

University of Michigan Journal of Law Reform

Volume 48

2015

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Recommended Citation

Claudia Arno, *Proportional Response: The Need for More—And More Standardized—Veterans' Courts*, 48 U. MICH. J. L. REFORM 1039 (2015).
Available at: <https://repository.law.umich.edu/mjlr/vol48/iss4/5>

<https://doi.org/10.36646/mjlr.48.4.proportional>

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PROPORTIONAL RESPONSE: THE NEED FOR MORE— AND MORE STANDARDIZED—VETERANS' COURTS

Claudia Arno*

Over the past two decades, judges and legislators in a number of states have recognized significant shortcomings in the ways traditional systems of criminal corrections address cases involving criminal offenders who are veterans of the U.S. armed services. This recognition has come at a time when policy-makers have similarly recognized that, for certain subsets of criminal offenders, “diversionary” programs may achieve better policy results than will traditional criminal punishment. In accordance with these dual recognitions, some states have implemented systems of veterans’ courts, in which certain offenders, who are also U.S. veterans, are diverted into programs that provide monitoring, training, and occupational and psychological counseling in lieu of imprisonment. Because these veterans’ courts have been created on an ad hoc, state-by-state basis, it remains unclear exactly how such courts should be implemented in order to be most effective. This Note argues that the evidence currently available suggests that veterans’ courts are a good policy choice, in that they can have a positive impact on state criminal systems by reducing recidivism among offenders and by conserving state resources. Accordingly, this Note argues, states should pursue diversionary programs for at least some subset of U.S. veterans because: (1) the U.S. government has already invested significant resources in training veterans and helping them to develop skills; (2) in many cases the behavior that leads to a veteran being incarcerated stems at least in part from service-related trauma, suggesting that addressing the trauma may correct the behavior; and (3) as a matter of equity, those who have served in defense of the United States may be due special consideration in light of their special sacrifices. This said, given the difficulties inherent in determining which veterans, in which cases, should be afforded the benefits of these diversionary programs, that there is no coordinated state action in this area, and that many of the potential benefits of veterans’ courts can best—or perhaps only—be realized through a standardized, uniform model, the federal government should promulgate standards for implementing such programs in state court systems.

INTRODUCTION

Observers of the United States’ criminal justice system have long recognized the value of diversionary programs for certain types of offenders, especially juveniles and those with substance abuse problems. The concept of special courts for America’s veterans,

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however, is a relatively new one. That concept has become increasingly popular in the past decade, with judges in numerous states taking the initiative to establish programs catering to or focusing on veterans in their districts. In general, veterans' courts have been tailored to the needs of individuals whose criminal behavior can be linked to physical or emotional trauma experienced in the course of military service. The goal of such courts is to help participants avoid recidivism by addressing the root causes of their behaviors and by reintegrating them into their communities with the support of mentors who are veterans themselves.

The surge of interest in veterans' courts is likely due in part to the substantial increase in the number of veterans returning from overseas conflicts in recent years, and in part to improved understandings by scientists and policy-makers of the relationship of brain trauma and mental illness (notably including post-traumatic stress disorder, or PTSD) to substance abuse and criminal behavior. According to at least one estimate, about 140,000 veterans are currently incarcerated in state and federal prisons.¹ The population of incarcerated veterans differs significantly from the rest of the incarcerated population: in particular, incarcerated veterans are, on average, older and better educated than incarcerated non-veterans; incarcerated veterans also generally have shorter criminal histories.² At a minimum, these differences suggest that, from the perspective of criminal rehabilitation, it makes sense to treat these populations differently.

This Note argues that, as a matter of criminal law policy, diversionary programs for at least some subset of the United States' veterans should be pursued because: (1) the United States government has already invested significant resources in training veterans and helping them develop skills that they can presumably use to benefit society as a whole; and (2) in many cases the behavior that leads to a veteran's incarceration stems in part from trauma resulting from that veteran's service to the United States. (This is quite apart from the point that, as a matter of equity, those who have served in defense of the United States are due treatment by the State that recognizes and honors that service.) The widespread implementation of veterans' courts as a separate category of

1. Eileen C. Moore & Antoinette Balta, *Penal Code Section 1170.9 Provides Crucial Options to Veterans and Members of the Military*, ORANGE CTY. LAW., Apr. 2014, at 16.

2. See CHRISTOPHER J. MUMOLA, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: VETERANS IN PRISON OR JAIL 4 (Jan. 2000), available at http://justiceforvets.org/sites/default/files/files/Veterans%20in%20Jail%20or%20Prison_0.pdf (comparing incarcerated veterans and incarcerated nonveterans using a number of metrics including age and education level).

diversionary programs has the potential to reduce recidivism, promote the reintegration of low-level offenders into productive society, and decrease the financial burdens of incarceration on government—all while respecting the sacrifices of the U.S. veterans.

That said, while it makes policy sense to pursue widespread implementation of veterans' courts, it is nevertheless very difficult to formulate the criteria that should be applied in determining which veterans should be eligible for such diversionary programs. Such difficulties are not restricted to questions of application, but are also inherent in questions of basic fairness. Indeed, critics of the veterans' courts movement have repeatedly raised concerns about disparate treatment of veteran and non-veteran offenders, especially in cases involving violent offenses and, specifically, domestic violence.³ This Note argues that these concerns can be addressed, following extensive study of the existing programs, by implementing nationwide standards for participant eligibility. Of course this is not to say that veteran offenders should not face the consequences of their criminal behavior, or that all offenders who are veterans should be accorded lighter sentences simply on the strength of having served in the military. When a veteran offender's conduct is tied to injuries or demonstrable trauma sustained during military service, however, pre- or post-trial diversionary programs should be available to that individual, and those programs should be tailored to the specific and well-understood needs of veterans. Such programs come at a relatively low cost to taxpayers and, again, will lower recidivism and help to reintegrate veterans into their families and communities.

Ultimately, this Note argues that, while there may be problems with the sources of information regarding the success of veterans' courts, the available evidence suggests that veterans' courts can have a positive impact by reducing recidivism and conserving resources. It would, therefore, likely be beneficial for states to implement additional veterans' courts programs. That said, many of the potential benefits of veterans' courts can best be realized—or, perhaps, can only be realized—through a standardized, uniform model aligned with the best treatment practices for issues stemming from trauma suffered by veterans. Further, this need for standardization or uniformity suggests that, in the absence of unified or coordinated state action, the optimal approach for implementing veterans' courts programs in state court systems is through federally

3. E.g., Pamela Kravetz, Note, *Way off Base: An Argument Against Intimate Partner Violence Cases in Veterans Treatment Courts*, 4 VETERANS L. REV. 162 (2012).

promulgated standards. Setting eligibility standards and determining an appropriate structure for standardized programs will require more study of existing programs. The national community—and not merely individual communities in which veteran offenders live—has enough of a stake in the problem of veterans in the criminal justice system that it should invest in shaping these standards.

Part I of this Note traces the history and development of veterans' courts in the United States, beginning with the first moves towards such courts in Massachusetts in 2005. Part II analyzes two of the most serious critiques that face the continued establishment and vitality of veterans' courts: first, the question of whether the American criminal justice system should include any diversionary programs at all; and second, the question of whether veterans' courts can and should continue to exist and proliferate in the absence of national (or well-understood, generally accepted, rational) standards. Part III further explores the question of how and why national standards can and should be imposed, and analyzes available data on the performance of courts in three representative jurisdictions: Minnesota, Alaska, and New Jersey.

I. THE HISTORY AND DEVELOPMENT OF THE COURTS

Although veterans' courts have a relatively short history, assessing the efficacy of such courts and the extent to which they should be implemented nationally requires understanding how and why these courts developed as they did. This Part discusses the origins, operations, and funding of various veterans' courts, as well as where the movement in favor of veterans' courts seems to be heading. Although veterans' courts have come into being largely through the initiative of individual judges and have not, therefore, been established as part of a standardized national plan (or even statewide movement), these sometimes disparate courts share enough similarities that a brief overview will be useful for understanding the general rationale and importance underlying such diversionary programs.

A. *The Origins of Veterans' Courts*

Veterans' courts in the United States are a product of the post-9/11 era and are likely tied to the enormous surge in the number of veterans resulting from the United States' involvement in wars in

Afghanistan and Iraq through the 2000s. Tentative movements toward the establishment of veterans' courts began in Massachusetts in January of 2005, when Representative Patricia Jehlen introduced House Bill 863, which would have "require[d] the establishment of a 'veteran's court' to hear all cases in the criminal justice system involving veterans as defendants, and require[d] that the court make all possible efforts to channel veterans toward rehabilitation programs."⁴ Neither this Act, however, nor New York's 2007 Assembly Bill 11649/S8621, which "would have created a pilot program in New York City and Utica to handle any criminal cases in which a veteran was a defendant," passed the committee stage.⁵

Given that these state-level efforts did not result in the creation of veterans' courts, the veterans' court movement actually took shape when judges began to realize that, even though veterans are not *over*represented in the prison system by their proportion in the U.S. population as a whole, a large number of veterans were coming through their courts—and through drug and mental health courts in particular.⁶ The cases involving such veterans caught the attention of such judges as the Honorable Robert Russell of the Buffalo City Court because the veterans these judges saw often exhibited similar problems and behaviors.⁷ This continues to be the case, and, indeed, the sorts of issues witnessed by these judges—

4. H.B. 863, 180th Gen. Court, Reg. Sess. (Mass. 2005), available at <http://www.mass.gov/legis/bills/house/184/ht00/ht00863.htm>.

5. *Focus: Veterans' Courts*, 3 GAVEL TO GAVEL: A REV. ST. LEGIS. AFFECTING CTS. 1 (Feb. 19, 2009), available at http://www.ncsc.org/sitecore/content/microsites/gavel-to-gavel/home/~/_/media/Microsites/Files/Gavel%20to%20Gavel/archived%20pdfs/G%20to%20G%203-8.ashx.

