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THE GROWTH AND NEED FOR VETERANS TREATMENT COURTS

*Chad Lennon**

I. HISTORY AND GROWTH OF THE VETERANS TREATMENT COURTS

On January 15, 2008, the first Veterans Treatment Court was established in Buffalo, New York.¹ The Buffalo Court sought “to divert eligible justice-involved veterans with substance dependency and/or mental illness that are charged with typically felony or misdemeanor non-violent criminal offenses, to a specialized criminal court docket.”² The model for the treatment court is based on the model of community-based problem-solving.³ Additionally, the court serves justice-involved veterans struggling with addiction, mental health issues, and/or co-occurring disorders. Thus, the court may be considered a hybrid of drug court and mental health court.⁴ “Veterans are identified through evidence-based screening and assessments.”⁵ The treatment court consists of veterans who voluntarily participate in the court with a team consisting of court staff, veteran health care

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¹ Honorable John J. Toomey & Edward Gialella, *Suffolk County Veterans Court Policy and Procedure Manual*, <https://www.nycourts.gov/LegacyPDFS/courts/10jd/suffolk/VeteransCT/pdf/VETPoliciesAndProcedures.pdf>. (last visited Jan. 2, 2015).

² *Id.*

³ *Id.*

⁴ Anne Caron, *Fourth Judicial District Veterans Court – Two Year Review: July 2010 – June 2012*, 8 (2013).

⁵ Toomey, *supra* note 1.

professionals, veteran peer mentors, and other team members.⁶ “At regular status hearings treatment plans and other conditions are periodically reviewed for appropriateness, incentives are offered to reward adherence to court conditions, and sanctions for non-adherence are handed down.”⁷ A veteran will complete the program according to specific criteria that must be adhered to.⁸ “Many will have their charges dismissed upon successful completion and others are assured of a non-incarceration sentence upon completion.”⁹

The Buffalo Veterans Treatment Court has established 10 Key Components, based on the Department of Justice Publication “Defining Drug Courts: The Key Components,” that many Veteran Treatment Courts have since followed.¹⁰ The 10 Key Components are as follows:

Veterans Treatment Court integrates alcohol, drug treatment, and mental health services with justice system case processing.

Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants’ due process rights.

Eligible participants are identified early and promptly placed in the Veterans Treatment Court program.

Veterans Treatment Court provides access to a continuum of alcohol, drug, mental health, and other related treatment and rehabilitation services.

Abstinence is monitored by frequent alcohol and other drug testing.

A coordinated strategy governs Veterans Treatment Court responses to participants’ compliance.

Ongoing judicial interaction with each Veteran is essential.

Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 2.

Continuing interdisciplinary education promotes effective Veterans Treatment Court planning, implementation, and operations.

Forging partnerships among Veterans Treatment Court, Veterans Administration, public agencies, and community-based organizations generates local support and enhances the Veterans Treatment Court effectiveness.¹¹

Veterans are known to have a warrior's mentality, which can lead to not addressing their treatment needs for physical and psychological health care.¹² Many justice-involved veterans are suffering from alcohol or drug addiction, homelessness, and/or serious mental illnesses.¹³ A veteran today is expected to go from fighting the Taliban one day to picking up his or her toddler from daycare the next.¹⁴ Moreover, veterans from previous wars, such as Korea, Vietnam, and the Gulf War, often suffer from long-undiagnosed effects of their service. When veterans become involved in the criminal justice system, the Veterans Treatment Court team will discover them, evaluate their needs, offer assistance, and, if possible, manage their care to help them solve their issues.¹⁵ The Mission of The Suffolk County Veterans Treatment Court is:

to have a coordinated community response through collaboration with the veteran's service delivery system and the Criminal Justice System. The Court provides a means to successfully habilitate veterans by diverting them from the traditional criminal justice system and providing them with the tools they need to lead a productive and law-abiding life through treatment, rehabilitative programming, reinforcement and judicial monitoring. We will find them, offer them assistance, assess their needs, manage their care and

¹¹ *Id.* at 2-4.

¹² Honorable John J. Toomey & Edward Gialella, *Suffolk County Veterans Court Policy and Procedure Manual* 3, <https://www.nycourts.gov/LegacyPDFS/courts/10jd/suffolk/VeteransCT/pdf/VETPoliciesAndProcedures.pdf>. (last visited Jan. 2, 2015).

¹³ *Id.*

¹⁴ Charles Davis, *Traumatized Vets Are Finding Hope in Special Courts*, TAKEPART, <http://www.takepart.com/feature/2015/03/06/veterans-treatment-courts>. (last visited Mar. 6, 2015).

¹⁵ *Id.*

help them solve their problems. We will provide Veterans with substance abuse, alcoholism and mental health treatment coupled with academic/vocational skills improvement, while actively assisting with residential, outpatient and/or transitional services leading to job placement and job retention.¹⁶

Many conditions/disorders common in veterans are post-traumatic stress disorder (“PTSD”) and/or traumatic brain injury (“TBI”).¹⁷ There is growing evidence that if these behavioral health disorders are left untreated, a veteran may become further involved in the criminal justice system.¹⁸ Veterans who suffer from PTSD, TBI, or substance abuse have a higher chance of encountering the court system.¹⁹ “We take good and bad paper,” Judge Marcia Hirsch of the Queens County New York Veterans Treatment Court said, referring to the terms used for honorable and less-than-honorable discharges. Her court sometimes has to find service providers outside the Department of Veterans Affairs (“VA”). Former servicemembers with less than fully honorable discharges often do not qualify for VA medical treatment, so finding medical providers to enable a justice-involved veteran to participate in a treatment program can be a challenge. When veterans come in with “bad paper,” the court works to find them medical insurance, medical providers and, other services. Then they work to find the underlying issue, which is typically drugs, alcohol, TBI, or PTSD.²⁰

Very few states have legislation relating to Veterans Treatment Courts, but many local judicial jurisdictions have created Veterans Treatment Courts by rule or practice.²¹ For example, there are over eighteen states, and Guam, that have Veterans Treatment Court

¹⁶ *Id.*

¹⁷ Points of Light, *Veteran Treatment Courts*, http://www.pointsoflight.org/sites/default/files/site-content/files/veteran_treatment_courts.pdf (last visited Nov. 7, 2019).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Veterans Treatment Courts Are A “Game Changer” And Easy to Implement, Judges Say*, AMERICAN BAR ASSOCIATION (Aug. 15, 2017), https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/veterans_treatmentc.html.

