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SEEING THE JUSTICE SYSTEM THROUGH A SOLDIER'S EYES: A CALL TO ACTION FOR MARYLAND TO ADOPT A VETERANS TREATMENT COURT SYSTEM

BETH TOTMAN*

Lately I've been wondering what's been going on
I've been here before but I don't remember when
And every time we get to where we're entering
I feel my beliefs and hopes surrendering

...

'Cause like the enemies that we are battling
I am nothing but a human alien
Left with nothing else but to keep wandering
Down this path while stopping my hands trembling

...

I've seen inside the devil's dreams where young men die
And graveyards open up their arms for mothers left to cry
I have seen the bleeding and I hate what we've done
But just like every other fool here I'll keep marching on

Because I know that I'll be coming home soon
And yes I know, that I'll be coming home soon . . . with a soldier's eyes
With a soldier's eyes
With a soldier's eyes
With a soldier's eyes¹

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1. JACK SAVORETTI, SOLDIER'S EYES (De Angelis Records 2007).

I. INTRODUCTION

On the night of January 24, 2004, Hector Matacastillo, a long-serving member in the Minnesota National Guard who had seen action in fifty-seven countries, faced down an enemy combatant who had drawn his gun and was aiming it at him point blank.² Matacastillo stood, waiting for the enemy to fire.³ Earlier that night, he had gone door to door armed with two pistols seeking out enemy combatants.⁴ But this time, it seemed the enemy had found him first.⁵

However many times this type of scenario had played out before Matacastillo's eyes over the course of his fourteen-year career as a soldier, the circumstances that set the scene for the drama of that winter's night were certainly unexpected. As it turned out, Matacastillo was not in Iraq; he was in Lakeville, Minnesota, standing in front of his own house, staring down the barrel of a police officer's gun.⁶ His ex-wife's informative yell to the police officer—"He doesn't keep ammunition in the house!"—was what snapped him back to reality.⁷ By the night's end, Matacastillo was arrested and charged with a felony for making terroristic threats, to which he pleaded to a reduced charge.⁸ It was not until *after* his court appearance that he was diagnosed with Post-Traumatic Stress Disorder (PTSD).⁹

PTSD "is an anxiety disorder that can develop after a person experiences a life-threatening or extremely traumatic event, including . . . military combat . . . or [a] terrorist attack."¹⁰ Not surprisingly, combat veterans are ideal candidates for developing PTSD.¹¹ PTSD has been linked to depression, suicide, strained familial relationships, decreased physical health, unemployment, and homelessness.¹² A

2. See Mark Brunswick, *New Vets Court Aims to Help Scarred Soldiers*, STAR TRIB. (Mar. 9, 2010), <http://www.startribune.com/local/minneapolis/87047647.html?page=1&c=y>.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Dennis Geisinger, *Vets' Advocates Want to Pass PTSD Law on Federal Level*, SOUTHSIDE PRIDE (Jul. 7, 2008), http://www.southsidepride.com/2008/07/articles/Vets_advocates.html.

8. See Brunswick, *supra* note 2.

9. See Geisinger, *supra* note 7.

10. Thomas L. Hafemeister & Nicole A. Stockey, *Last Stand?: The Criminal Responsibility of War Veterans Returning from Iraq and Afghanistan with Post Traumatic Stress Disorder*, 85 IND. L.J. 87, 92 (2010); see also U.S. DEP'T OF VETERANS AFFAIRS, *What is PTSD?*, NAT'L CTR. FOR PTSD, <http://www.ptsd.va.gov/public/pages/what-is-ptsd.asp> (last updated May 17, 2013).

11. See Hafemeister & Stockey, *supra* note 10 (noting that because PTSD can stem from traumatic events, and war veterans experience traumatic events during combat, war veterans can suffer from PTSD).

12. TERRI TANIELIAN, ASSESSING COMBAT EXPOSURE AND POST-TRAUMATIC STRESS DISORDER IN TROOPS AND ESTIMATING THE COSTS TO SOCIETY: IMPLICATIONS FROM THE RAND INVISIBLE WOUNDS OF WAR STUDY 5–6 (2009) [hereinafter IMPLICATIONS] (referencing findings from the RAND study, which assessed PTSD and depression among Operations Enduring Freedom and Iraqi Freedom veterans and the impact PTSD has on society).

study of Vietnam combat veterans with PTSD revealed that up to seventy-five percent also suffer from substance abuse.¹³ Additionally, PTSD and how it manifests has been linked to expressive violence.¹⁴ One study suggests that veterans with PTSD committed significantly more violent acts than veterans without the disease.¹⁵ Compounding the direct impact that PTSD has on a veteran's emotional and physical state is the fact that veterans are expected to seamlessly re-integrate into civilian life.¹⁶ Yet many veterans who suffer from PTSD receive inadequate treatment or none at all, increasing the potential for veteran sufferers to find themselves in a court of law.¹⁷ Worse still, once veteran sufferers are arrested and sentenced, they are often shuffled through a criminal justice system that lacks the resources to treat them.¹⁸

To combat this growing problem, a new trend has emerged across the country that has, thus far, proven effective in handling veterans who commit crimes, and reducing recidivism.¹⁹ Rather than convicting and sentencing veterans to jail time, veterans treatment courts have been created to confront the root causes of the criminal behavior.²⁰ Modeled after the drug court system, veterans treatment courts aim to hold veterans who have committed crimes accountable, while providing the treatment they need to heal and get their lives back on track.²¹ The effectiveness of the veterans treatment courts is found in the outright acknowledgement that

13. TERRI TANELIAN & LISA H. JAYCOX, *INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY* 134 (2008) [hereinafter *PSYCHOLOGICAL AND COGNITIVE INJURIES*].

14. Adam Caine, *Fallen from Grace: Why Treatment Should be Considered for Convicted Combat Veterans Suffering from PTSD*, 78 *UMKC L. REV.* 215, 219 (2009) (noting that aggressive behavior, violent outbursts, and poor anger control are symptoms found in veterans suffering from PTSD).

15. Samantha Walls, *The Need for Special Veterans Courts*, 39 *DENV. J. INT'L L. & POL'Y* 695, 711 (2011) (citing a study that reported that veterans with PTSD committed significantly more violent acts, 13.3 per year, than veterans without a PTSD diagnosis, who only committed 3.53 violent acts in one year).

16. Greg A. Greenberg et al., *Risk of Incarceration among Male Veterans and Nonveterans: Are Veterans of the All Volunteer Force at Greater Risk?*, 33 *ARMED FORCES & SOC'Y* 337, 338 (2007).

17. See Terri Tanelian & Lisa H. Jaycox, *Stop Loss: A Nation Weighs the Tangible Consequences of Invisible Combat Wounds*, *RAND REV.*, Summer 2008, at 7; see also DRUG POLICY ALLIANCE, *HEALING A BROKEN SYSTEM: VETERANS BATTLING ADDICTION AND INCARCERATION* (2009) (observing that thousands of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) veterans are returning home with PTSD, which left untreated can lead to incarceration).

18. See Mary Susan Littlepage, *Veterans Courts Try to Keep PTSD Victims Out of Jail*, *TRUTHOUT* (Mar. 30, 2010), archive.truthout.org/veterans-courts-try-keep-ptsd-victims-out-jail58123 (quoting Amy Fairweather, Director of the Coalition for Iraq and Afghanistan Veterans, who argues that veterans do not get the treatment that they need for PTSD and substance abuse in jail).

19. See Jillian M. Cavanaugh, *Helping Those Who Serve: Veterans Treatment Courts Foster Rehabilitation and Reduce Recidivism for Offending Combat Veterans*, 45 *NEW ENG. L. REV.* 463, 474 (2011).

20. *Id.* at 465.

21. Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 *NEW ENG. J. ON CRIM. & CIV. CONFINEMENT* 357, 369 (2009) (noting that in the veterans treatment court structure, emphasis is placed on both personal accountability and treatment).

veterans are shaped by combat experiences that only fellow veterans can understand.²² Veterans are assigned peer-mentors who are either veterans themselves or active duty service members.²³ Therein lies the great potential for success: a veteran who comes before a veterans treatment court will find himself in a familiar structure that mirrors that of the military; in essence, the judicial system can be seen and understood through a soldier's eyes.

On May 2, 2012, Governor Martin O'Malley approved a task force that is charged with researching the effectiveness of veterans treatment courts and reporting its findings to the Governor and to the Chief Judge of the Maryland Court of Appeals.²⁴ The task force must report back on or before December 1, 2013.²⁵ This Comment will argue that the General Assembly need only look to other states and jurisdictions to see the effectiveness of the veterans treatment court structure that is tailored to the unique challenges that veterans face upon returning from war.²⁶ With more than 471,000 veterans,²⁷ it is imperative that Maryland implement veterans treatment courts into its judicial system.

