminal misconduct is attributable, at least in part, to underlying service-connected issues. Because of the study’s limited sample size (n=14) and the narrow timeframe of available data (2009–2010), firm conclusions as to the practice and efficacy of veterans courts overall must be qualified. Our generalized findings among survey respondents, however, highlight a number of elements essential to veterans courts’ current programs.

First, because veterans courts seek to address criminal misconduct through a rehabilitative rather than punitive model of punishment, key stakeholder involvement is critical.

The overwhelming majority of survey respondents listed the Department of Veterans Affairs (92%), prosecuting attorneys (85%), and defense attorneys (85%) as essential for their courts' success. Courts also frequently relied on other community agencies to link veterans to community services, including local treatment providers and housing and social service agencies. Coordination among these key stakeholders was seen as critical, with most courts holding regular internal meetings attended by judges, court staff, prosecuting and defense attorneys, and VA personnel. In addition to updating judges about veterans' treatment progress, VA personnel often provide real-time eligibility and enrollment services to program participants. (In one court, veterans not eligible for VA services were connected to local helping agencies.)

Second, prosecuting attorneys should serve as the gatekeeper for who can and cannot be admitted into veterans court and, once admitted, how charges ultimately will be disposed. For example, one survey respondent noted that “the District Attorney’s Office screens all cases for the program and eliminates those most serious crimes” Another commented that the “[district attorney] holds the veto and reviews each case for eligibility[.]” Several underscored that prosecuting attorneys, either in practice or by legislative mandate, function as the approval authority for all admissions into veterans court programs, though they often do so in consultation with defense attorneys and judges. Because prosecuting attorneys are integrally involved in deciding who is admitted into veterans court programs, they are capable of effectively promoting the rehabilitative interests of veterans while protecting the prosecutorial interests of both the state and victims—an important role in maintaining public support of veterans courts.

Third, courts should segregate eligible offenses based on the severity of the offense and the input of the victim—not simply on whether the offense was or was not violent. While nearly all (93%) survey respondents reported limiting eligibility based on type of offense, the vast

majority heard both misdemeanor (86%) and felony (79%) offenses. Most courts (71%) also heard violent offenses. Of these, the majority (70%) required victim consent prior to enrolling the veteran in the veterans court treatment program. While perhaps controversial, the inclusion of low-level violent offenders in veterans court programs is justified given the research linking PTSD to violent misconduct. Veterans without prior criminal histories whose misconduct stems directly from combat trauma are arguably among those most likely to benefit from a coordinated, rehabilitative treatment plan involving the VA, the court, and local community agencies. Of course, only a minority of courts (36%) reported requiring veterans to have a treatable behavioral health condition, suggesting that most courts' target population was broader than those veterans whose misconduct may be causally related to a prior diagnosis of PTSD or TBI.

Fourth, courts most effectively serve at-risk veterans by carefully working with other justice system stakeholders to implement a reliable, systematic method for identifying and screening potential program participants early in the criminal justice process. Most survey respondents identified potential program participants through multiple means, including arrest (79%), arraignment (64%), and the initial probable cause determination hearing (57%). Further, multiple stakeholders were involved in this early identification process, including police (57%), pre-trial judges (64%), VA officials (64%), and prosecutors (57%). Others involved in identifying veterans included defense attorneys, corrections and probation officers, and court personnel. Recruiting, training, and coordinating with these stakeholders in identifying potential program participants is key.

Fifth, treatment plans and disposition decisions should be both tailored and flexible, with “incentives . . . offered for compliance and sanctions for non-compliance . . .”¹³⁷ As one court

¹³⁷ Russell, *supra* note 114, at 369.

observed, “[Veterans] officially enroll when the VA presents a treatment plan and a negotiated plea agreement is entered (alternate plea agreements for graduation or failure).” Another court commented that their program was “linked to terms of probation[.]” Courts were nearly evenly divided between those which disposed of veterans’ charges with “a plea and/or conviction prior to enrollment” and those which authorized “dismissal and/or withdrawal of charges upon program completion,” an indication of the variety of approaches courts may take in tailoring outcomes to the offense committed, the needs of the veteran, and the interest of the state. Further, most courts appeared to allow at least some program participants to withdraw previously entered guilty pleas following successful completion of their treatment programs in order for the veteran’s original charges to be reduced or dismissed.