²¹ National Conference of Commissioners on Uniform State Laws, *Model Veterans Treatment Court Act and Model Veterans Court Treatment Court Rules 16*, https://www.american.edu/spa/jpo/initiatives/drug-court/upload/topic-two_state-statutes-relevant-to-veterans-treatment-courts.pdf (last visited Jun. 1, 2015).

statutes.²² The ad hoc creation of Veteran Treatment Courts has led to a wide variation among the states and at the federal level regarding which veterans are approved to participate in the court and how participation is managed.²³ A model act, created by The National Conference of Commissioners on Uniform State Laws, allows a veteran to participate in the court regardless of the character of discharge from the service, which allows judges and prosecutors the widest latitude to decide a justice-involved veteran's eligibility.²⁴ This act authorizes a potential Veterans Treatment Court to manage a court, which can adjudicate misdemeanor and felony offenses, in order to give the court autonomy for the participation of justice-involved veterans based on the requirements of the participation agreement.²⁵ Furthermore, an eligible justice-involved veteran may be admitted into the Veterans Treatment Court at any stage in a proceeding.²⁶ The proposed act mandates that a Veterans Treatment Court create a record of policies and procedures regarding implementation of the docket and do so with the assistance of prosecutors, defense counsel, and other interested parties.²⁷ In Suffolk County, the District Attorney's Office must consent to have a case transferred to the Veterans Treatment Court. Without the District Attorney's consent, a case will not be allowed to transfer to the diversion court.

The number of Veterans Treatment Courts has grown from 19 in 2009 to 461 in 2016.²⁸ Some courts may request funding; for example, in 2016, the Department of Justice awarded over \$4 million to 13 state and local Veterans Treatment Courts to help "use evidence-based principles and practices to rehabilitate and ultimately reduce

²² Justice Programs Office et al., *Veterans Treatment Courts: Compilation of Preliminary Information from Survey Responses*, AMERICAN UNIVERSITY, https://www.american.edu/spa/jpo/initiatives/drug-court/upload/topic-two_state-statutes-relevant-to-veterans-treatment-courts.pdf (last visited Jun. 1, 2015).

²³ National Conference of Commissioners on Uniform State Laws, *Model Veterans Treatment Court Act and Model Veterans Court Treatment Court Rules 16*, <http://nadcpconference.org/wp-content/uploads/2018/05/VCC-TS-5.pdf> (last visited Jul. 2017).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Douglas B. Marlowe et al., *Painting the Current Picture: A National Report on Drug Courts and Other Problem Solving Courts in the United States*, NATIONAL DRUG COURT INSTITUTE, 36 (June 2016). See also Veterans Health Administration, Department of Veterans Affairs, *Veterans Court Inventory 2016 Update 2* (March 2017).

recidivism among military veterans.”²⁹ However, a Veterans Treatment Court does not require funding to run successfully. In Suffolk County the previous presiding Judge, John J. Toomey, started running a Veterans Treatment Court at no additional cost to the state or local government; regular court personnel are used, and the docket in an existing court is created for veterans, and the mentors are volunteers.³⁰ Suffolk County has the largest veteran population of any county in the state of New York; thus, the necessity for creating a Veterans Treatment Court was obvious.³¹ Following the lead of the first Veterans Treatment Court, Suffolk County decided to take the same proactive approach to meet the needs of the veterans.³² The Suffolk County Veterans Treatment Court seeks to divert eligible justice-involved veterans with substance dependency and/or mental illness who are charged with non-violent misdemeanor or felony criminal offenses to a specialized criminal court docket.³³ However, today the Suffolk County Veterans Treatment Court has allowed in violent crimes based on the particular circumstances surrounding the case. For example, in a victim-sensitive case, the victim may consent to the case being transferred to Veterans Treatment Court, which can give the prosecutor more leeway to transfer the case. An immense number of veterans are returning from the wars in Iraq and Afghanistan demonstrating PTSD and brain trauma at unparalleled heights and there are VA-funded treatment and services available; thus, there has never been a more serious need to support judiciary efforts to assist the men and women who served our country.³⁴

II. VETERANS TREATMENT COURT TEAM MEMBERS

The Veterans Treatment Court team members will vary based upon the jurisdiction. However, there are a few vital members needed

²⁹ Department of Justice, *Justice Department Announces Over \$4 Million in Grants to Rehabilitate and Reduce Recidivism among Military Veterans*, (Sept. 20, 2016), <https://www.justice.gov/opa/pr/justice-department-announces-over-4-million-grants-rehabilitate-and-reduce-recidivism-among>.

³⁰ Veterans Treatment Courts Are A “Game Changer” *supra* note 20.

³¹ Honorable John J. Toomey, *supra* note 12.

³² *Id.*

³³ *Id.*

³⁴ See generally Josephine McNeil, *American Bar Association Policy in Support of Creating Veteran Treatment Courts*, AMERICAN BAR ASSOCIATION (Feb. 2010), https://www.americanbar.org/content/dam/aba/migrated/homeless/PublicDocuments/ABA_Policy_on_Vets_Treatment_Courts_FINAL.pdf.

to run a successful court. The Judge, defense counsel, justice-involved veteran, veteran justice outreach specialist, mentor, and prosecutor all have specific roles required for the Court to run efficiently.