II. A DIFFERENT KIND OF WAR

*"Fighting street to street, house to house—you know, going into houses finding . . . people dead and . . . mutilated. Bodies in the streets."*²⁸

Since September 2001, more than two million U.S. troops have been deployed to Afghanistan and Iraq.²⁹ Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) have demanded an unprecedented pace of deployments to Afghanistan and Iraq, respectively.³⁰ Furthermore, deployments have been longer, redeployment to combat has been more common, and breaks between deployments have been infrequent.³¹ Thanks to advances in medical technology and body armor, the U.S. casualty rate is not as high as in past wars.³²

22. *Id.* at 363 (arguing that service members need tailored care that takes into account their unique and shared experiences).

23. *Id.* at 364.

24. See Press Release, Office of Gov. Martin O'Malley, Bills to be Signed by Governor on May 2, 2012, (May 2, 2012) (on file with the Journal of Health Care Law & Policy).

25. *Id.*

26. See *infra* Part V.B.1.

27. MD. DEP'T OF VETERANS AFFAIRS, 2010 ANNUAL REPORT (2010).

28. Interview by *PBS Now* with Michael Zacchea, U.S. Marine Lieutenant Colonel (Sept. 28, 2007), available at www.pbs.org/now/transcript/339.html (speaking of his experiences during the Battle of Fallujah).

29. See EXEC. OFFICE OF THE PRESIDENT, STRENGTHENING OUR MILITARY FAMILIES: MEETING AMERICA'S COMMITMENT (2011).

30. See IMPLICATIONS, *supra* note 12, at 1.

31. *Id.*

32. *Id.*

While this means that more soldiers are surviving, it also means that more soldiers are returning from war, having survived extremely traumatic experiences.³³

Moreover, Afghan and Iraqi insurgents³⁴ have employed tactics that U.S. troops never encountered in past wars.³⁵ Insurgents have relied heavily on roadside bombs and improvised explosive devices (IEDs),³⁶ and have aggressively recruited suicide bombers.³⁷ U.S. troops have found themselves under constant attack, and have been exposed to intense, pervasive violence and death.³⁸ One OIF veteran describes that “[s]niper fire, [Rocket Propelled Grenades], IEDs and mortar attacks kept us on edge at every moment. We were hypervigilant. We couldn’t shut it off. It reached the point when we thought that anything could be a bomb, that anything on the road could blow up.”³⁹ Such extreme stress increases the risk for PTSD and major depression.⁴⁰

33. *Id.*

34. An insurgent is defined as “a person who revolts against civil authority or an established government.” MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/insurgent> (last visited June 8, 2013).

35. See Hafemeister & Stockey, *supra* note 11, at 105 (noting that the tactics that insurgents have employed have shifted from small-unit infantry fighting to more unpredictable hit-and-run attacks involving roadside bombs, suicide bombers, and rocket-propelled grenades).

36. NAT’L ACADS. & THE DEP’T OF HOMELAND SEC., IED ATTACK: IMPROVISED EXPLOSIVE DEVICES, available at www.dhs.gov/xlibrary/assets/rep_ied_fact_sheet.pdf (“An improvised explosive device (IED) attack is the use of a ‘homemade’ bomb and/or destructive device to destroy, incapacitate, harass, or distract. IEDs are used by criminals, vandals, terrorists, suicide bombers, and insurgents. Because they are improvised, IEDs can come in many forms, ranging from a small pipe bomb to a sophisticated device capable of causing massive damage and loss of life. IEDs can be carried or delivered in a vehicle; carried, placed, or thrown by a person; delivered in a package; or concealed on the roadside. The term IED came into common usage during the Iraq War that began in 2003.”) (last visited June 8, 2013).

37. See generally M. Audrey Burnam et al., *Mental Health Care For Iraq And Afghanistan War Veterans*, 28 HEALTH AFF. 771, 771 (2009) (observing that OEF and OIF veterans were exposed to unique conditions and circumstances including suicide bombers and the handling of human remains).

38. Press Release, Rand Corp., One in Five Iraq and Afghanistan Veterans Suffer from PTSD or Major Depression (Apr. 17, 2008), available at <http://www.rand.org/news/press/2008/04/17.html> (stating that half of deployed service members reported having a friend seriously wounded or killed, forty-five percent reported seeing dead or seriously injured civilians, and over ten percent reported injuries or hospitalizations).

39. Jeremy Proffitt, *Fighting the War at Home*, AM. NARRATIVE ON WAR & SURVIVAL (Feb. 21, 2010), http://www.anothersource.org/ptsd_1.html.

40. See Burnam et al., *supra* note 37, at 771.

III. WHAT IS PTSD?

*"If I saw a dead deer on the side of the road . . . I'd always try to move over thinking there was a bomb under the deer. And if traffic got heavy, it wasn't comfortable because one of the ways they ambush you is to block you into traffic."*⁴¹

Lieutenant Colonel Michael Zacchea, a United States Marine who fought in OIF, suffers from PTSD, which dominates his life.⁴² A celebration for a baby's christening, for instance, quickly turned sour when children in attendance started jumping on sheets of bubble wrap.⁴³ The high pitch of the popping reminded him of gunfire and he told his wife he needed to leave immediately.⁴⁴ PTSD is an anxiety disorder⁴⁵ that a person can develop after experiencing "a life-threatening or extremely traumatic event" such as military combat or a terrorist attack.⁴⁶ A smell, a sound, a color, or a place can send a sufferer into turmoil, forcing him to relive the traumatic experience accompanied by the fear, stress, and physiological reactions that were initially experienced.⁴⁷ The more experiences a person has involving traumatic events, the more likely he is to develop "profound emotional and behavioral disturbances."⁴⁸

In combat, the way in which a soldier's body responds to danger or fear is, in many instances, crucial to his survival: the amygdala is the part of the brain that can instinctively sense danger, and it triggers the body's "fight or flight" response, also known as hyperarousal.⁴⁹ This response manifests through rapid heart rate, sweating, dilation of the eyes to sharpen sight, and the pumping of adrenaline into

41. Interview by *PBS Now* with Jeremy Lewis, U.S. Iraqi War Veteran (Sept. 28, 2007), available at www.pbs.org/now/transcript/339.html (describing how his PTSD would manifest while he worked as a long-haul truck driver upon returning from war). See also Melissa Hamilton, *Reinvigorating Actus Reus: The Case for Involuntary Actions by Veterans with Post-Traumatic Stress Disorder*, 16 BERKELEY J. CRIM. L. 340, 383 (2011) (noting that upon returning home from war, veterans with PTSD report behavior that includes constantly scanning for potential threats, being suspicious of noises and environmental changes, and being hypervigilant while driving).

42. See Interview with Michael Zacchea, *supra* note 28.

43. *Id.*

44. *Id.*

45. Edgar Garcia-Rill & Erica Beecher-Monas, *Gatekeeping Stress: The Science and Admissibility of Post-Traumatic Stress Disorder*, 24 U. ARK. LITTLE ROCK L. REV. 9, 14–15 (2001) ("There are three main categories of anxiety disorders, namely panic disorder, obsessive-compulsive disorder, and PTSD. People with anxiety disorder have a sensory gating deficit . . . [which] implies excessive distractability. This means that the reactivity to stimuli in their world never wanes. All light, sound, and touch is intrusive, continuous, and punishing, driving you, well—crazy.")

46. See Hafemeister & Stockey, *supra* note 11, at 97.

47. See Garcia-Rill & Beecher-Monas, *supra* note 45, at 17.

48. See Caine, *supra* note 14, at 219, citing Kathleen Wayland, *The Importance of Recognizing Trauma Throughout Capital Mitigation Investigations and Presentations*, 36 HOFSTRA L. REV. 923, 933 (2008).