6. *Hearing on Assemb. B. 187 Before the Comm. on Judiciary*, 75th Sess. 3 (Nev. 2009) [hereinafter *Hearing on Assemb. B. 187*] (statement of Assemb. Barbara E. Buckley), available at <http://leg.state.nv.us/75th2009/Minutes/Senate/JUD/Final/914.pdf> ("After counting 300 veterans in the local courts during 2007, Judge Russell decided to structure a veterans treatment court to address not only the veterans' crimes but their unique mental health issues."); *Responding to the Needs of Justice-Involved Combat Veterans with Service-Related Trauma and Mental Health Conditions*, CTR. FOR MENTAL HEALTH SERVS. NAT'L GAINS CTR 1 (2008), http://justiceforvets.org/sites/default/files/files/GAINS%20Report%5B1%5D_0.pdf [hereinafter *Responding to the Needs of Justice*].

7. William H. McMichael, *Battle on the Home Front: Special Courts Turn to Vets to Help Other Vets*, NAT'L ASS'N DRUG CRT. PROFS. (Nov. 1, 2011), <http://www.nadcp.org/Battle-on-the-Home-Front>; see also *Responding to the Needs of Justice*, *supra* note 6, at 5 ("Behaviors that promote survival within the combat zone may cause difficulties during the transition back to civilian life. Hypervigilance, aggressive driving, carrying weapons at all times, and command and control interactions, all of which may be beneficial in theater, can result in negative and potentially criminal behavior back home."); RAND CORP., *Invisible Wounds: Mental Health and Cognitive Care Needs of America's Returning Veterans* (2008), available at http://www.rand.org/pubs/research_briefs/RB9336/index1.html ("An estimated 31% of troops returning from Iraq and Afghanistan have a mental health condition or reported experiencing a TBI [traumatic brain injury].").

drug dependency and mental illness, for example—are likely to become even more prevalent as “studies indicate that the development of PTSD is higher among servicemembers who have served multiple combat tours, which is a hallmark of both OIF [Operation Iraqi Freedom] and OEF [Operation Enduring Freedom],” and because greater numbers of servicemembers are surviving combat injuries.⁸ Even with the drawdown of America’s wars there are now an enormous numbers of veterans entering U.S. society in comparison to the pre-9/11 era. Moreover, given the economic problems that have plagued the nation since at least 2008, there are an enormous number of unemployed or underemployed veterans in the United States.⁹

Of course, while many veterans exhibited the same problems and negative behaviors, they also exhibited many of the same positive behaviors and attributes. Judge Russell noticed, for example, that the veterans he saw tended to have positive reactions to two court employees who were also veterans.¹⁰ In an attempt to serve this veteran population, Judge Russell independently established the country’s first veterans’ treatment court in Buffalo in 2008.¹¹ Other judges quickly followed suit; by 2009 there were seven more veterans’ courts (in Rochester, New York; Tulsa, Oklahoma; Orange, Santa Clara, and San Bernardino Counties, California; Anchorage, Alaska; and Madison County, Illinois).¹² As of November 2014, the National Association of Drug Court Professionals (NADCP) reported there were 184 courts around the country specifically serving veterans.¹³

8. FLA. SENATE, INTERIM REPORT 2011-13, COMMITTEE ON MILITARY AFFAIRS AND DOMESTIC SECURITY, VETERANS’ COURTS, at 2 (2010), available at <http://www.flsenate.gov/Committees/InterimReports/2011/2011-13lms.pdf>; see also McMichael, *supra* note 7.

9. Chantell Frazier, *2014 Unemployment Rates Decline for Post-9/11 Veterans, but Still Higher than the National Average*, IRAQ & AFG. VETS. AM. (Jan. 9, 2015), <http://iava.org/blogs/2014-unemployment-rates-decline-for-post-911-veterans-but-still-higher-than-the-national-average/>. Unemployment and underemployment are known to have physical and mental health consequences. *Psychological Effects of Unemployment and Underemployment*, AM. PSYCHOL. ASS’N (2013), https://web.archive.org/web/20130922_075534/http://www.apa.org/about/gr/issues/socio-economic/unemployment.aspx (last visited Aug. 17, 2014).

10. McMichael, *supra* note 7.

11. Although two judges in Anchorage, Alaska established a court for veterans in 2004, it is sufficiently different from the type of court that Judge Russell established (see *infra* Part III) that his court is widely known as the first. Jack W. Smith, *The Anchorage, Alaska Veterans Court and Recidivism: July 6, 2004–December 31, 2010*, 29 ALASKA L. REV. 93, 109 (2012). See *infra* Part III.B.2.

12. Robert T. Russell, *Veterans Treatment Courts Developing Throughout the Nation*, NAT’L CTR. FOR STATE COURTS 1 (2009), available at <http://www.nadcp.org/sites/default/files/nadcp/Future%20Trend%20Article-Final%202009.pdf>.

13. *Veterans Treatment Court Locations*, JUST. FOR VETS, <http://www.justiceforvets.org/veterans-treatment-court-locations> (last visited Mar. 14, 2015).

B. How the Veterans' Courts Work

To understand how veterans' courts work, it is useful to look first to the example of the nation's network of drug courts, which are analogous to the more recently created veterans' courts. Congress authorized the creation and federal funding of drug courts in the Violent Crime Control and Law Enforcement Act of 1994.¹⁴ Over the past two decades, drug courts have become a standard part of state judicial systems. As of 2014, every state and the District of Columbia has at least one adult drug court or hybrid DWI/drug court; California has the greatest number, with ninety-nine such courts statewide.¹⁵

The veterans' courts movement owes much to the development of drug courts in terms of structure and resources. Because part of the focus of veterans' courts is usually to deal with participants' issues of substance abuse and addiction, the programs use some of the same treatment and monitoring methods. In fact, Judge Russell noted in a 2009 article on the operation of the Buffalo Veterans' Court that "the Buffalo court was able to keep cost relatively minimal the first year by using existing drug and mental-health courts staff and resources that were already funded and available."¹⁶ Even with this existing infrastructure, veterans' courts have some distance to go to achieve the national scale of drug courts. Veterans' courts nevertheless currently exist in thirty-six states and are able to apply for federal grants on a court-by-court basis.¹⁷

While the federal government has not provided resources for veterans' courts comparable to those it provides for drug courts, various resources (both public and private) for the development of veterans' courts are available at the national level. The National Association of Drug Court Professionals (NADCP), a non-profit 501(c)(3) corporation founded in 1994, is a source of information and training for veterans' courts, as well as many other variations on the drug court system, including hybrid DWI/drug courts and tribal healing to wellness courts.¹⁸ Through the National Drug Court Institute (NDCI), NADCP offers materials and webinars for groups interested in starting a drug court-type program or improving an

14. Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 3796ii to 3796ii-8 (2014).

15. *U.S. Drug Court Map*, NAT'L ASS'N DRUG CT. PROFS., <http://www.nadcp.org/learn/find-drug-court> (last visited Nov. 18, 2014).

16. Russell, *supra* note 12, at 3.

17. 42 U.S.C. 3796ii to 3796ii-8.

18. *About NADCP*, NAT'L ASS'N DRUG CT. PROFS., <http://www.nadcp.org/learn/about-nadcp> (last visited Nov. 18, 2014).

existing one.¹⁹ For veterans' courts in particular, a division of NADCP called Justice for Vets provides detailed advice on how to establish a veterans' court. More specifically, Justice for Vets offers online resources and facilitates visits to four Mentor Courts: the Buffalo, Tulsa, Rochester, and Orange County Veterans' Treatment Courts.²⁰ The DOJ's Bureau of Justice Assistance provides funding for teams of court officials to receive five days of training at one of these courts.²¹ Justice for Vets hosted the first veterans' court conference, Vet Court Con, on December 2–5, 2013, with the goal of offering “critical training to judges, prosecutors, defense attorneys, probation officers, volunteer Veteran Mentors, volunteer Veteran Mentor Coordinators, law enforcement officers, mental health and drug addiction treatment professionals, VA employees, and many others.”²² Nearly 1,000 attendees participated in the inaugural conference, which witnessed explicit statements of support for veterans' courts from former United States Department of Veterans Affairs Secretary General Eric Shinseki and Chairman of the Joint Chiefs of Staff Martin Dempsey.²³ The second Vet Court Con took place on May 28–31, 2014, in Anaheim, California, and was scheduled simultaneously with the NADCP 20th Annual Training Conference in order to facilitate attendance at both conferences for drug court and veterans' courts supporters.²⁴

In addition to the various conferences they have organized, NADCP and Justice for Vets have promulgated the “Ten Key Components” which serve as guiding principles for veterans' courts.²⁵ This document is based on the DOJ's 1997 publication, “Defining Drug Courts: The Key Components,” which Judge Russell adapted in 2008 to fit the needs of veterans' courts. The key components include:

- The courts integrate alcohol, drug treatment, and mental health services with justice system case processing.

19. *The Drug Court Planning Initiative*, NAT'L DRUG CT. INST., http://live-ndci.gotpantheon.com/trainings/design_a_drug_court (last visited Aug. 17, 2014).

20. *Veterans Treatment Court Mentor Program*, JUST. FOR VETS, <http://justiceforvets.org/veteran-mentor-courts> (last visited Nov. 18, 2014); *Resources for Court Professionals*, JUST. FOR VETS, <http://www.justiceforvets.org/resources> (last visited Nov. 18, 2014).

21. McMichael, *supra* note 7.

22. *Vet Court Con 2013*, JUST. FOR VETS, <http://web.archive.org/web/20130529085251/http://www.justiceforvets.org/2013-vet-court-con> (last visited May 10, 2015).

