

## **COLORADO'S ABOUT FACE: MECHANICS, PROGRESS, AND CHALLENGES FACING VETERANS TRAUMA COURTS IN COLORADO**

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*The nature of asymmetrical warfare—defined by improvised explosive devices, indirect fire attacks, and suicide attacks—has significantly altered the patterns of post-service challenges faced by veterans. Dealing with the unseen wounds of post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) that result from this type of combat has been one of the most difficult leadership challenges of my career as a young officer.*

*Although our nation's medical response to PTSD and TBI is well documented, the judicial challenges are not as apparent. Most recently, our nation has responded to this challenge with an alternative court, the Veterans Trauma Court (VTC), modeled on longstanding drug courts. The VTC offers a legal solution to the complex problems faced by our veterans, particularly those suffering from TBI and PTSD.*

*Although there is much literature advocating for VTCs, there is a dearth of research examining the actual operations of the VTC or its measurable outcomes. VTCs are at a point of development, particularly the one studied in this Comment, where metrics are available, operations have been*

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*standardized, and recommendations can be made. The 4th Judicial District's VTC, the subject of this study, provides a particularly powerful case study because the district has a large, diverse military population. By incorporating research gathered over two years on this VTC, this Comment attempts to understand the mechanics and operations of a veterans trauma court as a case study for other veteran courts.*

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## INTRODUCTION

Repaying America's debt to its veterans means giving them the opportunity to succeed in civilian life. Veterans courts are a pragmatic way we can repay that debt and save veterans from additional suffering.<sup>1</sup>

Army Specialist (Spc.) Thomas Delgado, a combat medic and recipient of the Purple Heart, returned home from Iraq in December 2005.<sup>2</sup> On September 24, 2008, Spc. Delgado, under the influence of alcohol and anti-anxiety medication Ativan, grabbed a gun and threatened to kill himself.<sup>3</sup> When his wife attempted to take the weapon away from him, Spc. Delgado lashed out by choking her and breaking her nose.<sup>4</sup> His wife "was in fear that he was going to kill her or hurt her very badly."<sup>5</sup> Delgado was charged with one count of first-degree attempted murder and an array of other charges.<sup>6</sup> Prior to this incident, Delgado's only run-in with the law was a minor traffic violation.<sup>7</sup> Delgado's case is one of many cases that contributed to the alarming trend of combat veterans returning home and committing crimes.<sup>8</sup> This trend led to the establishment of Veterans Trauma Courts (VTC), including the 4th Judicial District's VTC.<sup>9</sup> The VTC is a veteran specific court that handles justice-involved veteran cases based on the discretion of the district attorney and in coordination with other members of the judicial district.<sup>10</sup> Spc. Delgado's case is a powerful case study of VTCs because it describes a decorated combat veteran without a criminal record who was affected by PTSD and committed a criminal offense. This case was one of the first

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1. Ronald D. Castille, Opinion, *A Special Court for Veterans*, N.Y. TIMES (Nov. 10, 2010), [http://www.nytimes.com/2010/11/11/opinion/11castille.html?\\_r=0](http://www.nytimes.com/2010/11/11/opinion/11castille.html?_r=0) [<https://perma.cc/KC7L-QV84>].

2. Jim Spellman & Wayne Drash, *Soldier's Invisible War: Iraq Vet Charged with Attempted Murder*, CNN (Aug. 6, 2009), [http://www.cnn.com/2009/CRIME/08/06/accused.soldier.ptsd/index.html?eref=ib\\_us](http://www.cnn.com/2009/CRIME/08/06/accused.soldier.ptsd/index.html?eref=ib_us) [<https://perma.cc/YNP2-FJLP>].

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *What is a Veterans Treatment Court?*, JUSTICE FOR VETS, <http://www.justiceforvets.org/what-is-a-veterans-treatment-court> (last visited Jul. 10, 2016) [<https://perma.cc/3PCC-TT7M>].

cases taken up by the 4th Judicial District's VTC, the subject of this Comment, and it represents a spectrum of cases handled by the VTC from "veterans and active-duty military service members with misdemeanor and/or felony charges."<sup>11</sup>

The nature of asymmetrical warfare, defined as "conflicts between nations or groups that have disparate military capabilities and strategies," has significantly altered the patterns of post-service challenges faced by veterans.<sup>12</sup> Asymmetrical warfare in both the Iraq and Afghanistan theaters—defined by improvised explosive devices (IEDs), indirect fire attacks, and suicide attacks, including an uptick in green-on-blue attacks<sup>13</sup>—created a threat that is constant and difficult to define.<sup>14</sup> Because of the differences between asymmetrical warfare and traditional conflicts, the traumas associated with these conflicts are different; indeed, dealing with the unseen wounds of PTSD and TBI that result from this type of combat has been one of the most difficult leadership challenges within the United States Armed Forces.<sup>15</sup>

Upon returning home, servicemen and women struggling with the effects of this type of warfare find they must also deal with a scandal-mired Department of Veteran Affairs (VA) system that continues to struggle to deliver services.<sup>16</sup> On a macro level, the VA and the numerous non-profits dedicated to

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11. Michelle Slattery et al., *Catch, Treat, and Release: Veteran Treatment Courts Address the Challenges of Returning Home*, 48 *SUBSTANCE USE & MISUSE* 922, 922 (2013).

12. *Asymmetric Warfare*, RAND CORP., <http://www.rand.org/topics/asymmetric-warfare.html> (last visited Jan. 18, 2015) [<https://perma.cc/HN8D-JD9F>].

13. Green-on-blue attacks are attacks conducted by members of the Afghan police and army against coalition forces. See *The Meaning of 'Green on Blue' Attacks in Afghanistan*, NAT'L REV. ONLINE: THE CORNER (Sept. 18, 2012), <http://www.nationalreview.com/corner/322428/meaning-green-blue-attacks-afghanistan-jonathan-foreman> [<https://perma.cc/EP9A-2A2G>], for more information on green on blue attacks.

14. See U.S. ARMY CTR. OF MIL. HIST., *ENDURING VOICES: ORAL HISTORIES OF THE U.S. ARMY EXPERIENCE IN AFGHANISTAN 2003–2005* (Christopher N. Koontz ed., 2008).

15. See Terri Cronk, *Officials Cite Research as Key to Progress in PTSD, TBI Diagnosis, Treatment*, DEP'T OF DEF. NEWS (Apr. 25, 2016), <http://www.defense.gov/News/Article/Article/742469/officials-cite-research-as-key-to-progress-in-ptsd-tbi-diagnosis-treatment> [<https://perma.cc/2TRX-ATUP>] (discussing the enormity of service members diagnosed with PTSD and TBI in 2015).

16. *VA Hospitals Scandal*, CBS NEWS, <http://www.cbsnews.com/feature/va-hospitals-scandal/> (last visited Jan. 18, 2014) [<https://perma.cc/SP2S-ZG8S>].

serving veterans share the challenge of caring for so many of our combat veterans affected by PTSD and TBI.<sup>17</sup>

Although the way our nation deals with PTSD and TBI medically is well documented and addressed by the VA and numerous non-profits, the judicial challenges are not as apparent and are plagued by a lack of resources. Our nation has responded to this challenge with an alternative court, the VTC, modeled on longstanding drug courts.<sup>18</sup> The VTC offers a legal solution to the complex problems faced by our justice-involved veterans,<sup>19</sup> particularly those suffering from TBI and PTSD.<sup>20</sup> Close examination of the operations and mechanics of a VTC reveals both strengths and weaknesses. Only by acknowledging the VTC's weaknesses can the system be improved so that it ensures an effective judicial option that best serves veterans moving forward.

From its genesis, the primary difference between VTCs and regular courts is the VTC's sentencing regime, which specifically recognizes issues percolating through the veteran community.<sup>21</sup> High numbers of veterans with substance and mental health issues compelled state judges to coordinate with VA officials, local prosecutors, public defenders, and other volunteers to create an exclusive veteran case proceeding modeled after drug treatment courts.<sup>22</sup> The VTC was first implemented in 2008 by Judge Robert Russell in Buffalo, New York, and recent counts estimate that there are around 220

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17. See, e.g., American Military Family, <https://www.americanmilitaryfamily.org> (last visited Aug. 10, 2016) [<https://perma.cc/NG79-SDRK>]; *Wounded Warrior Project*, <https://www.woundedwarriorproject.org> (last visited Aug. 10, 2016) [<https://perma.cc/EV4M-F4WE>]; *Healing Warriors Program*, <http://healingwarriorsprogram.org> (last visited Aug. 10, 2016) [<https://perma.cc/RQM4-68U4>].

18. John Furman Wall, IV, *The Veterans Treatment Court Program Act: South Carolina's Opportunity to Provide Services for Those Who Have Served*, 65 S.C. L. REV. 879, 881 (2014) (citing NAT'L DIST. ATTYS ASS'N, NAT'L DIST. ATTYS ASS'N ENDORSES THE ESTABLISHMENT AND FUNDING OF VETERANS COURTS AND PROGRAMS, <http://justiceforvets.org/sites/default/files/files/National%20District%20Attorney's%20Association.pdf> [<https://perma.cc/K97C-H762>]).

19. Veterans involved with the criminal justice system. Justice-involved veterans are mostly lower enlisted (lower-ranking and usually younger service members), as well as a few senior enlisted and officers.

20. *What is a Veterans Treatment Court?*, *supra* note 10.

21. See *id.*

22. OFF. OF NAT'L DRUG CONTROL POL'Y, EXECUTIVE. OFFICE OF PRESIDENT, FACT SHEET, VETERANS TREATMENT COURTS (2010), [https://www.whitehouse.gov/sites/default/files/ondcp/Fact\\_Sheets/veterans\\_treatment\\_courts\\_fact\\_sheet\\_12-13-10.pdf](https://www.whitehouse.gov/sites/default/files/ondcp/Fact_Sheets/veterans_treatment_courts_fact_sheet_12-13-10.pdf) [<https://perma.cc/P2XT-AXFN>].

VTCs in the United States with hundreds more in the planning stages.<sup>23</sup> The Services, Education, and Rehabilitation for Veterans (SERV) Act, a bipartisan law sponsored by then Senator John Kerry (D-MA) and Senator Lisa Murkowski (R-AK), provided funding to expand existing VTCs and establish new ones.<sup>24</sup>

With over 424,228 veterans,<sup>25</sup> Colorado presents an apt case study for the veteran court system. In Colorado, there are five types of VTCs: (1) 1st Judicial District VTC, (2) 4th Judicial District VTC, (3) Denver Veterans Trauma Track, (4) 18th Judicial District VTC, and (5) Adams County VTC.<sup>26</sup> This Comment focuses primarily on operations within a specific VTC: the 4th Judicial District located in El Paso County. This Comment also examines the VTC concept on a granular level in order to understand the mechanics, progress, and challenges of the 4th Judicial District's VTC. Although there is much literature advocating for VTCs, there is a dearth of literature examining the actual operations of the VTC or its measurable outcomes.<sup>27</sup> The lack of analysis is unsurprising given that VTCs are such a new concept. However, VTCs, particularly the one studied in this Comment, are at a point where metrics are available, operations have been standardized, and recommendations can be made.<sup>28</sup> Using the 4th Judicial District's VTC as a case study, this Comment will explore and draw recommendations from a nuanced understanding of VTC

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23. *The History*, JUSTICE FOR VETS, <http://www.justiceforvets.org/vtc-history> (last visited Jul. 10, 2016) [<https://perma.cc/E5QG-FQF2>].

24. See Tabatha Renz, *Veterans Treatment Court: A Hand Up Rather Than Lock Up*, 17 RICH. J. L. & PUB. INT. 697, 699–700 (2014) (discussing the law).

