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VETERANS TREATMENT COURT: A HAND UP RATHER THAN LOCK UP

Tabatha Renz*

* Originally from Dillon, Montana, Tabatha Renz is a 2011 graduate of Boise State University. She is currently attending New York University Robert F. Wagner Graduate School of Public Service where she is pursuing an MPA. Her interests center on policies that affect veterans and military families during post-deployment reintegration, especially for National Guard and Reserve components. Tabatha is the wife of an Army Reserve Combat Engineer currently deployed to Afghanistan and is employed by the Iraq and Afghanistan Veterans of America (IAVA). The views expressed herein are those of the author and do not necessarily reflect the views of IAVA or any other entity.

I. INTRODUCTION

There has been a gradual national shift toward rehabilitation within the justice system. This has been especially important for veterans who make up only 8% of the total population, but account for 10% of those with criminal records.¹ Recognizing that the traditional justice system is not equipped to handle cases of individuals whose underlying cause of offense is combat trauma, there has been a call to expand the Veterans Treatment Court (“VTC”) program as an alternative for offenders who are veterans of the armed forces.²

This issue has been compounded by over a decade of war in Iraq and Afghanistan, involving more than two million service members.³ Nearly one in five new veterans is diagnosed with a mental health condition, such as Post Traumatic Stress Disorder (“PTSD”) or major depression, while many others suffer from severe combat-related stress.⁴ The rates of substance abuse among new veterans continues to rise, especially for younger veterans and those who serve in the National Guard and Reserve components.⁵ Research shows that veterans of the current wars who are dealing with PTSD and anger issues are more than twice as likely than veterans of earlier eras to be arrested for a crime with a direct link between learned military skills and the propensity to offend.⁶ For example, hyper-vigilance and a quick response necessary for combat can translate into aggressiveness and impulsivity.⁷

¹ *Veterans’ Courts*, AM. PROMISE ALLIANCE, <http://www.americaspromise.org/veterans-courts> (last visited June 2, 2014).

² VETERANS TREATMENT COURTS: GIVING OUR HEROES AT HOME THE HELP THEY’VE EARNED, Nat’l Ass’n of Drug Ct. Prof’l 2 (2009), available at <http://www.nadcp.org/sites/default/files/nadcp/VTC%20Brief.pdf>.

³ GLENNA TINNEY & KATHLEEN M. WEST, SAFETY ON THE HOMEFRONT: ADEQUATELY ADDRESSING VIOLENCE IN FAMILIES IMPACTED BY MILITARY SERVICE 1 (2011), available at http://cir.usc.edu/wp-content/uploads/2013/10/2011-05-CIR-Brief_Safety-on-the-Homefront_K.West-G.Tinney.pdf.

⁴ TERRI TANELIAN ET AL, CTR. FOR MILITARY HEALTH POLICY RESEARCH, INVISIBLE WOUNDS OF WAR iii; 1 (2008), available at <http://www.rand.org/pubs/monographs/MG720.html>.

⁵ VETERANS AND CRIMINAL JUSTICE: A REVIEW OF THE LITERATURE, INST. FOR VETERAN POLICY 5 (2011), available at <http://www.swords-to-plowshares.org/wp-content/uploads/Veterans-and-Criminal-Justice-Literature-Review.pdf>.

⁶ David Wood, *Combat Veterans with PTSD, Anger Issues More Likely to Commit Crimes: New Report*, HUFFINGTON POST (Oct. 9, 2012), http://www.huffingtonpost.com/2012/10/09/veterans-ptsd-crime-report_n_1951338.html.

⁷ SWORDS TO PLOWSHARES, *supra* note 5, at 1.