23. *See, e.g., id.*

24. *See The 2nd Annual Vet Court Con Takes Place in Anaheim, California*, JUST. FOR VETS, <http://www.justiceforvets.org/2014Vet-Court-Con> (last visited Aug. 17, 2014).

25. *The Ten Key Components of Veterans Treatment Court*, NAT'L DRUG COURT RESOURCE CTR., available at <http://www.ndcrc.org/content/10-key-components-veterans-treatment-courts> (last visited May 11, 2015).

- 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.
- The courts provide access to a continuum of alcohol, drug, mental health, and other related treatment and rehabilitation services.
- The courts monitor abstinence through frequent alcohol and other drug testing.
- A coordinated strategy governs the courts' responses to participants' compliance.
- Ongoing judicial interaction with each veteran is essential.
- Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
- Continuing interdisciplinary education promotes effective veterans' treatment court planning, implementation, and operations.
- Forging partnerships among the veterans' treatment courts, the Veterans Administration, public agencies, and community-based organizations generates local support and enhances the courts' effectiveness.

Veterans' courts around the country now use these principles as a guide, while integrating distinct visions of what a veterans' court should be into their particular programs. For example, Judge Maria D. Granger of the Floyd County, Indiana, Superior Court explained that, "Veterans Court is an interventionist approach that addresses the cause leading to criminal behavior and supports the guarantee of restorative justice founded in the Indiana Constitution."²⁶

As I discuss further in Part II of this Note, the most significant difference among veterans' courts around the country is the way in which they select their participants. Although many courts offer the option of participation in the veterans' programs only to nonviolent offenders, some, such as Judge Wendy Lindley's Orange County Combat Veterans Court, offer participation to some violent offenders and instead distinguish among types of violent crimes. (For example, Judge Lindley excludes veterans charged with "crimes

26. Maria D. Granger, *Veteran's Court: Restorative Justice*, IND. CT. TIMES (Aug. 16, 2013), <http://indianacourts.us/times/2013/08/veterans-court/>.

such as murder or sexual assault.”²⁷) The Orange County court accepts only veterans who have been in combat, while others, including the Buffalo court, do not differentiate based on type of service. The Buffalo court requires “a clinical diagnosis of serious and persistent mental-health disease and those with a primary diagnosis of substance dependency.”²⁸ The California Penal Code, meanwhile, requires that the court determine, prior to admission to the program, whether a convicted servicemember or veteran “may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result” of his or her military service.²⁹

The administration of veterans’ courts involves a broad-based network of participants, including the judges who run the courts, court officials, probation officers, prosecutors and public defenders, Veterans Administration specialists and treatment providers, and mentors who are either veterans themselves or are still on active duty.³⁰ The mentoring programs are seen as one of the great strengths of veterans’ courts and have been part of the effort from the beginning, when Judge Russell noticed that veteran offenders were able to relate to veteran court officials in an especially positive way.³¹ The mentors are typically volunteers, and as the veterans’ court system progresses over time, a number of graduates of the programs have become volunteers themselves.³² This is a vital element of the veteran-specific approach central to the programs: the mentors, along with the other program participants, work to create an atmosphere reminiscent of the camaraderie veterans experienced during their service.³³ The absence of this aspect of military life, and of the structure the military provided, is often a contributing factor to the difficulties veterans experience in the transition back to civilian life; additionally, many feel guilt about not being able to protect friends in combat or about not returning to their

27. McMichael, *supra* note 7.

28. Russell, *supra* note 12, at 2.

29. CAL. PENAL CODE § 1170.9(a) (West 2015).

30. BUFF. VETERAN’S TREATMENT CT., BUFFALO VETERAN’S COURT: MENTORING AND VETERANS HOSPITAL PROGRAM POLICY AND PROCEDURE MANUAL, available at <http://www.buffaloveteranscourt.org/sites/g/files/g283702/f/Bufalo%20Policy%20and%20Procedures%20Manual.pdf> [hereinafter *Buffalo Veteran’s Court*].

31. Russell, *supra* note 12, at 2.

32. *Id.*; see McMichael, *supra* note 7; Eileen C. Moore, *A Mentor in Combat Veterans’ Court: Observations and Challenges*, FUTURE TRENDS ST. CTS. 41–42 (2012), available at http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/Courts-and-the-Community/~/_/media/Microsites/Files/Future%20Trends%202012/PDFs/AMentor_Moore.ashx.

33. See Granger, *supra* note 26 (“The camaraderie among veterans is a unique and powerful connection.”); see also McMichael, *supra* note 7 (“The program is aimed at helping them regain the sense of discipline and camaraderie they had in uniform. . . .”).

units after being injured or discharged.³⁴ Veterans who have been through veterans' court programs and have reintegrated into society cite the emotional support they received as one of the keys to their success.³⁵ Mentors are able to connect with program participants especially well because they understand the stigma that servicemembers and veterans commonly attach to admitting that they need help in the first place.³⁶ This understanding is one of the most important reasons to maintain separate treatment courts for veterans and non-veterans.

C. Status of Veterans' Courts, Five Years In

According to Justice for Vets and the NADCP, there are currently 184 state-level veterans' courts across the United States.³⁷ Thirty-six states have at least one veterans' court; Pennsylvania tops the list with sixteen, followed by Michigan with fifteen and Florida with fourteen.³⁸ Veterans' courts continue to grow in numbers and support from state governments in spite of the recent economic downturn. There are also two federal veterans' courts, located in Salt Lake City, Utah, and Roanoke, Virginia.³⁹ The Salt Lake City court began in March 2010, and the Roanoke court began in early 2011.⁴⁰ These federal courts were developed in the same ad hoc way as the state courts. In Salt Lake City, Magistrate Judge Paul Warner simply obtained approval from then-Chief Judge Tena Campbell of the District of Utah, and "just asked other judges in the federal courthouse to watch for veterans and send them his way."⁴¹ At this time, veterans' courts constitute only about six percent of the total

34. See, e.g., Carol Comegno, *Returning Vets: Guilt to the Grave*, COURIER-POST (June 15, 2014), <http://www.courierpostonline.com/story/news/local/south-jersey/2014/06/15/returning-vets-guilt-grave/10542175/>; see also U.S. NAVY NAVAL HEALTH RES. CTR., POSTDEPLOYMENT USER GUIDE: TRANSITION WORKBOOK FOR COMBAT VETERANS, available at <http://www.med.navy.mil/sites/nmcscd/nccosc/postdeploymentUserGuide/grief-and-guilt.htm>.

35. See McMichael, *supra* note 7; Joe Huisinga, *Veterans Treatment Court Celebrates Graduation in Great Falls*, KRTV.COM (Mar. 3, 2015), <http://www.krtv.com/story/28250965/veterans-treatment-court-celebrates-graduation-in-great-falls>.

36. See McMichael, *supra* note 7.

37. *Veterans Treatment Court Locations*, *supra* note 13.

38. *Id.*

39. Dennis Romboy, *Fledgling Veterans Court Deals with "Root of the Problem,"* DESERET NEWS (Jan. 2, 2011), <http://www.deseretnews.com/article/700096885/Fledgling-veterans-court-deals-with-root-of-the-problem.html?pg=all>; Jeff Sturgeon, *U.S. Attorney General Eric Holder Praises Veterans Court in Roanoke*, ROANOKE.COM (Jan. 24, 2014), http://www.roanoke.com/news/article_9e155062-849e-11e3-9296-001a4bcf6878.html.

40. Romboy, *supra* note 39; Sturgeon, *supra* note 39.

41. Romboy, *supra* note 39.

number of specialty courts in the country, but as demand grows and the successes become more visible, it is likely that this percentage will increase.⁴²

While it is too soon for long-term studies of the effectiveness of veterans' courts to be available, the data gathered so far suggests that they are having a very positive impact.⁴³ Judge Russell's court is a particularly striking example. As of January 2011, 180 participants were enrolled, fifty-one had successfully completed the program, and the recidivism rate was zero percent.⁴⁴ Of the 202 participants who had enrolled in the program by November 2011, only twenty-six had dropped out, and none of the seventy veterans who had graduated by early 2013 had been rearrested.⁴⁵ In other words, by far the majority completed the program—and those who did complete it were remarkably successful. According to NADCP statistics, nationwide, by November 2011, seventy percent of defendants finished the programs they enrolled in, and seventy-five percent were not rearrested for at least two years after completion.⁴⁶ Although some court officials, such as those at the veterans' court in Ionia, Michigan, have encountered some initial challenges in adapting the drug court system to the needs of veterans, those administering these courts are optimistic about the prospects for the courts and the veterans whose cases are adjudicated in them—especially if they are successful in receiving grants from the federal government.⁴⁷

D. Funding the Courts

Veterans' courts have shown very promising signs thus far, but the federal government has not yet passed a bill providing funding

42. See *U.S. Drug Court Map*, *supra* note 15; *Veterans Treatment Court Location*, *supra* note 13.

43. See Justin Holbrook & Sara Anderson, *Veterans Courts: Early Outcomes and Key Indicators for Success* 5 (Widener Law Sch., Legal Studies Research Paper No. 11-25, 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1912655## (“[V]eterans court outcomes, at least at present, appear at least as favorable as those of other specialized treatment courts.”).

44. Neale Gully, *Nation's First Veterans Court Counts Its Successes*, REUTERS (Jan. 9, 2011), <http://www.reuters.com/article/2011/01/09/us-court-veterans-idUSTRE7082U020110109>.

45. McMichael, *supra* note 7; Jessica Trufant, *Court Shows Compassion for Mass. Veterans*, METROWEST DAILY NEWS (Feb. 24, 2013), <http://www.metrowestdailynews.com/article/20130224/News/302249919/?Start=1>.