49. Hamilton, *supra* note 41, at 372–73.

the bloodstream.⁵⁰ The body is essentially snapping into survival mode to deal with an actual or perceived threat. However, a traumatic event can damage the hippocampus of a person's brain, which in turn impacts the way in which the person manages and responds to fear and his surrounding environment.⁵¹ When a veteran has PTSD, it takes longer for his brain to assess whether there is an actual source of danger, leaving him in a prolonged state of hyperarousal.⁵² The brain can misinterpret its surroundings by perceiving them as danger, when in actuality, "all strangers are not the enemy; trash along the Interstate probably doesn't contain an IED; an explosion may be harmless fireworks; [and] a bad dream may be just that."⁵³

The United States Department of Veterans Affairs (VA) has adopted the American Psychiatric Association's six diagnostic criteria for PTSD, which are listed in its most current version of the Diagnostic and Statistical Manual of Mental Disorders.⁵⁴ The first criterion demands that the person exposed to the traumatic experience must have directly experienced, witnessed, or been confronted with the event, and his response must have involved intense fear, helplessness, or horror.⁵⁵ The second criterion involves re-experiencing the event through flashbacks, nightmares, anxious thoughts, and intense psychological and physical distress when coming across cues that remind the person of the traumatic event.⁵⁶ The third criterion is known as avoidance and/or numbing.⁵⁷ A person who suffers from PTSD attempts to avoid thoughts, feelings, conversations, activities, places, or people with whom he associates the trauma.⁵⁸ The fourth criterion, labeled "negative alterations in cognitions and mood," can manifest in the sufferer becoming estranged from family and friends, and having difficulty experiencing positive emotions. may also become estranged from family or friends.⁵⁹ Fifth, sufferers experience hyperarousal and must experience at least two of the following symptoms: difficulty falling or staying asleep, irritability or outbursts of anger, difficulty concentrating, hyper-vigilance, and exaggerated startle response.⁶⁰ Lastly,

50. *Id.*

51. *Id.*

52. *Id.*

53. David Wood, *Iraq, Afghanistan War Veterans Struggle with Combat Trauma*, HUFF. POST (July 4, 2012), http://www.huffingtonpost.com/2012/07/04/iraq-afghanistan-war-veterans-combat-trauma_n_1645701.html.

54. DEPT. OF VETERANS AFFAIRS, *DSM Criteria for PTSD*, NAT'L CTR. FOR PTSD, <http://www.ptsd.va.gov/professional/pages/dsm-iv-tr-ptsd.asp> (last updated May. 17, 2013).

55. *Id.*

56. *Id.*; see also Hafemeister & Stockey, *supra* note 11, at 96 (noting that in extreme cases, flashbacks can be triggered by sounds or smells that remind the PTSD sufferer of the initial traumatic event, and can last as short as a few seconds and as long as a few days).

57. See DEPT. OF VETERANS AFFAIRS, *supra* note 54.

58. *Id.*

59. *Id.*

60. *Id.*

the symptoms must have lasted longer than one month and must have significantly impaired the way in which a person functions, including in social and professional settings.⁶¹

If a person meets the six diagnostic criterion for PTSD, he or she is most likely suffering from other disorders as well.⁶² For instance, depression is one of PTSD's most common co-occurring conditions.⁶³ One study found that two-thirds of veterans who suffered from PTSD also had major depression.⁶⁴ Lisa Jaycox, co-leader of an extensive study on how PTSD has impacted Afghanistan and Iraq veterans has observed:

If PTSD and depression go untreated or are under treated, there is a cascading set of consequences . . . Drug use, suicide, marital problems and unemployment are some of the consequences. There will be a bigger societal impact if these service members go untreated. The consequences are not good for the individuals or society in general.⁶⁵

Indeed, many PTSD sufferers abuse drugs and alcohol to cope with the disorder.⁶⁶ One study revealed that seventy-five percent of Vietnam veterans with a history of PTSD also met the criteria for substance and alcohol dependence.⁶⁷ PTSD has also been linked to poor physical health, risky behavior, such as unsafe sex, unemployment, and homelessness.⁶⁸ Furthermore, a soldier with PTSD is more likely to attempt suicide than a person without PTSD.⁶⁹

The effects of PTSD worsen over time; receiving early, adequate treatment is crucial to improving the quality of a veteran's life, and in many instances, saving it.⁷⁰ Through treatment, a veteran can learn how to deal with the stressors that

61. *Id.*

62. TERRI TANIELIAN ET AL., INVISIBLE WOUNDS OF WAR: SUMMARY AND RECOMMENDATIONS FOR ADDRESSING PSYCHOLOGICAL AND COGNITIVE INJURIES 125 (2008) [hereinafter SUMMARY AND RECOMMENDATIONS] (“*Co-morbidity of conditions* refers to two or more conditions co-occurring simultaneously [I]n the general population . . . about 88 percent of men and 79 percent of women with PTSD also experience one other disorder in their lifetime and . . . about half have three or more comorbid diagnoses.”).

63. *Id.*

64. *Id.*

65. See Press Release, Rand Corp., *supra* note 38.

66. See SUMMARY AND RECOMMENDATIONS, *supra* note 62, at 134.

67. *Id.*

68. See IMPLICATIONS, *supra* note 12, at 6.

69. See Wood, *supra* note 53 (“The national veterans suicide crisis line . . . , operated by the VA, gets an average of 17,000 calls a day. The VA believes the suicide rate for all U.S. veterans is more than 500 per month.”). See also SUMMARY AND RECOMMENDATIONS, *supra* note 62, at 128–29 (citing two studies, the first suggesting that male veterans are at double risk compared to male civilians of dying from suicide, and a second study suggesting that Vietnam veterans who died from suicide were more likely to suffer from PTSD than a comparison group who died in car crashes).

70. SUMMARY AND RECOMMENDATIONS, *supra* note 62, at 149 (finding that the effects of post-combat mental health conditions are likely to grow more severe if left untreated); see also Walls, *supra*

trigger the debilitating symptoms of PTSD.⁷¹ Yet the disheartening reality is that the military's health system fails to meet the growing psychological needs of its military members.⁷²

A. Falling Victim to an Inadequate Treatment System and Military Culture

*"There is a major health crisis facing those men and women who have served our nation in Iraq and Afghanistan . . . Unfortunately, we found there are many barriers preventing them from getting the high-quality treatment they need."*⁷³

A veteran who suffers from PTSD must overcome several obstacles to receive much-needed treatment. First, the military's initial attempts to screen soldiers for PTSD are inherently ineffective.⁷⁴ Second, military mental health services are overwhelmed by the increasing demand to treat veterans, forcing many veterans to "wait and see" if they will be treated.⁷⁵ Third, the military culture of self-reliance and mental toughness discourages veterans from seeking help.⁷⁶ Approximately 300,000 OEF and OIF veterans have reported PTSD symptoms, yet only a little more than half of them have sought out treatment; only half of those who did seek care received minimally adequate treatment.⁷⁷

Typically, a soldier is initially screened for PTSD immediately before he is to return home.⁷⁸ However, when going through an initial screening, it is highly unlikely that soldiers will be forthcoming about the mental health issues they face, especially if they believe providing such information would lead to a diagnosis and delay their homecoming.⁷⁹ For these reasons, the military re-administers a mental health survey six months after a soldier's return.⁸⁰ At this point, forty-two percent of active duty army soldiers and ninety-two percent of Army Guard and Reserve

note 15, at 708 (noting that without treatment, the symptoms and effects of PTSD and worsen over time) see Wood, *supra* note 53 (citing a VA report as support for PTSD's long term effects on veterans by virtue of the fact that 476,515 veterans were treated for PTSD in 2011, the majority of whom were Vietnam war veterans).

71. Walls, *supra* note 15, at 698.

72. See Ann Scott Tyson, *Pentagon Report Criticizes Troops' Mental-Health Care*, WASH. POST, Jun. 16, 2007, at A2. Vice Admiral Donald Arthur, co-chairman of the Department of Defense Mental Health Task Force stated, "Not since Vietnam have we seen this level of combat. . . . With this increase in . . . psychological need, we now find that we have not enough providers in our system. . . . Clearly, we have a deficit in our availability of mental-health providers." *Id.*

73. See Press Release, Rand Corp., *supra* note 38 (quoting Terri Tanielian, co-leader of the RAND study, on impacts of PTSD on OEF and OIF veterans).

74. Tiffany Cartwright, "To Care for Him Who Shall Have Borne the Battle": The Recent Development of Veterans Treatment Courts in America, 22 STAN. L. & POL'Y REV. 295, 302 (2011).