25. DEPT VETERANS AFF., COLORADO AND THE U.S. DEPT OF VETERANS AFFAIRS 1 (2009).

26. *Veterans Trauma Court Locations: Courts in CO*, JUSTICE FOR VETS, <http://www.justiceforvets.org/veterans-treatment-court-locations> (last visited Nov. 9, 2014) [<https://perma.cc/V8EX-S8RM>].

27. See generally Wall, *supra* note 18, at 881 (raising awareness of combat-related psychological issues to establish a tailored and efficient program to provide treatment for service members with mental health or substance abuse issues by creating a VTC); Samantha Walls, *The Need for Special Veterans Courts*, 39 DENV. J. INT'L L. & POL'Y 695 (2011) (articulating the psychological wounds veterans face when returning from war, and focusing on the need for specialty Veteran Courts across our nation); Mark A. McCormick-Goodhart, *Leaving No Veteran Behind: Policies and Perspectives on Combat Trauma, Veterans Courts, and the Rehabilitative Approach to Criminal Behavior*, 117 PENN ST. L. REV. 895 (2013) (addressing the basic treatment process and jurisdictional differences among VTCs in the United States).

28. See generally Slattery et al., *supra* note 11.

operations.

Part I of this Comment discusses the background of VTCs, the current legal solutions for veterans, and includes a brief discussion of PTSD and TBI. Part II of the Comment unpacks the VTC's mechanics, including the four-phase system incorporated by the VTC. Part III of the Comment evaluates the VTC by analyzing metrics provided by the University of Colorado at Colorado Springs Trauma, Health & Hazards Center (the University THHC). The Conclusion of the Comment covers challenges faced by the VTC, and discusses recommendations based on an examination of empirical data and the current legal infrastructure.

## I. BACKGROUND ON VETERANS TRAUMA COURTS

Because a VTC judge handles numerous veterans' cases and is supported by an interdisciplinary team,<sup>29</sup> the judge can effectively exercise discretion and respond better than a judge and court that occasionally hear a case involving a veteran defendant.<sup>30</sup> As a result of military experience and by virtue of having an interdisciplinary team, a VTC judge may better understand the issues that a veteran may be struggling with, such as substance addiction, PTSD, TBI, and military sexual trauma.<sup>31</sup>

This Part begins with a brief definition of PTSD and TBI in sections A and B. Section C discusses the prevalence of PTSD and TBI among veterans by discussing the metrics associated with PTSD and TBI. Section D provides a snapshot of legal problems facing justice-involved veterans. Finally, section E discusses the current legal situation facing justice-involved veterans, and introduces the 4th Judicial District as a case study.

### A. *Defining PTSD and TBI*

PTSD is defined as the damaging or changing of one's

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29. This interdisciplinary team consists of peer mentors, a veteran justice outreach specialist, therapists from the Warrior Support Center and other organizations, a public defender, deputy district attorneys, probation officers, and other law enforcement personnel. *What is a Veterans Treatment Court?*, *supra* note 10.

30. *Id.*

31. *Id.*

fight-or-flight response, which causes a person to “feel stressed or frightened even when they are not in danger.”<sup>32</sup> The symptoms of PTSD can be grouped into four main categories: (1) re-experiencing, (2) avoidance, (3) arousal and reactivity, and (4) cognition and mood.<sup>33</sup> The National Institute of Mental Health’s (NIMH) symptoms for PTSD are similar to the VA’s symptoms with slight differences with respect to how the symptoms are labeled.<sup>34</sup>

1. Re-experienced symptoms are defined by flashbacks, nightmares, and frightening thoughts, which can emerge from a person’s own thoughts and feelings and “may cause problems in a person’s everyday routine.”<sup>35</sup> Triggers such as words, events, or situations that are reminders of the traumatic event may exacerbate these symptoms.<sup>36</sup> The VA also refers to these symptoms as “reliving the event.”<sup>37</sup>
2. Avoidance symptoms are marked by feelings of numbness, guilt, depression, worry, trouble remembering the traumatic event(s), losing interest in previously enjoyable activities, and staying away from reminders of the experience.<sup>38</sup> Similar to re-experienced symptoms, avoidance symptoms are defined by a change in one’s routine.<sup>39</sup> The VA also refers to these symptoms as

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32. *Post-Traumatic Stress Disorder*, NAT’L INSTS. OF HEALTH, NAT’L INST. OF MENTAL HEALTH, <http://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml> (last visited Oct. 12, 2014) [<https://perma.cc/5H4R-L8GV>].

33. *Id.*

34. *Symptoms of PTSD*, U.S. DEP’T OF VETERANS AFFAIRS, PTSD: NAT’L CTR. FOR PTSD, [http://www.ptsd.va.gov/public/PTSD-overview/basics/symptoms\\_of\\_ptsd.asp](http://www.ptsd.va.gov/public/PTSD-overview/basics/symptoms_of_ptsd.asp) (last visited Oct. 12, 2014) [<https://perma.cc/XHC7-X6SK>].

35. *Post-Traumatic Stress Disorder*, *supra* note 32.

36. *Id.*

37. *Symptoms of PTSD*, *supra* note 34.

38. *Id.*

39. *Id.* For issue papers going into far more detail on PTSD and TBI as related to combat veterans returning from Iraq and Afghanistan, see generally Jennifer J. Vasterling et al., *PTSD Symptom Increases in Iraq-Deployed Soldiers: Comparison with Nondeployed Soldiers and Associations with Baseline Symptoms, Deployment Experiences, and Postdeployment Stress*, 23 J. TRAUMATIC STRESS 41 (2010); Charles W. Hoge et al., *Mental Health Problems, Use of Mental Health Services, and Attrition from Military Service After Returning From Deployment to Iraq or Afghanistan*, 295 J. AM. MED. ASS’N 1023 (2006); Karen H. Seal et al., *Bringing the War Back Home: Mental Health Disorders Among 103,788*



“avoiding situations that remind you of the event.”<sup>40</sup>

3. Hyperarousal symptoms involve being startled, feeling tense, and having difficulty sleeping, and having angry outbursts.<sup>41</sup> Hyperarousal is constant, as opposed to triggered.<sup>42</sup> These symptoms make daily tasks such as sleeping, eating, or concentrating extraordinarily difficult.<sup>43</sup> The VA also refers to these symptoms as “feeling keyed up.”<sup>44</sup> The NIHM refers to these symptoms as “arousal and reactivity symptoms.”<sup>45</sup>
4. Finally, someone experiencing the negative changes in beliefs and feelings may struggle to have positive or loving feelings toward other people and may stay away from relationships; may forget about parts of the traumatic event or not be able to talk about them; and may think the world is completely dangerous and no one can be trusted.<sup>46</sup> The NIHM also refers to these symptoms as “cognition and mood symptoms.”<sup>47</sup>

When these very serious symptoms recede after a few weeks, it is known as acute stress disorder; however, if these symptoms persist and become an ongoing problem then they may develop into PTSD.<sup>48</sup> PTSD's impacts include, but are not limited to: (1) not having positive or loving feelings toward other people; (2) forgetting about parts of the traumatic event; and (3) paranoia.<sup>49</sup> A PTSD diagnosis is given only when the service member has experienced “at least one re-experiencing symptom[,] at least one avoidance symptom[,] at least two arousal and reactivity symptoms[, and] at least two cognition and mood symptoms” for a period lasting longer than one

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*US Veterans Returning From Iraq and Afghanistan Seen at Department of Veterans Affairs Facilities*, 167 ARCH. INTERN. MED. 476 (2007).

40. *Symptoms of PTSD*, *supra* note 34.

41. *Id.*

42. *Id.*

43. *Post-Traumatic Stress Disorder*, *supra* note 32.

44. *Symptoms of PTSD*, *supra* note 34.

45. *Post-Traumatic Stress Disorder*, *supra* note 32.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Symptoms of PTSD*, *supra* note 34.

month.<sup>50</sup>

TBIs develop from a brain injury caused when the “head suddenly and violently hits an object, or when an object pierces the skull and enters brain tissue.”<sup>51</sup> These injuries are most commonly associated with IED blasts and have become known as the “new silent signature war wounds.”<sup>52</sup> TBI, like PTSD, is difficult to diagnose and treat, and severe TBI can leave a person totally incapacitated.<sup>53</sup> Mild TBI (mTBI), which is most common among TBI affected service members, has symptoms that include: headaches, balancing problems, hearing problems, lack of self-control, mood changes, ringing in the ears, problems sleeping, and memory loss.<sup>54</sup> Recovery from mTBI can take years.<sup>55</sup> In addition to the severity of the symptoms of PTSD and TBI, the prevalence of these issues are also severe.

### B. *Enormity of the Issue*

The VA and Department of Defense along with several other veteran non-profits are dealing with the enormous number of veterans impacted by PTSD and TBI. This section briefly discusses statistics of veterans impacted by PTSD and TBI and concludes with a brief discussion of treatment options. The VA estimates that 11–20% of Iraq and Afghanistan war veterans suffer from PTSD.<sup>56</sup> A 2010 study estimated as many as 300,000 Iraq and Afghanistan veterans were suffering from PTSD or major depression, which have been exacerbated by repeated deployments that increase the likelihood of PTSD.<sup>57</sup>

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50. *Post-Traumatic Stress Disorder*, *supra* note 32.

51. *NINDS Traumatic Brain Injury Information Page*, NAT'L INST. NEUROLOGICAL DISORDERS & STROKE, <http://www.ninds.nih.gov/disorders/tbi/tbi.htm> (last visited Oct. 12, 2014) [<https://perma.cc/X834-RUQU>].

52. *Where Soldiers Come From*, PUB. BROADCASTING SERV., <http://www.pbs.org/pov/wheresoldierscomefrom/traumatic-brain-injury.php> (last updated Nov. 10, 2011) [<https://perma.cc/79NA-GG4X>].

53. *Id.*

54. *Id.*

55. *Id.*

56. *How Common is PTSD?*, U.S. DEP'T VETERANS AFFAIRS, <http://www.ptsd.va.gov/public/PTSD-overview/basics/how-common-is-ptsd.asp> (last updated Aug. 13, 2015) [<https://perma.cc/EGF8-HR32>].

57. HON. JUDGE RONALD CROWDER, 4TH JUDICIAL DIST., DIST. ATTORNEY VETERANS TRAUMA COURTS (2012). The 2010 estimate also showed that 320,000 Global War on Terror (GWOT: Operation Enduring Freedom and Operation Iraqi Freedom) veterans may have experienced a TBI ranging from mild to severe. *Id.*

Outside of the Global War on Terror veterans, PTSD affects about 12% of Gulf War veterans and about 30% of Vietnam veterans.<sup>58</sup>

Research has concluded that veterans of wars in Iraq and Afghanistan who screen positive for TBI also have high rates of PTSD.<sup>59</sup> Another study showed that mTBIs are strongly associated with PTSD and physical health problems three to four months after soldiers returned home from combat operations in Iraq.<sup>60</sup> Finally, another study examined the relationship between TBI and PTSD and revealed shared symptoms between TBI and PTSD in addition to the high co-occurrence among soldiers.<sup>61</sup>

The remedy for PTSD is a patchwork of prescription drugs, which has been traced to prescription drug abuse among service members.<sup>62</sup> Specifically, “prescription drug abuse doubled among U.S. military personnel from 2002 to 2005 and almost tripled between 2005 and 2008.”<sup>63</sup> Indeed, “11% of service members reported misusing prescription drugs.”<sup>64</sup> Because of the overwhelming presence of issues among returning veterans, military doctors wrote almost 3.8 million prescriptions for pain relief medication for service members in 2009.<sup>65</sup> Specific to PTSD (which is often treated along with

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58. *How Common is PTSD?*, *supra* note 56.