A. The Judge

The Veterans Treatment Court judge is responsible for maintaining and running a court whose primary mission is to assist in rehabilitating justice-involved veterans who come before the court.³⁵ The court should not be handled like a typical criminal courtroom, but rather a diversionary court in a non-adversarial environment.³⁶ However, the judge must adhere to the rules of the Veterans Treatment Court, although not every jurisdiction has adopted specific statutes.³⁷ It is suggested that the judge have the veteran's mentor stand next to the veteran in an effort to reinforce a positive environment.³⁸ "It is paramount, especially at the first few court appearances, to remind the justice-involved veteran that they have a committed team behind them and that you require that he or she commit himself or herself as well."³⁹ The judge assigned to Veterans Treatment Court will actively participate in the "staffing of cases; preside over the court proceedings and monitor application of disciplines, sanctions, and incentives while maintaining the integrity of the Court."⁴⁰

B. Defense Counsel

Traditionally, the defense attorney has been required for the initial guilty plea, sanctions, and sentencing once the justice-involved veteran agrees to enter the treatment court.⁴¹ However, it is important the defense attorney remain part of the court team throughout the

³⁵ Michael C.H. McDaniel, *Veteran's Treatment Courts in Michigan: A Manual for Judges* 12, <https://courts.michigan.gov/Administration/admin/op/problem-solving-courts/SiteAnalyticsReports/VTC%20Manual%20for%20Judges.pdf> (last visited Oct. 2012).

³⁶ *Id.*

³⁷ COURT OF COMMON PLEAS OF BUTLER COUNTY, *Veterans Treatment Court Policies & Procedures* 7, <http://www.co.butler.pa.us/Files/Admin/Court%20Administration/Vet%20Court/VTC-PP-Manual16.pdf> (last visited 2016).

³⁸ Michael C.H. McDaniel, *supra* note 35.

³⁹ *Id.*

⁴⁰ *Veterans Treatment Court Policies & Procedures* 7, *supra* note 37.

⁴¹ Michael C.H. McDaniel, *supra* note 35.

process.⁴² A justice-involved veteran may face legal consequences, such as extension of or termination from the program or jail time, or be ordered to appear in another court.⁴³ The defense attorney provides a voice for participants in the non-adversarial process of the treatment court.⁴⁴ “Further, he or she should attend team meetings and court hearings to provide input and recommendations on issues such as incentives, sanctions, and probation requirements.”⁴⁵ The defense attorney represents and counsels the veteran in all court proceedings. In the Veterans Treatment Court, while the protection of all the defendant’s constitutional rights is always the primary concern, the defense attorney is also interested in promoting the veteran’s health and well-being.⁴⁶ Balancing these two intimate concerns, the defense attorney protects his or her client’s legal interest, and to serve the client’s best interests with regard to treatment, rehabilitation, and integration back to civilian life.⁴⁷ In a traditional courtroom, the defense attorney fights for his or her client. However, in Veterans Treatment Court, the defense attorney must work with the prosecutor and judge to ensure the best course of action to rehabilitate the client. Although the number of appearances may be difficult for the defense attorney to attend, particularly due to a high demand schedule for court appearances, appearing from time to time can reap great benefits to the justice-involved veteran. The appearance of the defense attorney demonstrates that another member of the team truly cares for the success of the client.

In Suffolk County Veterans Treatment Court, a legal aid attorney, who is also a veteran, sits in on team meetings. The majority of cases in the court are handled by the legal aid attorney. However, private attorneys are invited to attend court appearances to ensure the justice-involved veteran is progressing well and to provide legal advice if any is needed. A justice-involved veteran may be subject to additional charges while in Veterans Treatment Court. The defense counsel who checks in on the client’s progress can provide a better argument to amend a contract to include the new charges or dismissed charges in satisfaction of completion of the contract.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Honorable John J. Toomey, *supra* note 12.

⁴⁷ *Id.*

C. The Justice-Involved Veteran

One gap identified in the Suffolk County Veterans Treatment Court is transportation. Suffolk County is a large county with a lack of easy access to mass transportation. Many rural counties may run into the same issue. Thus, transportation can become a major hurdle for a justice-involved veteran to make court dates, treatment appointments, community service, drug testing, etc.⁴⁸ Some courts may be able to provide bus fares and gas cards to offset expenses.⁴⁹ Further, Veteran Service Organizations may be able to provide transportation services.⁵⁰ A mentor can provide transportation for the justice-involved veteran; however, due to liability issues, this should be utilized after all other means have been exhausted.⁵¹ “Timothy Thayne, a former defense attorney and now an Assistant District Attorney in Binghamton, New York, said you have to expect relapses, but that they just get the vet help again.”⁵² The key is for the veteran to be honest about it; lying about it can bring a sanction.⁵³

D. Veteran Justice Outreach Specialist

The VA representative, or Veteran Justice Outreach Specialist (“VJOS”), is the liaison between the court and the Veterans Health Administration.⁵⁴ When Veterans Treatment Courts began to grow at a rapid pace, the VA needed more justice-focused action at the medical centers.⁵⁵ Therefore, the Veterans Justice Outreach Initiative was established to “educate the legal system, law enforcement, and jails on distinctive issues facing today’s Veterans.”⁵⁶ Once a veteran enters the legal system, the VJOS assists the justice-involved veteran to avoid higher more serious charges and more severe penalties, including incarceration, through incorporation into the VA substance abuse and

⁴⁸ Michael C.H. McDaniel, *supra* note 35.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Veterans Treatment Courts Are A “Game Changer,” *supra* note 20.

⁵³ *Id.*

⁵⁴ Michael C.H. McDaniel, *supra* note 35.

⁵⁵ Department of Veterans Affairs, *A Second Chance: Veterans Treatment Courts*, VANTAGE POINT (March 30, 2011), <https://www.blogs.va.gov/VAntage/2018/a-second-chance-veterans-treatment-courts>.