Finally, survey data suggests that veterans court outcomes are at least as favorable as those of other specialized treatment courts. With respect to drug courts, both independent and state researchers have consistently concluded that such courts reduce future criminal activity for participants and deliver measurable savings for states. A study in California reported re-arrest rates of 41 percent for drug offenders who did not participate in drug court and 29 percent for offenders who did participate in drug court.¹³⁸ A similar study in Massachusetts reported that drug court participants “were 13 percent less likely to be re-arrested, 34 percent less likely to be re-convicted, and 24 percent less likely to be re-incarcerated” than those on probation for similar offenses.¹³⁹ In four different “meta-analysis” studies, independent researchers have found “that drug courts significantly reduce crime rates an average of approximately 7 to 14 percentage

¹³⁸ C. West Huddleston, et al, *Painting the Picture: A National Report Card on Drug Courts and Other Problem-Solving Court Programs in the United States*, NATIONAL DRUG COURT INSTITUTE 6, May 2008, available at <http://bit.ly/bNhOI9> (citation omitted).

¹³⁹ *Id.* (citation omitted).

points.”¹⁴⁰ In our study, survey respondents reported 404 current program participants, 59 graduates, eight early withdrawals, 21 early terminations, and one re-offender. Because of gaps in respondents’ data, the number of historical and current participants did not allow us to account for all veterans who had participated in respondents’ veterans court programs. Nor can we, based on present data, compare veterans court outcomes to the outcomes of similarly-situated veterans who did not participate in a veterans court program or opted out of a veterans court program.¹⁴¹ However, present data does support the general conclusion that the recidivism rates of veterans court appears to be no higher (and arguably are much lower) than the recidivism rates of other specialized treatment courts, a finding consistent with Buffalo Veterans Treatment Court’s reported recidivism rate of 0 percent.¹⁴²

III. CONCLUSION

This chapter has explored the rise and development of veterans courts from two perspectives. First, attention has been given to the considerable research exploring the causal connection between combat, PTSD, and post-combat criminal misconduct. While such discussions remain the subject of much debate, the results of numerous studies suggest a strong etiological connection between combat trauma and criminal misbehavior. Because veterans suffer from such trauma at rates higher than the general population, they necessarily appear to offend at rates greater than the general population. Importantly, we do not claim that either military service or combat itself predisposes veterans to later criminal behavior. Rather, it is the

¹⁴⁰ *Id.* (citations omitted).

¹⁴¹ At least one research study is currently underway to evaluate the recidivism rates of veterans who have participated in a veterans court program with veterans who have not participated in a veterans court program. See University of Alaska Anchorage Justice Center, *Veterans Court Evaluation Project*, <http://bit.ly/muwIoA> (last visited May 26, 2011) (“The purpose of this project is to establish a control group of veterans charged with felonies or misdemeanors who have *not* used the Veterans Court for comparison of recidivism rates with veterans who *have* participated in the Veterans Court.”)

¹⁴² Russell, *supra* note 114, at 370.

trauma of combat—with its attendant post-combat behaviors—which place some veterans at greater risk of engaging in criminal misconduct.

Second, the results of our survey of veterans courts suggest a number of “best practices” essential to veterans courts’ success. These include (1) an integrated stakeholder team committed to veterans’ rehabilitative interests; (2) an active role for prosecutors in determining participant eligibility; (3) a willingness to maximize the offenses available to be heard in veterans court, provided the interests of the state and any victim are appropriately served; (4) a reliable network to identify potential program participants early in the criminal justice process; and (5) treatment plans and disposition decisions that are both tailored and flexible.

Additionally, we conclude on the basis of present data that the efficacy-based outcomes of veterans courts appears to be at least as favorable as those of other specialized treatment courts—a finding which should encourage the creation and development of additional veterans courts throughout the country, as well as research about their practices and efficacy.