59. James J. Hill et al., *Separating Deployment-Related Traumatic Brain Injury and Posttraumatic Stress Disorder in Veterans: Preliminary Findings from the Veterans Affairs Traumatic Brain Injury Screening Program*, 88 AM. J. OF PHYSICAL MED. & REHABILITATION 605, 605 (2009).

60. Charles W. Hodge et al., *Mild Traumatic Brain Injury in U.S. Soldiers Returning from Iraq*, 358 NEW ENG. J. MED. 453, 453 (2008).

61. Murray B. Stein & Thomas W. McAllister, *Exploring the Convergence of Posttraumatic Stress Disorder and Mild Traumatic Brain Injury*, 166 AM. J. PSYCHIATRY 768 (2009).

62. *Clinician's Guide to Medications for PTSD*, U.S. DEP'T OF VETERANS AFF., <http://www.ptsd.va.gov/professional/treatment/overview/clinicians-guide-to-medications-for-ptsd.asp> (last updated Apr. 25, 2015) [<https://perma.cc/5P8G-94BA>]; NAT'L INST. ON DRUG ABUSE, NAT'L INSTS. OF HEALTH, SUBSTANCE ABUSE AMONG THE MILITARY, VETERANS, AND THEIR FAMILIES—APRIL 2011, <https://www.drugabuse.gov/sites/default/files/veterans.pdf> [<https://perma.cc/756B-RQ57>].

63. NAT'L INST. ON DRUG ABUSE, *supra* note 62.

64. *DrugFacts: Substance Abuse in the Military*, NAT'L INST. ON DRUG ABUSE, NAT'L INSTS. OF HEALTH, <https://www.drugabuse.gov/publications/drugfacts/substance-abuse-in-military> (last updated Mar. 2013) [<https://perma.cc/J5V3-UBCZ>].

65. *Id.*; Gregg Zoroya, *Fighting Prescription Drug Abuse Among Wounded Soldiers Uneven Report Says*, USA TODAY (Feb. 21, 2014), <http://www.usatoday.com/story/news/nation/2014/02/21/ig-military-prescription->

other symptoms), doctors prescribe a regime of antidepressants.<sup>66</sup> In addition to prescription medicines, there are three primary types of therapies used to treat PTSD: (1) cognitive therapy, (2) exposure therapy, and (3) eye movement desensitization and reprocessing therapies.<sup>67</sup>

The VA, which is the primary system to implement treatment, is openly mired in controversy caused by long wait times, the increased prescription of drugs, as well as doctors and nurses overstretched by an ever-growing caseload and a lack of facilities.<sup>68</sup> In short, the VA is “poorly-administered, under-funded, and under-staffed.”<sup>69</sup> It is clear that the 2014 VA Reform Bill has yet to solve the issues that are precluding effective treatment of veterans.<sup>70</sup>

#### *D. Snapshot of Current Legal Problems Facing Veterans*

Recent research “shows that veterans with PTSD suffer from poorer overall health, greater use of alcohol and drugs over their lifetimes, and more justice involvement than their peers without PTSD.”<sup>71</sup> VTCs aim to preclude the cycle of mental health disorders common among veterans that lead to

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abuse-overdose-wounded/5676235/ [https://perma.cc/8HTX-PLMA].

66. *Treatment of PTSD*, U.S. DEPT VETERANS AFFAIRS, <http://www.ptsd.va.gov/public/treatment/therapy-med/treatment-ptsd.asp> (last visited Oct. 25, 2014) [https://perma.cc/CNC2-8VCH].

67. *Id.* Cognitive therapies are therapy sessions that focus on “how certain thoughts about [one’s] trauma cause [one] stress and make [one’s] symptoms worse,” “[learning] to replace these thoughts with more accurate and less distressing thoughts,” and “[coping] with feelings such as anger, guilt, and fear.” *Id.* Exposure therapy’s goal is to have less fear about one’s memories by a gradual discussion of upsetting memories moving from “desensitization”—dealing with traumatic memories a little at a time—to “flooding”—remembering all traumatic memories at once to learn how to not be overwhelmed. *Id.* Exposure therapy involves focusing on other stimuli like eye movements, hand taps, and sounds while thinking of or talking about memories. *Id.*

68. See Thomas Catan, *For Veterans with PTSD, a New Demon: Their Meds*, WALL ST. J. (Nov. 10, 2013), <http://www.wsj.com/articles/SB10001424052702304672404579181840055583388> [https://perma.cc/2WKA-8SW8] (discussing the emerging issue of prescription drug abuse among PTSD afflicted veterans); Rebecca Kaplan, *Obama Signs VA Reform Bill*, CBS NEWS (Aug. 7, 2014), <http://www.cbsnews.com/news/obama-signs-va-reform-bill/> [https://perma.cc/7NCV-QHL8].

69. Walls, *supra* note 27, at 707.

70. Pete Hegseth, *The VA Scandal: Two Years On*, NAT’L REV. (Apr. 7, 2016), <http://www.nationalreview.com/article/433760/va-still-unreformed> [https://perma.cc/KFS5-4JUJ].

71. Slattery et al., *supra* note 11, at 923.

involvement in the criminal justice system.<sup>72</sup> Common crimes emerging from PTSD or TBI usually relate to substance abuse (possession of drugs or DUIs) and are covered by the VTC.<sup>73</sup> Crimes of violence and anger (menacing, assault, or domestic violence issues) are also common to those with PTSD and TBI and usually are covered by the VTC.<sup>74</sup> Indeed, the VTC has taken cases of Assault in the Second Degree on a case-by-case, fact-specific basis.<sup>75</sup> However, there are several automatic exclusions from the VTC that are not viewed as linked to PTSD and TBI from combat service: sex offenses, felony crimes against children, crimes of violence<sup>76</sup> and domestic violence charges that allege strangulation or stalking.<sup>77</sup>

VTCs attempt to address a unique, high-risk, and high-need population that suffers from acute trauma spectrum disorders and substance abuse issues.<sup>78</sup> VTCs addresses these endemic issues by creating a model cognizant of the rigor and structure of the armed forces—a structure any veteran would have experienced. To this end, VTCs requires regular court appearances as well as mandatory attendance at treatment sessions and frequent and random testing for substance use.<sup>79</sup> In addition, VTCs act as a focal point for veteran services and link veterans with the programs, benefits, and services they have earned.<sup>80</sup> Because VTCs may be the first time a justice-involved veteran receives benefits or treatment, the importance of a VTC's link to veteran services cannot be understated.<sup>81</sup>

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72. *What is a Veterans Treatment Court?*, *supra* note 10.

73. *Id.*

74. Interview with Jon Ippolito, Deputy Dist. Attorney to the 4th Judicial Dist. Veterans Trauma Court (Jan. 20, 2015); *Intimate Partner Violence*, U.S. DEP'T VETERANS AFF., <http://www.ptsd.va.gov/public/types/violence/domestic-violence.asp> (last updated Sept. 2, 2015) [<https://perma.cc/6SVS-HS7S>].

75. *Id.*

76. Interview with Jon Ippolito, Deputy Dist. Attorney to the 4th Judicial Dist. Veterans Trauma Court (Oct. 7, 2016). Crimes of violence are specific types of crimes under Colorado law that require mandatory prison sentences. *Id.*

77. *Id.*; Interview with Jon Ippolito, *supra* note 74.

78. *Veterans Trauma Court*, COLO. JUD. BRANCH, [https://www.courts.state.co.us/Courts/County/Custom.cfm?County\\_ID=6&Page\\_ID=501](https://www.courts.state.co.us/Courts/County/Custom.cfm?County_ID=6&Page_ID=501) (last visited July 10, 2016) [<https://perma.cc/NDL7-RW5E>].

79. *Id.*

80. *See id.*

81. Interview with Judge David Shakes, Judge of the 4th Judicial Dist. Veterans Trauma Court (Oct. 23, 2014). Because with an other than honorable discharge veterans cannot qualify for VA benefits, they have little opportunity to receive benefits. *Id.* VTCs connect these veterans with non-profits that partner

*E. Current Legal Solutions: Case Study of the 4th Judicial District*

Alternative dispute courts have had a positive impact in reducing recidivism as well as actually treating offenders.<sup>82</sup> This section begins with a brief discussion of the creation of VTCs, and then focuses on why the 4th Judicial District's VTC was selected as the case study for this Comment. This section will conclude with a brief discussion on how the 4th Judicial District's VTC was created.

Justice for Vets is a 501(c)(3) non-profit organization that is leading the VTC movement by advocating to "keep veterans out of jail and connect them to the benefits and treatment they have earned."<sup>83</sup> It is a professional services division of the National Association of Drug Court Professionals.<sup>84</sup> One policy paper describes VTCs as "a coordinated response involving the traditional partners found in drug courts and mental health courts, as well as the Department of Veterans Affairs healthcare networks, the Veterans Benefits Administration, State Departments of Veterans Affairs, volunteer veteran mentors, and veterans family support organizations."<sup>85</sup> VTCs build on the success of drug courts, "which promote collaboration among the judiciary, community corrections agencies, drug treatment providers, and other community support groups," resulting in a "remarkable track record over the course of their 20 year history."<sup>86</sup> In 2010, a collaborative effort between the Bureau of Justice Assistance, the VA, the National Drug Court Institute, and numerous VTC professionals resulted in the Veterans Treatment Court Planning Initiative (VTCPI), the first VTC training program in

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with the VTC. *Id.*

82. See *Drug Courts Work*, NAT'L ASS'N DRUG COURT PROF'LS, <http://www.nadcp.org/learn/drug-courts-work> (last visited Nov. 10, 2014) [<https://perma.cc/64HB-LDWB>] ("75% of Drug Court graduates remain arrest-free at least two years after leaving the program . . . . [R]igorous studies examining long-term outcomes of individual Drug Courts have found that reductions in crime last at least 3 years and can endure for over 14 years . . . . The most rigorous and conservative scientific 'meta-analyses' have all concluded that Drug Courts significantly reduce crime as much as 45% more than other sentencing options.")

83. *About Us*, JUSTICE FOR VETS, <http://justiceforvets.org/about> (last visited Oct. 7, 2016) [<https://perma.cc/9YDE-JGGE>].