II. VETERAN'S TREATMENT COURTS

Judge Robert Russell created the first Veteran's Treatment Court in 2008 in Buffalo, New York.⁸ Judge Russell observed that the number of veterans present in the drug and mental health courts he originally established in 1995 increased, and he noticed that these veterans responded well to two veterans that he frequently worked with.⁹ Subsequently, he argued that jails were not the right place for veterans.¹⁰ By mid-2011, 120 veterans had been enrolled in Judge Russell's VTC and matched with a fellow veteran as a mentor.¹¹ Of the 115 veterans who had completed the program at that time, none of them had reoffended or committed subsequent crimes.¹² Since 2008, 32 states have utilized experts to start or expand VTCs.¹³ Similar to drug courts, VTCs empower the veteran offender to make significant life changes that improve their future behavior. Through a series of structured appointments dedicated to substance abuse treatment (when necessary) and court hearings, those who complete the treatment successfully often have their charges dismissed.¹⁴ VTCs are by no means a "free pass" for offenders. In fact, VTCs require more time and effort than a traditional sentence.¹⁵

Using the Veteran's Treatment Court in Buffalo as a model, then Senator John Kerry (D-MA) and Senator Lisa Murkowski (R-AK) introduced a bill in July 2008 that would provide funding to expand existing VTCs or establish new ones in communities to serve that population.¹⁶ This bill, entitled

⁸ Leave No Veteran Behind, *ECONOMIST*, June 4, 2011, <http://www.economist.com/node/18775315>.

⁹ William H. McMichael, Finding a New Normal: Special Courts Help Vets Regain Discipline, *Camaraderie by Turning to Mentors Who've Served*, *MILITARY TIMES*, Feb. 14, 2011, <http://www.nadcp.org/MilitaryTimes%20-Veterans-Treatment-Courts>.

¹⁰ *Veteran's Courts*, supra note 1.

¹¹ *Veteran's Courts*, supra note 1.

¹² *Veteran's Courts*, supra note 1; *Testimony Before the House Committee on Veterans' Affairs*- September 16, 2009, NAT'L ASS'N OF DRUG CT. PROF., <http://www.nadcp.org/node/424> (last visited June 2, 2014).

¹³ See *VETERANS TREATMENT COURTS*, supra note 2.

¹⁴ *BUFFALO VETERAN'S COURT: MENTORING AND VETERANS HOSPITAL PROGRAM POLICY AND PROCEDURE MANUAL*, NAT'L CTR. FOR STATE CT. (2008), available at <http://www.nadcp.org/sites/default/files/nadcp/Bufalo%20policy%20and%20procedure%20manual.pdf>; What Is a Veterans Treatment Court?, *JUSTICE FOR VETS*, <http://www.justiceforvets.org/what-is-a-veterans-treatment-court> (last visited June 2, 2014).

¹⁵ Mark A. McCormick-Goodhart, Comment, Leaving No Veteran Behind: Policies and Perspectives on Combat Trauma, Veterans Courts, and the Rehabilitative Approach to Criminal Behavior, 117 *PENN ST. L. REV.* 895, 907 (2013) (citing Amanda Ruggeri, New Courts Give Troubled Veterans a Second Chance, *U.S. NEWS & WORLD REP.* (Apr. 3, 2009), <http://www.usnews.com/news/national/articles/2009/04/03/new-courts-give-troubled-veterans-a-second-chance>); Veterans Treatment Courts: What You Need to Know, NAT'L ALLIANCE ON MENTAL ILLNESS, <https://www.nami.org/Template.cfm?Section=CIT&Template=/ContentManagement/ContentDisplay.cfm&ContentID=159241> (last updated Aug. 2013).

¹⁶ The Buffalo Veterans Treatment Court, *ERIE CNTY. VETERANS SERV. AGENCY*, <http://www2.erie.go>

The Services, Education, and Rehabilitation for Veterans (“SERV”) Act, was the beginning of a national call to action to help them effectively combat addiction issues by diverting veterans away from the traditional justice system.¹⁷ In 2012, President Obama announced his support of VTCs as part of the Joining Forces Initiative.¹⁸ Attorney General, Eric Holder followed suit, stating that VTCs are the most fiscally responsible means by which to handle veteran offenders.¹⁹ The response from Veterans Affairs was the funding of the Veterans Justice Outreach program, designed to complement the VTCs and connect justice-involved veterans with treatment and services to prevent future homelessness and incarceration.²⁰

Veteran populations are naturally higher in some states.²¹ States such as Illinois, Pennsylvania, Texas, and California, all with large veteran populations, operate at least seven VTCs, most of them at the state court level.²² One year in a VTC program costs roughly \$6,000 to \$12,000 for one veteran, as opposed to nearly \$30,000 to \$45,000 to incarcerate that same individual.²³ It is reasonable to assume that at least one VTC can be maintained in each state. There is even seed funding available through the Department of Justice Bureau of Justice Assistance and the Veterans Treatment Court Planning Initiative.²⁴ However, Virginia, a state that is just outside of the

v/veterans/index.php?q=buffalo-veterans-treatment-court (last visited April 17, 2014); see NAT'L ASS'N OF DRUG CT. PROF'LS, VETERANS TREATMENT COURTS: GIVING OUR HEROES AT HOME THE HELP THEY'VE EARNED (2010), available at <http://www.nadcp.org/sites/default/files/nadcp/VTC%20Brief.pdf>.