46. *Id.*

47. Gary Gosselin, *Building on a System that Michigan Pioneered: Specialty Courts Help Cut Costs, Keep Recidivism Rate Down*, MICH. LAW. WKLY. (Aug. 30, 2013), available at <http://milawyersweekly.com/news/2013/08/30/building-on-a-system-the-state-pioneered/>.

for the veterans' court programs. Senator John Kerry first introduced the Services, Education, and Rehabilitation for Veterans Act (SERV Act) in 2008, and it promptly moved on to the Committee on the Judiciary.⁴⁸ The bill never made it out of committee. Representative Patrick Kennedy of Rhode Island introduced the bill's counterpart in the House two months later, with the same result.⁴⁹ The following year, Senator Kerry and Representative Kennedy again introduced the bills in the Senate and House; the House bill was referred to the Subcommittee on Courts and Competition Policy, and the Senate bill to the Committee on the Judiciary.⁵⁰ In 2011, when Rep. David Cicilline of Rhode Island introduced the bill, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security.⁵¹ Senator Kerry introduced the most recent version of the SERV Act in 2012, and after two readings legislators referred the Act to the Committee on the Judiciary again.⁵² A recent House Oversight and Government Reform Committee session produced the following unpromising statement about the federal government's connection to veterans' courts:

Many states have given veterans with legal troubles the opportunity to have their cases heard and resolved through special courts which liaise with community resources and VA to address the root causes of veterans' legal problems, e.g., substance abuse, PTSD, etc. In return for seeking and sustaining treatment for these issues, veterans are given the ability to keep their record clean and resolve their underlying issues. The Committee will assess VA's role in cooperating with these courts and monitor effectiveness.⁵³

Currently, veterans' courts are funded primarily at the state level.⁵⁴ There are several federal funding opportunities for judicial personnel who want to start veterans' court programs in their home

48. S. 3379, 110th Cong. (2008).

49. H.R. 7149, 110th Cong. (2008).

50. H.R. 2138, 111th Cong. (2009); S. 902, 111th Cong. (2009).

51. H.R. 2026, 112th Cong. (2011).

52. S. 3702, 112th Cong. (2012).

53. H. COMM. ON VETERANS' AFFAIRS, 113TH CONG., OVERSIGHT AGENDA, <https://veterans.house.gov/sites/republicans.veterans.house.gov/files/documents/FINAL%20113th%20Congress%20Oversight%20Agenda%2001152013.pdf>.

54. *See, e.g.*, Letter from Rick Scott, Governor, Fla., to Ken Detzner, Sec'y, Fla. Dep't of State (May 20, 2013), available at <http://www.flgov.com/wp-content/uploads/2013/05/Mesage1.pdf>; KANSAS CITY, MO. CODE OF ORDINANCES I § 2-1464 (2013) ("Pursuant to section 488.2230, RSMo, an additional surcharge in the amount of \$7.00 for moving and general ordinance violations and \$3.00 for non-moving violations shall be assessed to fund special mental health, drug, and veterans courts. . . .").

jurisdictions, however. In Michigan, for example, the Muskegon County veterans' court program learned in the fall of 2013 that the DOJ had approved its application for certification by opening the door to federal grants.⁵⁵ Muskegon County was one of thirty applicants, out of about 300, to be accepted for an intensive federal training program in California.⁵⁶ When that federal program was delayed and funding for it cut due to federal budget sequestration in 2013, however, the Muskegon County Department of Veterans Affairs paid for four members of the veterans' court team to travel to Washington, D.C. and train with the NDCI. The county launched the court in January 2014 and subsequently sought state funding.⁵⁷ The struggles the Muskegon court has faced are emblematic of the challenges in establishing veterans' courts in many other jurisdictions as well.

PART II: PROBLEMS AND CONCERNS

There are several potential problems with veterans' courts, two of which stand out as the most frequently discussed or cited. The first of these is the argument that there are societal problems with allowing *any* diversionary courts to exist. Ultimately, however, this potential concern is easily dismissed as a theoretical rather than a real problem. The second stand-out criticism is that veterans' courts lack necessary statewide and national standardization. This problem is far more troubling, and highlights a central policy and equitable concern with these sorts of diversionary programs.

A. Concerns about the Trend toward Diversionary Programs

Although veterans' courts are becoming ever more widespread, concerns exist both about veterans' courts and about diversionary programs in general. Jessica M. Eaglin expresses one such concern in her 2013 article, *Against Neorehabilitation*.⁵⁸ Professor Eaglin defines "neorehabilitation" as the development of "a guiding theory

55. Gary Gosselin, *Muskegon County Veteran Court to Be First to Receive Federal Approval*, MICH. LAW. WKLY. (Sept. 9, 2013), <http://milawyersweekly.com/milwblog/2013/09/09/muskegon-county-veteran-court-to-be-first-to-receive-federal-approval/>.

56. *Id.*

57. Stephen Kloosterman, *Muskegon County Seeks Funding for Newly Functioning Veterans Treatment Court*, MLIVE.COM (June 8, 2014), http://www.mlive.com/news/muskegon/index.ssf/2014/06/muskegon_county_seeks_funding.html.

58. Jessica M. Eaglin, *Against Neorehabilitation*, 66 SMU L. REV. 189, 189 (2013).

to transform emergency and short-term reforms [including sentencing reforms such as the creation of drug and other treatment courts] into a long-term shift in policy and practice away from mass incarceration” and “an improved theory of rehabilitation to guide the state in implementing such reform.”⁵⁹ Her concern is that, assuming that the ultimate goal of prison and criminal justice reform is to solve the problem of mass incarceration, the recent surge of interest in diversionary programs focuses on the *wrong kinds* of offenders and thus does not address the true problem of the criminal justice system: total incapacitation as the primary response to criminality.⁶⁰ While it is true that mass incarceration poses a very serious problem for American society as a whole, however, the goal of the veterans’ treatment court movement is not primarily to address that problem, but to provide a particular service to veterans. The incarceration of veterans for crimes that stem from their service experiences and the focus on incapacitation rather than rehabilitation of these veterans where a clear path toward rehabilitation exists, is indeed a narrower problem than that of mass incarceration generally. This is not, however, a sufficient reason *not* to attempt to solve the unique problems veterans face within the criminal justice system using diversionary programs as a tool.

David Garland first popularized the term “mass imprisonment” at the beginning of the twenty-first century; since then, scholars and other Americans have recognized the negative impact of mass incarceration on society as a whole and especially on particular communities.⁶¹ From about 1920 to 1975, the percentage of incarcerated Americans was relatively stable, but prison populations increased year-by-year thereafter.⁶² Between 1980 and 2008, the number of Americans in prison quadrupled, from about 500,000 to 2.3 million people⁶³ (approximately 0.7% of the population of the

59. *Id.*

60. *Id.* at 211–14.

61. Garland’s definition focuses on large-scale imprisonment as a social rather than a purely numerical phenomenon. “Mass imprisonment implies a rate of imprisonment and a size of prison population that is markedly above the historical and comparative norm for societies of this type. Imprisonment become *mass imprisonment* when it ceases to be the incarceration of individual offenders and becomes the systematic imprisonment of whole groups of the population. In the case of the USA, the group concerned is, of course, young black males in large urban centres.” David Garland, *Introduction: The Meaning of Mass Imprisonment*, in MASS IMPRISONMENT: SOCIAL CAUSES AND CONSEQUENCES 1, 1–2 (David Garland ed., 2001).

62. Mary Pattillo, David Weiman & Bruce Western, *Introduction to IMPRISONING AMERICA: THE SOCIAL EFFECTS OF MASS INCARCERATION* 1 (Mary Pattillo, David Weiman & Bruce Western eds., 2004).

63. *Criminal Justice Fact Sheet*, NAACP, <http://www.naacp.org/pages/criminal-justice-fact-sheet> (last visited Jan. 4, 2014).

United States⁶⁴). In comparison, the total population of the United States increased by thirty-five percent between 1980 and 2010.⁶⁵ The number of persons who are incarcerated or otherwise under the supervision of the criminal justice system (for example, on probation or parole) has declined every year since 2008, and the correctional population now makes up the same percentage of adult U.S. residents as it did in 1997,⁶⁶ but enormous disparities persist along gender, educational, and, most importantly, racial lines. In addition, the declines in the correctional population do not necessarily herald the end of mass incarceration. The 2012 decrease was the lowest since 2009, and while there were 38,000 fewer probationers nationwide in 2012 than there were in 2011, the number of people in jail actually increased by 8,900.⁶⁷ Meanwhile, “black males were 6 times and Hispanic males 2.5 times more likely to be imprisoned than white males in 2012.”⁶⁸ Mass incarceration and its attendant problems, such as the institutionalization of socioeconomic inequality along racial lines, thus continue to be pressing issues.

Eaglin concedes in her article that “it is unclear whether these reforms [including diversionary programs] are so detrimental that they do more harm than good,” but argues that “there is a high political cost in adopting the neorehabilitative model to address the larger problem of overincarceration in the United States.”⁶⁹ She believes that the danger lies in the institutionalization of “three key perversions into the criminal justice system”:⁷⁰ a focus on “low-hanging fruits,” or the extraction of the “wrong offenders” from the system;⁷¹ exacerbation of racial disparities within the prison population;⁷² and distortion of the perception of justice⁷³ by increasing the punishment for “those offenders viewed as undeserving of rehabilitation because they are not low-level offenders . . . [or] because they

64. See *2008 World Population Data Sheet*, POPULATION REFERENCE BUREAU (Aug. 19, 2008), <http://www.prb.org/Publications/Datasheets/2008/2008wpds.aspx>.

65. See *Fast Facts*, U.S. CENSUS BUREAU, https://www.census.gov/history/www/through_the_decades/fast_facts/ (last visited May 11, 2015).