75. See Walls, *supra* note 15, at 708.

76. See Cartwright, *supra* note 74, at 301.

77. See Tanielian & Jaycox, *supra* note 17.

78. See Cartwright, *supra* note 74, at 302.

79. *Id.*

80. *Id.*

members are positively screened for PTSD.⁸¹ While it is commendable that the military is attempting to keep track of how many of its members may have PTSD, military mental health services are “overburdened, ‘woefully’ understaffed, and inadequately financed.”⁸² Consequently, veterans treatment is often significantly delayed, and veterans continue to suffer from the symptoms of PTSD while their names get placed on waitlists for appointments.⁸³

Furthermore, however many veterans seek out treatment, just as many refuse it for fear of being judged by peers and supervisors.⁸⁴ In many ways, seeking help directly contravenes the military culture that encourages self-reliance, perseverance, and physical and mental toughness.⁸⁵ Robert Pyles, an experienced military psychiatrist and former President of the American Psychoanalytic Association, has observed that: “. . . the very real stigma regarding mental health issues prevents many [veterans] from seeking treatment. In a professional army, one visit to a psychiatrist, or one prescription for Prozac, can ruin a career. We have put our people in an impossible situation.”⁸⁶ In an interview of two hundred men and women, sixty percent revealed that receiving mental health treatment would have a negative impact on both their military careers and their future civilian careers.⁸⁷ This belief is not meritless. In fact, within the military and beyond, the revelation that an active duty soldier or veteran is in need of mental health treatment could jeopardize security clearances, limit job offers and promotions, and restrict gun-carrying privileges.⁸⁸ Regardless of the reason, veterans are not receiving the treatment they need to cope with either PTSD or the ripple effect of associated conditions.⁸⁹

81. *Id.*

82. See Deborah Sontag & Lizette Alvarez, *Across America, Deadly Echoes of Foreign Battles*, N.Y. TIMES (Jan. 13, 2008), http://www.nytimes.com/2008/01/13/us/13vets.html?pagewanted=all&_r=0; see also Cartwright, *supra* note 5, at 302 (finding that the military’s mental health system could not keep up with the increased demand for psychiatric care after the start of the Iraq and Afghanistan wars).

83. See Walls, *supra* note 15, at 708.

84. *Id.* at 704.

85. See Cartwright, *supra* note 74, at 301 (noting that military culture places a stigma on receiving mental health treatment, which has become a hindrance on those who need it).

86. Robert L. Pyles, *When the Mind Is a Casualty of War*, Letter to the Editor, N.Y. TIMES, May 25, 2009, at A18.

87. See Walls, *supra* note 15, at 706.

88. *Id.* at 706–07.

89. See *supra* notes 74–77 and accompanying text.

B. PTSD and Criminal Behavior

“To deny the frequent connection between combat trauma and subsequent criminal behavior is to deny one of the direct societal costs of war and to discard another generation of troubled heroes.”⁹⁰

Veterans returning home from war may find themselves in trouble with the law because of untreated PTSD and co-occurring conditions, such as substance and alcohol abuse.⁹¹ Male veterans, especially, may be at greater risk of incarceration than men in the general population as a result of the prevalence of PTSD among veterans.⁹² One theory is that a combat soldier is wired to snap into “survivor-mode” to stay alive during battle.⁹³ If the soldier or veteran suffers from PTSD, this survivor-mode may manifest in three reactions, which are associated with violent criminal behavior:⁹⁴ dissociative reaction, sensation-seeking syndrome, and the depression-suicide syndrome.⁹⁵

First, veterans are most likely to engage in criminal behavior during a dissociative or hyperarousal state.⁹⁶ Flashbacks are a main cause of dissociative violence for combat veterans, because they enter into “survivor mode” and lapse into a search-and-destroy mindset in which their automatic reaction is to find and kill any perceived source of danger.⁹⁷ Combat veteran PTSD sufferers who

90. See Sontag & Alvarez, *supra* note 82 (quoting one criminal defense lawyer who argues that “[t]o deny the frequent connection between combat trauma and subsequent criminal behavior is to deny one of the direct societal costs of war and to discard another generation of troubled heroes.”).

91. See Walls, *supra* note 15, at 709 (“The number of veterans in the United States criminal justice system is substantial. In 2007, approximately 1.6 million inmates were in either state or federal prisons and another 780,000 inmates were confined in local jails. Approximately 9.4 percent of those inmates, or roughly 223,000, were veterans. Of those veterans in jails or prisons, approximately 60 percent have a substance abuse problem. Veterans who are incarcerated in jails and prisons have similar characteristics. . . . [I]ncarcerated veterans were more likely to report alcohol abuse and a mental illness than non-veterans.”).

92. Greenberg et al, *supra* note 16, at 337.

93. Daniel Burgess et al., *Reviving the “Vietnam Defense”: Post-Traumatic Stress Disorder and Criminal Responsibility in a Post-Iraq/Afghanistan World*, 29 DEV. MENTAL HEALTH L. 59, 65–66 (2010).

94. *Id.* at 65; see also Robert R., *The Following Are Some of the Feelings That Most Will Never Know*, AM. NARRATIVE ON WAR & SURVIVAL, http://www.anothersource.org/shattered_1.html (last visited June 8, 2013) (poem written by a Marine veteran who deployed to Afghanistan from February to October 2002 and to Iraq from March to November 2004) (“Today I freaked out in a store where danger was non-existent. Maybe if I stay up all night doing coke there won’t be any nightmares. But I can’t go without sleep. The war is over for me. I don’t understand why I panic or break out into sweats or fits of anger.”).

95. See Burgess et al., *supra* note 93, at 65.

96. Erin M. Gover, *Iraq as a Psychological Quagmire: The Implications of Using Post-Traumatic Stress Disorder as a Defense for Iraq War Veterans*, 28 PACE L. REV. 561, 567 (2008).

97. See Burgess et al., *supra* note 93, at 66 (noting that when a veteran is in a dissociative state, he may lapse into a search-and-destroy mentality because of the countless hours of ritualized military training he received in preparation for war).

experience hyperarousal have difficulty managing anger and controlling aggressive or violent impulses.⁹⁸ Frequent combat exposure and the associated stresses directly impact the severity of PTSD and resulting hostile actions.⁹⁹ Second, veterans' survivor mode may manifest through sensation-seeking, which leads to the commission of high-risk crimes where they are attempting to recreate the adrenaline rush of combat.¹⁰⁰

Finally, some veterans suffer from what is known as survivors' guilt and feel hopeless and deeply depressed.¹⁰¹ They have a difficult time coming to terms with the fact that their comrades died, but they survived.¹⁰² Often, these veterans turn to drugs and alcohol to numb the pain, stress, and guilt they feel for surviving.¹⁰³ Still others have suicidal urges¹⁰⁴ or act out their anger and frustration for having survived through engaging in criminal behavior.¹⁰⁵ If PTSD and its associated symptoms and disorders are left untreated, there is a high likelihood that veteran sufferers will engage in criminal behavior and find themselves before a court of law.¹⁰⁶

98. Hamilton, *supra* note 41, at 383 (noting that in addition to being a way to cope with the stress of re-experiencing a traumatic event, anger and hostility may manifest because of the aggression and fight impulse ingrained in combat soldiers).

99. *Id.* at 384.

100. See Burgess et al., *supra* note 93, at 66–67 (noting that veterans with PTSD may have difficulty adapting to the mundane world of civilian life upon returning from war and, as a result, may seek out ways to expose themselves to dangerous activities ranging from skydiving to dealing drugs); see also *infra* note 117 and accompanying text (discussing the case of Iraq and Afghanistan war veteran John Brownfield, who pled guilty to accepting bribes for selling illegal contraband to federal prison inmates while working as a corrections officer); Chester Sigafoos, *A PTSD Treatment Program for Combat (Vietnam) Veterans in Prison*, 38 INT. J. OFFENDER THERAPY & COMP. CRIMINOLOGY 117, 124 (1994) (citing the sensation-seeking experiences of two Vietnam veterans who reported driving at dangerously excessive rates of speed in search of a “high”).

101. See Sigafoos, *supra* note 100, at 124; see also Burgess et al., *supra* note 93, at 68.

102. Sigafoos, *supra* note 100, at 124.

103. See Walls, *supra* note 15, at 711.

104. Madeleine McGrane, *Post-Traumatic Stress Disorder in the Military: The Need for Legislative Improvement of Mental Health Care for Veterans of Operation Iraqi Freedom and Operation Enduring Freedom*, 24 J.L. & HEALTH 183, 189–90 (2010) (observing that suicide rates among veterans are notably higher than the general population and that the two leading causes of suicide among veterans are PTSD and depression).

105. See Burgess et al., *supra* note 93, at 68 (noting that in some cases, a person may act out his anger through criminal behavior to meet the subconscious goal of “suicide by cop,” or being shot by law enforcement officers); see also Gover, *supra* note 96, at 567 (noting that some veterans may idealize suicide as a solution to PTSD symptoms, and may even unconsciously take out their feelings on certain authority figures resulting in criminal action).