84. *Id.*

85. OFF. OF NAT'L DRUG CONTROL POL'Y, *supra* note 22.

86. *Id.*

the nation.<sup>87</sup> This effort has culminated in a number of states taking legislative steps to promote VTCs or veterans assistance within the state court systems.<sup>88</sup> California and New Hampshire, for example, “have passed legislation that [allows] judges to order treatment, instead of prison, for veterans suffering from combat-related mental health disorders.”<sup>89</sup>

Colorado House Bill 10-1104 sponsored by Representative Marsha Looper and Senator Suzanne Williams, was enacted in 2010.<sup>90</sup> This legislation authorized the state court administrator to seek federal funding for the establishment, maintenance, or expansion of state VTCs.<sup>91</sup> In addition, this legislation amended Part 1 of Article 5 of Title 13 of the Colorado Revised Statutes by encouraging the chief judge of each judicial district to establish an appropriate program for the treatment of veterans and military personnel.<sup>92</sup> HB 10-1104 provided the impetus to begin the 4th Judicial District’s VTC. The 4th Judicial District followed through with this mandate, securing the Jail Diversion and Trauma Recovery—Priority to Veterans Grant (JDTR): a veterans’ jail diversion program focusing on veterans with trauma spectrum disorder.<sup>93</sup> As part of this program, the 4th Judicial District became the first VTC established in Colorado.<sup>94</sup>

The 4th Judicial District’s VTC provides a powerful case study because El Paso County has a significant military population located at Fort Carson, Peterson Air Force Base, the Air Force Academy, Schreiver AFB, and NORTHCOM, among other smaller installations in El Paso County. Fort Carson sees 2,400 PTSD or TBI cases every month, which amounts to about one in ten soldiers.<sup>95</sup> This problem is compounded by the fact

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87. *Id.*

88. *Id.*

89. *Id.*

90. H.B. 10-1104T, 67th Gen. Assemb., Reg. Sess. (Colo. 2010).

91. Colo. Rev. Stat. § 13-3-101(9) (2016).

92. Colo. Rev. Stat. § 13-5-144 (2016).

93. TRAUMA, HEALTH & HAZARDS CTR., UNIV. OF COLO. COLO. SPRINGS, COLORADO FOURTH JUDICIAL DISTRICT VETERANS TRAUMA COURT EVALUATION FACT SHEET 1, [https://www.courts.state.co.us/userfiles/file/Court\\_Probation/04th\\_Judicial\\_District/Veterans%20Trauma%20Court%20\(VTC\)/VTC%20FACT%20SHEET%20-%20Colorado%20Veteran%20Trauma%20CourtEvaluation%20Fact%20Sheet%20January%2010%202013%20DRAFT.pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/04th_Judicial_District/Veterans%20Trauma%20Court%20(VTC)/VTC%20FACT%20SHEET%20-%20Colorado%20Veteran%20Trauma%20CourtEvaluation%20Fact%20Sheet%20January%2010%202013%20DRAFT.pdf) (last visited Oct. 7, 2016) [<https://perma.cc/9CFE-TBE5>].

94. *Veterans Trauma Court*, *supra* note 78.

95. Spellman & Drash, *supra* note 2.

that only 65% of authorized positions at the behavioral health department at Fort Carson are filled.<sup>96</sup> Indeed, Fort Carson has been described as the epicenter of violent offenses, with fourteen homicides and attempted homicides since 2005, and other soldiers being charged with an array of other crimes.<sup>97</sup> The VTC has been on the front lines of responding to this issue within the 4th Judicial District.

In 2009, the 4th Judicial District's VTC became a post-conviction treatment court established through a combined effort of multiple community, state, and local agencies, including: officials in the 4th Judicial District, Mental Health America of the Pikes Peak Region, Veterans Administration Colorado Springs Community Based Outpatient Clinic, Aspenpointe Behavioral Health Group, National Organization on Disability, and the Colorado Departments of Labor and Employment and Public Safety, among others.<sup>98</sup> In the 4th Judicial District's VTC, veterans with trauma spectrum disorders who have been charged with lower-level felonies and misdemeanors, from offenses like theft and forgery to more serious charges like domestic violence and murder, are provided an alternative to incarceration.<sup>99</sup> In exchange for moving from a traditional courtroom setting to a VTC, the veteran must agree to actively engage in treatment and counseling as well as make regular court appearances.<sup>100</sup> The staff of the VTC assists by connecting veterans to mental health and/or substance abuse treatment, and linking veterans to educational, housing, and employment resources.<sup>101</sup>

This VTC also incorporates a peer specialist program, which matches veterans in the program with peer veteran mentors who "[provide] on-going peer support to the participant while she/he goes through the court process."<sup>102</sup> The post-conviction court is funded through a "five year 2 million dollar federally funded grant from the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services."<sup>103</sup> Thus far, around 200 veterans

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96. *Id.*

97. *Id.*

98. *Veterans Trauma Court, supra* note 78.

99. Interview with Jon Ippolito, *supra* note 76.

100. *Id.*

101. *Id.*

102. *Veterans Trauma Court, supra* note 78.

103. *Id.*



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have graduated from the 4th Judicial District VTC's treatment program.<sup>104</sup>

## II. HOW THE COURT WORKS

Part II examines how a case makes its way into a VTC and is adjudicated within the VTC. Section A explores the composition of justice-involved veterans. Section B explores the district attorney as a gatekeeper concept. Section C unpacks the four-phase approach embraced by VTCs. Section D discusses the staffing and daily operations of the VTC. Section E discusses the role of military customs and traditions within the VTC. Section F explores treatment options within VTCs. Finally, section G discusses the appropriation and use of the VTC budget.

### A. *Composition of Justice-Involved Veterans*

The court accepts members from all branches of the military, including reservists.<sup>105</sup> Most justice-involved veterans served in Operation Enduring Freedom and Operation Iraqi Freedom, but some offenders include those who served in early conflicts, such as the Gulf and Vietnam Wars.<sup>106</sup>

Often times, justice-involved veterans struggle with numerous collateral issues, including the inability to secure housing and employment.<sup>107</sup> Veterans cited the difficulty of balancing a job with medical appointments.<sup>108</sup> In order to address housing issues, the VTC team attempts to find a housing solution for a given veteran during a veteran's court appearance.<sup>109</sup> Halfway homes often have wait lists that make it difficult for justice-involved veterans to find stable housing.<sup>110</sup> Judge Shakes of the 4th Judicial District VTC and the VTC team are actively working to address this dual-faceted problem by liaising with local employers; however, the VTC does not have any large institutional veteran employers to

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104. Interview with Jon Ippolito, Deputy Dist. Attorney to the 4th Judicial Dist. Veterans Trauma Court (Sept. 2, 2014).

105. *Id.*

106. *Id.*

107. Slattery et al., *supra* note 11, at 927.

108. *Id.*

109. *Id.*

110. *Id.*

date.<sup>111</sup> The VTC is indeed an alternate tribunal that allows for punishments not available in state court, and that fashions punishments and remedies on an *ad hoc*, veteran-by-veteran basis; however, it also incorporates a phased approach that is similar to a rehabilitation program that bears a distinct semblance to military culture.<sup>112</sup>

*B. District Attorney as an Evaluator and Gatekeeper*

Initial entry into the 4th Judicial District's VTC is determined by whether the case is in district or county court. In a district court, so long as the defendant meets the minimum qualification<sup>113</sup> and does not have any disqualifiers—a high-level felony, sex offense, crime of violence, or domestic violence charge involving strangulation or stalking—then the district court judge has the discretion to transfer the case to be screened for the VTC.<sup>114</sup> Only after the case is transferred and an evaluation is complete will the district attorney decide to make a plea offer that would sentence the veteran to the VTC.<sup>115</sup> However, even if the VTC makes an offer, the defendant can still reject it, should the defendant not want to participate in the rigor and structure inherent within a VTC program.<sup>116</sup> Finally, the Colorado Victim's Rights Act, which allows a victim to have significant input in the sentencing process, will factor into the district attorney's decision to make an offer.<sup>117</sup> If the defendant accepts the offer, the VTC judge has to accept the agreement, which would complete the transfer of the case to the VTC.<sup>118</sup> Thus, although the district attorney is the gatekeeper, there are essentially three layers of

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111. *Id.*; Interview with Judge David Shakes, Judge of the 4th Judicial Dist. Veterans Trauma Court (Oct. 23, 2014).

112. The Army incorporates three phases—Red, White, and Blue—as part of its basic training for new recruits. Every branch has some variation of a phased concept within training. U.S. ARMY BASIC COMBAT TRAINING, <http://www.goarmy.com/soldier-life/becoming-a-soldier/basic-combat-training.html> [https://perma.cc/94UR-23WF].

113. Interview with Jon Ippolito, Deputy Dist. Attorney to the 4th Judicial Dist. Veterans Trauma Court (Mar. 16, 2015). The minimum qualification is a veteran or active duty service member that has a service-connected trauma. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

approval: (1) the district attorney proposes the agreement; (2) the defendant concurs; and (3) VTC judge accepts the agreement.

In county court,<sup>119</sup> the case is no longer transferred to the VTC; instead, those cases remain at county court, where the defendant attends a briefing<sup>120</sup> and the court creates an evaluation.<sup>121</sup> The district attorney assigned to the VTC will review the case and evaluation, and determine if the VTC is going to make an offer.<sup>122</sup> If the VTC district attorney chooses to make an offer, the VTC district attorney will create the plea paperwork and send the offer to defense counsel and the county court district attorney.<sup>123</sup> Sometimes, the district attorney will inform both the county court district attorney and defense counsel as to the conditions of the offer, and the county court district attorney will draft the plea paperwork.<sup>124</sup> The county court judge will make a decision on the plea deal.<sup>125</sup> If accepted, the county court judge—per the plea deal—will sentence the veteran, and the veteran will be transferred to VTC.<sup>126</sup> Like the district court, victim input also will factor into whether the case is accepted into the VTC.<sup>127</sup>

It is important to note that the case can be referred to the VTC in a number of ways: (1) by defense counsel; (2) if a district attorney believes it is appropriate; (3) if the judge in the home division believes it is appropriate; (4) the defendant can request it on his or her own; and (5) by victim referral.<sup>128</sup> With respect to the defendant's request, defendants in the

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119. *Colorado's State Court System*, COLO. JUDICIAL BRANCH, <https://www.courts.state.co.us/Courts/Index.cfm> (last visited July 10, 2016) [<https://perma.cc/C5QX-RN6P>] (“County Courts handle civil cases under \$15,000, misdemeanors, traffic infractions, felony complaints (which may be sent to district court), protection orders, and small claims. County court decisions may be appealed to the district court.”).

120. Interview with Jon Ippolito, *supra* note 113. All defendants that are interested attend a briefing prior to the evaluation, which provides them information on the requirements of VTC and shows how the program works. *Id.* This briefing allows the defendant to make an informed decision about the VTC option. *Id.*

121. *Id.*

122. Interview with Jon Ippolito, *supra* note 104.

123. Interview with Jon Ippolito, *supra* note 76.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

veterans' ward in the jail may hear about the court from another justice-involved veteran or from a peer mentor—a VTC representative—who goes into the ward regularly looking for people who may qualify.<sup>129</sup> There are two ways the victim can refer the veteran to the VTC: (1) directly (the victim hears about the VTC and asks the district attorney to consider it); or (2) indirectly (the victim mentions to the district attorney that the defendant is a veteran and may have some form of trauma, and the DA makes the connection to refer the case to the VTC).<sup>130</sup> Unless the defendant is ineligible because of failure to meet minimum qualifications or due to an ineligible offense, any one of these parties can refer a case for VTC consideration.<sup>131</sup> Ultimately, the VTC offer falls within the district attorney's discretion, and it is not a sentencing option for any judge.<sup>132</sup> Once the offer is made for this post-conviction court, the defendant and judge both have to agree as well.<sup>133</sup>

When evaluating a defendant's record for eligibility to the VTC, the VTC district attorney looks at four key indicators: (1) whether the defendant self-reports PTSD or TBI; (2) whether the defendant tells the defense attorney about military trauma; (3) whether the district attorney recognizes the possibility for VTC while reading through the record; or (4) whether the victim of the crime reports it.<sup>134</sup> If the case is eligible to be transferred, it can always be transferred and screened; however, the district attorney's office still has the final decision to make an offer and decide the conditions of the offer.<sup>135</sup> If the case is not eligible because of the nature of the crime, then the case cannot be transferred to the VTC without the district attorney's approval.<sup>136</sup> The district attorney's office will occasionally make exceptions for those ineligible cases, but it is a very fact-specific decision.<sup>137</sup>

When assessing a defendant's qualification, specific criteria are evaluated by the district attorney. On the most basic level, the defendant's military service is confirmed,

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129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

primarily through his or her DD 214 (a record of service document).<sup>138</sup> From there, the district attorney will begin a more discerning process where the defendant's actual service will be scrutinized, including: (1) how many times the veteran was deployed; (2) what kinds of experiences the service member encountered during the deployment; and (3) whether the veteran has been diagnosed with PTSD or TBI by the VA.<sup>139</sup> Of course, there are instances where PTSD or TBI has not been diagnosed or is not apparent from a military record. This situation may place a veteran in a precarious state with respect to their eligibility to the VTC. There are several reasons why PTSD may have gone undiagnosed; one of the primary reasons being the professional stigma of PTSD.<sup>140</sup> Soldiers fear that an association with PTSD will cause them to face stigmatization within the military, endanger their future security clearances, and will affect their careers.<sup>141</sup> Stigma exists despite the Department of Defense's attempt to normalize both counseling and treatment of PTSD.<sup>142</sup> This stigma can present challenges to district attorneys when evaluating a veteran's ability to participate in a VTC.