66. *Correctional Populations in the United States*, BUREAU OF JUSTICE STATISTICS (Dec. 19, 2013), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4843>.

67. *Total U.S. Correctional Population Declined in 2012 for Fourth Year*, BUREAU OF JUSTICE STATISTICS (Dec. 19, 2013), <http://www.bjs.gov/content/pub/press/cpus12pr.cfm>.

68. *Id.*

69. Eaglin, *supra* note 58, at 210.

70. *Id.* at 211.

71. *Id.* at 211–13.

72. *Id.* at 214–18.

73. *Id.* at 218–22.

failed to rehabilitate themselves during their ‘second chance’ opportunities from the courts.”⁷⁴

Eaglin’s claim is that diversionary programs such as drug courts exclude high-risk offenders, who would benefit the most from rehabilitative programs: “[f]or example, a 2000 study found that there were larger treatment effects for higher risk cases of violent offenders.”⁷⁵ The study she cites, however, does not support this argument: “Although the results from the present study indicated that correctional treatment programs were more effective for higher-risk offenders, this was not demonstrated to a statistically significant degree. Past meta-analyses using the same procedures adopted here have reported that the risk principle was the weakest contributor of the three principles” (risk, need, and responsivity) that the authors considered as factors in the effectiveness of rehabilitative programs.⁷⁶ According to another meta-analysis, a 2006 study of violent offenders in Ohio found that better results came from “treatment groups with greater overall proportions of high-risk participants and [from] programs that provided more units of service or longer service to those among the participants who were at higher risk.”⁷⁷

Even assuming that the best results in preventing recidivism come from offering treatment to higher-risk offenders, however, would not necessarily militate against the implementation of veterans’ courts. First of all, as the 2007 meta-analysis points out in reference to the aforementioned 2006 study results, “[s]pecific treatment needs of offenders, such as substance-abuse problems, can also be conceptualized as risk factors.”⁷⁸ Thus, many individuals who qualify for veterans’ court treatment programs may already fit into the high-risk category.⁷⁹ Also, Eaglin’s criticism is based in part on the understanding that drug and other treatment court programs typically exclude violent offenders.⁸⁰ The enrollment of non-violent offenders is indeed deeply entrenched in the drug court

74. *Id.* at 218–19.

75. *Id.* at 211 (citation omitted).

76. Craig Dowden & D.A. Andrews, *Effective Correctional Treatment and Violent Reoffending: A Meta-Analysis*, 42 CANADIAN J. CRIMINOLOGY 449, 460 (2000).

77. Mark W. Lipsey & Francis T. Cullen, *The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews*, 3 ANN. REV. L. & SOC. SCI. 297, 312 (2007).

78. *Id.*

79. The Buffalo Veterans Treatment Court, for example, “serves veterans who are struggling with addiction and/or mental illness.” BUFFALO VETERANS TREATMENT CT., <http://www.buffaloveteranscourt.org/> (last visited Aug. 17, 2014).

80. Eaglin, *supra* note 58, at 209 (noting that drug courts focus on “low-level, first-time offenders”) & n.131 (equating veterans’ courts and other programs with drug courts for purposes of the article).

philosophy and implementation, but although veterans' courts take their structure from drug courts, the violent/non-violent restrictions tend not to be as strictly implemented in practice. Several veterans' courts have developed specialized definitions of what it means to be a violent offender; for example, Judge Lindley's well-known Orange County program officially accepts both violent and non-violent offenders but excludes cases of murder or sexual assault,⁸¹ and the Buffalo Veterans Treatment Court, while accepting only "non-violent" offenders, does not exclude those charged with domestic violence.⁸² Jacobs, McFarland, and Ledeen found in a 2011 interview with Travis County (Texas) Veterans Treatment Court Manager Jackson Glass that Travis County "promote[d] restrictive eligibility requirements 'on the books,' but [was] more lenient in practice—willing to consider cases on an individualized basis despite formal policies that accept nonviolent offenders only."⁸³ Given that the veterans' court movement is still in the developmental phase, it is not useful to presume that veterans' courts will only or always address non-violent or "low-level" offenders, and to evaluate the movement as a whole based on that presumption.

Eaglin's second objection to diversionary programs is likewise a bad fit for veterans' courts. She argues that they exacerbate racial disparities in the correctional population by removing white people and not people of color from the criminal justice system "because the typical risk factors used to screen offenders for rehabilitative programming are often proxies for structural inequities disproportionately plaguing historically disadvantaged populations."⁸⁴ While it may well be a valid criticism of drug courts that they use criminal history to screen potential participants and thus automatically exclude disproportionate numbers of "poor black men" who might benefit from rehabilitative programs (thus "reinforc[ing] the perverse connection between blackness and criminality"⁸⁵), veterans' courts have their own, particularized eligibility criteria that are less tied to race than are those of drug courts.⁸⁶ Criminal history takes a

81. McMichael, *supra* note 7.

82. *Buffalo Veteran's Court*, *supra* note 30.

83. Gavriel Jacobs, Katharine McFarland & Gabe Ledeen, *Serving Those Who Served: Veterans Treatment Courts in Theory and Practice* 6 (2012) (unpublished), available at http://www.law.stanford.edu/sites/default/files/child-page/266901/doc/slspublic/Jacobs_McFarland_Ledeen.pdf.

84. Eaglin, *supra* note 58, at 215.

85. *Id.* at 218 (citations omitted).

86. Approximately fifty percent of incarcerated veterans at the federal and state levels are white. See MUMOLA, *supra* note 2, at 4; MARGARET E. NOONAN & CHRISTOPHER J. MUMOLA, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: VETERANS IN STATE AND FEDERAL PRISON, 2004 4 (May 2007), available at <http://www.bjs.gov/content/pub/pdf/>

backseat to status as a veteran or combat veteran, diagnosis of mental illness or chemical dependency, whether the criminal behavior was caused by a problem connected to military service, the nature of the crime at issue, and entering a plea of guilty (depending on the jurisdiction).⁸⁷ Eaglin also mentions “education, employment, and socioeconomic status” as “factors dependent on structural inequities that already exist in society,”⁸⁸ which thus tend to reinforce racial disparities when used as selection criteria for diversion programs. These suspect criteria are not typically factored into eligibility determinations for veterans’ courts, however, because it is often presumed that many of the eligible veterans entered the criminal justice system because of mental illness or substance abuse problems that are also tied to unemployment and homelessness.⁸⁹

The third of Eaglin’s concerns is that a rehabilitative option will encourage judges and policy-makers to impose harsher punishments on individuals who are disqualified from treatment programs, or who fail to complete the programs or go on to commit subsequent crimes. There are two parts to this concern: statutory enhancement of sentences for particular crimes and unduly punitive sentences for offenders who recidivate during or after a treatment program. For example, several studies of New York drug courts analyzed by Josh Bowers in 2008 showed that “the sentences for failing participants in New York City drug courts were typically two-to-five times longer than the sentences for conventionally adjudicated defendants.”⁹⁰ While it is within the standard discretion of the court to sentence more harshly based on criminal history, including criminal activity that led to enrollment in a treatment program in the first place, these numbers are striking. This set of issues does potentially apply to veterans’ courts as well as drug courts, and it can only be addressed by changing legislators’ attitudes about rehabilitative programs and the relationship of those programs to the criminal justice system. The danger of this distortion in sentencing comes primarily from a perception of rehabilitative programs as an indication that those who do not qualify for them—or are for any other reason unable to complete them—deserve even more punishment than the state has already deemed appropriate for a particular crime.

vsfp04.pdf. There are no nationwide statistics on the racial or ethnic identification of participants in veterans’ courts.

87. McMichael, *supra* note 7.

88. Eaglin, *supra* note 58, at 216.

89. *Buffalo Veteran’s Court*, *supra* note 30.

90. Josh Bowers, *Contraindicated Drug Courts*, 55 UCLA L. REV. 783, 792 (2008).

The other side of the coin, and probably the most difficult concern to address, is that by offering treatment rather than the more punitive option of incarceration without a specific rehabilitation program to some offenders and not others, diversionary programs damage the perceived legitimacy of the criminal justice system by doling out unequal and thus unfair treatment. To counter this perception, it is important to understand that rehabilitative programs are geared toward people with specific characteristics, such as having served in the military or suffering from a particular type of mental illness or addiction. Craig Dowden and D. A. Andrews concluded in their 2000 meta-analysis of rehabilitative programs for violent offenders that the key to reducing recidivism was to ensure that the program included four factors: providing human services as part of the program; noting whether the offender presented a high or low risk of reoffending (although this was not strongly correlated to success); addressing the individual factors that caused the offender to engage in criminal behavior; and using cognitive behavioral and social learning approaches to teach the necessary skills and appropriate behaviors to avoid reoffending.⁹¹ Because programs must be tailored at least to some extent to the needs of participants, they are not and cannot be designed to treat all offenders. Offenders for whom no rehabilitative program currently exists are not necessarily inherently more deserving of punishment than those who can participate in existing programs (although some crimes are obviously worse than others and some offenders cannot be rehabilitated effectively through any of the methods in use). It is simply not possible to put every offender through (for example) a veterans' court program and achieve the current high rate of success, since veterans' court programs are designed to address certain needs and not others, and so cannot be expected to help every offender.