106. Burgess et al., *supra* note 93, at 68.

IV. A TRADITIONAL, BUT EVOLVING, APPROACH: VETERANS IN THE CRIMINAL COURT SYSTEM

*“Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines . . . ”*¹⁰⁷

Once a veteran enters the criminal justice system, a PTSD diagnosis can serve to downgrade a charge, shorten the length of a sentence, or mitigate the type of sentence the trial court may impose.¹⁰⁸ For instance, in *Porter v. McCollum*, the Supreme Court acknowledged a link between PTSD and criminal behavior by unanimously ruling that in cases involving capital sentencing, PTSD must be considered.¹⁰⁹ The Court recognized the defendant’s extensive combat exposure as significant “not only [because] he served honorably under extreme hardship and gruesome conditions, but also [because] the jury might find mitigating the intense stress and mental and emotional toll that combat took upon [the defendant].”¹¹⁰

Likewise, in non-capital cases, a defendant’s military background, as well as the existence of any mental disorders, can be considered when determining prison sentences.¹¹¹ In federal district courts, sentencing is greatly influenced by the Federal Sentencing Guidelines,¹¹² which are reviewed, interpreted, and justified by the United States Sentencing Commission.¹¹³ Traditionally, in a judge’s consideration of a departure from the guidelines, factors such as “age, mental and emotional conditions, physical condition, and military service” were “not ordinarily relevant.”¹¹⁴ However, in 2010, the Sentencing Commission amended the guidelines to direct federal judges to take a defendant’s military status into account during sentencing, if such a factor is “relevant to an unusual degree and distinguish[es] the case from the typical case.”¹¹⁵

107. *Porter v. McCollum*, 130 S. Ct. 447, 455 (2009).

108. *See Caine, supra note 14*, at 223.

109. *Porter*, 130 S. Ct. at 455 (finding that military service and a PTSD diagnosis can provide evidence sufficient enough to mitigate sentencing).

110. *Id.*

111. *See Cartwright, supra note 76*, at 314.

112. *Id.*

113. U.S. SENTENCING COMM’N, AN OVERVIEW OF THE UNITED STATES SENTENCING COMMISSION 1, available at http://www.ussc.gov/About_the_Commission/Overview_of_the_USSC/USSC_Overview.pdf (noting that the Sentencing Reform Act of 1984 provides for the development of the Federal Sentencing Guidelines and delegates broad authority to the United States Sentencing Commission to review, interpret, and justify the federal sentencing process) (last visited June 8, 2013).

114. Press Release, U.S. Sentencing Comm’n, U.S. Sentencing Commission Votes to Send Congress Guideline Amendments Providing More Alternatives to Incarceration, Increasing Consideration of Certain Specific Offender Characteristics During the Sentencing Process (Apr. 19, 2010), available at http://www.ussc.gov/Legislative_and_Public_Affairs/Newsroom/Press_Releases/20100419_Press_Release.htm.

115. *Id.*

Furthermore, a departure from the Sentencing Guidelines may be warranted if the crime is “related to a treatment issue such as drug or alcohol abuse or significant mental illness and sentencing options such as home or community confinement or intermittent confinement would serve a specific treatment purpose.”¹¹⁶ The flexibility by which the advisory guidelines can be applied, as well as their recent amendments, are indicative of the growing trend in the traditional criminal justice system of acknowledging a defendant’s veteran status and taking it into account in sentencing.

At least one federal judge is exercising his discretion and taking a more lenient stance in the sentencing of military veterans.¹¹⁷ The Honorable John L. Kane is a Colorado federal judge who has argued that PTSD and military service should be potential mitigating factors in sentencing.¹¹⁸ He used military veteran John Brownfield as an example by sentencing him to five years probation and ordering him to undergo a psychiatric evaluation for the crime of accepting a bribe as a public official.¹¹⁹

Surely, probation and receiving a psychiatric evaluation is preferable to jail time. At least in the former, there is some potential that the veteran defendant may receive treatment for PTSD.¹²⁰ However, when a veteran is sent to prison, he finds himself in a setting that creates a “survivor mode” environment that might exacerbate PTSD symptoms.¹²¹ The initial traumatic experience(s) that caused the veteran’s PTSD may be relived by the social stimuli found in prison, and the veteran may revert back to “combat mode” to handle prison life.¹²² Worse still, when veterans are sent to jail, it is highly unlikely that they will get the treatment they need to deal with PTSD.¹²³ The VA is prohibited from providing hospital and

116. *Id.*

117. *See, e.g.,* United States v. Brownfield, No. 08-CR-00452-JLK, slip op. at 5, 27 (D. Col. Dec. 18, 2009). In what is known as “The Brownfield Memo,” Colorado federal judge, Judge John L. Kane advocated for the importance of PTSD and military service as potential mitigating factors in sentencing and to create an example, sentenced military veteran John Brownfield to five years of probation and ordered him to undergo a psychiatric evaluation for the crime of accepting a bribe as a public official. *Id.*

118. *Id.* at 19, 27–28.

119. *Id.* at 24, 27–28.

120. *Id.* at 27.

121. *See* Sigafos, *supra* note 100, at 118.

122. *Id.* at 121.

123. *See* United States v. Brownfield, No. 08-CR-00452-JLK, slip op. at 27 (D. Col. Dec. 18, 2009) (noting both the lack of prison treatment programs and the shortage of expertise in such programs in dealing with prisoners serving one year or less who suffer from war-zone related illnesses); *see also* *Veteran with PTSD, Jailed on Attempted Murder Charges, Sues D.A.*, L.A. TIMES (July 31, 2012), <http://articles.latimes.com/2012/jul/31/nation/la-na-nn-veteran-ptsd-20120731> (discussing the case of a soldier with diagnosed PTSD who requested a transfer of his case from the civilian court system to a military court in order to receive treatment for his PTSD, as would be required by the military, and sued the North Carolina prosecutor for violating his right to comprehensive mental health resources). A prison psychiatrist verified that there are no appropriately personnel familiar with the military-mandated form of PTSD treatment, nor are there adequate amounts of PTSD medication available. *Id.* The same

outpatient care to an incarcerated veteran who is an inmate in an institution of another government agency when that agency has a duty to provide the care or services.¹²⁴ Thus, if the prison does not provide treatment for PTSD, the veteran remains in an environment that not only enables PTSD symptoms to manifest, but that allows for the PTSD symptoms to worsen and become more severe over time.¹²⁵

On the state level, California and Minnesota have both passed legislation aimed at providing treatment for veterans, rather than sending them to jail.¹²⁶ Both statutes allow for judges to consider a defendant's PTSD diagnosis during a sentencing trial and to afford appropriate treatment alternatives when deemed necessary.¹²⁷ Under the California model, if a defendant avers that he is a veteran who suffers from PTSD, substance abuse, or other psychological problems as a result of combat service, the court must hold a pre-sentencing hearing to determine the validity of the defendant's claim.¹²⁸ If the court finds that the defendant meets these criteria, and most importantly, is eligible for probation, the court may use its discretion to put the defendant on probation and place him in a treatment program.¹²⁹ There is one major proviso to this statute—the length of time the defendant is in the treatment program cannot be longer than the time he would have served in jail or prison, had he gone through the traditional criminal justice system.¹³⁰ This caveat substantially devalues the statute's intent of ensuring that veteran defendants with PTSD and other associated conditions receive effective and adequate treatment to which they would otherwise not have access.¹³¹

In 2008, the Minnesota legislature amended the state's procedures for pre-sentence investigations to ensure that veterans who suffer from mental illnesses are diverted away from the traditional criminal justice system, and directed towards treatment.¹³² Whereas the California statute's procedure places the responsibility on

psychiatrist noted that "[w]ithout appropriate treatment, there's a likelihood [the soldier's] condition will deteriorate significantly." *Id.*

124. *Incarcerated Veterans*, DEPT. OF VETERANS AFFAIRS, 1 (Aug. 2012), <http://www.benefits.va.gov/BENEFITS/factsheets/misc/incarcerated.pdf>.

125. See Walls, *supra* note 15, at 708 (noting that without treatment, PTSD symptoms and effects get more severe over time).

126. See CAL. PENAL CODE § 1170.9(a)–(b) (West 2007); MINN. STAT. § 609.115(10) (2008); Caine, *supra* note 14, at 225.

127. See PENAL § 1170.9(a)–(b); § 609.115(10); see also Caine, *supra* note 14, at 232.

128. PENAL § 1170.9(a)–(b).

129. *Id.*

130. *Id.*

131. See Cartwright, *supra* note 74, at 313 (arguing that this policy depreciates the value of the diversion, because the length of treatment is an important factor behind a treatment's effectiveness); see also CAINE, *supra* note 14, at 230 (advocating for California to re-consider the time limitation that has been placed on the length of treatment, because PTSD has lifelong effects and sufferers should be afforded more effective, long-term treatment).