In order to qualify for the VTC, a defendant must not only be a veteran, but must also have a service-related trauma (e.g., PTSD, TBI, or Military Sexual Trauma).<sup>143</sup> These records are assembled from a host of organizations, including the VA, Aspenpointe, the Family Support Center,<sup>144</sup> and law enforcement officials.<sup>145</sup> This service-related trauma must actually be connected to the crime.<sup>146</sup> For example, an assault

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138. *Id.*

139. *Id.*

140. Wall, *supra* note 18; Aaron Levin, *Combat Reactions Oceans Apart for British, U.S. Soldiers*, PSYCHIATRIC NEWS (Dec. 17, 2010), [http://psychnews.psychiatryonline.org/doi/10.1176/pn.45.24.psychnews\\_45\\_24\\_014](http://psychnews.psychiatryonline.org/doi/10.1176/pn.45.24.psychnews_45_24_014) [<https://perma.cc/7JEN-RFUZ>].

141. Sadie F. Dingfelder, *The Military's War on Stigma*, 40 MONITOR ON PSYCHOL. 52 (2009).

142. *Id.*

143. Interview with Jon Ippolito, *supra* note 76.

144. FAMILY SUPPORT CTR. OF COLO. SPRINGS, [http://pikespeak.co.networkofcare.org/veterans/services/agency.aspx?pid=FamilySupportCenter\\_1042\\_17\\_0](http://pikespeak.co.networkofcare.org/veterans/services/agency.aspx?pid=FamilySupportCenter_1042_17_0) (last visited Oct. 7, 2016) [<https://perma.cc/Q8BD-NSJV>]. The Family Support Center of Colorado Springs provides a variety of specialized behavioral health services for retired and active duty military, their families, and others in the community. *Id.*

145. *Id.*

146. Interview with Jon Ippolito, Deputy Dist. Attorney to the 4th Judicial

charge is more likely to be viewed as a crime connected to a service-related trauma because violence or anger can be connected to elements of PTSD or TBI. It is important to keep in mind that there is no definitive list of crimes connected to service-related trauma, rather it is up to the discretion of the judge and district attorney.

A district attorney will also factor in a service member's criminal history, particularly if the service member had a clean history before deployment, and began having issues only after deployment.<sup>147</sup> A service member with a continuous criminal history will probably not be an ideal candidate for the VTC.<sup>148</sup> The district attorney will use the totality of these factors—current charges, facts of current crime, criminal history, victim input, safety to community, defendant's military history, and trauma—to determine if a veteran can qualify for a VTC.<sup>149</sup> In this determination, the district attorney will evaluate “risk” and “needs.”<sup>150</sup> The district attorney will evaluate what sort of risk the veteran poses to the community and the risk that the veteran may re-offend if they are not given the more intense treatment and supervision of VTC.<sup>151</sup> The district attorney also evaluates the needs of the veteran, which refers to level of supervision and treatment that a veteran may need.<sup>152</sup> Specific to “needs,” the district attorney will evaluate if the veteran is suited for regular probation or if the veteran needs the heightened supervision and treatment of VTC.<sup>153</sup> The district attorney may even determine that the veteran may need an even higher level of supervision and treatment than the VTC can provide.<sup>154</sup> Once a veteran meets the above discussed criteria they begin the VTC program. The next section discusses the four-phase approach of the VTC program.

### *C. Four-Phase Approach*

The VTC program is approximately a year long and

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Dist. Veterans Trauma Court (Jan. 25, 2014).

147. *Id.*

148. *Id.*

149. Interview with Jon Ippolito, *supra* note 76.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

employs a four-phase approach to rehabilitate justice-involved veterans.<sup>155</sup> The four-phase approach, similar to the phases of military training,<sup>156</sup> is composed of a system of incentives and sanctions “designed to motivate program participants and increase program engagement.”<sup>157</sup> Just as veterans can progress through the phases, they can also regress as a sanction for substance abuse or misuse of prescribed medications, non-compliance with, or termination of, treatment, or new criminal charges.<sup>158</sup> For a new charge, the current phase will be placed on hold, and the judge will make a decision with respect to sanctions.<sup>159</sup> For those who are struggling yet retained in the program, special plans are crafted in consultation with the VTC staff in order to assess and target individual issues—there is no one-size-fits-all approach within a VTC.<sup>160</sup>

### 1. Phase I

Phase I focuses on stabilization through key developmental tasks. The Phase 1 Stabilization Phase<sup>161</sup> is a minimum of sixty days.<sup>162</sup> The mean amount of required appointments is sixteen, which includes court appearances, meetings with probation officers, treatment appointments, substance use monitoring such as urinalysis, breath alcohol, and 80-hour alcohol testing appointments, as well as meetings with peer mentors and service providers.<sup>163</sup> Within Phase I and

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155. COLO. FOURTH JUDICIAL DIST., VETERAN TRAUMA COURT PARTICIPANT GUIDE, [https://www.courts.state.co.us/userfiles/file/Court\\_Probation/04th\\_Judicial\\_District/Veterans%20Trauma%20Court%20\(VTC\)/VTC%20Participant's%20Guide%20-%202014\\_July\\_2015%20-%20FINAL.pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/04th_Judicial_District/Veterans%20Trauma%20Court%20(VTC)/VTC%20Participant's%20Guide%20-%202014_July_2015%20-%20FINAL.pdf) (last visited Oct. 7, 2016) [<https://perma.cc/33XT-6XGT>].

156. See U.S. ARMY BASIC COMBAT TRAINING, *supra* note 112 and accompanying text.

157. *Veterans Trauma Court*, *supra* note 78.

158. *Id.*

159. *Id.*

160. Interview with Jon Ippolito, Deputy Dist. Attorney to the 4th Judicial Dist. Veterans Trauma Court (Oct. 11, 2016).

161. VETERANS TRAUMA COURT, COLO. JUDICIAL BRANCH, PHASES, [https://www.courts.state.co.us/userfiles/file/Court\\_Probation/04th\\_Judicial\\_District/Veterans%20Trauma%20Court%20\(VTC\)/VTC%20Phases%20revised%202014.pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/04th_Judicial_District/Veterans%20Trauma%20Court%20(VTC)/VTC%20Phases%20revised%202014.pdf) (last visited Oct. 7, 2016) [<https://perma.cc/49FY-8V9F>]; Slattery et al., *supra* note 11.

162. Slattery et al., *supra* note 11.

163. *Id.*

throughout the phases, veterans are encouraged to take ownership of their own treatment plan.<sup>164</sup>

In order to be promoted to Phase II, the veteran must accomplish a set of key developmental tasks including: (1) attending and being on time for scheduled activities (court appearances, probation appointments, and treatment sessions); (2) completing a comprehensive clinical assessment; (3) signing and verbalizing treatment plan goals; (4) having no unexcused absences from scheduled services and appointments for the last fourteen days; (5) complying with substance abuse testing (determined by probation and no positive test results for the last thirty consecutive days); (6) taking medications as prescribed; (7) checking in with veteran peer mentors; (8) complying with all court orders; (9) setting up a payment plan in the first thirty days; (10) beginning to accept personal responsibility for the offense; and (11) writing and reviewing a Phase 2 promotion letter with probation officers and treatment providers.<sup>165</sup>

## 2. Phase II

Phase II focuses on reintegration into society through community service and accomplishing short treatment goals.<sup>166</sup> Phase II Engagement Phase<sup>167</sup> is a minimum of ninety days and contains a far more extensive and rigorous schedule.<sup>168</sup> This phase consists of: (1) completing short-term treatment goals in accordance with a treatment plan; (2) articulating and demonstrating internal motivation for treatment and change; setting goals of self-sufficiency (which may include vocational, educational, or volunteer work); (3) registering with Front Range Community Service to start community service (if ordered); (4) abiding by the payment plan; (5) seeking out or participating in pro-social activities in order to expand his or her support network; (6) complying with all court orders; (7) attending and being on time for scheduled activities; (8) no unexcused absences from scheduled services and appointments for the last fourteen days (consecutive); (9) complying with

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164. VETERANS TRAUMA COURT, *supra* note 161.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*



substance abuse testing (testing to be defined by probation and no positive test results for the last thirty consecutive days—missed, tampered with, and diluted tests are considered positive test results); (9) taking medications as prescribed and submitting a list of all prescribing providers; (10) checking in with Veteran Peer Mentor program or assigned mentor as directed by the peer mentor; (11) fully accepting personal responsibility for offense; and (12) writing and reviewing a Phase III promotion letter with a probation officer and treatment provider.<sup>169</sup> Within Phase II, there is a continued emphasis on the veteran defining his or her own plan for recovery.<sup>170</sup>

### 3. Phase III

Phase III is defined by continued independence of the veteran in planning and executing the treatment plan as well as an increased focus on social integration through volunteer work.<sup>171</sup> Phase III Action is a minimum of ninety days.<sup>172</sup> Successful completion of Phase III includes: (1) no unexcused absences from scheduled services and appointments for the last sixty consecutive days unless approved by probation officer; attending and being on time for scheduled activities (court appearances, probation appointments, and treatment sessions); (2) complying with substance abuse testing; (3) taking medications as prescribed and submitting a list of all prescribing providers; (4) checking in with Veteran Peer Mentor program or assigned mentors as directed by the peer mentor; (5) complying with all court orders; (6) seeking out or participating in pro-social activities in order to expand the veteran's support network; (7) initiating actions indicative of having full personal responsibility for the offense; (8) initiating the development of a written relapse prevention plan and discussing plan with treatment provider and a probation officer; (9) developing a written aftercare plan with a treatment provider and probation officer; (10) beginning and completing 50% of public service; (11) continuing to abide by payment plan (if applicable); (12) actively working to achieve goals of self-

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169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

sufficiency (may include vocational, educational, or volunteer work); and (13) writing and reviewing a Phase IV promotion letter with probation officer and treatment provider.<sup>173</sup>

#### 4. Phase IV

Phase IV is defined by an emphasis on transition, reintegration, and continuity of treatment.<sup>174</sup> Phase IV Graduation or Maintenance is a minimum of 120 days.<sup>175</sup> Within Phase IV, veterans can transfer to another state if the receiving state's probation department allows it, but the VTC prefers that veterans stay until they complete the program.<sup>176</sup> However, if the veteran has no support in the 4th Judicial District, and would have better support (family, home, or job) in another state, the VTC will have its staff decide if they are willing to let the veteran start the process to request an interstate compact.<sup>177</sup> The receiving state also has to agree to the compact.<sup>178</sup>

These veterans are required to check-in personally via conference call with Judge Shakes.<sup>179</sup> Successful completion of Phase IV is marked by: (1) no unexcused absences from scheduled services and appointments for the last 120 consecutive days unless approved by probation officer; (2) complying with substance abuse testing (testing to be defined by probation) with no positive test results for the last sixty consecutive days—missed, tampered and diluted tests are considered positive test results; (3) completing all court ordered treatment; (4) completing and understanding how to implement written aftercare plan and discussing with treatment provider and probation officer; (5) completing remaining court ordered public service; (6) continuing to abide by payment plan; (7) writing and reviewing a graduation letter with probation officer and treatment provider; and (8) completing all court orders.<sup>180</sup>