It is worth noting that no individual or group appears to be raising a Fourteenth Amendment equal protection or due process objection to the implementation of veterans' courts. Allen Lichtenstein, General Counsel for the Nevada chapter of the American Civil Liberties Union, has expressed concern about the underlying concept of predicating a diversionary program on veteran status, arguing that "the idea of an entirely different court system based on status doesn't make sense. . . . Does that mean a police officer who is accused of a crime should have a separate court because of his

91. Dowden & Andrews, *supra* note 76, at 459–60.

stress?”⁹² This objection attacks one justification for dedicating the resources necessary for veterans’ courts—that the veterans have served their country and been harmed in the process; this is not, however, the primary reason this Note advocates for implementing such programs. Diversionary programs for veterans as a group are effective because they are offered to veterans who share certain life experiences and certain conditions, such as service-related mental illnesses or chemical dependencies. These programs target veterans because they constitute a group of people with enough similar characteristics for similar rehabilitation methodologies to be effective on a large scale. Thus, to address Lichtenstein’s example, if there were a flood of police officers into the criminal justice system and the nature and causes of their offenses suggested that a particular course of rehabilitative treatment would be effective in preventing recidivism for a large percentage of the officers, it might well make sense to create a specialized treatment program for them.

It may be that no one has raised a Fourteenth Amendment objection because such an objection is unlikely to succeed. The level of scrutiny applied to differentiated treatment for veterans and non-veterans would almost certainly be rational basis review (as veteran status is not a traditionally protected class), and the eligibility requirement most commonly applied in veterans’ courts, that the criminal behavior be tied to the offender’s military service, provides a rational basis for treating veterans differently. Vanita Gupta, Deputy Legal Director of the ACLU, has explained that the national organization supports veterans’ treatment courts because the programs constitute “a recognition that our criminal justice system is, frankly, ill-equipped to address the problems of substance abuse, chemical dependency, [and] mental illness that really plague so many in our prisons, including the majority of veterans who are incarcerated.”⁹³ Although veterans’ courts cannot treat all of the offenders who suffer from mental illness or addiction, they do make an important contribution by assisting the offenders they can treat most effectively.

To return to the concerns raised in Eaglin’s article: as long as we recognize that diversionary programs are not sufficient to solve the problem of mass incarceration, the existence of such programs can benefit particular populations and, to a lesser extent, society as a

92. Kristina Shevory, *Why Veterans Should Get Their Own Courts*, THE ATLANTIC (Oct. 26, 2011), <http://www.theatlantic.com/magazine/archive/2011/12/why-veterans-should-get-their-own-courts/308716/>.

93. McMichael, *supra* note 7.

whole, without detracting from the overall mission of criminal justice reform.

B. The Bigger Problem: National Standards or Not?

Once we accept that diversionary programs with eligibility requirements based on veteran status are acceptable and desirable, however, another problem arises. Within the set of “veterans,” as veterans’ courts around the country have found, there are a number of variables for selecting treatment program participants. Currently, the standards are largely set on a court-by-court or state-by-state basis, and their ad hoc nature makes it difficult to predict or determine what the requirements of a particular court really are. What this means in practice is that veterans who suffer from similar conditions and commit similar crimes, but live in different states (or even different counties within a state) receive disparate treatment. This is problematic because, while there is a rational basis for distinguishing between veterans whose criminality is connected to their service and non-veteran offenders, the only basis for treating similarly situated veteran offenders differently is that most criminal law is state law. Differences in state laws provide a logical explanation for why similarly situated veterans might be treated differently by veterans’ courts or diversionary programs, but—especially given that military service is generally federal service—such disparate treatment seems inappropriate.

Currently, it is difficult to measure the effect of veterans’ treatment court programs as a whole because of the different standards of eligibility and because of the relative isolation in which the courts conduct their daily operations. In order to make the best possible use of the resources dedicated to veterans’ courts and to demonstrate the effectiveness of these programs and the advisability of creating new ones, it makes sense to establish some sort of national standards. For example, there are strong differences of opinion as to whether veterans who are not combat veterans should be eligible for the courts, and whether or not veterans who commit violent offenses should be eligible. Judge Lindley of Orange County has said that she supports California’s restriction of eligibility to combat veterans because the experience of combat “resonates very deeply with them. I think that if they’ve been damaged as a result of their service . . . in a combat zone, that ethically and morally we need to respond by offering them special services to restore them to

who they were.”⁹⁴ Judge Russell of Buffalo, on the other hand, insists that his court will not discriminate between types of veterans, since “all vets deserve special consideration simply for their willingness to serve and defend their nation.”⁹⁵ The Buffalo court does, however, restrict its eligibility to nonviolent offenders.⁹⁶ Conversely, Robert Alvarez, a Marine veteran and psychotherapist with the Wounded Warrior program at Fort Carson, Colorado, told the *Denver Westword News* in 2010 that violent offenders “need help more than anybody. . . . The very skills these people are taught to follow in combat are the skills that are a risk at home. They’re trained to react instantly to a threat, because if not, people die.”⁹⁷ Further analysis of the data collected by veterans’ courts is necessary to address these fundamental disagreements over which policies best serve the state’s interests both in protecting the public from dangerous offenders and providing rehabilitative treatment to veterans who can benefit from it.

The federal government can play a positive role in the development of veterans’ courts by providing for such a thorough analysis of veterans’ courts’ data. Commissioning a study of the results of different programs would help to synthesize the data across jurisdictions and determine the best criteria for potential participants, as well as the structure that would optimize participant outcomes. Once it becomes clear whether one approach has significantly better results than the other, and if so, which one, federal funding can be made available as an incentive to encourage more jurisdictions to structure their courts according to the more successful policies. An act of Congress would be necessary to provide such funds, but concrete data on the success of veterans’ court programs might be helpful in finally getting some iteration of the SERV Act out of committee.

PART III: EXPANDING THE ARGUMENT FOR NATIONAL FUNDING AND STANDARDS

The best purely morality-based justification for federal recognition and funding for veterans’ courts nationwide is the rationale

94. *Id.*

95. *Id.*

96. *Buffalo Veteran’s Court*, *supra* note 30.

97. Joel Warner, *Can a Veterans Court Help Former GIs Find Justice Here at Home?*, DENVER WESTWORD NEWS (Feb. 4, 2010), <http://www.westword.com/2010-02-04/news/can-a-veterans-court-help-former-gis-find-justice-here-at-home/>.

often cited for creating veterans' courts in the first place: that veterans have given up a great deal for the United States as a whole, so the United States should have a way of helping them live with the damages they incurred as a result.⁹⁸ Following this chain of logic, it makes sense for veterans to receive the same advantages no matter where in the country they happen to live. This idea is beginning to gain currency in the field of higher education, as state universities offer in-state tuition rates to veterans even though they may not meet the schools' technical requirements of residency. For example, as of January 2014, the University of Michigan offers in-state tuition to active or honorably discharged members of the military and their spouses and dependents, regardless of actual residency.⁹⁹ Twenty other states have passed legislation offering in-state tuition to veterans at all of the state's public universities.¹⁰⁰ In Arizona, for example, honorably discharged veterans can receive in-state tuition so long as they have "demonstrated objective evidence of intent to be a resident of Arizona," which can be as simple as possessing an Arizona driver's license, and have registered to vote in Arizona.¹⁰¹ These policies build on the long-accepted practice of helping veterans to reintegrate into civilian life by making some aspects of civilian life, including education, easier for them to access; President Franklin D. Roosevelt explained in his Fireside Chat on June 22, 1944, that veterans "have been compelled to make greater economic sacrifice and every other kind of sacrifice than the rest of us, and are entitled to definite action to help take care of their special problems."¹⁰² Today it is clear that some of the "special problems" veterans face involve coping with the requirements of everyday life while burdened by substance abuse or mental illness related to trauma experienced during their service, and that these problems all too frequently lead them into the criminal justice system. State and federal governments, therefore, are justified by historical precedent in taking action to help the veterans struggling with these problems, in this case by helping them to access the rehabilitative

98. See, for example, the tagline of Justice for Vets, featured prominently on the organization's website: "Veterans fought for our freedom, now it's our turn to fight for theirs." JUST. FOR VETS, <http://www.justiceforvets.org> (last visited Nov. 19, 2014).

99. *University of Michigan Veterans and Military In-State Tuition*, U. MICH. VETERAN & MIL. SERVS. PROGRAM, <http://vets.umich.edu/content/university-michigan-veterans-and-military-state-tuition> (last visited Jan. 24, 2014).

100. *The Fight for In-State Tuition for Veterans*, STUDENT VETERANS AM., <http://www.studentveterans.org/what-we-do/in-state-tuition.html> (last visited Jan. 24, 2014).

101. ARIZ. REV. STAT. ANN. § 15-1802 (2014).

102. President Franklin D. Roosevelt, Statement on Signing the G.I. Bill (June 22, 1944), available at <http://www.presidency.ucsb.edu/ws/?pid=16525> (internal citations omitted).

aspect of criminal punishment while also enforcing sufficient incapacitation—and deterrence-oriented measures to protect the public. Just as veterans should not be kept out of a particular state university system because of the vagaries of residency requirements, so their access to treatment programs should not depend on the state in which they happen to be located.

A. Veterans' Courts and Punishment

In his 2010 article on veterans and the justice system, Ninth Circuit Judge Michael Daly Hawkins observed that, because of widespread concerns that veterans' courts would provide treatment to the exclusion of punishment, "the diversion of criminal charges away from traditional processing and into the treatment mode has largely been limited to non-violent offenses. Veterans accused of violent offenses, absent prosecutorial downsizing agreement, are very likely to be processed in the traditional way, with consideration of their military experience reserved for sentencing."¹⁰³ Judge Hawkins suggested that this focus on non-violent offenses might lead to early intervention for veterans showing troubling patterns of behavior, thereby diverting them from the path to more serious crimes. Judge Russell of the Buffalo court has said the same thing, but with the line drawn so as to admit cases of simple assault and domestic violence.¹⁰⁴

The latter category, domestic violence, has proven to be an especially challenging one to address, reflecting the complexity of domestic violence itself and American society's uneven response to it. For example, one domestic violence organization raised concerns about the balance of punishment and treatment during testimony on the 2009 Nevada bill that authorized the creation of veterans' courts.¹⁰⁵ Nancy Hart of the Nevada Network against Domestic Violence argued that the bill should specifically exclude veterans charged with domestic violence offenses because the "escalating" nature of domestic violence behavior made it particularly important that such offenders not only be punished but be easily

103. Michael Daly Hawkins, *Coming Home: Accommodating the Special Needs of Military Veterans to the Criminal Justice System*, 7 OHIO ST. J. CRIM. L. 563, 571 (2010).

