

South Carolina Law Review

Volume 65
Issue 4 *SURVEY OF SOUTH CAROLINA LAW*
and *FOURTH CIRCUIT SURVEY*

Article 11

Summer 2014

The Veterans Treatment Court Program Act: South Carolina's Opportunity to Provide Services for Those Who Have Been Served

John Furman Wall IV

Follow this and additional works at: <https://scholarcommons.sc.edu/sclr>



Part of the [Law Commons](#)

Recommended Citation

Wall, John Furman IV (2014) "The Veterans Treatment Court Program Act: South Carolina's Opportunity to Provide Services for Those Who Have Been Served," *South Carolina Law Review*: Vol. 65 : Iss. 4 , Article 11.

Available at: <https://scholarcommons.sc.edu/sclr/vol65/iss4/11>

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact digres@mailbox.sc.edu.

**THE VETERANS TREATMENT COURT PROGRAM ACT:
SOUTH CAROLINA’S OPPORTUNITY TO PROVIDE SERVICES FOR
THOSE WHO HAVE SERVED**

I. INTRODUCTION879

II. HISTORY OF VETERANS TREATMENT COURTS.....881

 A. *Casualties of War*882

 1. *Mental Health*884

 2. *Substance Abuse*885

 3. *Unemployment & Homelessness*886

 4. *Suicide*.....886

 B. *Veterans Treatment Courts*.....886

 1. *History*887

 2. *Operation of Veteran Treatment Courts*888

 3. *Success of Existing Veterans Treatment Courts*.....892

III. SOUTH CAROLINA’S VETERANS TREATMENT COURT PROGRAM ACT.....894

 A. *South Carolina Will Benefit by Passing House Bill 3014*.....895

IV. PROPOSED GUIDELINES FOR NEW SOUTH CAROLINA VETERANS
TREATMENT COURTS898

 A. *Training of Key Personnel*.....898

 B. *Coordination with Community Service Providers*899

V. CONCLUSION.....900

I. INTRODUCTION

“Recognizing that I volunteered as a Ranger, fully knowing the hazards of my chosen profession, I will always endeavor to uphold the prestige, honor, and high esprit de corps of the Rangers.”¹ After completing a grueling physical workout, over eight hundred elite warriors gather to recite this phrase in unison before showering, eating, donning their gear, and drawing their weapons. Although the men only returned from hunting down the most dangerous insurgent leaders in combat two weeks earlier, these battle-hardened operators are sharpening the spear in preparation for their next combat deployment. Rangers, as well as other service members, know that they might make the ultimate sacrifice. They escort their fallen brothers home, take care of their grieving families, and honor them by continuing to fight. After more than a decade of intense fighting and constant deployments, every man donning a tan

1. SH 21-76 United States Army Ranger Handbook (2006) (emphasis added) [hereinafter Ranger Creed].

beret and reciting these words would warn others that it is impossible to anticipate all of the hardship one can incur from serving one's country.²

This inability to anticipate the harmful effects of war is not only applicable to Army Rangers: it also rings true for service members in every branch of the military. As a result of their service, an astonishing 20% of the total veterans of Iraq and Afghanistan suffered from either post-traumatic stress disorder (PTSD) or major depression in 2008.³ This trauma affects those soldiers deployed overseas and those serving their country stateside alike.⁴ Additionally, military units often discharge soldiers with mental health or substance abuse issues because they do not have the time or resources to properly treat these individuals, forcing civilian society to bear the burden of dealing with these wounded warriors.⁵

This Note argues that South Carolina should raise awareness of these issues and establish a tailored and efficient program to provide treatment for service members with mental health or substance abuse issues by passing the Veterans Treatment Court Program Act (VTCPA). Part I highlights how the unique problems veterans endure can lead to criminal behavior. Part I also examines the history and success of veterans treatment courts and confronts the arguments against these courts. Part II presents the ways in which South Carolina would benefit from passing the VTCPA. Part III discusses procedures that new veterans treatment courts can implement to maximize rehabilitative efforts. Part IV concludes this Note by asserting that the growing needs of veterans demand that South Carolina pass the VTCPA and continue to serve its citizens who admirably served their state and country.

2. This Author had the privilege of serving with some of America's most intelligent and physically gifted young men during five combat deployments and has witnessed firsthand the harmful effects suffered by veterans in this country.

3. See West Huddleston, *Veterans Treatment Courts: Giving Struggling Veterans the Help They've Earned*, in LAWYERS WORKING TO END HOMELESSNESS AMONG VETERANS (forthcoming 2014) (manuscript at 1) (on file with *South Carolina Law Review*) (estimating that, in 2008, 20% or 460,000 of Iraq and Afghanistan veterans suffered from either PTSD or major depression); see also OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., SERIOUS PSYCHOLOGICAL DISTRESS AND SUBSTANCE USE DISORDER AMONG VETERANS 4 (2007), available at <http://www.samhsa.gov/data/2k7/veteransDual/veteransDual.htm> (estimating that, at the end of 2006, one-fifth of Iraq and Afghanistan veterans suffered from a substance abuse issue (citing K.H. Seal, et al., *Bringing the War Back Home: Mental Health Disorders Among 103,788 US Veterans Returning from Iraq and Afghanistan Seen at Department of Veterans Affairs Facilities*, 167 ARCHIVES INTERNAL MED. 476, 476-82 (2007))).

4. See TERRI TANELIAN ET AL., RAND CTR. FOR MILITARY HEALTH POLICY RESEARCH, INVISIBLE WOUNDS OF WAR: SUMMARY AND RECOMMENDATIONS FOR ADDRESSING PSYCHOLOGICAL AND COGNITIVE INJURIES 2 (2008) (estimating that around 9% of nondeploying veterans had mental health issues (citing Charles W. Hoge et al., *Combat Duty in Iraq and Afghanistan, Mental Health Problems, and Barriers to Care*, 351 NEW ENG. J. MED. 13, 13 (2004))).

5. Elliot Blair Smith, *War Heroes Gone Bad Divided by Courts Favoring Prison or Healing*, BLOOMBERG NEWS, Nov. 2, 2012, <http://www.businessweek.com/printer/articles/356590?type=bloomberg>.

II. HISTORY OF VETERANS TREATMENT COURTS

Unlike the post-Vietnam era in America, some states utilize veterans courts today to treat and rehabilitate service members who have committed crimes connected to their mental and substance abuse issues.⁶ In early October of 2013, ten service members celebrated their recovery and thanked the Richland County Veterans Treatment Court program for its assistance.⁷ The importance of caring for this nation's veterans was resoundingly clear as a young veteran publicly acknowledged a Vietnam veteran classmate and expressed his gratitude for receiving help at a much faster rate than his Vietnam compatriot.⁸

Concerned with the high number of soldiers in their courtrooms with substance abuse and mental health issues, state judges coordinated with U.S. Department of Veterans Affairs (VA) officials, local prosecutors, public defenders, and other volunteers to establish exclusive veteran case proceedings modeled after drug treatment courts.⁹ Before veterans can participate in the program, they must plead guilty and "the judge, prosecutor and defense counsel must agree the offense was motivated by substance abuse or mental illness rather than criminal intent."¹⁰ Similar to drug courts, participants are generally limited to nonviolent offenders.¹¹ Moreover, participation in the veterans courts is conditioned upon regular court visits, drug and alcohol screenings, and counseling appointments.¹² Since the first court opened in Buffalo, New York, in 2008, 120 veterans treatment courts currently operate in thirty-five states with over 100 additional courts preparing to operate in the future.¹³ Of the 377 graduates from the first four veterans treatment courts—located in Buffalo, Tulsa, Orange County, and Rochester—only eleven graduates returned to the traditional criminal court system for later offenses.¹⁴ Thanks to high levels of

6. See Beth Totman, *Seeing the Justice System Through a Soldier's Eyes: A Call to Action for Maryland to Adopt a Veterans Treatment Court System*, 16 J. HEALTH CARE L. & POL'Y 431, 433 (2013) (citing 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, 464, 465 (2011); Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 357, 369 (2009)).