132. See 609.115(10); see also Caine, *supra* note 14, at 230.

the veteran defendant who suffers from PTSD to declare his status, the Minnesota statute requires a pre-sentence investigation for all defendants who are convicted of a felony, and in some cases a misdemeanor.¹³³ The investigatory report will include information on the defendant's background, including military status.¹³⁴ There is a "Military Veterans" provision which states, among other considerations, that where a defendant is a veteran or active member of the military, and has been diagnosed with a mental illness, the court can collect information on treatment options for the defendant.¹³⁵ Unlike California's statute, it is not a prerequisite that the defendant be eligible for probation to be considered for treatment, and the potential length of the jail sentence, had the defendant gone through the traditional system, has no bearing on the length of the treatment.¹³⁶

California and Minnesota are recognizing that when a veteran finds himself before a court of law for criminal behavior linked to PTSD and combat experience, the court should be fully aware of such a circumstance so that treatment options to address such root causes of criminal behavior can be considered, alongside of, or in place of incarceration.¹³⁷ This is most certainly a step in the right direction for our veterans.

133. Compare CAL. PENAL CODE § 1170.9(a)–(b), with MINN. STAT. § 609.115(10); see also Caine, *supra* note 14, at 231.

134. See Caine, *supra* note 14, at 231.

135. MINN. STAT. § 609.115(10) provides:

(a) When a defendant appears in court and is convicted of a crime, the court shall inquire whether the defendant is currently serving in or is a veteran . . .

(b) If the defendant is currently serving in the military or is a veteran and has been diagnosed as having a mental illness . . . the court may:

(1) order that the officer preparing the report under subdivision 1 consult with the United States Department of Veterans Affairs, Minnesota Department of Veterans Affairs, or another agency or person with suitable knowledge or experience, for the purpose of providing the court with information regarding treatment options available to the defendant, including federal, state, and local programming; and

(2) consider the treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant in imposing sentence.

136. Compare CAL. PENAL CODE § 1170.9(a)–(b), with MINN. STAT. § 609.115(10). See also Caine, *supra* note 14, at 232.

137. Caine, *supra* note 14, at 224.

V. A NEW APPROACH: THE VETERANS TREATMENT COURT SYSTEM

“[W]ait a minute, there’s something to this . . . [in] how a veteran responds to another veteran.”¹³⁸

The nation’s first specialized veterans treatment court began operation in early 2008 in Buffalo, New York.¹³⁹ The Honorable Robert T. Russell was the presiding judge over Buffalo’s Drug Treatment and Mental Health Treatment courts and noticed that more and more veterans on the city treatment court dockets.¹⁴⁰ He also witnessed the positive reactions of veterans when they met fellow veterans who worked for the courts.¹⁴¹ These observations served as the impetus to establish the veterans treatment court to provide access to alcohol, drug, and mental health treatment, as well as a veteran mentor.¹⁴² The Veterans Treatment Court system builds off of the foundation of the already-proven drug court model¹⁴³ and adds support and treatment tailored to the unique needs of veterans.¹⁴⁴

The framework of drug treatment courts heavily influences the basic structure of the veterans treatment courts.¹⁴⁵ The concerns that gave rise to drug treatment court systems resemble those underlying the justification for the establishment of the veterans treatment court: that the traditional punishment-based approach of sending many criminal addicts to prison has proven ineffective.¹⁴⁶ The recidivism rate among drug offenders who have been incarcerated is astonishingly high.¹⁴⁷ An even more telling fact indicating that the current criminal punishment-based approach is futile is that those who do receive drug abuse treatment while incarcerated have a high rate of relapse.¹⁴⁸

138. William H. McMichael, *The Battle on the Home Front: Special Courts Turn to Vets to Help Other Vets*, ABA JOURNAL (Nov. 1, 2011, 4:10 AM) (quoting the Honorable Robert T. Russell, the presiding judge over the nation’s first Veterans Treatment Court), <http://www.nadcp.org/Battle-on-the-Home-Front>.

139. *Id.*

140. *Id.*; see, e.g., Russell, *supra* note 21, at 363 (observing that “[i]n recent years, there have been noted increases in veteran involvement in alcohol-related incidents including driving under the influence, reckless driving, and drunk and disorderly conduct [and that between] the third quarter of fiscal year 2005 to the third quarter of fiscal year 2006 alone, the rate of veterans involved in alcohol-related incidents jumped from 1.73 per 1000 soldiers to 5.71 per 1000 soldiers.”).

141. See McMichael, *supra* note 138.

142. *Id.*

143. See Russell, *supra* note 21, at 364.

144. *Id.* at 363.

145. *Id.* at 364.

146. Richard C. Boldt, *The “Tomahawk” and the “Healing Balm”*: *Drug Treatment Courts in Theory and Practice*, 10 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 45, 47 (2010) (finding that within one year of release from prison, eighty percent of drug offenders resume drug use, and ninety percent resume drug use within three years of release).

147. *Id.*

148. *Id.*

In response to such an ineffective approach to handling drug offenders, the innovative drug court model was established and effectively turned the criminal punishment-based approach on its head.¹⁴⁹ Ten key components set out by the U.S. Department of Justice are infused into the drug court framework. First, courts should integrate alcohol and other drug treatment services with justice system case processing.¹⁵⁰ Second, prosecution and defense counsel should promote public safety while protecting participants' due process rights through a non-adversarial approach.¹⁵¹ Third, eligible participants should be identified early and placed in the drug court program.¹⁵² Fourth, courts should provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.¹⁵³ Fifth, frequent alcohol and other drug testing must be used to monitor sobriety.¹⁵⁴ Sixth, a coordinated strategy should govern the courts' responses to participants' compliance.¹⁵⁵ Seventh, continued judicial interaction with each drug court participant is vital.¹⁵⁶ Eighth, effectiveness of the program should be monitored and evaluated.¹⁵⁷ Ninth, continuing interdisciplinary education should be employed to promote effective drug court planning, implementation, and operation.¹⁵⁸ Finally, partnerships among drug courts, public agencies, and community-based organizations should be developed to create local support and enhance the court's effectiveness.¹⁵⁹ In implementing these key tenets by way of court meetings, drug testing, drug counseling, education and vocational programs, drug courts tackle the addiction head-on and in doing so remove the root-cause of the criminal behavior.¹⁶⁰ Today there are more than 2,000 drug courts in operation across the country, with each state having at least one.¹⁶¹

These courts have proven effective in reducing recidivism among those who abuse drugs.¹⁶² One study reports that drug courts significantly reduce crime by

149. *Id.* at 48–49.

150. See NAT'L ASS'N OF DRUG COURT PROF'LS, *DEFINING DRUG COURTS: THE KEY COMPONENTS* 9–10 (1997).

151. *Id.* at 11–12.

152. *Id.* at 13.

153. *Id.* at 15–19.

154. *Id.* at 21–22.

155. *Id.* at 23–25.

156. *Id.* at 27–28.

157. *Id.* at 29–33.

158. *Id.* at 35–36.

159. *Id.* at 37.

160. *Id.* at 6–7.

161. Andrew Wasicek, *Palliative Exceptions: Substance Abuse, Mental Illness, and Drug Courts*, 10 CONN. PUB. INT. L.J. 199, 206–07 (2010).

162. See *Quitting Hard Habits: Efforts to Expand and Improve Alternatives to Incarceration for Drug-Involved Offenders: Hearing Before the Subcomm. on Domestic Policy of the H. Comm. on Oversight & Gov't Reform*, 111th Cong. 92–93 (2010) (statement of Douglas B. Marlowe, Chief of Sci., Law & Policy, Nat'l Ass'n of Drug Court Prof'ls) (“Drug courts reduce crime, reduce drug abuse, improve family relationships, and save considerable money for taxpayers.”).

between eight and twenty-six percent.¹⁶³ Drug court participants have reported that they have experienced improved familial relationships, and data has revealed higher employment rates and incomes.¹⁶⁴

Drug courts also yield cost benefits. A recent study conducted by the Urban Institute found that drug courts produce an average of \$2.21 in direct benefits to the criminal justice system for every \$1 invested, resulting in a 221% return on investment.¹⁶⁵ These savings stem from diminishing rates of re-arrests, court hearings, and incarceration.¹⁶⁶ The result of the establishment of drug courts has been net economic benefits to local communities ranging from approximately \$3,000 to \$13,000 per drug participant.¹⁶⁷

A. Maryland's Drug Treatment Court System

Maryland's first drug treatment court began in March 1994 in the District Court for Baltimore City.¹⁶⁸ On October 23, 2001, Chief Judge Robert M. Bell of the Maryland Court of Appeals created the Judiciary's Drug Treatment Court Commission to support the establishment of drug treatment court programs in circuit courts and the District Court.¹⁶⁹ The Drug Treatment Court Commission's "vision statement" declares:

It is the vision of the Drug Treatment Court Commission that the State of Maryland is made safer through the collaboration of multi-disciplinary, government and private sector organizations and individuals working together to reduce addiction-driven crime and drug usage, to improve the quality of life and to promote the positive integration of drug abusing individuals with family and community.¹⁷⁰

As of July 2009, there were forty drug treatment courts throughout the state.¹⁷¹ Data compiled from 2007 to 2009 indicates that on average, adult drug court programs had a graduation rate of fifty-one percent for offenders who

163. *Id.* at 93.