104. Kibret Markos, *Helping Vets Stop the Cycle of Crime*, NORTHJERSEY.COM (Sept. 20, 2010), <http://www.northjersey.com/news/police-on-mission-to-assist-war-vets-1.281857>.

105. Hawkins, *supra* note 103, at 570 (citation omitted).

identifiable in the criminal justice system.¹⁰⁶ The legislature ultimately decided that, because domestic violence sometimes results from PTSD, the decision as to what treatment program would be most appropriate for an individual offender should be left to judicial discretion.¹⁰⁷ A veteran who is charged with a misdemeanor involving violence or who has been previously convicted of a felony involving violence may not, however, enter a Nevada treatment court program unless the prosecutor agrees.¹⁰⁸ The primary objection to allowing veterans' courts to handle domestic abuse cases seems to be a concern that the offenders will not be punished severely enough to deter future violence, and that the lack of severity will contribute to the systemic failure of American society, and more particularly the military culture, to take domestic violence and sexual assault seriously enough.¹⁰⁹

This argument does not give veterans' courts enough credit, however. The goal of court treatment programs is to address the underlying problems that contribute to the offender's criminal behavior, thereby preventing that behavior in the future. Whether the veteran is charged with domestic violence or with driving under the influence, the resources of the court will be directed toward preventing recidivism through a combination of punishment, treatment for addiction or mental illness, and assistance with lifestyle changes. It may happen that a particular veteran is prone to domestic violence for reasons unconnected to the factors that veterans' court treatment deals with and goes on to commit a domestic violence offense after completing the program. In that case, it would be within the discretion of the court to deny that person access to the program a second time, and he or she would follow a different path in the justice system, possibly including a treatment program specific to domestic violence.

A related concern is that the veterans' courts should not be handling violent offenders because such people are not good candidates for rehabilitation through treatment programs, because they do not deserve the opportunity to participate, or because of the model provided by federal drug court legislation, which explicitly excludes violent offenders.¹¹⁰ Some courts and legislatures have

106. *Hearing on Assemb. B. 187, supra* note 6, at 22 (statement of Nancy Hart, Nevada Network Against Domestic Violence).

107. LEGIS. COUNS. BUR., POLICY AND PROGRAM REPORT: NEVADA'S COURT SYSTEM 3 (2014), available at <http://www.leg.state.nv.us/Division/Research/Publications/PandPReport/26-NCS.pdf>.

108. NEV. REV. STAT. § 176A.290 (2014).

109. See Kravetz, *supra* note 3, at 186, 188–91.

110. 42 U.S.C. §§ 3797u-1 (1994).

handled admission of violent offenders to their programs by requiring the input of the victim,¹¹¹ while others have relied on less formal methods to restrict the number of violent offenders in the programs. In New Jersey, for example, the criminal division manager in Superior Court in Hackensack remarked in 2010 that the state's Veterans Assistance Project was "technically open to veterans who are charged with serious or violent crimes, but the high bail that comes with such charges would limit a veteran's chances of participating[.]"¹¹²

B. Veterans' Courts So Far: What Does the Data Tell Us?

Since veterans' courts are still relatively new from the standpoint of data analysis, it is difficult to say with much statistical authority that one method of implementation has proven more effective than another. A quick examination of the data that has been collected, in this case from three representative states (Minnesota, Alaska, and New Jersey), can distinguish certain approaches that appear to be working.

1. Minnesota

The Fourth Judicial District of Minnesota was the first jurisdiction in the state to institute a veterans' court, and in 2012, after two years of operation, its research division prepared a program review detailing how the court and associated programs had operated up to that point.¹¹³ From 2010 to 2012, 131 veterans enrolled in the program. By the end of 2012, thirty-one percent of them had graduated, fifty-six percent were still in the program, and only eleven percent had left (either expelled for noncompliance with program rules or voluntarily withdrawn).¹¹⁴ All persons who have served in the U.S. armed forces count as "veterans" for purposes of eligibility for this court, regardless of length of service or what sort of discharge they received; even veterans ineligible to receive benefits

111. Evan R. Seamone, *Reclaiming the Rehabilitative Ethic in Military Justice: The Suspended Punitive Discharge as a Method to Treat Military Offenders with PTSD and TBI and Reduce Recidivism*, 208 MIL. L. REV. 1, 7 n.9 (2011).

112. Markos, *supra* note 104.

113. Anne Caron, *Fourth Judicial District Veterans Court—Two Year Review: July 2010–June 2012*, FOURTH JUD. DIST. RES. DIV. 6 (2013), available at http://www.mncourts.gov/Documents/4/Public/Research/Veterans_Court_Two_Year_Review.pdf.

114. *Id.* at 3.

through the Veterans Administration may still participate.¹¹⁵ Participants must have a “treatable chemical dependency and/or mental health issues.”¹¹⁶ Any presumptive probation offense, as defined by the Minnesota Sentencing Guidelines, is accepted, including offenses as serious as felony driving while intoxicated and assault in the second degree if the veteran has a low criminal history score, or less serious offenses that combine to produce a high criminal history score.¹¹⁷ Twenty-five percent of the participants entered the program with a felony charge.¹¹⁸ As long as they do not have too high a criminal history score, veterans charged with domestic assault may participate in the program. The most common offenses during the time period in question were DWIs (forty percent) and misdemeanor domestic offenses (twenty percent).¹¹⁹ Because of the short amount of time that the court had been in operation, the report could only provide preliminary recidivism results: number and type of new offenses and number of offenses within a given number of months after entering the program compared to the same amount of time before entering.¹²⁰ Based on this limited data set, researchers concluded that “[g]raduates are more likely than non-completers to have no new offenses at all four points after entering Veterans Court (6, 12, 18, and 24 months),” and that “[n]ot only do graduates commit new offenses at a lower rate than non-completers, but when they do reoffend it is more often a less serious offense.”¹²¹ As initially conceived, the mentoring component of the program was voluntary, leaving participants to choose whether or not to have a mentor. The two-year review notes that by the end of 2012 this program took steps to make mentoring a more central component, and it recommends that the program continue on such a course.¹²²

2. Alaska

The Alaska Veterans Court has operated in Anchorage since 2004, making it the oldest court in the country specifically geared toward helping veterans, but there are key differences between its

115. *Id.* at 8.

116. *Id.* at 3.

117. *Id.*; MINN SENTENCING GUIDELINES AND COMMENTARY §§ 4.A, 5.A (2013), available at <http://mn.gov/sentencing-guidelines/images/2013%2520Guidelines.pdf>.

118. Caron, *supra* note 113, at 11.

119. *Id.* at 14.

120. *See id.* at 17–18.

121. *Id.*

122. *Id.* at 5.

design and that of the prevalent Buffalo model. As Judge Jack W. Smith, one of the founders of the court, has said, “[t]he Alaska Veterans Court is a facilitator for veterans to interact with the VA.”¹²³ The court deals only with misdemeanor defendants; misdemeanors involving violence are accepted, with assault being the most common offense.¹²⁴ More importantly, only those who are eligible for benefits through the Veterans Administration may participate because all of the treatment and services are provided by the VA.¹²⁵ This means that the veterans receive services at no cost to themselves or to the state or municipal government,¹²⁶ but it also means that the types of services are limited; the veterans’ court will refer veterans to the Anchorage drug or mental health courts “when their particular problems are more appropriately addressed in another therapeutic court.”¹²⁷ Participants must attend court dates over a period of about eighteen months and undergo drug or alcohol testing as the court deems necessary, but there is no mentoring component. From 1994 to 2010, seventy-four veterans participated in the Anchorage program, and thirty-eight graduated.¹²⁸ Among those graduates, there was a forty-five percent recidivism rate.¹²⁹ That is slightly less than the fifty percent rate in Alaska as a whole during the same period, but it does not approach the level of success seen in courts such as Judge Russell’s in Buffalo.¹³⁰ Because mentoring has been a key component of courts using the Buffalo model and is widely cited as a strong motivating factor for participants, so much so that veterans who have successfully completed the programs sometimes become mentors themselves, it seems reasonable to suggest that this missing element would benefit the Anchorage court.

3. New Jersey

New Jersey’s Veterans Assistance Project (VAP) is an atypical variation on the veterans’ court model, in that it provides services—including mentoring—to veteran offenders, but unlike participants in Minnesota, Alaska, and most other jurisdictions, those veterans

123. Smith, *supra* note 11, at 109.

124. *Id.* at 99, 106.

125. *Id.* at 95.

126. *Id.* at 102.

127. *Id.* at 98.

128. *Id.* at 103.

129. *Id.* at 107.

130. *Id.*; Trufant, *supra* note 45.

are not subject to any special adjudication or sentencing procedures.¹³¹ The materials on the VAP make it very clear that it is not a “diversionary program.”¹³² The role of the judiciary is to assist in identifying veterans when they enter the criminal justice system and to connect them with the VAP by referring potential participants to one of the state Veterans Service Offices (VSO).¹³³ Between the first implementation of the project in December 2008 and October 31, 2014, courts referred 2,751 veterans.¹³⁴ An analysis of the recidivism rate among these veterans could be very useful in judging the value of a court-centered program that diverts veterans from prison, as opposed to a path leading veterans toward services that can help them without lessening the severity of their punishment.