7. Program from Fifth Circuit Veterans Court Graduation (Oct. 8, 2013) (on file with *South Carolina Law Review*).

8. Address at the Fifth Circuit Veterans Court Graduation (Oct. 8, 2013). Specifically, it took the Vietnam veteran thirty more years to obtain help than his young compatriot. *Id.*

9. Press Release, Nat'l Dist. Attorneys Ass'n, Nat'l Dist. Attorneys Ass'n Endorses the Establishment and Funding of Veterans Courts and Programs, *available at* [http://justiceforvets.org/sites/default/files/files/National%20District%20Attorney%27s%20Associati](http://justiceforvets.org/sites/default/files/files/National%20District%20Attorney%27s%20Association.pdf) on.pdf.

10. Smith, *supra* note 5.

11. 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, 910 (2013); Nat'l Dist. Attorneys Ass'n, *supra* note 9.

12. Nat'l Dist. Attorneys Ass'n, *supra* note 9.

13. Smith, *supra* note 5.

14. Justice for Vets, NAT'L ASS'N OF DRUG COURT PROF'LS 4.

success and funding from the federal government, veterans treatment courts continue to expand.¹⁵

A. Casualties of War

“Acknowledging the fact that a Ranger is a more elite Soldier who arrives at the cutting edge of battle by land, sea, or air, I accept the fact that as a Ranger *my country expects me to move further, faster, and fight harder than any other soldier.*”¹⁶

According to a VA report released in April 2013, the United States has around 22,328,000 veterans.¹⁷ This large number includes over 2.2 million Iraq and Afghanistan veterans who deployed on multiple combat rotations, spent little time recovering between deployments, and fought a unique type of war.¹⁸ Almost half of these veterans were deployed on multiple combat rotations—with an average deployment of 16.9 months in combat¹⁹—and the present war is the longest sustained military operation since the Vietnam War.²⁰ Unfortunately, the average soldier spends only twenty-one months at home before deploying again.²¹

On top of longer deployments, constant redeployments, and infrequent breaks between deployments, our service members experience some of the most traumatic experiences imaginable.²² Improved explosive devices, suicide vehicle-borne improved explosive devices, and suicide bombers are the weapons of choice that enemies use to take the lives, limbs, and sanity of our service

15. See generally Ben Gales & Paul Freese, *An Innovative Court for Veterans in Los Angeles County*, L.A. LAW., Nov. 2012, at 24, 27 (explaining the ways in which veterans courts are succeeding and growing in popularity).

16. Ranger Creed, *supra* note 1 (emphasis added).

17. NAT'L CTR. FOR VETERANS ANALYSIS & STATISTICS, DEPARTMENT OF VETERANS AFFAIRS STATISTICS AT A GLANCE, U.S. DEP'T OF VETERANS AFFAIRS (April 2013), available at http://www.va.gov/vetdata/docs/quickfacts/Homepage_slideshow_03_31_13.pdf.

18. INST. OF MED. OF THE NAT'L ACADS., RETURNING HOME FROM IRAQ AND AFGHANISTAN: ASSESSMENT OF READJUSTMENT NEEDS OF VETERANS, SERVICE MEMBERS, AND THEIR FAMILIES 13 (2013) [hereinafter ASSESSMENT OF READJUSTMENT]. In November 2010, the VA reported that South Carolina has 408,747 known veterans. U.S. DEP'T OF VETERANS AFFAIRS, SOUTH CAROLINA STATE SUMMARY (2010).

19. See ASSESSMENT OF READJUSTMENT, *supra* note 18, at 41.

20. *Id.* at 13.

21. *Id.* at 41. In fact, even after five deployments in five years and spending over twenty-three months in combat as an Army Ranger, this Author was still one of the soldiers with the least amount of combat experience in the unit.

22. Totman, *supra* note 6, at 434 (citing *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*, Hearing Before the Subcomm. on Disability Assistance & Mem'l Affairs of the H. Comm. on Veterans Affairs, 111th Cong. 1 (Mar. 24, 2009) (testimony of Terri Tanielian, Study Co-Director, Invisible Wounds of War Study Team, the RAND Corporation) [hereinafter Tanielian Testimony], available at http://www.rand.org/content/dam/rand/pubs/testimonies/2009/RAND_CT321.pdf).

members.²³ It is hard to witness a suicide bombing, and even harder to cope with the experience.²⁴ The trauma that accompanies witnessing a child suicide bomber complete the mission and injure one's comrades is unimaginable.²⁵ These constant stressors over multiple deployments have a lasting impact on the military and create invisible wounds that are almost impossible to detect and heal.²⁶

The protective equipment technology utilized at the start of the war, as well as advancements in armor, medical gear, and the experience of medical personnel, have fortunately saved many American lives.²⁷ Despite the technological advancements protecting soldiers' bodies, however, it is still impossible to shield soldiers from emotional scarring.²⁸ If stress from deployments was not enough, time spent away from family while deployed and time spent constantly training for deployments while home takes a heavy toll on the families of American soldiers.²⁹ Fortunately, with the United States slowly withdrawing its troops from foreign engagements, fewer troops are being deployed.³⁰ Reductions in our Armed Forces are imminent, however, and will likely leave more veterans without jobs and entangled in the legal system.³¹

23. See *id.* at 435 (citing NAT'L ACADS. & U.S. DEP'T OF HOMELAND SEC., IED ATTACK: IMPROVISED EXPLOSIVE DEVICES, available at www.dhs.gov/xlibrary/assets/prep_ied_fact_sheet.pdf; Press Release, RAND Corp., One in Five Iraq and Afghanistan Veterans Suffer from PTSD or Major Depression (Apr. 17, 2008), <http://www.rand.org/news/press/2008/04/17.html> [hereinafter RAND Corp. 2008 Press Release]).

24. See generally *id.* (explaining the psychological effects of the tactics soldiers in Iraq and Afghanistan have had to face).

25. See generally *id.* (quoting Jeremy Proffitt, *Fighting the War at Home*, ANOTHERSOURCE.ORG, http://www.anothersource.org/ptsd_1.html (last visited Mar. 11, 2014)) (citing RAND CORP. 2008 Press Release, *supra* note 23) (explaining how the threat of harm to themselves and their friends is a constant struggle that soldiers cannot shut off).