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173. *Id.*

174. *Id.*

175. *Id.*

176. Interview with Jon Ippolito, *supra* note 160.

177. *Id.*

178. *Id.*

179. Interview with Judge David Shakes, *supra* note 111.

180. VETERANS TRAUMA COURT, *supra* note 161.

## 5. Aftercare

This phase lasts one year after completion of Phase IV,<sup>181</sup> and is integral in a veteran sealing his or her record.<sup>182</sup> This phase requires the veteran to check in periodically, to continue therapy, and to coordinate with the VTC coordinator.<sup>183</sup> The veteran is also assigned an Aftercare Coach.<sup>184</sup> The Aftercare phase culminates in a contract that can best be described as an out-processing checklist used by military units when a service member either transfers a unit or leaves the military entirely.<sup>185</sup>

The Aftercare plan consists of a contract that includes: (1) recommending treatments going forward (including identifying treatment providers, primary care physicians, and locations to obtain medication); (2) discussions with the VTC Coordinator and Aftercare Program Director; (3) reviewing the Aftercare contract with the VTC Coordinator; (4) taking the Aftercare Contract to the current clinician and discussing the “treatment” section; (5) meeting with the assigned Aftercare Coach to sign the contract and then have a monthly strategy meeting; (6) checking in with the Aftercare Coach monthly; (7) completing “seal” paperwork; (8) continuing with recommended treatment from the treatment provider; and (9) at the end of yearlong program, submitting “seal” paperwork to the VTC Coordinator.<sup>186</sup>

### *D. Staffing and Daily Operations*

The VTC is staffed by a judge assigned to the court, a VTC coordinator, a team of peer mentors, a veteran justice outreach specialist, therapists from the Family Support Center (primarily to serve veterans that do not qualify for benefits because they were not honorably discharged), a public defender, deputy district attorneys, probation officers, additional treatment providers, and law enforcement personnel.<sup>187</sup> Peer mentors support veterans in whatever way

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181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. Dep't of the Army Unit Clearance Record, AR 600-8-101A (2016).

186. VETERANS TRAUMA COURT, *supra* note 161.

187. Court observation with Jon Ippolito, Deputy Dist. Attorney to the 4th

they can, including: offering rides to the VA, finding a place to live, finding a job, reminding the justice-involved veteran of appointments, or being someone to talk to when the justice-involved veteran is stressed, depressed, or dealing with something difficult.<sup>188</sup>

Thursdays are designated for VTC court procedures, which include: taking plea deals into the VTC (the majority of the deliberation); dealing with new cases, revocations, warrant or bond issues for people who failed to appear; restitution hearings; and hearings on other post-conviction motions.<sup>189</sup> The process is a constant discussion between all parties with a distinct eye towards an individualized approach.<sup>190</sup> A staffing meeting follows where discussions are centered on the treatment needs of the individual; specifically, how each justice-involved veteran is doing, what they need to be doing, and whether the VTC should levy a sanction or incentive and what that sanction or incentive should be.<sup>191</sup> During the staffing meeting, the VTC team may occasionally conduct a conference call with additional therapists from the University's Trauma, Health & Hazards Center who are also administering appointments.<sup>192</sup> These University THHC therapists update the VTC team on the status of veteran appointments, and the VTC team consults with these therapists to get their perspective on sanctions, should there be a need for them.<sup>193</sup> Upon conclusion of the staffing meeting, the VTC has afternoon court, where the VTC will call the current VTC participants and discuss their status.<sup>194</sup>

Sentencing is a fluid process that is done in consultation with the entire VTC team.<sup>195</sup> The staffing meeting also

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Judicial Dist. Veterans Trauma Court (Oct. 23, 2014); Interview with Jon Ippolito, Deputy Dist. Attorney to the 4th Judicial Dist. Veterans Trauma Court (Oct. 17, 2016); Interview with Jon Ippolito, *supra* note 160.

188. Interview with Jon Ippolito, *supra* note 187.

189. *Id.* Post conviction motions include: withdrawal of the plea, ineffective assistance of counsel, sealing of records. *Id.*

190. *Id.*

191. *Id.* Sometimes this includes a sanction if the VTC participant is not complying with the program. This sanction will be tailored to the individual. *Id.* Sanctions vary depending upon number of violations, history of violations, severity of violation, length of time in program, and prior sanctions. *Id.*

192. *Id.*

193. *Id.*

194. *Id.* Not every VTC participant appears each week. *Id.*

195. *Id.*

attempts to address several challenges.<sup>196</sup> It is also important to note that the best method of treating TBI is the subject of nation-wide disagreement.<sup>197</sup> In addition to sentencing, the staffing meeting also confirms a list of model veterans within a concept called “Strong Performers.”<sup>198</sup>

### *E. Military Customs and Traditions*

The VTC hallmark is its incorporation of military customs. Emphasizing personal responsibility, a key value of the military, veterans answer questions directly from the judge with their public defender or personal attorney at the table.<sup>199</sup> Judge Shakes personally contributes to military customs in traditions such as prominently displaying each branch’s service flag at his bench.<sup>200</sup> Judge Shakes also has a “hooah” button, which he presses for major accomplishments.<sup>201</sup> Often times, he recognizes these accomplishments in front of the VTC team and other veterans.<sup>202</sup> Each phase concludes with a graduation ceremony where the justice-involved veteran is recognized in front of other veterans and where the veteran reads a letter showing his or her progress and recognizing the infraction that led him or her to the VTC.<sup>203</sup> Oftentimes these are emotional

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196. Slattery et al., *supra* note 11. The THHC study identifies housing and employment as two key issues endemic within the VTC. *Id.* The staffing meeting addresses these issues. *Id.*

197. For example, while proponents of methods involving hyperbaric chambers say that breathing pressurized oxygen raises oxygen levels in the brain, boosting the health of damaged cells and improving brain function, hyperbaric chambers have not shown promise in treating TBI. See Gregg Zoroya, *Hyperbaric Chamber Treatments Did Not Help with Mild TBI*, USA TODAY (Sept. 21, 2013) <http://www.usatoday.com/story/nation/2013/09/21/tbi-treatment-research-military-hyperbaric-oxygen-chamber/2842695/> [<https://perma.cc/2HKU-M6AA>].

198. Court observation with Jon Ippolito, *supra* note 187. This list is cognizant of military tradition of publically recognizing soldiers for key developmental events or accomplishments. *Id.* Strong performers are those veterans that attended group meetings, attended all tests, and applied themselves in therapy sessions. *Id.* Strong performers are allowed to leave early (they are the first ones to be called up), are put into a drawing for a gift card, and are recognized by the entire VTC team as well as fellow veterans. *Id.* Once again, the VTC continues to use military traditions and ceremonies—a concept familiar to all veterans within the court—in order to mark key milestones. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* “Hooah” is word used in many contexts within the Army, including giving praise.

202. *Id.*

203. Interview with Jon Ippolito, *supra* note 160.

moments for the justice-involved veteran, the veteran's colleagues, and the VTC team.<sup>204</sup> Recognizing a soldier in a formation (in front of all the other soldiers in the unit) is a time-honored military tradition used to honor the soldier and provide a model for others to follow.<sup>205</sup> The graduation ceremony captures this tradition. Success in phases also follows another time-honored military tradition of awarding challenge coins.<sup>206</sup> Judge Shakes has created VTC coins, which he awards for successes during the phases.<sup>207</sup> This simple symbol in military training offers a meaningful and powerful reminder of accomplishment.<sup>208</sup>

#### *F. Treatment*

Judge Shakes and the VTC team place paramount importance on treatment. Judge Shakes explains that all other aspects of life, including a stable job and housing situation, result from successfully engaging in treatment.<sup>209</sup> Judge Shakes also noted that treatment is difficult because veterans often have to engage in remembering unpleasant experiences from combat.<sup>210</sup>

Treatments within the VTC include veteran-focused and civilian treatment options. Treatments within the VTC include: (1) intensive residential treatment: an inpatient residential treatment for drug and substance abuse; (2) dialectical behavioral therapy: a specialized treatment through the Warrior Support Center; (3) Circle Program: an in-patient civilian program that deals with addiction issues; (4) Matrix: a

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204. Interview with Judge David Shakes, *supra* note 111.

205. See DEP'T OF THE ARMY, AR 600-25, SALUTES, HONORS, AND VISITS OF COURTESY (2004).

206. Challenge coins are given as a token of success to service members. Deana Heitzman, *Challenge Coins: A Tradition of Excellence*, UNITED STATES AIR FORCE (Apr. 10, 2015), <http://www.af.mil/News/ArticleDisplay/tabid/223/Article/584692/challenge-coins-a-tradition-of-excellence.aspx> [https://perma.cc/S878-3XAK]. These coins could be given for going above and beyond in a training exercise, performance during a deployment, or displaying creativity in an Army training activity. *Id.*

207. Interview with Judge David Shakes, *supra* note 111.

208. During deployment or key training exercises, key leadership will be given a list of top service members to recognize. During the recognition ceremony, these key leaders will present the designated service members with their military coin. Heitzman, *supra* note 206.

209. Interview with Judge David Shakes, *supra* note 111.

210. *Id.*

bi-weekly VA addiction meeting; (5) Alcoholics Anonymous: a civilian weekly group to discuss alcoholism; and (6) Reintegration and Recovery: a rehabilitation drug program that occurs over ninety days while in jail.<sup>211</sup> For some repeat offenders, the VTC will recommend Soberlink (breathalyzer) or SCRAM (attached to ankle) to monitor alcohol intake.<sup>212</sup> In addition, the probation officer determines whether treatments such as ethyl glucuronide (a more sensitive urine analysis test for alcohol) and urine analysis tests are administered.<sup>213</sup> These tests are used to ensure sobriety as well as ensure that veterans are actually taking their medications. Resources limit treatment options.<sup>214</sup> Specifically, PTSD centers' waiting lists were discussed several times with respect to limited treatment options.<sup>215</sup>

### *G. Appropriation and Use of the VTC Budget*

The VA (if the participant is VA eligible) or earmarked state funds for the VTC pay for treatments for PTSD, TBI, and substance abuse.<sup>216</sup> These earmarked funds are called "626 Funds."<sup>217</sup> The VTC has approximately \$265,000 in its 626 fund each year.<sup>218</sup> With these funds, the VTC pays for treatment, sober living homes, drug testing (including SCRAM bracelets or sober link breathalyzers), transportation (such as bus passes), and staff training.<sup>219</sup> The VTC staff has discretion in how the budget is spent.<sup>220</sup> The VTC is in its last year of a federal SAMHSA grant that funds the Warrior Support Center to treat the justice-involved veterans who do not have VA benefits.<sup>221</sup>

Regular court fines and costs as well as restitution fees (if the case requires it) incurred in all criminal cases exist in the

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211. Interview with Kisten Born, 4th Judicial Dist. Veterans Trauma Court Coordinator (Oct. 28, 2014).

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. Interview with Kisten Born, 4th Judicial Dist. Veterans Trauma Court Coordinator (Nov. 10, 2014).