C. Possible Next Steps

The available data on veterans’ courts provides excellent reason to hope that their national expansion could significantly reduce recidivism and improve the lives and prospects of thousands of veterans who would otherwise become entangled in the criminal justice system and become a burden to society as a whole. However, it is clear that if veterans’ courts are to have a significant impact, legislators must take serious steps to expand the courts’ reach and scope.

First and foremost, Congress should pass a modified version of the SERV Act. There is obviously a great deal of grassroots support for veterans’ court programs, as is the case with many programs that assist veterans.¹³⁵ The DOJ under the Obama administration has expressed its support for diversionary programs, along with other policies that move away from mass incarceration.¹³⁶ Attorney General Eric Holder has emphasized the role of diversion and reentry

131. See *New Jersey Judiciary Veterans Assistance Project*, N.J. JUDICIARY, http://www.judiciary.state.nj.us/criminal/Veterans_Assistance_Project.pdf (last visited Aug. 17, 2014).

132. *Id.* at 2.

133. *Id.* at 3.

134. *Id.* at 1.

135. See, e.g., ILL. WORKFORCE INV. BD. VETERANS TASK FORCE, VETERANS TASK FORCE REPORT: FINDINGS AND RECOMMENDATIONS 13–14, available at http://www.illinoisworknet.com/NR/rdonlyres/657DA3F5-753E-4E7D-9193-CF54A5EBC39C/0/VeteransTaskForceReportFinalDraft3_17_11.pdf.

136. One example is a reduction in the use of mandatory minimum sentences for nonviolent drug crimes, through the “Smart on Crime” initiative unveiled in August 2013. Eric H. Holder, Jr., Att’y Gen., Remarks at the Annual Meeting of the American Bar Association’s House of Delegates (Aug. 12, 2013), available at <http://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-annual-meeting-american-bar-associations>; Ari

courts in this initiative by, for example, directing each U.S. Attorney to designate a Prevention and Reentry Coordinator in his or her office.¹³⁷ In the absence of federal legislation, however, several states have attempted to fill the gap by passing legislation dealing with the problem of veterans in the criminal justice system in different ways. In California, for example, the 2007 modification of California Penal Code § 1170.9 states that when a veteran who may be “suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her service” is convicted of an offense for which the sentence would be imprisonment, the court may, with the veteran’s agreement, order him or her “into a local, state, federal, or private nonprofit treatment program for a period not to exceed that which the defendant would have served in state prison or county jail.”¹³⁸ This legislation passed before the veterans’ courts movement really took hold, and it seems clear that having special court sessions to handle such cases, in which all of the resources are coordinated, would be more efficient than having individual judges requesting “an assessment to aid in [the] determination” of whether a defendant meets California’s criteria on an as-needed basis.¹³⁹

With federal funding should come federal standards. Such standards would save a great deal of time in the organization of veterans’ courts for state courts and legislatures alike. In Illinois, for example, the Governor’s Task Force on Veterans and Servicemembers Courts produced a manual in 2010 that included, at the front end of the process, decisions on “whether to include misdemeanors and/or felonies,” “whether the program is a pre-adjudicatory/post-adjudicatory/general continuance/probation program/vacate conviction on graduation program,” and “whether to include veteran mentors.”¹⁴⁰

Melber, *For Vets, Rehab Rather Than Prison*, MSNBC.COM (July 29, 2014), <http://www.msnbc.com/the-cycle/vets-rehab-rather-prison>.

137. Eric H. Holder, Jr., Att’y Gen., Remarks at the Roanoke Veterans Treatment Court Program (Jan. 23, 2014) [hereinafter Holder’s Remarks at Roanoke], *available at* <http://www.justice.gov/iso/opa/ag/speeches/2014/ag-speech-140123.html>.

138. CAL. PENAL CODE § 1170.9(a)–(b) (West 2015); *see* Adam Caine, Comment, *Fallen from Grace: Why Treatment Should Be Considered for Convicted Combat Veterans Suffering from Post Traumatic Stress Disorder*, 78 UMKC L. REV. 215, 227–30 (2009).

139. CAL. PENAL CODE § 1170.9(a).

140. ILL. GOVERNOR’S TASK FORCE ON VETERANS AND SERV. MEMBERS COURTS, IMPLEMENTING VETERANS COURTS OR PROGRAMS IN THE STATE OF ILLINOIS 4 (2010), [hereinafter *Implementing Veterans Courts*], *available at* <https://www.ncjrs.gov/App/Publications/Abstract.aspx?id=263707>.

Federal standards for veterans' courts should include several critical requirements, such as volunteer mentor programs. Participants and administrators alike cite mentorship as a crucial component of the team atmosphere that encourages participants to succeed. Mentors also embody the success that troubled veterans can achieve by committing to the treatment programs and to maintaining healthier and more law-abiding behavior. They create little to no financial burden, because after the initial class of mentors has received any necessary training, training new mentors can be part of the volunteer program.

Similarly, federal standards should make some accommodations for the veterans who are charged with domestic violence that acknowledges the objections of victim advocacy groups. Nancy Hart, speaking for the Nevada Network against Domestic Violence, cited the lack of availability of a domestic violence treatment program for offenders on the veterans' court track as a potential weakness of the program and a concern for her organization.¹⁴¹ In response to such concerns, federal funding should mandate treatment programs tailored to domestic violence offenders on at least a regional level, so that judges would be able to order attendance as necessary. The 2010 Illinois manual adopts such an approach; it proposes a case-by-case approach, urging that, although the state statute¹⁴² does not exclude them, domestic violence cases should be "carefully scrutinized," "[c]onsideration should be given to whether violence is a power and control issue or a result of PTSD, etc.," and the "[b]ackground of [the] defendant and onset should be researched[.]"¹⁴³ Federal funding and guidance would be instrumental in implementing this type of case-by-case approach. This type of treatment program requires local, trained staff to aid courts in determining which domestic violence offenders belong in a veterans' treatment court program.

PART IV. CONCLUSION

In his remarks at the federal Roanoke Veterans Treatment Court, Attorney General Holder gave the veterans' courts movement his unequivocal support:

141. *Hearing on Assemb. B. 187, supra* note 6, at 22 (statement of Nancy Hart, Nevada Network Against Domestic Violence).

142. 730 ILL. COMP. STAT. ANN. 167/20 (West 2010).

143. *Implementing Veterans Courts, supra* note 140, at 5.

By offering alternatives to incarceration—and linking participants with vital rehabilitation and treatment resources—this program provides a model for preventing recidivism, reducing relapse, and empowering veterans convicted of certain nonviolent crimes to rejoin their communities as productive, law-abiding members of society. It's also saving resources at a time when they could not be more scarce.¹⁴⁴

Veterans' courts as a nationwide phenomenon are still very much in the developmental stage. In the first quarter of 2014 alone, however, several states have taken significant steps toward creating or expanding veterans' court programs. In Mississippi, for example, after multiple failed attempts to pass a bill establishing veterans' courts,¹⁴⁵ the legislature enacted and the governor signed an amendment to the Mississippi Code instructing the Administrative Office of the Courts to establish and implement "a uniform certification process for all drug courts and other problem-solving courts," and authorizing the state circuit court judges to create veterans' court programs.¹⁴⁶

Perhaps most significantly for the future of veterans' courts, California is currently considering expanding the veterans' courts initiative, at the state level, in several key ways. In an analysis of California Senate Bill 1227, now codified as California Penal Code § 1001.80, the California Senate Committee on Public Safety discussed the use of veterans' courts as a mechanism to address the severe overcrowding in the California prison system.¹⁴⁷ Given the need for immediate action to remedy this problem, the Committee argued, it would make sense to expand the already established network of veterans' courts to include pretrial diversionary programs, thus removing the defendants from the system at the earliest possible moment. Under the new law, participants are referred to mental health programs and other necessary services, and, after completion of diversion lasting not more than two years, the arrest

144. Holder's Remarks at Roanoke, *supra* note 137.

145. Bill Rattery, *Veterans Courts: 2013 Legislatures Are Both Encouraging Them and Trying to Give the Executive Control over Them*, GAVEL TO GAVEL (Feb. 26, 2013), <http://gaveltogavel.us/2013/02/26/veterans-courts-2013-legislatures-are-both-encouraging-them-and-trying-to-give-the-executive-control-over-them/>.

146. H.B. 585, 2014 Leg. Reg. Sess §§ 4, 82 (Miss. 2014). These programs will not be open to veterans charged with crimes of violence or those who have been previously convicted of a felony crime of violence. *Id.* at § 82(3)(e).

147. S. COMM. ON PUB. SAFETY, S.B. 1227, 2013–14 REG. SESS., BILL ANALYSIS (Cal. 2014), available at http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1201-1250/sb_1227_cfa_20140408_141344_sen_comm.html.

will be deemed never to have occurred.¹⁴⁸ Eligibility for these programs is also comparatively relaxed, offering participation to individuals accused of committing a misdemeanor with no mention of a restriction for violent crimes, and on the basis of conditions from which the individual may be suffering include “sexual trauma” related to military service as well as the more usual criteria such as traumatic brain injury and post-traumatic stress disorder.¹⁴⁹ This law sets an interesting precedent for states to use in thinking about the potential benefits of statewide veterans’ court programs. In addition to casting a wide net in terms of participation, it clearly emphasizes the important role of access to mental health services in the veterans’ court scheme.¹⁵⁰ By mandating the availability of veterans’ court treatment programs at the pretrial stage, the state recognizes the value of such programs and signals its trust in the programs to accomplish the twin goals of helping individual citizens and protecting the public as a whole. It is clear that veterans’ courts are increasingly recognized as a powerful tool in the criminal justice system, and that it would only prove more beneficial to society and to veterans themselves to implement a widespread and perhaps most importantly standardized network of such courts throughout the country.

148. CAL. PENAL CODE § 1001.80 (West 2015).

149. *Id.*

150. CAL. PENAL CODE § 1001.80(d)–(g) (West 2015).