26. See generally *id.* ("Such extreme stress increases the risk for PTSD and major depression.").

27. See *id.* at 434 (citing Tanielian Testimony, *supra* note 22, at 1–2).

28. *Id.* at 435 (citing Tanielian Testimony, *supra* note 22, at 2).

29. See *How Deployment Stress Affects Families*, MILITARY.COM, <http://www.military.com/deployment/effects-deployment-families.html> (last visited Mar. 12, 2014) (explaining the negative effects deployments can have on military families).

30. See generally Thom Shanker, *Military Plans Reflect Afghanistan Uncertainty*, N.Y. TIMES, Jan. 30, 2014, at A12, available at <http://www.nytimes.com/2014/01/30/world/asia/us-and-nato-afghanistan.html>

31. In July of 2013, the Army alone announced that it will cut over 80,000 soldiers. Michelle Tan, *The Huge BCT Overhaul*, ARMY TIMES (Jul. 2, 2013), <http://www.armytimes.com/article/20130702/NEWS/307020002/The-huge-BCT-overhaul>. More recently, the Army announced that it will also cut another 120,000 troops over the next five years. Lance M. Bacon, *Chief, Congress and DoD Hammer Out Army's Future Manning Levels*, ARMY TIMES (Oct. 7, 2013).

1. *Mental Health*

“Never shall I fail my comrades[.] I will always keep myself mentally alert, physically strong and morally straight and I will shoulder more than my share of the task whatever it may be, one hundred percent and then some.”³²

While mental illness and psychological trauma have plagued American combat veterans of all conflicts, it was not until 1980—five years after the conclusion of the Vietnam War—that the American Psychiatric Association formally recognized PTSD as a mental disorder.³³ PTSD and traumatic brain injury (TBI) are common among new veterans and have been described as the “signature injuries” of the wars in Iraq and Afghanistan.³⁴ For the past decade, reports consistently demonstrated that at least 25% of Iraq and Afghanistan veterans suffer from mental health disorders.³⁵ Additionally, around 5% of these veterans met criteria for both a mental health problem and TBI.³⁶ Furthermore, mental health issues even plague veterans who have not deployed—especially women in the military who sometimes endure the “psychological impact of sexual trauma perpetrated by fellow military personnel.”³⁷ The increasing number of reports and committees examining the psychological impacts on service members³⁸ illustrates the deep concern of both the American public and policymakers.

Although the percentages of service members with mental illness issues vary, articles and reports estimating the percentage of service members with such

32. Ranger Creed, *supra* note 1.

33. Cavanaugh, *supra* note 6, at 467 (citing Christopher Hawthorne, *Bringing Baghdad into the Courtroom: Should Combat Trauma in Veterans Be Part of the Criminal Justice Equation?*, CRIM. JUST., Summer 2009, at 4, 6).

34. Russell, *supra* note 6, at 360 (citing DEP’T OF DEF. TASK FORCE ON MENTAL HEALTH, AN ACHIEVABLE VISION: REPORT OF THE DEPARTMENT OF DEFENSE TASK FORCE ON MENTAL HEALTH ES-1 (2007)).

35. See ASSESSMENT OF READJUSTMENT, *supra* note 18, at 14 (citing Hoge et al., *supra* note 4, at 13). In 2004, reports estimated that over 25% of troops returning from Afghanistan and Iraq were plagued by mental health disorders. *Id.* (citing Hoge et al., *supra* note 4, at 13). In 2008, another report estimated that over 40% of troops deployed to Afghanistan or Iraq reported symptoms of PTSD, depression, or a probable TBI during deployment. See *id.* (estimating that 18.5% of returning service members had signs of PTSD or depression, 19.5% had probable TBI during deployment, and 7% met the criteria for both a mental health problem and TBI (citing TANIELIAN ET AL., *supra* note 4, at 11)). Another recent report examining only the Army stated that 42% of active duty soldiers and 92% of previously deployed Army Guard and Reserve members screened positive for PTSD. Totman, *supra* note 6, at 439–40 (citing 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)).

36. See ASSESSMENT OF READJUSTMENT, *supra* note 18, at 14 (citing TANIELIAN ET AL., *supra* note 4, at 12).

37. Russell, *supra* note 6, at 361–62 (citing DEP’T OF DEF. TASK FORCE ON MENTAL HEALTH, *supra* note 34, at 59).

38. See, e.g., ASSESSMENT OF READJUSTMENT, *supra* note 18 (reporting the psychological impacts on soldiers returning from deployment).

health issues acknowledge that estimates are likely too low because service members are not aware of their issues, service members do not report known issues, and military mental health services attempting to track these issues do not have the resources to accurately report, monitor, or even treat mental illness.³⁹ If untreated, mental illness often leads to other issues, including substance abuse, strained relationships, homelessness, and suicide.⁴⁰ Because recent veterans experience PTSD and TBI more than veterans of prior conflicts, these issues have correlated with an increase in criminal behavior and the number of veterans involved in the criminal justice system.⁴¹

2. *Substance Abuse*

Unsurprisingly, veterans also have higher rates of alcoholism and heavy alcohol use than their nonveteran counterparts.⁴² Studies also show that 12% of active-duty military personnel report prescription drug abuse—a percentage almost three times higher than nonveteran counterparts.⁴³ A strong correlation appears to exist between substance abuse and veterans in the criminal justice system, with 81% of criminal defendants reporting drug use problems and over 30% reporting alcohol dependency.⁴⁴ In this Author's experience as an Army Ranger, many alcohol and drug issues are not discovered until a service member's work performance suffers, leaving many substance abuse issues unreported. The severity of the problem is exacerbated because the few veterans who actually self-report issues almost never receive further examinations or treatment.⁴⁵

39. See Russell, *supra* note 6, at 360–61 (citing DEP'T OF DEF. TASK FORCE ON MENTAL HEALTH, *supra* note 34, at ES-1 to ES-3; Alan Maimon, *Combat's 'Invisible Wounds,'* LAS VEGAS REV.-J., Dec. 21, 2008, available at <http://www.lvrj.com/news/36525319.html>).

40. See Russell, *supra* note 6, at 362; Totman, *supra* note 6, at 441–42 (citations omitted); see also Huddelston, *supra* note 3, (manuscript at 3) (discussing the reasons many veterans are homeless (citing OFFICE OF INSPECTOR GEN., U.S. DEP'T OF VETERANS AFFAIRS, REP. NO. 11-03428-173, HOMELESS INCIDENCE AND RISK FACTORS FOR BECOMING HOMELESS IN VETERANS (2012), available at <http://www.va.gov/oig/pubs/vaoig-11-03428-173.pdf>).

41. See Cavanaugh, *supra* note 6, at 470; Russell, *supra* note 6, at 362.

42. See ASSESSMENT OF READJUSTMENT, *supra* note 18, at 103 (citing BRAY ET AL., RTI INT'L 2008 DEPARTMENT OF DEFENSE SURVEY OF HEALTH RELATED BEHAVIORS AMONG ACTIVE DUTY MILITARY PERSONNEL: A COMPONENT OF THE DEFENSE LIFESTYLE ASSESSMENT PROGRAM (DLAP) (2009)).