164. *Id.* at 95.

165. *Id.* (finding that when services provided by drug courts are focused on higher risk offenders, the average return on investment has been projected to be \$3.36 for every \$1 invested).

166. *Id.* (noting that studies have shown financial benefits to the community and social services that range from \$2 to \$27 for every \$1 invested).

167. *Id.*

168. William D. McColl, *Baltimore City's Drug Treatment Court: Theory and Practice in an Emerging Field*, 55 MD. L. REV. 467, 467 (1996).

169. Order Governing the Establishment of Drug Treatment Courts (Md. Oct. 23, 2001).

170. See MD. DRUG TREATMENT COURT COMM'N, *Vision Statement*, ADMIN. OFFICE OF THE COURTS (2003), <http://www.courts.state.md.us/opsc/dtc/pdfs/visionandmissionstatement.pdf>.

171. See generally NPC RESEARCH, FINAL REPORT: MARYLAND PROBLEM-SOLVING COURTS EVALUATION, PHASE III: INTEGRATION OF RESULTS FROM PROCESS, OUTCOME, AND COST STUDIES CONDUCTED 2007-2009 (2009), available at <http://www.ndcrc.org/content/maryland-problem-solving-courts-evaluation-phase-iii>.

completed the program successfully, a nineteen percent reduction in the number of individuals who had a new criminal offense over the two years from program entry to graduation, and a twenty-nine percent reduction in the number of new arrests over the two years.¹⁷² In sum, Maryland's Drug Court system has been successful.¹⁷³

B. A Case For Maryland to Adopt the Veterans Treatment Court System

There are more than 471,000 veterans residing in the state of Maryland.¹⁷⁴ The Maryland Department of Veterans Affairs admits that the U.S. Department of Defense and the VA are having difficulty providing timely services to veterans in need.¹⁷⁵ Moreover, in 2010, the Maryland National Guard projected that it would have more troops deployed and re-deployed to combat zones than any other time since World War II.¹⁷⁶ This demand for National Guard soldiers has created a unique problem: most of these volunteer soldiers and veterans live away from the resources of military bases and oftentimes are limited to civilian health care providers.¹⁷⁷ They are separated from their comrades and injected back into civilian life without much support.¹⁷⁸ Simply put, Maryland's veterans, including its many National Guardsmen and Reservists who are suffering from PTSD and resulting behavioral and psychological disorders, are most likely not receiving adequate treatment, resulting in a perfect storm for criminal behavior and arrests.¹⁷⁹

On May 2, 2012, Governor Martin O'Malley approved a task force that is charged with researching the effectiveness of veterans treatment courts and reporting its findings to the Governor and to the Chief Judge of the Maryland Court

172. *Id.* at 61.

173. *See id.* The results from seven Maryland Adult Drug Treatment Court Program's cost evaluations show an average 24-month outcome cost savings of \$1,982 per adult drug treatment court participant when compared to the comparison group. *Id.* In sum, the results of this limited statewide evaluation indicate that the programs are mostly successful in reducing participant recidivism, with some programs having more success than others, and decreasing substance use. *Id. But see generally* DRUG POLICY ALLIANCE, DRUG COURTS ARE NOT THE ANSWER: TOWARD A HEALTH-CENTERED APPROACH TO DRUG USE, at 9 (2011) (arguing that repeated claims of drug court success due to cost savings, reduced incarceration, and increased public safety are made anecdotally by creators of the programs being evaluated).

174. *See* MD. DEP'T OF VETERANS AFFAIRS, *supra* note 27, at 19.

175. *See supra* notes 75, 83 and accompanying text.

176. *See* MD. DEP'T OF VETERANS AFFAIRS, *supra* note 27, at 23.

177. MICHELE A. HOVLAND, U.S. ARMY NAT'L GUARD, REINTEGRATION OF NATIONAL GUARD SOLDIERS WITH POST-TRAUMATIC STRESS DISORDER I (2010) ("The National Guard soldier's transition time is extremely limited. Unlike Active Component soldiers, Guard soldiers return home from combat almost directly; they must transition to civilian life in a matter of days. . . . They do not return to an Army base under the watchful eye of their platoon sergeant. They may not even retain close contact with fellow Guard soldiers with whom they deployed. Guard soldiers suffering from PTSD are essentially left alone to deal with their readjustment issues, perhaps in the hands of an uncomprehending spouse or family.").

178. *Id.*

179. *See supra* Part III.B.

of Appeals.¹⁸⁰ The task force must report back on or before December 1, 2013.¹⁸¹ While this is certainly progress, the Maryland legislature need only turn to the successes of veterans treatment courts around the country to realize that any delay in establishing such a court system for Maryland's veterans, is a delay in effectively dealing with the unique demands of veterans suffering from PTSD.¹⁸²

1. How and Why Veterans Treatment Courts Work

*"The mentoring program thrives on the premise that 'behind every successful person, there is one elementary truth: somewhere, somehow, someone cared about their growth and development. This person was their mentor.'"*¹⁸³

The first veterans treatment court was established in Buffalo, New York in 2008 by the Honorable Robert T. Russell.¹⁸⁴ Since then, more than eighty veterans treatment courts have been formed in communities across the country.¹⁸⁵ While many of these treatment courts have infused the ten key components of drug treatment courts into their framework,¹⁸⁶ the benefit of the veterans treatment court structure is that it is tailored to the needs of each veteran.¹⁸⁷ Through customized counseling and mentorship, drug and alcohol programs, and job placement programs, veterans are given a chance to begin life anew, better-suited to cope and deal with PTSD and the struggles that come with the disorder.¹⁸⁸

Across the country, newly-established veterans treatment courts model themselves after the Buffalo system.¹⁸⁹ Generally, when a person is arrested, police officers ask whether he is a veteran to determine his eligibility for veterans

180. See *infra* Part V.B.2.

181. See *infra* Part V.B.2.

182. See PSYCHOLOGICAL AND COGNITIVE INJURIES, *supra* note 13, at 149.

183. See Russell, *supra* note 21, at 370.

184. *Id.* at 364.

185. Kristina Shevory, *Why Veterans Should Get Their Own Courts: As Troops Surge Back into Domestic Life, Incarceration Isn't Always the Answer*, THE ATLANTIC (Oct. 26, 2011, 3:59 PM), <http://www.theatlantic.com/magazine/archive/2011/12/why-veterans-should-get-their-own-courts/308716/>.

186. See Russell, *supra* note 21, at 364–67.

187. *Id.* at 364 ("Veterans court allows for veterans to go through the treatment court process with people who are similarly situated and have common past experiences and needs. This type of court links individuals with service providers who either share or understand the unique experience of military service, military life, and the distinctive needs that may arise from that experience.").

188. ROBERT T. RUSSELL, VETERANS TREATMENT COURTS DEVELOPING THROUGHOUT THE NATION 2, available at http://www.ncdsv.org/images/Russell_VetsTreatmentCourtsDevelopNationwide_2009.pdf (last visited June 8, 2013).

189. See Cavanaugh, *supra* note 19, at 478–79 (noting that similar veterans treatment courts developed after the Buffalo Court opened in 2008 follow the same treatment model).

treatment court access and VA benefits.¹⁹⁰ A veteran who commits a non-violent crime and suffers from mental health or substance abuse typically is eligible for the treatment court,¹⁹¹ and must decide to go through the treatment court program or through the traditional criminal justice system.¹⁹² If a veteran chooses the treatment court program, a mental health care provider then assesses the veteran and makes a determination as to the best course of treatment.¹⁹³ A judge regularly checks on his progress and there are repercussions if the veteran fails to meet the requirements of the program; the court may order more community service, payment of fines, jail time, or re-arrest.¹⁹⁴

Through an innovative mentor program, however, veteran offenders are matched with veteran mentors who wear many hats in the treatment court process, including coach, facilitator, advisor, sponsor, and supporter.¹⁹⁵ Judge Russell has observed that veterans respond more favorably to other veterans in the court system, because veterans have many shared experiences, which are uncommon among civilians.¹⁹⁶ The mentor relationship creates a sense of camaraderie, resembling the bonds veterans once forged during their time in the military.¹⁹⁷

The implementation of veterans treatment courts are expected to yield benefits similar to those created by the successes of the drug treatment court structure.¹⁹⁸ Lower crime rates, safer communities, more gainfully employed individuals contributing to the economy, and less need for government assistance will surely have long-term benefits for local communities and the country overall.¹⁹⁹

190. U.S. DEP'T OF VETERANS AFFAIRS, *Keeping Veterans with PTSD out of the Justice System*, NAT'L CTR. FOR PTSD, <http://www.ptsd.va.gov/public/pages/keeping-PTSD-vets-out-JS.asp> (last updated Mar. 21, 2012).