¹⁷ The Buffalo Veterans Treatment Court, *supra* note 16.

¹⁸ R. Gil Kerlikowske, Veterans Treatment Courts: Providing Our Nation's Heroes the Support They Have Earned, HUFFINGTON POST (June 1, 2012, 4:30pm), http://www.huffingtonpost.com/r-gil-kerlikowske/veterans-treatment-courts_b_1561174.html?ref=politics

¹⁹ Justice for Vets, Attorney General Eric Holder Visits Federal Veterans Treatment Court in Roanoke, VA, NAT'L DRUG CT. RESOURCE CTR., <http://www.ndcrc.org/content/attorney-general-eric-holder-visits-federal-veterans-treatment-court-roanoke-va> (last visited June 2, 2014).

²⁰ *Veterans' Courts*, *supra* note 1.

²¹ Veteran Population by State: Fiscal Year 2014, DEP'T OF VETERANS AFFAIRS, http://www.va.gov/vetdata/docs/Maps/VetPop_State.pdf (last updated Sept. 9, 2013).

²² California Counties with Veterans Treatment Courts, CAL. VETERANS LEGAL TASK FORCE, <http://www.cvlrf.org/ca-counties-with-veterans-treatment-courts.html> (last visited Apr. 22, 2014); Commonwealth of Pennsylvania Problem Solving Courts March 5, 2014, ADMIN. OFFICE OF PA. CT., <http://www.cookcountycourt.org/ABOUTTHECOURT/CountyDepartment/CriminalDivision/SpecialtyTreatmentCourts/SpecialtyTreatmentCourtLocations.aspx> (last visited June 2, 2014); Specialty/Treatment Locations Veterans Court, ILL. CIR. CT. OF COOK CNTY., <http://www.cookcountycourt.org/ABOUTTHECOURT/CountyDepartment/CriminalDivision/SpecialtyTreatmentCourts/SpecialtyTreatmentCourtLocations.aspx> (last visited Apr. 22, 2014); TEX. INDIGENT DEFENSE COMM'N, VETERANS DEFENDER RESOURCE 8 (2012), available at [http://www.courts.state.tx.us/tidc/pdf/VetDefenderMarch28Publication\(Final\).pdf](http://www.courts.state.tx.us/tidc/pdf/VetDefenderMarch28Publication(Final).pdf).

²³ Erin Delmore, Veterans Can Get Help Instead of Jail Time, MSNBC (Dec. 28, 2013), <http://www.msnbc.com/jansing-co/now-vets-can-get-help-instead-jail-time>.

²⁴ See Funding Now Available for Veterans Treatment Court, JUSTICE FOR VETS, <http://www.justiceforvets.org/node/174> (last visited Apr. 20, 2014); 2014 Veterans Treatment Court Planning Initiative, JUSTICE FOR VETS, <http://www.justiceforvets.org/2014-vtncpi> (last visited Apr. 20, 2014).

top ten states with the highest population of veterans, does not yet have a state court level VTC.²⁵

III. VIRGINIA'S EFFORTS

Montana and Alaska are home to the most veterans per capita,²⁶ not the state of Virginia as claimed by veteran and Governor Bob McDonnell in 2012.²⁷ However, there are still a substantial number of veterans who call Virginia their home.²⁸ According to U.S. Census Bureau data presented by the Joint Legislative Audit and Review Commission of Virginia, more than 143,000 active duty service members plus another 22,000 members of the National Guard and Reserve components were living in the Commonwealth.²⁹ This is in addition to the roughly 820,000 veterans in the state.³⁰ The majority of service members and veterans in Virginia are concentrated in six cities: Hampton, Virginia Beach, Norfolk, Newport News, Chesapeake, and Portsmouth.³¹