43. See *id.* (citing BRAY ET AL., *supra* note 42).

44. Russell, *supra* note 6, at 362–63 (citing Under Secretary for Health's Information Letter, Dep't of Veterans Affairs, Guidelines and Recommendations for Services Provided by VHA Facilities to Incarcerated Veterans Re-Entering Community Living (June 27, 2006), available at http://www1.va.gov/homeless/docs/IV_IL_10200607.pdf).

45. See, e.g., ASSESSMENT OF READJUSTMENT, *supra* note 18, at 95 (noting that a 2012 Army study found that 12% of soldiers reported alcohol problems on Post Deployment Health Risk Assessments (PDHRAs), but only 2% were referred to personnel for evaluations (citing U.S. DEP'T OF THE ARMY, ARMY 2020: GENERATING HEALTH AND DISCIPLINE IN THE FORCE, at 30 (2012)).

3. *Unemployment & Homelessness*

Unfortunately, Iraq and Afghanistan veterans also have higher unemployment rates than American civilians their age.⁴⁶ Although only 7% of Americans are veterans,⁴⁷ veterans make up almost 12% of the homeless adult population—and, according to the U.S. Department of Housing and Urban Development (HUD), the numbers are increasing.⁴⁸ Increases in PTSD, unemployment, and homelessness among veterans correlate with the increasing numbers of veterans becoming entangled in the legal system.⁴⁹ Of the forty participants thus far in the Fifth Judicial Circuit Veterans Court in Richland County, South Carolina, twenty-four participants were homeless when they entered the program.⁵⁰

4. *Suicide*

In February 2013, the VA reported that around twenty-two veterans take their own lives each day.⁵¹ The report also noted that, in reality, this number is likely much higher due to the limited scope of the study, which analyzed data on suicide rates between 1999 and 2011 from twenty-one states that make up only around 40% of the U.S. population.⁵²

B. *Veterans Treatment Courts*

“I will always place the mission first. I will never accept defeat. I will never quit. I will never leave a fallen comrade.”⁵³

46. See Press Release, Bureau of Labor Statistics, U.S. Dep’t of Labor, Employment Situation of Veterans: 2012, at 2 (March 20, 2013), available at <http://www.bls.gov/news.release/pdf/vet.pdf>.

47. See *State and County Quick Facts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/00000.html> (last visited Mar. 13, 2014).

48. *FAQ About Homeless Veterans*, NAT’L COAL. FOR HOMELESS VETERANS, http://nchv.org/index.php/news/media/background_and_statistics/ (last visited Mar. 13, 2014).

49. See *id.*; see also *supra* note 40 and accompanying text (discussing the link between PTSD and criminal behavior).

50. Memorandum from the Solicitor’s Office, S.C. Fifth Judicial Circuit, Veterans Treatment Mentor Court (2013) (on file with *South Carolina Law Review*).

51. Moni Basu, *Why Suicide Rate Among Veterans May be More Than 22 a Day*, CNN (Nov. 14, 2013, 12:08 PM), <http://www.cnn.com/2013/09/21/us/22-veteran-suicides-a-day>; see also Lauren Sausser, *Vet Fights Hidden Toll of War: Speaks to Citadel on PTSD, Suicide*, POST AND COURIER, Mar. 14, 2013, at B2 (noting that “about 22 veterans commit suicide each day in the U.S.”). Unfortunately, the number of South Carolina veterans who commit suicide is unavailable because the South Carolina Office of Veterans Affairs did not track the numbers and did not report its figures to the VA. Sausser, *supra*.

52. Banu, *supra* note 51; Sausser, *supra* note 51.

53. *Warrior Ethos*, U.S. ARMY, <http://www.army.mil/values/warrior.html> (last visited Mar. 13, 2014).

For the past decade, service members have continued to place the needs of their country, their units, and their fellow service members above their own needs and the needs of their families. Many of these men and women have been discharged from the military on an honorable status but with serious issues related to their service.⁵⁴ Unfortunately, a large number of service members suffer from PTSD, TBI, and other mental disorders that lead to substance abuse, domestic violence, and other criminal activity.⁵⁵ With a growing number of veterans entangled in the criminal justice system, local judges decided to establish a new type of specialty court, the veterans treatment court, to work with federal agencies to rehabilitate these veterans, reduce their risk of recidivism, and honor men and women who have sacrificed so much for the American public.⁵⁶ According to the Supreme Court, U.S. courts are historically more lenient on veterans and formally acknowledge the relationship between PTSD and criminal behavior.⁵⁷

1. History

In January of 2008, Judge Robert T. Russell created the first veterans treatment court in Buffalo, New York, after noticing an increased number of combat veterans on his docket.⁵⁸ Today, communities are following Judge Russell's lead by creating new problem solving courts at faster rates than any other treatment model in the United States.⁵⁹ According to a report released on February 7, 2013, 168 veterans courts are currently operating in thirty-five different states.⁶⁰

54. See generally Evan R. Seamone, *Reclaiming the Rehabilitative Ethic in Military Justice: The Suspended Punitive Discharge as a Method to Treat Military Offenders with PTSD and TBI and Reduce Recidivism*, MIL. L. REV., Summer 2011, at 1, 3 (noting that military courts-martial for drugs and alcohol abuse are growing and often "result in punitive discharges that preclude mentally ill offenders from obtaining Veterans Affairs (VA) treatment"). Additionally, "[t]he lack of concern for treatment [in the military] is troublesome because of its inherent assumption that *somebody else*, outside of the military, will someday be responsible for dealing with aggravated psychological problems." *Id.* at 27–28.

55. See Cavanaugh, *supra* note 6, at 464–65 (citing RAND CORP. 2008 Press Release, *supra* note 23).

56. See *id.* at 465.

57. See Totman, *supra* note 6, at 443 (quoting and citing *Porter v. McCollum*, 558 U.S. 30, 43–44 (2009) (per curiam)).

58. See *id.* at 447 (citing William H. McMichael, *The Battle on the Home Front: Special Courts Turn to Vets to Help Other Vets*, A.B.A. J. (Nov. 1, 2011, 4:10 AM), http://www.abajournal.com/magazine/article/the_battle_on_the_home_front_special_courts_turn_to_vets_to_help_other_vets/).

59. See McCormick-Goodhart, *supra* note 11, at 908.

60. See JIM MCGUIRE ET AL., AN INVENTORY OF VA INVOLVEMENT IN VETERANS COURTS, DOCKETS AND TRACKS 1, 9 (2013), available at <http://www.justiceforvets.org/sites/default/files/files/An%20Inventory%20of%20VA%20involvement%20in%20Veterans%20Courts.pdf>.