⁵⁶ *Id.*

mental health treatment programs.⁵⁷ The VJOS program was created to provide timely access to VA services for justice-involved veterans in order to avoid unnecessary criminalization and incarceration of those with substance or mental health issues.⁵⁸ A VJOS is assigned to each treatment court in the nation to ensure access to services for all VA-eligible justice-involved veterans.⁵⁹ The VJOS will assess any mental, physical, or behavioral issues needed while enrolling the justice-involved veteran into those programs.⁶⁰ “The VA treatment professionals should be viewed as the justice-involved veteran’s primary provider of health services.”⁶¹ VA facilities do vary in size, administration, treatment, and professionals; thus, a justice-involved veteran may be enrolled in a program outside the VA health network.⁶² To increase the effectiveness of the Veterans Treatment Court, courts should also use traditionally proven VA programs such as housing assistance for homeless or at-risk of homelessness veterans, and implementation of evidence-based interventions to help justice-involved veterans cope with the daily stressors in civilian life.⁶³

Currently, in Suffolk County, the prosecutor will review a case to determine if it will be calendared on the Veterans Treatment Court. Once a case is “approved” by the Prosecutor, the VJOS will schedule a day and time to interview the justice-involved veteran to determine the appropriate treatment eligibility for VA services and design an appropriate treatment regimen. At the next court date, the VJOS will inform the Veterans Treatment Court team of the diagnosis and treatment schedule. The justice-involved veteran will then be able to contract into the court and provide updates to the VJOS. During the period of the contract the VJOS keeps the Veterans Treatment Court Team up to date on the progress, or lack of progress, the justice-involved veteran is making. Further, the prosecutor should monitor the progress and provide feedback to the team concerning the prosecutor’s recommendation of court dates. The VJOS is the “Captain” of the team and is the key to seeking a successful or unsuccessful treatment plan.

⁵⁷ *Id.*

⁵⁸ Veterans Treatment Court Policies & Procedures 7, *supra* note 37.

⁵⁹ *Id.*

⁶⁰ *Id.* at 8.

⁶¹ *Id.*

⁶² *Id.* at 16-17.

⁶³ *Id.* at 27-32.

E. Mentors

No one knows a veteran better than another veteran. The Buffalo Veterans Treatment Court, the first in New York State, came to life when then-Drug Treatment Court Judge Robert Russell noticed that when a mentor, who was a veteran, interacted with a defendant, also a veteran, the veteran would be more relaxed and less anxious.⁶⁴ The mentors, all US armed forces veterans that mostly have combat experience, have the ability to speak with a fellow veteran who has a similar background facilitating participants an informal way to ask questions, solicit feedback, and discuss how they are feeling about his or her situation.⁶⁵ This interaction creates communication between peers rather than with those in an authoritative position.⁶⁶ In fact, the mentor does not report to anyone in the court. Rather, the mentor is there to support the justice-involved veteran. “This change in demeanor was seen as an opportunity to make a deeper impact on the lives of the veterans that came into these courts.”⁶⁷ The Buffalo Court found that veteran peer mentors were a key to success for the program.⁶⁸ The initial group of mentors consisted of veterans from the organizations “Vietnam Veterans of America, Veterans of Foreign Wars, Paralyzed Veterans of America, Order of the Purple Heart, and AMVETS.”⁶⁹ “The role of the volunteer veteran mentor is to act as a coach, guide, role model, advocate, and support for the individuals he or she is working with.”⁷⁰ The intent of the mentors is to encourage and guide the justice-involved veteran all while supporting him or her through the court proceedings.⁷¹

Furthermore, “[t]he role of a veteran mentor is to provide support and guidance to justice-involved veterans as they progress

⁶⁴ Honorable John J. Toomey, *supra* note 12.

⁶⁵ Veterans Treatment Court Policies & Procedures 7, *supra* note 37.

⁶⁶ Honorable John J. Toomey & Edward Gialella, *Suffolk County Veterans Court Policy and Procedure Manual* 6, <https://www.nycourts.gov/LegacyPDFS/courts/10jd/suffolk/VeteransCT/pdf/VETPoliciesAndProcedures.pdf> (last visited Jan. 2, 2015).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Honorable John J. Toomey & Edward Gialella, *Suffolk County Veterans Court Policy and Procedure Manual* 8, <https://www.nycourts.gov/LegacyPDFS/courts/10jd/suffolk/VeteransCT/pdf/VETPoliciesAndProcedures.pdf> (last visited Jan. 2, 2015).

through the Veterans Treatment Court.”⁷² The mentors help to fill the gap between the justice-involved veteran and the court system.⁷³ Many times a mentor can speak with the judge, prosecutor, or defense counsel to facilitate a more successful outcome. Likewise, the judge, prosecutor, or defense counsel can approach the mentor to inform them of changes the justice-involved veteran may have to make to get back on track in the treatment court. He or she is in a unique role, someone who can speak to court personnel and the justice-involved veteran without legal ramifications.⁷⁴ A mentor’s duties should include attending all court appearances, communicating with the veteran and the court team, and, most importantly, being available for the justice-involved veteran.⁷⁵ Likewise, the mentor is seen as a liaison, advocate, and guide to the justice-involved veteran as he or she works to address issues leading to the criminal case.⁷⁶ Therefore, the mentor can be seen as a team member but is there to serve the justice-involved veteran as a conduit between the veteran, court, and ancillary services.

The prosecutor and mentors have a unique relationship. The communication between both parties does not create a record, but rather is utilized to keep the justice-involved veteran on a positive, progressive track. The prosecutor’s office may receive communications from witnesses, victims, or court personnel, and/or complainants on a case in Veterans Treatment Court. The prosecutor can inform the mentors that the justice-involved veteran seems to be making some bad decisions. The mentors can have a discussion to get the justice-involved veteran back on the right track. Moreover, the mentors can provide names of potential participants, so the prosecutor can investigate cases to determine the appropriateness of Veterans Treatment Court.