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

VTC.<sup>222</sup> The judge has discretion to waive some of those fees<sup>223</sup> and usually will if the veteran will graduate early from the VTC program; however, restitution is not waivable.<sup>224</sup>

The VTC can also use payments as sanctions. For example, if a participant keeps failing his or her ETG tests (i.e., the justice-involved veteran is still drinking) and the VTC knows that they have some kind of income, the VTC may have them pay \$350 a month for the SCRAM bracelet, which is paid to probation.<sup>225</sup>

There are some things that the VTC will not waive, such as the fee for a domestic violence class.<sup>226</sup> The VTC views this payment as a requirement because the VTC believes that it provides some accountability.<sup>227</sup> Aside from restitution, over which the VTC has no control, most other fees are based on the person's ability to pay.<sup>228</sup> The VTC uses state funds in an effort to keep justice-involved veterans in treatment, conduct drug testing, and stabilize veterans' housing situations.<sup>229</sup>

The VA, the state probation office, or the actual jail cover most of these treatments; however, justice-involved veterans must cover some of these treatments themselves.<sup>230</sup> In addition, justice-involved veterans may be required to attend several appointments a week based upon treatment the justice-involved veteran needs at the time.<sup>231</sup> The rate of appointments can change regularly depending upon their treatment needs.<sup>232</sup> Part III will evaluate the results of these mechanics within metrics provided by the lead evaluator in the VTC.

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222. *Id.*

223. These fees serve as an obstacle for several participants.

224. Interview with Kisten Born, *supra* note 216.

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.* Treatments that veterans must cover include the \$13 per day for Soberlink or SCRAM. Interview with Kisten Born, *supra* note 211.

231. Interview with Jon Ippolito, *supra* note 160. More violations such as missed appointments are typically met with increased sanctions; however, the VTC team will look at the totality of the circumstances. *Id.* These circumstances include: the type of violation, the number of violations, how long the veteran has been in the program, what pattern of violations have they had. *Id.* Then, as a team, the VTC will determine an appropriate sanction depending on the totality of the circumstances. *Id.*

232. Interview with Jon Ippolito, *supra* note 160.



### III. CHALLENGES

Section A begins with an analysis of the metrics emerging from the VTC within the University THHC Study on the 4th Judicial District's VTC: THHC Study 1 & THHC Study 2.<sup>233</sup> Section B next discusses both the University's THHC's study on the 4th Judicial District's VTC (THHC Study 1) and the THHC's (THHC Study 2) most recent results, and discerns challenging trends from these metrics. Finally, section C offers recommendations to VTCs based on this analysis.

#### A. Court Evaluation by the Numbers

The University THHC has spent the last several years studying the 4th Judicial District's VTC through the JDTR grant. This Comment analyzes three key studies that University THHC has produced, addressing each in chronological order. Beginning with the first study, Michelle Slattery, Lead Evaluator at the University THHC, published a comprehensive study based on seventy individuals involved in the VTC.<sup>234</sup> This study covered several aspects of the VTC, such as VTC graduation rates, recidivism, housing, and employment, among other metrics. The key issues that emerged from this initial study were compliance, employment, and housing.

Even a cursory overview of the statistics revealed issues with VTC compliance and graduation:

- 10% graduating;
- 8% failing; and
- 38% struggling with compliance.<sup>235</sup>

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233. Michelle Slattery, Lead Evaluator for the Jail Diversion and Trauma Recovery-Priority to Veterans Grant, *Evaluation of the Colorado Veteran Trauma Court: Process, Outcomes & Results, Invited Presentation Before the SAMHSA Gains Center for Behavioral Health and Justice Transformation JDTR Cross-Site Evaluation Annual Grantee Meeting* (Mar. 2012); Interview with Michelle Slattery, Lead Evaluator for the Jail Diversion and Trauma Recovery-Priority to Veterans Grant at the UCCS Trauma, Health & Hazards Ctr. (Dec. 11, 2014). THHC Study 1 covers research from 2012–2013 while THHC Study 2 covers research from 2013–2014. *Id.* Collectively, the University's THHC has studied the 4th Judicial District's VTC for two years. *Id.*

234. *Id.* The Jail Diversion and Trauma Recovery-Priority to Veterans (JDTR) grant helped fund the start-up of the court as well as Slattery's research on VTC outcomes. *Id.*

235. *Id.* 44% of the veterans did not have issues with the VTC program

In addition to compliance, unemployment within the VTC's justice-involved veterans also emerged as a problematic issue. Indeed, a year after the VTC:

- 5% of the VTC's participants were unemployed (not looking);
- 27% were unemployed looking for work;
- 14% were employed part-time; and
- 27% were employed full-time.<sup>236</sup>

Moreover, housing for VTC veterans was a clear issue. After a year with the VTC, the metrics show a drop in home ownership, and an increase in an unstable housing as well as homelessness.<sup>237</sup>

However, the VTC's metrics for substance abuse, drug use, and improvement of PTSD symptoms showed remarkable results within the court. In terms of substance abuse, within a year, alcohol use dropped from 49% to 18%, and illegal drug use dropped from 32% to 9%.<sup>238</sup> Issues emerging from PTSD also showed improvement, dropping from impacting 86% of veterans to 59%.<sup>239</sup> Further analysis will be offered within the Measurable Outcomes section; however, metrics concerning housing and employment are negative trends, while PTSD and TBI treatment and improvement are positive trends.

### *B. Measurable Outcomes*

By analyzing the THHC Study 1, several challenging

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compliance. *Id.* It is important to note that the rates of PTSD, unemployment, homelessness, and substance use were substantial at program start. *Id.* Within this group, 93% had early-life trauma; 98% had life trauma; 34% had a prior arrest history; 31 was the mean age; 79% were OIF/OEF veterans; 100% had military-service trauma; 54% were honorably discharged; 87% were eligible for VA Services (service-connected disabilities); 93% of participants' military service contributed to medical problems; 100% of participants' military service contributed to mental health or emotional problems; and participants had between 0–6 tours of duty. *Id.*

236. *Id.* 27% of veterans did not have issues with employment. *Id.* In addition, 5% of the VTC's participants were retired; and 23% were unemployed disabled (these veterans may receive disability benefits). *Id.*

237. *Id.* For those who owned a home before VTC involvement (75%), after a year, this number dropped to 64%. *Id.* For those who were unstably housed before VTC involvement (9%), after a year, this number increased to 18%. *Id.* For those who were homeless before VTC involvement (2%), this number actually increased to 9% at the end. *Id.* For those who were institutionalized (15%), this number dropped to 9% at the end. *Id.*

238. *Id.*

239. *Id.*

trends emerge that align with previous results.<sup>240</sup> Primarily, although PTSD and overall health improved, veteran issues with employment and housing continued to be reoccurring issues at both the six-month and yearlong data points.<sup>241</sup> The THHC Study 1 noted that gains were “modest and not significant.”<sup>242</sup> This section analyzes THHC Study 1 and Study 2, concluding with a brief discussion of high points from both studies.

A rigorous appointment schedule can affect employment and housing.<sup>243</sup> Although 86% of justice-involved veterans reported that they “like the services” they received from the VTC and 81% “would recommend” the VTC to others, THHC Study 1 points to the amount of commitment—approximately sixteen appointments per month—needed to successfully graduate from the VTC as a particular issue.<sup>244</sup> Study 1 describes the regiment of appointments as “intensive,” which “may have made it difficult for participants to hold down a full-time job.”<sup>245</sup> Another obvious implication of the VTC is that involvement with the justice system may create a “possible obstacle to both employment and housing.”<sup>246</sup> This data point also shows the level of commitment needed by the veterans. Transportation and accessibility are also problematic with the volume of appointments.

Final results from the THHC Study 2 show continuing challenges and trends within employment and housing.<sup>247</sup> In terms of the most recent metrics on employment, after a year with the VTC program, “full-time employment” decreased (while “part-time employment increased”), “unemployed-looking” for work decreased, and “unemployed-not” looking for work increased.<sup>248</sup>

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240. *See generally* Slattery et al., *supra* note 11.

241. *Id.* at 928.

242. *Id.* at 927.

243. Interview with Michelle Slattery, Lead Evaluator for the Jail Diversion and Trauma Recovery-Priority to Veterans Grant at the UCCS Trauma, Health & Hazards Ctr. (Sept. 23, 2014); Slattery et al., *supra* note 11, at 928.

244. Slattery et al., *supra* note 11, at 928.

245. *Id.* at 929.

246. *Id.*

247. Interview with Michelle Slattery, *supra* note 243. These results are still pending final publication. *Id.*

248. *Id.* 35% are employed full-time (5% part-time); 36% describe themselves as “unemployed - looking for work;” 26% describe themselves as “unemployed - NOT looking for work.” *Id.* By the twelve-month interview, 27% were employed

The high points of these final metrics are post-release recidivism rates (6% for those who completed the VTC) and housing that improved to 65% stably housed.<sup>249</sup> In terms of housing, recent metrics revealed an increase in participants maintaining their home, a decrease in “unstably” housed veterans, and a marginal decrease (but decrease nonetheless) in homelessness.<sup>250</sup> By the twelve-month interview, these powerful metrics show that the VTC team’s continued emphasis on finding stable housing, including partnering with halfway homes, have turned the tide on the housing situation for the VTC’s veterans. It must be mentioned that within recidivism, pre-release recidivism (in-program failure) still remained at 27%.<sup>251</sup>

### C. Recommendations

This section draws on empirical data, court observation, and interviews to recommend a four-part strategy to improve VTCs. This section begins with a discussion of issues within the VTC. These issues include, but are not limited to, unemployment, stable housing, the ability for justice-involved veterans to begin their life anew, and limited accessibility to VA benefits due to discharge status. Of course, these issues do not exist in a vacuum; indeed, they are connected to other issues, such as a rigorous appointment schedule affecting employment, grim veteran employment figures given the additional burden of a criminal record, the difficulty of finding treatment in overtaxed VA facilities, and an already existing unstable housing situation. Thus, recommendations to address these issues and which seek to improve VTCs include: (1) formalizing a process to correct military records reflecting

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full time (10% part-time); 25% described themselves as “unemployed - looking for work;” 38% describe themselves as “unemployed - NOT looking for work;” and half of participants experienced no change in employment from baseline to twelve-month interview. *Id.*

249. *Id.*

250. *Id.* At baseline, 62% of participants were housed in their own place, while 18% were “unstably” housed, 10% were hospitalized or institutionalized, 5% were homeless, and 5% were in a correctional facility. *Id.* By the twelve-month interview, 75% were housed in their own place, while 7% were “unstably” housed, 7% were hospitalized or institutionalized, 4% were homeless, and 7% were in correctional facilities. *Id.*

251. Slattery et al., *supra* note 11, at 927. A lack of employment reduces housing options. *Id.*

other-than-honorable discharge; (2) reducing appointments and increasing emphasis on housing and job opportunities that are congruent with the VTC's rigorous schedule; (3) creating a fresh start approach that increases the availability of record sealing; and (4) expanding VTCs to offer further employment and housing opportunities to justice-involved veterans.

### 1. Correction of Military Records

The VTC's record review should consider whether a service member's discharge status can be changed when the veteran has an other-than-honorable discharge.<sup>252</sup> Veterans with less-than-honorable discharges present the biggest challenge for the VTC because they have limited access to VA benefits, which may affect treatment as well as employment placement (discussed in detail below).<sup>253</sup> Since the Department of Defense recently decided to incorporate PTSD and TBI retroactively on discharge statuses, the importance of this process has only grown as the opportunity for changing a service member's discharge status has greatly expanded.<sup>254</sup> Thus, formalizing a due diligence review by the VTC's assigned VA representative, the veteran justice outreach specialist (VJO), to research whether an other-than-honorable discharge can be changed would be a quick, but potentially life-changing, review for a given service member. This review would simply add an additional duty to an already existing position on the VTC, and integrate with the already extensive knowledge of the VA that the VJO brings to the VTC.

This change would occur in Phase I as the veteran enters the VTC. The VJO would scrutinize the veteran's DD 214—the service record of the veteran—to determine the possibility for a change of discharge. If the VJO determines that there is a possibility for appeal, the VJO and VA representative will

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252. This applies only if the service member was discharged under other-than-honorable conditions. An other-than-honorable discharge could severely limit a veteran's access to benefits. Rachel Martin, *Help is Hard to Get for Veterans After a Bad Discharge*, NPR (Dec. 8, 2013), <http://www.npr.org/2013/12/08/249452852/help-is-hard-to-get-for-veterans-after-a-bad-discharge> [https://perma.cc/HD27-4KVL].