2. *Operation of Veteran Treatment Courts*

Most veterans treatment courts do not limit admission to veterans of Afghanistan and Iraq but accept veterans of all branches and service eras.⁶¹ While all of these courts require a positive mental health or substance abuse diagnosis to participate in the program, very few courts require combat experience or proof that the adverse condition is military-related.⁶² Additionally, the majority of veterans courts allow veterans who do not qualify for Veterans Health Administration benefits to participate in the program.⁶³ Around 71% of the current courts allow National Guard and Reserve members to participate and over half of the courts admit active duty service members.⁶⁴ While a majority of the courts, 61%, accept both felony and misdemeanor cases, veterans cases involving felonies are typically limited.⁶⁵ Furthermore, 74% of these courts have county-level jurisdiction and 37% of the 168 courts also accept veterans with out-of-jurisdiction charges.⁶⁶ Veterans courts universally involve four main participants, all of whom are critical to the operation and success of the courts: (1) the veteran participant, (2) veterans treatment court teams, (3) treatment providers, and (4) mentors.⁶⁷

a. *The Veteran Participant*

Ultimately, it is up to the veterans charged with an offense to take advantage of the veterans treatment court system to “end their involvement with the justice system.”⁶⁸ Typically, local police identify potentially eligible veterans at the time of arrest and notify the VA.⁶⁹ To participate in the program, veteran defendants must plead guilty to their criminal charges and consent to routine court evaluations, as well as extensive counseling and random drug screenings,

61. See *id.* at 5 (providing that 96% of veterans treatment courts accept veterans from all branches and service eras).

62. See *id.* (noting that only 14% of the 168 veteran treatment courts required that veterans’ mental health conditions be military related and only 8% required service in combat before veterans were allowed to participate).

63. See *id.*

64. See *id.* at 6.

65. *Id.* The few courts that accept veterans with felony charges do so on a case-by-case basis and often limit participation to those eligible for a reduction to a misdemeanor. See *id.* If the felony charge involves violence, the courts require the victim’s consent before the veteran can participate in the rehabilitation process. See *id.*

66. *Id.*

67. See *id.* at 3.

68. See *id.*

69. See, e.g., Cavanaugh, *supra* note 6, at 475 (noting that, in the Buffalo veterans treatment court model, local police determine an offender’s veteran status at the time of arrest (citing Aaron Levin, *Special Veterans’ Court Focuses on MH Recovery*, PSYCHIATRIC NEWS, Sept. 19, 2008, available at <http://psychnews.psychiatryonline.org/newsarticle.aspx?articleid=112070>)).

alcohol screenings, or both.⁷⁰ The rescindable nature of the program and rigorous requirements keep veterans accountable for their recovery and do not allow veterans to avoid criminal punishment for their actions.⁷¹ For those who believe veterans treatment courts afford veterans preferential treatment, one cannot overlook the fact that the veterans treatment regime requires participants to spend more time and effort than would be involved if the participants chose the traditional criminal sentence.⁷² The courts work closely with the VA, police agencies, prosecutors, defenders, local veterans organizations, and mental health experts to provide rehabilitative treatment that veterans would be eligible to receive even without the criminal charges.⁷³ Once a veteran successfully completes the program, the prosecutor normally reduces or drops the charges against the participant.⁷⁴

b. Veterans Treatment Court Teams

Normally, a veterans treatment court includes a Veterans Justice Outreach (VJO) specialist, the judge, the prosecutor, defense counsel, the probation officer, other representatives from the VA, and a correctional facility representative.⁷⁵ VJO specialists are involved in almost every veterans treatment court⁷⁶ and serve as an essential link by providing access to VA records and immediately determining whether the veteran is eligible for VA benefits.⁷⁷ A VJO specialist typically meets with the veteran offender first to determine whether the veteran is suitable for medical treatment; after meeting with the veteran offender, the VJO specialist issues a report to the veterans treatment court “outlining the offender’s criminal history and a proposed treatment plan.”⁷⁸

70. See Nat’l Dist. Attorneys Ass’n, *supra* note 9.

71. See generally *id.* (“Should they waver from the straight and narrow, their sentence goes into effect.”).

72. See, e.g., McCormick-Goodhart, *supra* note 11, at 907 (citing Amanda Ruggeri, *New Courts Give Troubled Veterans a Second Chance*, U.S. NEWS AND WORLD REP. (Apr. 3, 2009), <http://www.usnews.com/news/national/articles/2009/04/03/new-courts-give-troubled-veterans-a-second-chance> (discussing that treatment requires a greater time commitment than a traditional sentence)).

73. See, e.g., Cavanaugh, *supra* note 6, at 475 (citing Lou Michel, ‘Today’ to Showcase Local Court for Veterans, BUFFALO NEWS, (Sept. 22, 2008, 12:00 PM), <http://www.buffalonews.com/article/20080922/CITYANDREGION/309229998>; Ruggeri, *supra* note 72) (discussing the Buffalo veterans treatment court).

74. See McCormick-Goodhart, *supra* note 11, at 912.

75. See, e.g., MCGUIRE ET AL., *supra* note 60, at 3 (discussing the Montgomery County veterans treatment court).

76. See *id.* at 3, 6.

77. See McCormick-Goodhart, *supra* note 11, at 911; MCGUIRE ET AL., *supra* note 60, at 3.

78. See, e.g., McCormick-Goodhart, *supra* note 11, at 911 (citing MONTGOMERY CNTY., VETERANS TREATMENT COURT: POLICY AND PROCEDURE MANUAL 3 (2011) [hereinafter MONTGOMERY PROCEDURE MANUAL], available at <http://www.montcopa.org/DocumentCenter/View/740>; Telephone Interview with Bradley Schaffer, Coordinator of the Veterans Justice

Acceptance into the treatment program is usually determined on a case-by-case basis, with every member of the veterans treatment court team having a vote, but the judge ultimately makes the final decision as to whether a veteran may participate.⁷⁹ Once the veteran is accepted, the veterans treatment court team often meets weekly, and the judge evaluates the veteran's progress through the course of the program.⁸⁰ Typically, the VJO specialists are crucial in administering the treatment plan prescribed for the veteran.⁸¹ If a veteran is not meeting the program's requirements, however, the judge can order additional "community service, payment of fines, jail time, or re-arrest."⁸²

c. Treatment Providers

The VA and other community service providers are essential to every veterans treatment court—providing essentially all of the funding for rehabilitation programs and serving as a link between courts and rehabilitation centers to keep the veterans accountable for their recovery plans.⁸³ Veterans are eligible for a myriad of resources that are not available to other criminal defendants, and the assistance of various community providers is a major reason that veterans treatment courts' programs are successful.⁸⁴ The VA significantly supports VTCs by creating and maintaining the VJO program and providing essential treatment services.⁸⁵ Although veterans treatment courts receive support from the VA, they are primarily funded through other veterans service organizations.⁸⁶ Veterans and active military members are eligible for a host of benefits through VA rehabilitation programs, substance abuse treatment, medical evaluations for service-connected injuries, vocational rehabilitation and

Outreach Program, Dep't of Veterans Affairs, Butler Healthcare Ctr., Butler, Pa. (Sept. 13, 2011)) (discussing the Montgomery County veterans treatment court).

79. See, e.g., *id.* at 912–13 (citing Telephone Interview with Karen Blackburn, Problem-Solving Courts Coordinator, Admin. Office of Pa. Courts (Dec. 2, 2011); Telephone Interview with Justin G. Holbrook, Assoc. Professor of Law and Dir. of the Veterans Law Clinic, Widener Law Sch. (Sept. 26, 2011); Telephone Interview with Stephanie Landes, VTC Court Coordinator, Montgomery Cnty. (Jan. 3, 2011); Telephone Interview with Joshua Parsons, Clerk of Courts of Lancaster Cnty. (Dec. 29, 2011)) (discussing the Montgomery County veterans treatment court).