F. Additional Members of the Veterans Treatment Court Team

“One key point to remember within the criminal justice system is the identification of a veteran.”⁷⁷ Ken Rosenblum, retired director

⁷² Michael C.H. McDaniel, *supra* note 35.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Veterans Treatment Court Policies & Procedures 7, *supra* note 37.

⁷⁷ Veterans Treatment Courts Are A “Game Changer,” *supra* note 20.

of the Touro Law Center Veterans' and Servicemembers' Rights' Clinic and a Vietnam vet, who works with veterans, said Suffolk County also used to have trouble identifying veterans in the system.⁷⁸ But police now ask suspects if they have served in the military, which has produced more positive results than asking, "Are you a veteran?" One key item to distinguish a veteran at arrest is a section in the pedigree information that will indicate if one is a veteran. The paperwork will also be sent to the prosecutor so a second person will be able to identify a potential justice-involved veteran.

Further, when a defense attorney speaks to his or her client, one of the basic questions should be if the client has served in the military. Once this status is recognized, the process to obtain and submit a DD-214 (the basic document that verifies military service) and additional military paperwork should begin. The earlier in the criminal justice process a veteran is identified, the quicker he or she can be set up with treatment to assist in turning his or her life around. Probation officers also ask this question, which helps them get help to more veterans.⁷⁹

"One of the most overlooked team members in a VTC [sic] may be the probation officer (PO) [sic]."⁸⁰ A probation officer may maintain supervision over the justice-involved veteran, but also direct the operation of the courts' directives.⁸¹ The probation officer should be present for all team-meetings and court dates and maintain contact with the mentor.⁸² "The assigned officer should monitor accountability of social activities and home environment of all participants, as well as maintain up to date records on each participant."⁸³

Moreover, when applicable, a probation officer can provide drug testing and offer recommendations to the Court concerning sanctions and incentives.⁸⁴ The officer should attend all staffing and

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Michael C.H. McDaniel, *supra* note 35 (stating that prospectively a probation officer will include a parole officer. The intent is that whether a justice-involved veteran has a probation or parole officer, that individual should be an active participant in the Veterans Treatment Court.).

⁸¹ *Id.*

⁸² *Id.*

⁸³ COURT OF COMMON PLEAS OF BUTLER COUNTY, *Veterans Treatment Court Policies & Procedures*, 7, <http://www.co.butler.pa.us/Files/Admin/Court%20Administration/Vet%20Court/VTC-PP-Manual16.pdf> (last visited 2016).

⁸⁴ *Id.*

judicial review of cases, as well as supervise participants in the program and the graduates.⁸⁵ Similarly, there should be one designated probation officer to provide continuity throughout Veterans Treatment Court.

Currently, in Suffolk County Veterans Treatment Court there is no representation from Probation. However, efforts are being made to bring this position to the team. Additionally, it is recommended that one probation officer who is a veteran be identified to join the court team. A single point of contact for all probation cases will streamline the process. Further, a probation officer who is a veteran will serve as another connection to the justice-involved veteran that the entire Veterans Treatment Court team consisting of veterans is there to connect with and help the justice-involved veteran turn his or her life around.

Another unique aspect of Suffolk County's treatment of veterans is the Suffolk County Correctional Facility's Veterans Re-entry Program or Veterans Pod. Veterans in the pod are deemed not to be dangerous or violent, which includes those who are in pre-trial proceedings or sentenced. The Veterans Pod includes "services such as counseling, mentoring, court advocacy, education, and training that help veterans transition into society after release."⁸⁶ These services can be provided "at no cost, because county agencies and nonprofits provide many of the services." At the time, Suffolk County Sheriff Vincent DeMarco, "used the special Youth Re-Entry Program — another correction program that he designed for a specific population — as the main model for vets."⁸⁵

The need for these unique Veterans Pods can be demonstrated from a 2015 Federal Bureau of Justice Statistics study, which found roughly 8 percent of all inmates are veterans, and roughly half of incarcerated veterans were at the time diagnosed with a mental disorder.⁸⁶ Additionally, these pods have been utilized throughout the country, such as in Florida that has five similar units; Georgia's Muscogee County jail has a unit, as well as Virginia and Pennsylvania

⁸⁵ *Id.*

⁸⁶ Zachary R. Dowdy, *New Wing in Suffolk Jail Caters to Veterans' Issues*, NEWSDAY (September 20, 2016), <https://www.newsday.com/long-island/suffolk/new-wing-in-suffolk-jail-caters-to-veterans-issues-1.12340382>.

⁸⁵ *Id.*

⁸⁶ *Id.*

prisons, and California jails.⁸⁷ Suffolk County has seen a recidivism rate of only 22% compared to a recidivism rate of 67% in the non-Veterans Pods.⁸⁸ In Albany, New York, only 10 inmates returned out of 195 when released.⁸⁹ Violence in the Albany Veterans Pod is almost non-existent. In one instance, when an inmate attacked a corrections officer, the veterans ran out of their cells to stop the attack.⁹⁰ The Veterans Pod is another ideal situation to identify veterans for Veterans Treatment Court. Moreover, when a veteran is unable to make bail, remanded, or sentenced, it is ideal for the justice-involved veteran to be sent to the Veterans Pod where services are available to better assist him or her.

III. THE IMPORTANCE AND NEED FOR A VETERANS TREATMENT COURT

The idea that veterans have earned special treatment from the legal system originates from the awareness that the “training to overcome the natural human aversion to harming others and frequently being deployed overseas to do that very deed is what may have caused the mental illness and substance abuse leading to his or her presence in front of a judge.”⁹¹ Despite an increase in media attention, most communities remain uneducated about PTSD and TBI, their causes, symptoms, and methods to assist those suffering from these conditions.⁹² A basic understanding of PTSD and TBI is crucial in order for the criminal justice system to respond to the behaviors and challenges caused by these medical conditions.⁹³ Simply put, PTSD is the brain’s inability to let go of difficult or painful past experiences.⁹⁴ Over the last decade, more than 100,000 soldiers in the U.S. Army have been deployed at least three times.⁹⁵ Based on the improvements in military hardware, more service members are coming home injured

⁸⁷ *Id.*

⁸⁸ Dowdy, *supra* note 86.