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. See Cavanaugh, *supra* note 19, at 476–77.

196. See Russell, *supra* note 21, at 364.

197. See Cavanaugh, *supra* note 19, at 477 (finding that the underlying success of the mentoring program is based on the sense of camaraderie it fosters between the veteran mentor and the veteran, which boosts morale and promotes rehabilitation).

198. See Russell, *supra* note 21, at 371 (noting that it is anticipated that the Buffalo Veterans Treatment Court will produce similar benefits that have already been proven by other types of treatment courts across the country); see also *supra* Part V.A.

199. See Russell, *supra* note 21, at 371.

2. *Maryland Takes the First Steps to Establish a Veterans Treatment Court System*

Despite failed past attempts of the Maryland General Assembly to create a task force to investigate the benefits of veterans treatment courts,²⁰⁰ Governor O'Malley approved the creation of a task force on May 2, 2012.²⁰¹ The bill, entitled "Task Force on Military Service Members, Veterans and the Courts," calls for the formation of a task force to study military service-related mental health issues and related substance abuse issues and to make recommendations regarding the formation of a special court for defendants who are military members or veterans.²⁰²

The Maryland Constitution calls for a bill to be read on three different days in each house before becoming law.²⁰³ The first reading of the "Task Force on Military Service Members, Veterans, and the Courts" bill took place in the Senate on January 11, 2012 and a hearing took place on February 28.²⁰⁴ On March 13, a favorable report was adopted and a second reading was passed. A day later, the bill passed the third reading by a unanimous vote.²⁰⁵ The bill was sent to the House of Delegates on March 15 and a hearing took place on March 28.²⁰⁶ Two days later, a favorable report was adopted and second reading was passed.²⁰⁷ The bill was voted upon favorably for a third time by the House of Delegates.²⁰⁸ Upon Governor O'Malley's signing on May 2, 2012, the bill became law, marking a major step in the right direction for the veterans, family members and citizens of Maryland.²⁰⁹

VI. CRITICS OF THE VETERANS TREATMENT COURT MODEL

The veterans treatment court model is not without its critics. One main concern voiced by the American Civil Liberties Union (ACLU) is that veterans will be afforded legal rights unavailable to civilians, thereby creating a distinct legal

200. See DEP'T OF LEGIS. SERVS., FISCAL & POLICY NOTE, H.B. 252, Reg. Sess., at 3 (2012). SB 531 of 2011 passed the Senate, as amended, but received an unfavorable report from the House Judiciary Committee. *Id.* The cross-filed bill, HB 336, also received an unfavorable report from the House Judiciary Committee. HB 639 of 2010 passed the House, as amended, and was further amended in the Senate on second reading; no further action was taken on the bill. *Id.*

201. See *supra* note 25 (H.B. 252, 430th Leg., Reg. Sess. (Md. 2012)).

202. *Id.*

203. MD CONST. art. III, § 27(a).

204. See Senate Bill 18, *History by Legislative Calendar*, available at <http://mgaleg.maryland.gov/webmga/frmMain.aspx?ys=2012rs%2fbillfile%2fsb0018.htm>.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. See *supra* note 24 and accompanying text.

class of criminals based on their veteran status.²¹⁰ Another criticism is that civilians who have PTSD are ineligible for special courts, yet the overly-broad legal term “veterans” covers anyone who served time in any war in which the United States has participated, despite varied experiences and exposure to trauma.²¹¹ Thus, critics argue, only veterans with PTSD are privileged and have access to tailored treatment and care, despite the fact that many civilians also suffer from PTSD and commit crimes resulting from such a disorder.²¹²

Finally, some detractors take their criticism to the other extreme, arguing that many veterans treatment courts are inadequate because they fail to accept into the system those veterans who commit violent crimes.²¹³ These violent offenders whose actions can be linked to PTSD are the ones who most need access to treatment; “[t]he very skills these people are taught to follow in combat are the skills that are a risk at home.”²¹⁴ Yet, they are automatically barred from the veterans treatment court system.²¹⁵ A *New York Times* study found 121 cases of OEF and OIF veterans who had committed or were charged with murder; of those 121 cases, “the overwhelming majority of these [veterans], unlike most civilian homicide offenders, had no criminal history.”²¹⁶ The study revealed that there has been an eighty-nine percent increase in the number of homicides committed by active duty military personnel; three-fourths of these homicides were committed by veterans who served in OEF and OIF.²¹⁷ While the veterans involved in the murder cases were screened for PTSD at the end of their tours, very few received any follow-up treatment, despite displaying symptoms.²¹⁸ These veterans need treatment, not incarceration.²¹⁹

210. Dahlia Lithwick, *A Separate Peace: Why Veterans Deserve Special Courts*, THE DAILY BEAST (Feb. 10, 2010), <http://www.thedailybeast.com/newsweek/2010/02/10/a-separate-peace.html> (quoting Lee Rowland of the ACLU of Nevada who opposes Nevada’s proposed veterans court bill because it gives “an automatic free pass based on military status to certain criminal-defense rights that others don’t have.”); see also Shevory, *supra* note 185 (quoting ACLU of Nevada’s general counsel who argues, “[w]e’re not against diversionary programs, but the idea of an entirely different court system based on status doesn’t make sense. . . . Does that mean a police officer who is accused of a crime should have a separate court because of his stress?”).

211. See Lithwick, *supra* note 210.

212. See, e.g., *id.*

213. See, e.g., Fred Minnick, *Veterans Courts Offer Second Chance*, VFW MAGAZINE (Mar. 2011), http://digitaledition.qwinc.com/display_article.php?id=631301.

214. See Cavanaugh, *supra* note 19, at 486.

215. See Minnick, *supra* note 213.

216. See Sontag & Alvarez, *supra* note 82.

217. *Id.*

218. *Id.*; see also McGrane, *supra* note 104, at 191–93.

219. See Tanielian & Jaycox, *supra* note 17.

VII. CONCLUSION

*“War is an evil thing. War changes people. War destroys people. War does not affect every participant in exactly the same way . . . Certainly there are people who are better able to deal with or cope with the demands of war”*²²⁰

When veterans return home from war, they come back as different people.²²¹ Many veterans are able to successfully re-adjust to civilian life, but for those veterans who are suffering from PTSD and finding themselves in trouble with the law, veterans treatment courts offer a proven system that holds veterans accountable, while getting to the root cause of the criminal behavior.²²²

The veterans treatment court model recognizes that many veterans with combat-related PTSD return from war seeing the world in a wholly different way: in their minds, bright lights become explosions, cell phones become bomb detonators, strangers become enemy combatants.²²³ For those veteran sufferers who turn to risky behavior to cope with PTSD, and in turn, find themselves in trouble with the law, the structure of the veterans treatment court becomes a familiar system that provides a regimented process based on camaraderie, mentorship, and accountability.²²⁴ In essence, the justice system can be easily understood and seen through a soldier’s eyes because it mirrors the structure of military life.²²⁵

In the words of Matt Stiner, the Director of Development and Outreach for Justice For Vets:

The United States Military instills a sense of discipline, duty and respect that is evident in millions of veterans who return home strengthened by their experience. But we must not forget that some veterans struggle upon their return. For those whose struggles lead them into the criminal justice system, Veterans Treatment Courts are ensuring that we leave no veteran behind.²²⁶

Due to the clear benefits of Veterans Treatment Courts to those who have served our country in combat situations and the societal benefits of such courts, the Maryland General Assembly must establish a veterans treatment court system for the benefit of Maryland veterans, family members, and Marylanders at large.

220. Interview by Kara Miller with Andrew Bacevich, Professor, Boston Univ., and Colonel, U.S. Army (Ret.), Boston, MA (Mar. 19, 2012), *available at* <http://www.wgbh.org/programs/Greater-Boston-11/episodes/Mar-19-2012The-Afghanistan-massacre-and-the-toll-of-war-37109>.

221. *See supra* Part III.

222. *See supra* Part V.B.1.

223. *See supra* Part V.B.1.

224. *See supra* Part V.B.1.

225. *See supra* Part V.B.1.

226. Christopher Deutsch, *Veterans Treatment Courts*, AM. VETERAN (2012), <http://pubs.royle.com/article/Veterans+Treatment+Courts/971604/100082/article.html>.