80. See, e.g., *id.* at 913 (citing MONTGOMERY PROCEDURE MANUAL, *supra* note 78, at 6; Telephone Interview with Stephanie Landes, *supra* note 79) (discussing the Montgomery County veterans treatment court).

81. See, e.g., *id.* (citing MONTGOMERY PROCEDURE MANUAL, *supra* note 78, at 5) (discussing the role of Montgomery County VJO specialists).

82. Totman, *supra* note 6, at 452 (citing 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/community/keeping-PTSD-vets-out-JS.asp> (last updated Jan. 3, 2014)).

83. See MCGUIRE ET AL, *supra* note 60, at 3.

84. Gales & Freese, *supra* note 15, at 25.

85. McCormick-Goodhart, *supra* note 11, at 917 (citing Telephone Interview with Bradley Schaffer, *supra* note 78).

86. *Id.*

employment, housing, job search treatment, and vocational and educational training.⁸⁷

Additionally, the National Association of Drug Court Professionals (NADCP) maintains a comprehensive database on various veterans treatment courts throughout the country—as well as a federally funded training program known as the Veterans Treatment Court Planning Initiative—to assist communities with establishing veterans treatment courts.⁸⁸ Veterans treatment courts can also utilize the resources and services of local providers to rehabilitate veteran participants.⁸⁹ For example, the Los Angeles veterans treatment court utilizes “1,300 beds of service-rich transitional housing for veterans,” accepts court referrals, and “provide[s] comprehensive mental health and substance abuse services” for veterans.⁹⁰

d. Mentors

“Gallantly will I show the world that I am a specially selected and well trained Soldier. My courtesy to superior officers, neatness of dress, and care of equipment *shall set the example for others to follow*.”⁹¹

Judge Russell, creator of the first veterans treatment court in Buffalo, advocates that all veterans treatment courts establish a mentor program because veterans share similar experiences that are uncommon among civilians.⁹² Among the major advantages of the veterans treatment court structure is the tailored treatment plan for each unique participant⁹³ and the fact that the “mentorship relationship creates a sense of camaraderie, resembling the bonds veterans once forged during their time in the military.”⁹⁴ Over half of the veterans treatment courts have active mentor programs and another 21% are developing mentor programs.⁹⁵ Additionally, the NADCP offers federally

87. Cavanaugh, *supra* note 6, at 475 (citing Erie County Veterans Serv. Agency, *VA Benefits in Brief*, ERIE.GOV, <http://www2.erie.gov/veterans/index.php?q=va-benefits-brief> (last visited Mar. 14, 2014)).

88. See, e.g., McCormick-Goodhart, *supra* note 11, at 917 (discussing the NADCP’s role in shaping veterans treatment courts).

89. See, e.g., Gales & Freese, *supra* note 15, at 25 (crediting the partial success of veterans treatment courts to community supporters who provide, for example, transitional housing, mental health, and substance abuse services to veteran participants).

90. *Id.*

91. Ronger Creed, *supra* note 1 (emphasis added).

92. See Totman, *supra* note 6, at 451, 452 (citing Russell, *supra* note 6, at 364).

93. See *id.* at 451 (citing Russell, *supra* note 6, at 364).

94. *Id.* at 452.

95. MCGUIRE ET AL., *supra* note 60, at 6.

funded mentor training programs at four separate locations⁹⁶ that are available for anyone who wants to participate.⁹⁷

3. *Success of Existing Veterans Treatment Courts*

Given that veterans treatment courts are relatively new, appreciating the full effect of these courts is difficult.⁹⁸ In early 2011, however, both President Obama and then-Chairman of the Joint Chiefs of Staff, Admiral Michael Mullen, publicly acknowledged the success of veterans treatment courts throughout the country and encouraged their expansion.⁹⁹ Additionally, a VA report released on February 7, 2013, stated that 69% of all veterans who began treatment under the various veterans treatment courts successfully completed the program, with over half of all veterans who started the program still working toward complete rehabilitation and graduation.¹⁰⁰ A survey of eleven veterans treatment courts throughout the country reported only one repeat offender after graduation, thus yielding a recidivism rate of less than 2%—significantly lower than the 70% recidivism rate for all state prisoners, including veterans.¹⁰¹ Also, only 11 of the 377 graduates from the first four veterans treatment courts in Buffalo, Tulsa, Orange County, and Rochester have been rearrested.¹⁰² Furthermore, evidence suggests that—when overseeing sixty veterans—the Los Angeles veterans treatment court alone saves around \$1.5 million a year, based solely on the average cost of housing criminals in jail compared to the alternate housing support provided for veterans.¹⁰³ Besides strict incarceration cost savings, veterans treatment courts utilize VA vocational rehabilitation and employment services, as well as housing services, that can assist veterans with maintaining employment and housing needs.¹⁰⁴

96. Training programs are currently conducted in Rochester, Buffalo, Tulsa, and Orange County. See *Veterans Mentor Courts*, NAT'L DRUG COURT RESOURCE CTR., <http://www.ndcrc.org/content/veterans-mentor-courts>.

97. Telephone Interview with Christopher Deutsch, Dir. of Commc'ns, Nat'l Ass'n of Drug Court Prof'ls, (Oct. 1, 2013).

98. See generally McCormick-Goodhart, *supra* note 11, at 917–20 (citations omitted) (“[I]t may be difficult and premature to measure VTC outcomes. Nonetheless, early indications point to success.”).

99. See Seamone, *supra* note 54, at 12 (quoting President Barack H. Obama, Strengthening Our Military Families: Meeting America's Commitment ¶ 1.6.1, at 12 (Jan. 2011); Letter from Admiral Michael G. Mullen, Chairman of the U.S. Joint Chiefs of Staff, to Hon. Eric K. Shinseki, Sec'y of the Dep't of Veterans Affairs 1 (Feb. 15, 2011)).

100. MCGUIRE ET AL., *supra* note 60, at 7.

101. McCormick-Goodhart, *supra* note 11, at 918 (citing Justin Holbrook & Sara Anderson, *Veterans Courts: Early Outcomes and Key Indicators for Success* 30, 40 (Widener Law Sch. Legal Studies Research Paper Series No. 11-25), available at <http://ssrn.com/abstract=1912655>).