On its path toward becoming a more veteran-friendly state, Virginia's leadership has implemented several employment and education initiatives, as well as continued to fund the Virginia Wounded Warrior Program. In 2007, the state government designed the Virginia Veterans Workforce Development Task Force.³² The founding focus of this task force was to match veterans with employment opportunities, especially veterans with service-connected disabilities.³³ The Virginia Values Veterans program has also been expanded, with a vision of teaching Virginian employers how to recruit, hire, train, and retain veterans.³⁴ In 2013, the unemployment rate for

²⁵ Jeff Sturgeon, U.S. Attorney General Eric Holder Praises Veterans Court in Roanoke, *THE ROANOKE TIMES* (Jan. 23, 2014), available at http://www.roanoke.com/news/article_9e155062-849e-11e3-9296-001a4bcf6878.html.

²⁶ Niraj Chokshi, *MAPS: What Each State's Veteran Population Looks Like*, *WASH. POST*, Nov. 11, 2013, available at <http://www.washingtonpost.com/blogs/govbeat/wp/2013/11/11/maps-what-each-states-veteran-population-looks-like/>.

²⁷ Bob McDonnell Says Virginia is No. 1 State in Veterans Per Capita, *POLITIFACT.COM*, <http://www.politifact.com/virginia/statements/2012/jun/11/bob-mcdonnell/bob-mcdonnell-no-1-state-veterans-capita> (last visited Apr. 18, 2014).

²⁸ JOINT LEGISLATIVE AUDIT AND REVIEW COMM'N, *REDUCING VETERAN HOMELESSNESS IN VIRGINIA I* (2010), available at <http://jlarc.virginia.gov/reports/Rpt402.pdf>.

²⁹ *Id.* at i.

³⁰ *Id.* at 1.

³¹ *Id.* at i–ii.

³² Veterans Workforce Virginia Taskforce, *VIRGINIA.GOV*, <http://www.dvs.virginia.gov/board-vwdt.shtml> (last visited April 21, 2014).

³³ *Id.*

³⁴ Governor McDonnell Highlights Virginia as the Most Veteran-Friendly State Discussed State Initiatives at VFW Post 1503, VA. DEP'T OF MOTOR VEHICLES (Aug. 15, 2013), <https://www.dmv.virginia.gov/general/#news/news.asp?id=7545>.

veterans in Virginia was less than four percent, indicating that employment programs are paying dividends.³⁵ Despite the significant advances for veterans in the state, the issue remains that veterans facing criminal charges lack the benefit of a state court level VTC in Virginia.³⁶

IV. VETERAN'S TREATMENT COURTS AND EQUAL PROTECTION

A. United States Constitution

The Equal Protection Clause of the Fourteenth Amendment requires that similarly situated people shall receive similar treatment.³⁷ In this regard, critics argue that it is a violation of the Constitution for an individual's status as a veteran to trigger preferential treatment.³⁸ Specifically, representatives of the American Civil Liberties Union cite that it is unfair for PTSD to be a consideration in court for veterans, while nonveterans who might have PTSD from another life experience are not able to do so.³⁹

On the contrary, Judge Russell feels that his court does not give preferential treatment and does not discriminate because it includes people of all races, religions, and genders.⁴⁰ Further, because the ability to transfer a case to a VTC is held solely by the presiding judge, not all veterans who present in court will be given the right to participate in a VTC.⁴¹ Additionally, an individual's status as a veteran has been utilized as a consideration in legal proceedings long before VTCs came to fruition.⁴² For example, as early as 1983, the state of North Carolina has considered veteran status to be a mitigating factor in sentencing so long as the veteran defendant was honorably discharged.⁴³ Federal Courts have also followed North Carolina's approach

³⁵ Employment Situation of Veterans – 2013, U.S. BUREAU OF LABOR STATISTICS (Mar. 20, 2014), <http://www.bls.gov/news.release/vet.nr0.htm>; see also Governor McDonnell Highlights Virginia as the Most Veteran-Friendly State Discussed State Initiatives at VFW Post 1503, *supra* note 34.

³⁶ See Sturgeon, *supra* note 25.