⁸⁹ Tracy O’Connor, *Prisons Experiment with Cell Blocks for Military Veterans*, NBC NEWS (Feb. 26, 2017, 7:51 PM), <https://www.nbcnews.com/news/us-news/prisons-experiment-cell-blocks-military-veterans-n721306>.

⁹⁰ *Id.*

⁹¹ Davis, *supra* note 14.

⁹² McNeil, *supra* note 34, at 4.

⁹³ *Id.*

⁹⁴ *Id.* at 5.

⁹⁵ *Id.*

rather than dead.⁹⁶ Approximately the same number of service members were deployed to Vietnam as to Iraq and Afghanistan.⁹⁷ However, over 47,000 died in combat in Southeast Asia, while fewer than 5,300 U.S. soldiers have been killed in the Iraq and Afghan wars.⁹⁸ According to a RAND Institute study, 300,000 veterans suffer from PTSD while another 320,000 experienced TBI while deployed.⁹⁹ A combat veteran, who spent a significant amount of time in violence and stress, who is sent to prison or jail is nearly certain that when released he or she will have a worsening situation with increased anger and alienation, and thus further withdrawn from society.¹⁰⁰ Therefore, the word is spreading that putting troubled individuals behind bars will make things only worse.¹⁰¹

Veterans face several issues that can result in their becoming involved in the criminal justice system. Veterans face unemployment at a higher rate than civilians.¹⁰² In 2011, the unemployment rate for veterans and nonveterans over age eighteen was approximately the same.¹⁰³ However, upon closer inspection, civilian males between eighteen and twenty-four had an unemployment rate of 17.6% while male veterans ages eighteen to twenty-four had an unemployment rate of 29.1%.¹⁰⁴ Female civilians aged eighteen to twenty-four had an unemployment rate of 14.5% and 36.1% for veterans.¹⁰⁵

A second issue is the disability rates for veterans. Veterans may receive a disability rating from the VA based upon mental and physical diagnoses due to their time in the service. In 2011, 3.3 million veterans were receiving disability benefits, which may interfere with the potential for employment.¹⁰⁶ Veterans with a disability rating are less likely to be employed than those who do not have a disability rating.¹⁰⁷

⁹⁶ *Id.*

⁹⁷ McNeil, *supra* note 34.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Robert N. Davis, *Veterans Fighting Wars at Home and Abroad*, 45 TEX. TECH L. REV. 389, 392 (2013).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

A third issue is that of homelessness where veterans are more at risk than the civilian population. Male veterans are twice as likely to be homeless compared to civilian males, while female veterans are three times more likely to be homeless compared to civilian females.¹⁰⁸

On top of all these issues is the rate of suicide for the veteran population, which in 2015 was 20.6 per day.¹⁰⁹ Two of the leading factors for this rate are PTSD and depression.¹¹⁰ Approximately 60% to 80% of justice-involved veterans had a substance use issue prior to being incarcerated, 25% to 40% were suffering from a mental health disorder, and 23% were homeless a year before being arrested.¹¹¹ Further, approximately 25% of incarcerated veterans report having been under the influence of drugs or alcohol at the time of their offense.¹¹² Thus, veterans and the criminal justice system are at the crossroads of law and medicine.¹¹³

“A veteran’s root problem is not substance abuse or mental illness, but an underlying service-connected injury.”¹¹⁴ Service-connected injuries provide a unique resource that the justice-involved veteran can receive treatment from the VA for those injuries that are service-connected.¹¹⁵ Moreover, there should be some acknowledgment of the sacrifices made by service members in periods of armed conflict.¹¹⁶ Their service should not be the primary consideration, but compensation for physical and mental injuries sustained from their service “should be extended to consideration for criminal acts linked to those injuries.”¹¹⁷ An argument against accepting only honorably discharged veterans excludes the precise people whom such a program is coordinated to help: “individuals who

¹⁰⁸ *Id.* at 393.

¹⁰⁹ OFFICE OF MENTAL HEALTH AND SUICIDE PREVENTION, *VA National Suicide Data Report* 5 (2018).

¹¹⁰ Davis, *supra* note 105, at 395.

¹¹¹ Marlowe et al., *supra* note 28.

¹¹² *Id.*

¹¹³ Madeline McGrane, *Post-Traumatic Stress Disorder in the Military: The Need for Legislative Improvement of Mental Health Care for Veterans of Operation Iraqi Freedom and Operation Enduring Freedom*, 24 J.L. & HEALTH 183, 193-94 (2010).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

served in the Armed Forces but who now face barriers to reintegrating into civilian life.”¹¹⁸

The Butler County Veterans Treatment Court Team, including other counties throughout the country, consist of the assigned Assistant District Attorney (“ADA”) who will review all potential participants for eligibility, actively participate in staffing of cases, and interact in a positive manner to address pleas and application of sanctions and incentives as they apply to the participant.¹¹⁹ Additionally, prior to a defendant’s plea into the program, the ADA will determine what appropriate misdemeanor or felony offense will reduce upon the defendant’s graduation from Veterans Treatment Court. Also, the ADA will attend all the client staffing and judicial reviews pertaining to Veterans Treatment Court.¹²⁰ The Buffalo Veterans Treatment Court set up a computer linked to the VA to check on eligibility for the veteran and set up clinical appointments.¹²¹ Moreover, each jurisdiction that hosts a Veterans Treatment Court may have different criteria to be accepted. Several members throughout the criminal justice system can identify a potential participant, including a police officer, correction officer, parole/probation officer, defense attorney, prosecutor, mentor, judge, and generally anyone who can make the court aware of a justice-involved veteran.¹²²