102. Justice for Vets, *supra* note 14, at 4.

103. See Gales & Freese, *supra* note 15, at 27.

104. See generally *id.* (noting that veterans treatment courts can dramatically decrease the cost of many state and federally funded programs). According to the VA, around 75,000 veterans are homeless on any given night, and over 76% of these homeless veterans suffer from a substance

Critics of veterans treatment courts argue that these courts create a separate legal class of criminals based on one's veteran status.¹⁰⁵ Although this is a genuine concern, veterans treatment courts do not afford extra benefits to service members.¹⁰⁶ Instead, they provide a gateway for veterans to receive benefits they have already earned and desperately need.¹⁰⁷ In fact, most veterans treatment courts require that participants have higher than a dishonorable discharge to participate because only those veterans are eligible to receive VA benefits.¹⁰⁸ Also, in some programs, only veterans suffering from TBI, PTSD, substance abuse, or another psychological problem are allowed to participate¹⁰⁹—and even if a veteran meets all these requirements, the veterans treatment court team still has the discretion to deny participation.¹¹⁰ Furthermore, the U.S. Supreme Court currently allows consideration of veteran status and combat exposure in traditional criminal proceedings involving veterans.¹¹¹

Moreover, sending a veteran suffering from PTSD to prison can reinstate past traumatic situations—thereby intensifying the veteran's PTSD¹¹²—and

abuse or mental health issue. 100,000 HOMES CAMPAIGN, U.S. DEP'T OF VETERANS AFFAIRS, DATA REPORT: NATIONAL SURVEY OF HOMELESS VETERANS IN 100,000 HOMES CAMPAIGN COMMUNITIES (2011), *available at* http://www.va.gov/HOMELESS/docs/NationalSurveyofHomelessVeterans_FINAL.pdf; Press Release, U.S. Dep't of Veterans Affairs, VA Launches Outreach Campaign to Eliminate Homelessness Among Veterans (Oct. 12, 2011), *available at* <http://www.defense.gov/news/newsarticle.aspx?id=65628>. Additionally, veterans have a 15.2% unemployment rate and remain unemployed at a higher rate than civilians. Bryan Maxwell, *Jobless Rate Skyrockets to 15.2% for Iraq and Afghanistan Veterans*, IRAQ AND AFG. VETERANS OF AM. (Feb. 20, 2011), <http://iava.org/blog/jobless-rate-jumps-to-15.2-for-iraq-and-afghanistan-era-veterans>.

105. Totman, *supra* note 6, at 453–54 (citing Dahlia Lithwick, *A Separate Peace: Why Veterans Deserve Special Courts*, NEWSWEEK, Feb. 22, 2010, at 20).

106. *See generally* McCormick-Goodhart, *supra* note 11, at 920–22 (citations omitted) (explaining critics' concerns and arguing that veterans are not receiving extra benefits, but rather, are involved in a tailored rehabilitation system designed to circumvent the products of war and provide the most effective treatment options for service members).

107. *See id.*; *see also* Lithwick, *supra* note 105 (“Veterans deserve special treatment for their service, and the fact that veterans’ courts seem to work as well as they do suggests that politicians needn’t justify their existence beyond that fact.”).

108. *See, e.g.*, McCormick-Goodhart, *supra* note 11, at 909 n.127 (requiring that a veteran receive a military discharge “under conditions other than dishonorable” to be eligible for VA benefits (quoting 38 U.S.C. § 1110 (2006))).

109. *See, e.g., id.* (citing MONTGOMERY PROCEDURE MANUAL, *supra* note 78, at 2) (discussing the prerequisites for participating in the Montgomery County veterans treatment court).

110. *See, e.g., id.* at 913 (“The entire VTC team votes on whether a veteran may participate, but the judge makes the final decision.” (citing Telephone Interview with Stephanie Landes, *supra* note 79)).

111. *See, e.g.*, Porter v. McCollum, 558 U.S. 30, 43–44 (2009) (per curiam) (recognizing the county’s history of leniency toward those with military service and how combat can be a mitigating factor for some juries).

112. *See* Totman, *supra* note 6, at 444 (citing Chester E. Sigafos, *A PTSD Treatment Program for Combat (Vietnam) Veterans in Prison*, 38 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 117, 118 (1994)).

prevent the veteran from receiving VA treatment since the “VA is prohibited from providing hospital and 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.”¹¹³ Further, veterans who incurred mental and substance abuse issues during service are harmed by the military’s lack of proper treatment procedures; therefore, when the military releases members from service, it leaves troubled veterans and society to deal with the predicament.¹¹⁴ Judges acknowledge that veteran offenders are different from other offenders and, thus, may need treatment more than traditional criminals: because veterans are specifically trained to channel rage and emotion as part of their job, a failure to treat them effectively can result in a serious threat to public safety.¹¹⁵

III. SOUTH CAROLINA’S VETERANS TREATMENT COURT PROGRAM ACT

Recognizing the growing number of veterans charged with nonviolent offenses, the South Carolina General Assembly is considering House Bill 3014, the “Veterans Treatment Court Program Act,” to establish a veterans treatment program in South Carolina.¹¹⁶ The bill will provide each circuit solicitor with the option of establishing a veterans treatment court and will require each solicitor accepting funds to create the court within 180 days of receiving state funds.¹¹⁷ House Bill 3014 outlines the specific requirements for each veterans treatment court created in South Carolina, which primarily follow the requirements for the majority of veterans treatment courts across the country.¹¹⁸ Proposed section 14-29-50 outlines the prerequisites a veteran offender must satisfy before becoming eligible to participate in the veterans treatment court program, including a limit on participation to those who: (1) have not committed a violent crime;¹¹⁹ (2) face an active sentence of thirty days or more;¹²⁰ and (3) suffer “from a brain injury, mental illness, or mental disorder, including post-traumatic stress disorder.”¹²¹

113. *Id.* at 444–45 (citing *Incarcerated Veterans*, U.S. DEP’T OF VETERANS AFFAIRS, <http://www.benefits.va.gov/BENEFITS/factsheets/misc/incarcerated.pdf> (last updated Aug. 2012)).

114. *See, e.g.*, Seamone, *supra* note 54, at 27–28; *see also supra* note 54 (discussing the problems that result from discharging service members who have mental illnesses without proper treatment).

115. *See id.* at 29.

116. *See* H.B. 3014, 120th Gen. Assemb., 1st Reg. Sess. (S.C. 2013), *available at* http://www.scstatehouse.gov/sess120_2013-2014/bills/3014.htm.

117. *Id.*

118. *See id.*; *see also supra* Part I.B (providing the history and trends of veterans treatment courts across the nation).

119. *See id.*

120. *See id.*

121. *See id.*

The proposed Act will also require that each veteran participant voluntarily plead guilty to the offense with which that person is charged.¹²² Additionally, the veteran offender will be dismissed from the veterans treatment court and ordered to serve the original sentence—without reduction—if the offender fails to follow all requirements and orders from the veterans treatment court.¹²³ The bill states that each participant must complete at least twelve months of the treatment program before the participant can graduate, but participation is capped at twenty-four months in the program.¹²⁴ The veterans treatment court judge is granted broad authority over participants and can condition completion of the program on completing “school, education, vocational training, work, drug or alcohol testing, counseling, reporting, treatment, curfew, monitoring, restitution, community service, anger management, or other measures the judge considers appropriate.”¹²⁵

A. South Carolina Will Benefit by Passing House Bill 3014

South Carolina will benefit by passing the VTCPA for several reasons. First, the law will create an essential link between troubled veterans, local service providers, and the VA.¹²⁶ This link is crucial because the VA cannot contract with local providers to offer services to veterans treatment court participants¹²⁷ without state legislation authorizing non-federal entities to participate in these courts. This is also essential for South Carolina because, despite having seventeen VA offices located throughout the state,¹²⁸ the VA is currently only able to internally support veterans treatment courts in Charleston, Columbia, and Greenville.¹²⁹ By passing this legislation, other judicial circuits can elect to establish a veterans treatment court by contracting with local VA-certified service providers to offer mental health and substance abuse treatment to veterans.¹³⁰ Furthermore, even if a particular circuit solicitor does not wish to create a veterans treatment court, the legislation will allow veteran offenders to participate in a veterans treatment court in another circuit if such an arrangement is approved by the solicitor of the circuit in which the veteran is charged.¹³¹

122. *See generally id.* (requiring that a veteran plead guilty and be sentenced before becoming eligible for admission into the veterans treatment court).