³⁷ U.S. CONST. amend. XIV § 1; see PAUL L. CARY ET AL., *THE DRUG COURT JUDICIAL BENCHBOOK* 170 (Douglas B. Marlowe & Judge William G. Meyer eds., 2011), available at <http://www.ndci.org/publications/more-publications/drug-court-judicial-benchbook>.

³⁸ See Allison E. Jones, Veterans Treatment Courts: Do Status-Based Problem-Solving Courts Create an Improper Privileged Class of Criminal Defendants, 43 WASH. U. J.L. & POL'Y 307, 317-18 (2014).

³⁹ See *id.* at 318.

⁴⁰ See William H. McMichael, Finding a New Normal: Special Courts Help Vets Regain Discipline, *Camaraderie by Turning to Mentors Who've Served*, MILITARY TIMES NEWSPAPERS, Feb. 14, 2011, <http://www.nadcp.org/MilitaryTimes%20-Veterans-Treatment-Courts>.

⁴¹ See Judge Robert Russell & Judge Brian MacKenzie, Constitutional and Legal Issues in Veteran Treatment Courts (Drug Court Case Review) presented at 2013 Veterans Court Conference (Dec. 3, 2013), available at <http://justiceforvets.org/sites/default/files/2013/Handouts/CG-1/CG-1.pdf>.

⁴² Allison E. Jones, Veterans Treatment Courts: Do Status-Based Problem-Solving Courts Create an Improper Privileged Class of Criminal Defendants?, 43 WASH. U. J.L. & POL'Y 307, 310 (2014).

⁴³ *State v. Blackwelder*, 306 S.E.2d 783, 789 (1983); *id.* at 319.

in their approval that veteran status should, at times, be considered in criminal sentencing.⁴⁴ This is evidenced by the 2009 Supreme Court decision where the Court held that Porter's combat exposure in Korea must be taken into account after his defense had initially failed to provide that information.⁴⁵

B. Virginia Constitution

The Constitution of the State of Virginia is no different from the United States Constitution and specifies that the state cannot cater to a special class of citizens.⁴⁶ Cases involving veterans in VTCs would be addressed under a separate docket and thus veterans would be considered a class of citizens receiving special treatment. For this reason, properly initiating a state level VTC in Virginia would require an act of the General Assembly.⁴⁷

However, because of House Bill 1691 introduced by Delegate Christopher Stolle (R-Virginia Beach) and passed in Virginia's House of Delegates in 2011, the United States District Court in Roanoke is able to operate a VTC on the federal level.⁴⁸ Originally run under the leadership of Michael Urbanski, Judge Robert Ballou now presides.⁴⁹ There is a substantial presence of Veteran's Affairs in the Roanoke area; currently there are over 14,000 claims pending at the Regional VA that serves Roanoke, making it a logical place to launch a VTC.⁵⁰ However, compared to other cities in Virginia, it is not as heavily populated with veterans.⁵¹ Since 2011, only seven of the sixteen veterans enrolled in the VTC program have graduated, indicating that Roanoke VTC is not demonstrating the impact that it could if it were run at the state level.⁵²

However, the program has proven beneficial for Persian Gulf War veteran, Sean Duvall.⁵³ A Virginia native, Duvall was arrested and ultimately charged with four counts of manufacturing a weapon after calling the VA

⁴⁴ Jones, *supra* note 42, at 310.

⁴⁵ Porter v. McCollum, 558 U.S. 30, 43 (2009); Jones, *supra* note 42, at 324.

⁴⁶ Jeannette Porter, *Virginia May Create 'Veterans Courts,'* CAPITAL NEWS SERV., Feb. 6, 2011, <http://capitalnews.vcu.edu/2011/02/06/virginia-may-create-veterans-courts/>.

⁴⁷ Sturgeon, *supra* note 25.

⁴⁸ Sturgeon, *supra* note 25.

⁴⁹ Roanoke Bar Ass'n., U.S. Attorney General Eric Holder Endorses Western District Veterans Court, ROANOKE BAR. REV., March 2014, <http://www.roanokebar.com/newsletters/March%202014.pdf>

⁵⁰ VBA Monday Morning Workload Report, U.S. DEP'T OF VETERANS AFFAIRS (Apr. 14th, 2014), http://www.vba.va.gov/REPORTS/mmwr/2014/MMWL_04_14_14.xls.