The Suffolk County diversion court noticed that veterans who have participated in Drug Court and/or Mental Health Court have shown a need for greater supervision and support; increased collaboration with law enforcement and the VA; speedy identification and referrals of veterans; greater focus on veterans’ decision-making; and peer to peer, veteran to veteran mentoring in order to help the veterans build and achieve healthy goals.¹²³ The Veterans Treatment Court presents a unique opportunity to help veterans in legal trouble

¹¹⁸ Eric Merriam, *Non-Uniform Justice: An Equal Protection Analysis of Veterans Treatment Courts’ Exclusionary Qualification Requirements*, 84 MISS. L.J. 685, 726–27, 738–40 (2015).

¹¹⁹ COURT OF COMMON PLEAS OF BUTLER COUNTY, *Veterans Treatment Court Policies & Procedures* 13, <http://www.co.butler.pa.us/Files/Admin/Court%20Administration/Vet%20Court/VTC-PP-Manual16.pdf> (last visited 2016).

¹²⁰ *Id.*

¹²¹ BUFFALO VETERAN’S COURT: MENTORING AND VETERANS HOSPITAL PROGRAM POLICY AND PROCEDURE MANUAL AT 7.

¹²² Veterans Treatment Court Policies & Procedures 13, *supra* note 122.

¹²³ Honorable John J. Toomey, *supra* note 12.

and turn their life around for the better.¹²⁴ Without the teamwork of the VA, volunteers, mentors, and a coalition of Community Health Care providers, many veterans would suffer the consequences of the traditional criminal justice system of jail or prison without treatment to prevent future incidents.¹²⁵ This collaboration of partners affords the justice-involved veteran the opportunity to regain stability in their lives, strengthen family ties, house the homeless, employ the unemployed, and society receives the benefit of reduced recidivism and positive contributing members of society.¹²⁶ Veterans Treatment Courts have emerged as facilitating success in assisting the most vulnerable veterans achieve the goals of a successful transition.¹²⁷

IV. CONTRACTING INTO THE VETERANS TREATMENT COURT

A Veterans Treatment Court team will evaluate a justice-involved veteran's eligibility on a case-by-case basis.¹²⁸ Most Veterans Treatment Courts require veterans to be at least eighteen years old, have served in any branch of the U.S. military, and to be experiencing behavioral, mental health, and/or chemical health problems.¹²⁹ The prosecutor and defense must reach an agreement that Veterans Treatment Court is appropriate.¹³⁰ Justice-involved veterans do not need to be eligible for VA benefits to participate in Veterans Treatment Court, but may be treated by community-based services.¹³¹

Veterans Treatment Courts are meant to be non-adversarial, yet the issue of whether a Veterans Treatment Court will accept a particular individual and the terms of the contract can become adversarial.¹³² Jurisdictions handle the question of who should serve as the decision-maker for these courts differently from jurisdiction to jurisdiction.¹³³ The presiding judge has the final authority in some courts; other courts "permit the District Attorney's Office to have

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ McNeil, *supra* note 34, at 6.

¹²⁸ Caron, *supra* note 4, at 8.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Benjamin Pomerance, *The Best Fitting Uniform: Balancing Legislative Standards and Judicial Processes in Veterans Treatment Courts*, 18 WYO. L. REV. 179, 190 (2018).

¹³³ *Id.*

absolute veto power, and still others provide for a collaborative conference between the judge, the prosecutor, and the defense counsel.”¹³⁴

Veterans face a number of unique issues for which the treatment court can provide a life-changing opportunity. In addition to the legal problem a justice-involved veteran now faces, he or she has a number of issues that may have led to the legal situation. Veterans spent years in the military under orders to keep their weapons close at hand and accounted for. Thus, illegal possession of a firearm is a common offense. Yet some courts will reject a case like this mechanically, while other courts will base their decision on the facts.¹³⁵

The Orange County Veterans Treatment Court in California only admits veterans who have been in combat. Some combat wounded veterans are obvious such as those with a missing limb.¹³⁶ However, the majority of those who are combat wounded are hurting on the inside.¹³⁷ The justice-involved veteran is treated like a patient, not a criminal, as well as encouraged for what they are doing right, not repeatedly criticized for what they have done wrong.¹³⁸ Some Veterans Treatment Courts will accept only honorable discharged veterans because the VA extends benefits based on the veteran’s discharge.¹³⁹ Some courts do not mechanically preclude those with a discharge other than an honorable discharge, while other courts require the veteran exhibit a connection between his or her criminal offense and military experiences.¹⁴⁰ Though some Veterans Treatment Courts will not accept veterans whose only form of military service occurred in the Reserves, others will consider any veteran who ever wore the uniform whether in active duty or a reservist.¹⁴¹ Some will admit veterans with documented combat experience, while others allow veterans who may not have been to a combat zone.¹⁴² However, one key factor in Veterans Treatment Court is the assigned prosecutor on a

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Charles Davis, *Traumatized Vets Are Finding Hope in Special Courts*, TAKEPART (Mar. 6, 2015), <http://www.takepart.com/feature/2015/03/06/veterans-treatment-courts>.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Pomerance, *supra* note 135.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

case speaking with any and all victims of a crime to discuss the possibility of the defendant's entering the treatment court. It should be implied by all Veterans Treatment Courts that the assigned prosecutors maintain this standard of practice.