253. Interview with Judge David Shakes, *supra* note 111.

254. Leo Shane III, *Legislation Would Halt Bad Military Discharges Due to PTSD, TBI*, MILITARY TIMES (Mar. 7, 2016), <http://www.militarytimes.com/story/military/2016/03/07/bad-paper-discharges-ptsd-tbi/81445920/> [https://perma.cc/8KKU-JTQ7].

guide the veteran through an appeals process that would include a direct appeal to the VA. This process envisions a VJO assisting the veteran with submitting a DD 293—appeal to change discharge.<sup>255</sup> This recommendation draws upon (1) an already established process to change a discharge, and (2) changes in Department of Defense policy with respect to discharge appeals factoring in PTSD and TBIs.<sup>256</sup>

## 2. Increased Emphasis on Housing and Job Opportunities Cognizant of the VTC Schedule

The VA's job counseling program is called Transition GPS, which provides comprehensive services to our nation's service members to help them transition to civilian life after the military.<sup>257</sup> There are several non-profits, such as Hero 2 Hired and Hire Heroes, that work tirelessly to match veterans with employment opportunities.<sup>258</sup> But these services have not been paired with the VTC similarly to other services within the VA.<sup>259</sup> In addition, if a service member has been discharged under other-than-honorable conditions, the service member would not be eligible for VA benefits, and would be limited to services from non-profits that provide treatment services regardless of discharge status.<sup>260</sup>

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255. *Id.*

256. *Id.*

257. *Transition Assistance Program*, U.S. DEP'T OF VETERAN AFFAIRS, <http://www.benefits.va.gov/VOW/tap.asp> (last visited Feb. 19, 2015) [<https://perma.cc/F9UV-Y6Z5>]. All transitioning service members are required to take part in the program—including Guard and Reserve members demobilizing after 180 days or more of active service (Title 10). *Id.* The Transition GPS offers pre-separation counseling including: receiving individual assessments and one-on-one counseling with military service representatives experienced in the transition process. *Id.* The program also includes individual transition planning, employment workshops, and tailored tracks—Career Technical Training Track, Education Track, and Entrepreneurship Track. *Id.*

258. HERO 2 HIRED, <http://h2h.jobs> (last visited July 10, 2016) [<https://perma.cc/K6XT-AR3D>].

259. See *What is a Veterans Treatment Court?*, *supra* note 10. For example, the VA representative can give input to the team and be a connection to the VA. The VA representative provides information on how the person is doing in treatment at the VA, what treatment/medications they are receiving from the VA, and what additional VA resources could be utilized. A possible solution could be to expand this representative's role to include connecting justice-involved veterans with veteran employment services within the VA. Interview with Jon Ippolito, *supra* note 160.

260. *Applying for Benefits and Your Character of Discharge*, U.S. DEP'T OF VETERAN AFFAIRS, [http://www.benefits.va.gov/benefits/character\\_of\\_discharge.asp](http://www.benefits.va.gov/benefits/character_of_discharge.asp)

VJO specialists are already permanent fixtures in the VTC, and could be an apt conduit to provide employment guidance for veterans. Currently, VJOs are responsible for case management for justice-involved veterans in local courts and jails, including serving as a liaison to the Veterans Health Administration.<sup>261</sup> VJOs should serve a more robust role by not just assisting with the medical and criminal aspect of the VTC, but also by serving as representatives for the Transition GPS program. This proposal would allow the VA to continue to provide its normal services with the same personnel while simply adding a few additional responsibilities. Likewise, representatives of the Transition GPS program should also serve as permanent or visiting fixtures within the overall VTC structure, particularly upon the VTC graduation. The benefits regime within the VA severely limits services for veterans with other-than-honorable discharges; thus, employment services and non-profits partnered with a VTC appear to be the best manner to serve all veterans since they provide services to all veterans regardless of discharge status.

Along with these recommendations, employers have to be willing to work within the rigors of the VTC. Thus, deep connections, such as a pipeline program, need to be built with these employers that would allow veterans to work within their facility while attending court-mandated appointments and hearings.<sup>262</sup> These are relationships that the VTC must build with employers through job fairs and other events geared towards connecting justice-involved veterans with employers. Of course, employers must work with veterans on job skills as well as accommodating the VTC schedule. A veteran struggling with a trauma-spectrum disorder in addition to a criminal record presents a worst-case scenario for employment prospects, which necessitates a special need to tailor employment to the VTC.

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(last visited Feb. 19, 2015) [<https://perma.cc/BE5N-ZRW9>].

261. *Homeless Veterans*, U.S. DEPT OF VETERAN AFFAIRS, <http://www.va.gov/homeless/vjo.asp> (last visited Feb. 19, 2015) [<https://perma.cc/S2L3-YDJW>].

262. See Lois M. Davis, *Education and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook*, RAND CORP. (Aug. 22, 2013), <http://www.rand.org/news/press/2013/08/22.html> [<https://perma.cc/9BF7-S2LF>].

### 3. Fresh Start Approach

Sealing a justice-involved veteran's record would allow the individual to integrate fully with society and better allow the veteran to get a fresh start. Section 18-1.3-101 of the Colorado Revised Statutes, a modified diversion agreement,<sup>263</sup> presents an opportunity to provide justice-involved veterans with a fresh start and could be used as a model for other states. THHC Study 1<sup>264</sup> referred to a fresh start as "sealing a felony conviction . . . as though the conviction never occurred."<sup>265</sup> The Colorado diversion program gives district attorneys the ability to dismiss with prejudice all charges through a diversion program.<sup>266</sup> Within the current bill language, a trigger for this bill, relevant to veterans, can be found in Section 3—"Guideline for Eligibility" part b—"[a]ny special characteristics or circumstances of the defendant."<sup>267</sup> A military-related PTSD or TBI diagnosis (or a diagnosis of both PTSD and TBI) should be able to qualify within this guideline because they could be considered a "special characteristic," which would offer the veteran the ability to have a charge dismissed with prejudice so long as the veteran completes the guidelines of the diversion agreement set by the VTC. The statute and the VTC are opportunities for a seamless partnership of the current statute and an expansion of past legislation.

The statute has clear guidelines as to the parameters of offenses that can be incorporated into a diversion agreement. The key aspect of the statute is the ability to have one's record sealed, which would thereby allow one to apply for a job without evidence of a criminal record.<sup>268</sup> Much like when Rep. Looper and Sen. Williams presented a bi-partisan front to pass House Bill 10-1104, a coalition of legislators, relying on Colorado Revised Statute Section 18-1.3-101, should propose a

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263. A modified diversion program is a voluntary alternative to criminal adjudication that allows a person accused of a crime to fulfill a set of conditions or complete a formal program designed to address, treat, or remedy issues related to or raised by the allegation. *Adult Diversion*, COLO. JUDICIAL BRANCH, COLORADO'S STATE COURT SYSTEM, <https://www.courts.state.co.us/Administration/Unit.cfm?Unit=adultdiv> (last visited Nov. 15, 2016) [<https://perma.cc/5X4N-3YYV>].

264. Slattery et. al., *supra* note 11, at 922.

265. *Id.*

266. COLO. REV. STAT. § 18-1.3-101 (2016).

267. COLO. REV. STAT. § 18-1.3-101 (3)(b) (2016).

268. *Id.*



similar diversion agreement that works hand in hand with VTCs to provide justice-involved veterans with a fresh start.

#### 4. Expansion of VTCs

Because empirical data shows the continued success of the VTC concept, this type of alternative dispute court should be expanded. The THHC study remarked that findings “are consistent with the possibility that VTCs are having a broad and substantial impact in the lives of troubled veterans.”<sup>269</sup> Creating robust VTCs necessitates increased coordination from both federal and state authorities and increased funding, particularly for rehabilitative programs. Specifically, funding from the VA is necessary to create more VJOs to account for increased VTCs. VJOs must have immediate access to medical records for veterans to (1) ensure they have been properly diagnosed with PTSD, and (2) ensure that veterans receive disability compensation as well as education and training benefits.<sup>270</sup>

VA benefits for veterans with other-than-honorable discharges are severely limited, which places VTCs in a difficult situation with these types of veterans.<sup>271</sup> Indeed, Judge Shakes listed other-than-honorably discharged veterans as a chief concern since they are not eligible for VA benefits.<sup>272</sup> The Warrior Support Center, funded by a grant from Substance Abuse and Mental Health Services Administration,<sup>273</sup> provides treatment for these veterans.<sup>274</sup> Either state or federal funds should be allocated to the WSC in order to continue to serve this demographic.

Although the specific judicial district has the discretion to actually create a VTC, state and federal governments in coordination with legislatures can work together in order to provide grants and other funding mechanisms to help with the setup costs of the court. The state can assist in increasing funding earmarked for 626 funds. In addition to government services, veteran service organizations and states' departments

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269. Slattery et. al., *supra* note 11.

270. *The History*, *supra* note 23.

271. *Applying for Benefits and Your Character of Discharge*, *supra* note 260.

272. Interview with Judge David Shakes, *supra* note 111.

273. Interview with Michelle Slattery, *supra* note 233.

274. Interview with Kisten Born, *supra* note 216.

of veteran affairs can assist veterans with additional local and state resources.<sup>275</sup>

VTCs can also be cost-saving mechanisms for resource scarce counties. The 4th Judicial District survey estimated that the Colorado Springs community spent “approximately \$161,000 in probation supervision costs annually (\$1,630 [per person]); compared to \$3.2 million dollars that [Department of Corrections] sentences (\$32,335 [per person]) would have cost the community.”<sup>276</sup>

VTCs do not stand alone: they are part of a team composed of legal, medical, and social services. The medical and social services are just as important to the robustness of the system. On that note, the VA must place a renewed emphasis on expanding PTSD centers to reduce waiting lists and treat more veterans.<sup>277</sup> Furthermore, halfway-homes are often booked and veterans are left with few if any housing options.<sup>278</sup> In order to discontinue the vicious cycle of homelessness and crime, more resources on both the state and federal level along with non-profits have to be invested in halfway homes dedicated to veterans struggling with TBI and PTSD. Collectively, these four proposals could address the current VTC issues of unemployment, housing, accessibility to veteran benefits, and offering a justice-involved veteran a fresh start that increases the availability of record sealing.

## CONCLUSION

In the earlier case of *Spc. Delgado* and so many other service members like him, it is difficult to contemplate these veterans' options if the VTC did not exist: Would they have received the care they needed, and a second chance? From the moment one steps into a VTC, it is clear that this is a unique court with a unique program. While the VTC treats justice-involved veterans with the dignity and respect worthy of a combat veteran, it also ensures that these veterans are held accountable. As Judge Shakes articulates, at one point, every single one of these veterans did something most of their non-

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275. *The History*, *supra* note 23.

276. TRAUMA, HEALTH & HAZARDS CTR., *supra* note 93, at 2.

277. Court observation with Jon Ippolito, *supra* note 187.

278. *Id.*

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veteran peers will never do—serve in the military.<sup>279</sup>

The VTC strives to create an environment cognizant of the military—from traditions to phases and checklists—to make the judicial system easily accessible to these veterans. Although issues exist and possible modifications can be made, the VTC concept, particularly in the 4th Judicial District, is a powerful role model for alternative courts. The VTC concept, as demonstrated by the 4th Judicial District's VTC, exemplifies quality care for veterans.

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279. Interview with Judge David Shakes, *supra* note 111.