⁵¹ JOINT LEGISLATIVE AUDIT AND REVIEW COMM'N, *supra* note 28.

⁵² See Sturgeon, *supra* note 25.

⁵³ Laurence Hammack, *Blacksburg Veteran Won't Face Gun Charges*, ROANOKE TIMES, Mar. 27, 2013, http://www.roanoke.com/news/news/blacksburg-veteran-won-t-face-gun-charges/article_a0d37463-3f71-5cb7-8d6a-641189a97fb8.html.

suicide crisis hotline in June 2011.⁵⁴ In response to the advocacy of enraged veterans groups, prosecutors agreed to divert Duvall to the Roanoke Veteran's Treatment Court.⁵⁵ In March 2013, Duvall successfully completed the program and Judge Samuel Wilson dismissed the charges pending against him.⁵⁶

V. CONCLUSION

Early results indicate success in lowering recidivism because the program is modeled after drug courts that have shown consistent success. According to the National Association of Drug Court Professionals, 75% of drug court graduates avoid jail time for at least two years.⁵⁷ Additionally, drug courts are six times more likely to keep offenders in treatment long enough for them to get better.⁵⁸ Still, reintegration needs to be proactive, long-term, and must be the responsibility of those in the community.

For veterans facing more severe charges, the end result is often not as promising. Felony charges and less than honorable discharges often carry lifelong consequences for veterans. Veterans with these records can be barred from accessing VA mental health, GI Bill, home loans, and disability compensation.⁵⁹ According to Swords to Plowshares, nearly 40% of incarcerated veterans were given a less than honorable discharge.⁶⁰ This statistic could be decreased with the expansion of VTC to include veterans charged with violent crimes and those with a less than honorable discharge. Currently, the majority of VTC slots nationwide are reserved for veterans who commit non-violent misdemeanors.⁶¹ The suggestion to further expand the program would be a longer-term goal rolled out in stages. The typical length of the program, which is 15 to 18 months, would need to be extended to be commensurate with the charge.⁶² California and Texas, both housing

⁵⁴ Heather Rudow, *Veteran Avoids Charges for Homemade Gun Through Court-Mandated Counseling Sessions*, COUNSELING TODAY (Feb. 29, 2012), <http://ct.counseling.org/2012/02/veteran-avoids-charges-for-homemade-gun-through-court-mandated-counseling-sessions/>.

⁵⁵ *Id.*

⁵⁶ Hammack, *supra* note 53.

⁵⁷ See Drug Courts Work, NAT. ASS'N DRUG CT. PROF'L, <http://www.nadcp.org/learn/drug-courts-work> (last visited Apr. 20, 2013).

⁵⁸ *Id.*

⁵⁹ See Marisa Peñaloza & Quil Lawrence, *Path to Reclaiming Identity Steep for Vets with 'Bad Paper,'* NPR (Dec. 11, 2013, 4:58 AM), <http://www.npr.org/2013/12/11/249962933/path-to-reclaiming-identity-steep-for-vets-with-bad-paper>.

⁶⁰ VETERANS AND CRIMINAL JUSTICE: A REVIEW OF THE LITERATURE, *supra* note 5, at 5.

⁶¹ VETERANS AND CRIMINAL JUSTICE: A REVIEW OF THE LITERATURE, *supra* note 5, at 5.

⁶² Jim McGuire, et al., *An Inventory of VA Involvement in Veterans Courts, Dockets and Tracks*, VA VETERANS JUSTICE PROGRAMS 7 (Feb. 7, 2013), <http://www.justiceforvets.org/sites/default/files/files/An%20Inventory%20of%20VA%20involvement%20in%20Veterans%20Courts.pdf>.

11 VTCs, have been at the forefront of this movement to include more veterans previously excluded from the program.⁶³

It is imperative that state courts increase the overall number of VTCs, while simultaneously expanding capacity within current courts. This will not only facilitate more appropriate treatment for our nation's veterans, but will ultimately reduce taxpayer burden associated with prison costs and end in the achievement of safer communities.

⁶³ See *Veteran's Courts*, *supra* note 1.