V. CONTRACTED IN THE VETERANS TREATMENT COURT

The length of participation in the Veterans Treatment Court program is 12 months, yet a contract may be in length for up to two years in some cases.¹⁴³ The length will depend on the participant's ability to achieve program goals and the original crime the justice-involved veteran was charged with.¹⁴⁴ Justice-involved veterans are not scheduled to attend court as a typical criminal case; however, the court date will be determined on the justice-involved veterans' treatment and progress.¹⁴⁵ The court appearance requirement may range from weekly to over a month between appearances.¹⁴⁶ In general, court appearances may increase in length as the justice-involved veteran progresses through Veterans Treatment Court, "barring any chemical, mental health, or behavioral setbacks."¹⁴⁷ The Veterans Treatment Court differs from drug court and mental health court in that it is not used to direct a defendant through a 12-step program, rather to impede the destructive cycle the veteran is in.¹⁴⁸ The court further seeks to start a new positive cycle for the veteran, which will correspondingly benefit society.¹⁴⁹

VI. THE GRADUATION FROM JUSTICE-INVOLVED VETERAN TO VETERAN

The Veterans Treatment Court graduation ceremony is a key to the program's success.¹⁵⁰ The justice-involved veteran's probation officer, mentor, service providers, and family should all be included in

¹⁴³ Veterans Treatment Court Policies & Procedures 7, *supra* note 37.

¹⁴⁴ *Id.*

¹⁴⁵ Caron, *supra* note 4, at 7.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Michael C. McDaniel, *Veterans Treatment Courts in Michigan: A Consideration of the Factors to Success*, 94 MICH. BAR J. 18, 18 (2015).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 20.

an invitation.¹⁵¹ Additional community leaders, including members of the judiciary, law enforcement, and other local government officials, should also be invited to impress upon justice-involved veterans and their families the gravity and prominence of the occasion as well as the support and recognition of their community.¹⁵² All justice-involved veterans in the program should be required to demonstrate how the community is in support of them and the effort being made.¹⁵³ The graduation should commemorate the justice-involved veteran to veteran in that a transition occurred from an individual in the criminal justice system, whose life may have begun to spiral, to a veteran who turned his or her life around to become a positive member of society. The presentation of a certificate of completion and commemorative coin, which is an important part of military life, is presented to the veteran. Furthermore, those veterans who are seeking a discharge upgrade may cite their successful completion of a rigorous program designed to turn a life around into a success once again.

VII. THE SUCCESS AND FUTURE OF THE VETERANS TREATMENT COURT

In one study concerning Veterans Treatment Court, the justice-involved veterans reported improvements in substance use, psychiatric symptoms, social and family relationships, and social interaction during their participation in the court.¹⁵⁴ Similarly, a report concerning the Rochester, New York Veterans Treatment Court reported a 59% reduction in arrests after participants entered the court.¹⁵⁵ A study of the Bexar County, Texas Veterans Treatment Court reported significantly lower recidivism rates after two years for participants compared to veterans who declined to enter the court.¹⁵⁶ A study conducted by the Minnesota Fourth Judicial District Court in 2013 recommended the following: more clearly defined criteria for advancement through the treatment court, which would give more control to the justice-involved veteran over his or her progress; the presence of a probation officer when graduation is recommended to

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Marlowe et al., *supra* note 28.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

present a justice-involved veteran's achieved goals; collect information concerning the justice-involved veteran's life for stability (i.e., housing, employment, family/support system, and education status) at the beginning and end of the contract; and update data quarterly to ensure the ability to conduct a thorough evaluation when the number of graduates reaches 100 justice-involved veterans who have been out of the program for a full year.¹⁵⁷

Veterans Treatment Courts continue to grow today and should continue to grow in the coming years. Many veterans of the Iraq and Afghan wars have yet to return to civilian society. Furthermore, many veterans who have recently returned home may be in an "incubation period" of trauma from returning from war.¹⁵⁸ Problems do not fade away, and veterans' mindsets are not one to seek help from others.¹⁵⁹ Those troubled mentally and/or physically from the wars may give into despair and violently lash out years later without treatment.¹⁶⁰ There are some current members of our service who continue to reenlist because they do not know anything else and feel more comfortable in a war zone than in today's society.¹⁶¹ A public health crisis may be averted if we, as a society, continue to push for treatment of our veterans.

Moreover, society benefits from reduced recidivism rates, savings of money, time and resources invested in legal proceedings, and the story of persons turning their life around for the better. In the San Jose, California Veterans Treatment Court, Judge Stephen Manley released a report detailing how his Veterans Treatment Court resulted in more than \$7 million in savings to the state of California through a reduction in jail time and emergency services otherwise caused by relapse and recidivism.¹⁶²

The Veteran Treatment Court is unique compared to the other treatment courts.¹⁶³ The court demonstrates a commitment by courts,

¹⁵⁷ Caron, *supra* note 4, at 6-7.

¹⁵⁸ Charles Davis, *Traumatized Vets Are Finding Hope in Special Courts*, TAKEPART (Mar. 6, 2015), <http://www.takepart.com/feature/2015/03/06/veterans-treatment-courts>.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² McNeil *supra* note 34, at 10.

¹⁶³ Honorable John J. Toomey & Edward Gialella, *Suffolk County Veterans Court Policy and Procedure Manual* 9, <https://www.nycourts.gov/LegacyPDFS/courts/10jd/suffolk/VeteransCT/pdf/VETPoliciesAndProcedures.pdf> (last visited Jan. 2, 2015).

such as in Suffolk County, to the veterans who return from serving our country injured in some way.¹⁶⁴ The commitment recognizes the sacrifices our veterans have made for their country and the price paid for those freedoms.¹⁶⁵ The Veterans Treatment Court does not disregard the fact that the justice-involved veterans who come before it have broken the law and must face the consequences for their action.¹⁶⁶ The Court substitutes closely supervised treatment for incarceration in order to provide the justice-involved veteran an opportunity to address and treat the underlying causes of his or her criminal action while facing the consequences for breaking the law.¹⁶⁷ A final point to end with is that Veteran Treatment Courts are fluid and must maintain space to change, expand, modify, and clarify their policies and practices to sustain the success seen thus far.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*