123. *Id.*

124. *Id.*

125. *Id.*

126. Interview with Daniel E. Johnson, Solicitor for the Fifth Judicial Circuit, in Columbia, S.C. (Sept. 26, 2013); *see also* MCGUIRE ET AL., *supra* note 60, at 3 (explaining how the VA and other community service providers are essential to the success of veterans treatment courts).

127. Interview with Daniel E. Johnson, *supra* note 126.

128. *Locations: Facilities in South Carolina*, U.S. DEP'T OF VETERANS AFFAIRS, http://www1.va.gov/directory/guide/fac_list_by_state.cfm?State=SC&dnum=ALL&isflash=0 (last visited Mar. 15, 2014).

129. Interview with Daniel E. Johnson, *supra* note 126.

130. *Id.*

131. *Id.*

Second, the VTCPA will not require each circuit to establish a veterans treatment court but will ensure that, if funds are taken, a veterans treatment court will be established.¹³² Judges will receive basic expenses to conduct veterans treatment court proceedings, and the General Assembly will also allocate funds to send veterans treatment court teams to the appropriate training programs.¹³³ Importantly, the VTCPA will provide South Carolina veterans needing assistance with the opportunity to get the necessary treatment, while also protecting victims by limiting participation to only nonviolent offenders.¹³⁴ Furthermore, veteran offenders will receive tailored, but extensive, rehabilitative treatment because the veterans treatment court will have broad authority over veteran offenders.¹³⁵

While South Carolina currently has two veterans treatment court programs in operation,¹³⁶ passing the VTCPA will allow additional judicial circuits to participate and benefit from the sharing of information between circuits. The first veterans treatment court in South Carolina began operating in October of 2011 in the Fifth Judicial Circuit and has been extremely successful.¹³⁷ In its first year of operation, four veterans successfully completed the program.¹³⁸ Because all treatment services for veterans treatment court participants are completely funded by the federal government, these services provide health benefits to the veterans and huge economic benefits to the state of South Carolina.¹³⁹ Veteran participants receive numerous services: alcohol and addiction counseling and relapse prevention, intensive mental health case management, in-patient alcohol and drug abuse treatment at Morris Village, mandatory primary healthcare assessment and ongoing medical and dental services, pain clinics, weight management programs, assistance from HUD and VA Supportive Housing, compensated work therapy programs, anger management treatment, family reintegration services, money management counseling, domestic abuse counseling, access to veterans legal clinics, psychiatric assessments, neurological assessments, college enrollment, and a personal mentor to assist with treatment.¹⁴⁰

South Carolina will benefit economically by passing the VTCPA. As mentioned previously, the VA funds the treatment programs, eliminating any

132. See H.B. 3014, 120th Gen. Assemb., 1st Reg. Sess. (S.C. 2013), available at http://www.scstatehouse.gov/sess120_2013-2014/bills/3014.htm.

133. *Id.*

134. *See id.*

135. *See generally id.* (providing the broad authority of veterans treatment court judges and the strict requirements of participation).

136. Interview with Daniel E. Johnson, *supra* note 126; *see also* Memorandum from the Solicitor's Office, *supra* note 50 (reporting statistics on the success of the veterans treatment court program in Charleston).

137. *See* Memorandum from the Solicitor's Office, *supra* note 50.

138. *Id.*

139. Interview with Daniel E. Johnson, *supra* note 126.

140. Memorandum from Solicitor's Office, *supra* note 50.

additional costs of treatment services for veteran offenders participating in the veterans treatment courts.¹⁴¹ Circuit Judge John P. Kirby of the Cook County Veterans Court in Illinois explained that “[t]here’s no extra cost because what this really does is place [veterans] into services that are already out there.”¹⁴² Under the Buffalo Veterans Treatment Court model, treating a veteran offender costs the community, on average, less than 10% of what would be spent on incarcerating the same individual.¹⁴³ Additionally, if South Carolina passes the VTCPA, the funds necessary to set up and maintain veterans treatment courts will be available to each circuit solicitor and will cover the costs of hiring court coordinators and case managers to supervise veterans cases throughout the program.¹⁴⁴ Although veterans treatment courts are relatively new, they are extensions of the drug court model—which involves proven cost-saving programs—and have already seemed to enjoy similar success.¹⁴⁵ Further, establishing more veterans treatment courts to effectively treat troubled veteran offenders could increase public safety.¹⁴⁶

Lastly, passing this legislation could potentially help South Carolina avoid future base closings and a significant decrease in federal funding, which “pumps \$15.7 billion into the state’s economy each year.”¹⁴⁷ Given that the military as a whole is facing “[S]500 billion in across-the-board cuts over the next 10 years,” Congress will likely consider another round of base closings as early as 2015—which will inevitably affect South Carolina and other states.¹⁴⁸ While the Base Closure and Realignment Commission considers many factors when deciding whether to close a base, “community attitude toward the military is an important criteria.”¹⁴⁹ Unfortunately, South Carolina trails neighboring states with regard to enacting military-friendly bills that the U.S. Department of Defense has

141. See Cavanaugh, *supra* note 6, at 481.

142. Matthew Walberg, *Veterans Court Offers Helping Hand*, CHI. TRIB., July 15, 2009, at 18.

143. Cavanaugh, *supra* note 6, at 478.

144. See generally H.B. 3014, 120th Gen. Assemb., 1st Reg. Sess. (S.C. 2013), available at http://www.scstatehouse.gov/sess120_2013-2014/bills/3014.htm (setting requirements for solicitors who “accept[] state funding for the implementation of a veterans treatment court program”). These administrative costs are typically the only additional expenses not covered by the VA. Cavanaugh, *supra* note 6, at 478 (“The only added expenses come from the need to hire a court coordinator and case managers to oversee veterans’ cases and their participation in treatment programs.”).

145. See Russell, *supra* note 6, at 371 (citing Peggy Fulton Hora & Theodore Stalcup, *Drug Treatment Courts in the Twenty-First Century: The Evolution of the Revolution in Problem-Solving Courts*, 42 GA. L. REV. 717, 802 (2008)) (describing how drug courts provide a significant financial benefit that veterans treatment courts, like the Buffalo Veterans Treatment Court, are also expected to provide).

146. See, e.g., Seamone, *supra* note 54, at 29 (“While failure to treat mentally ill offenders may very well amount to a crisis in public health, the failure to treat mentally ill combat veteran offenders amounts to far more; by virtue of military training and experience that depends on the sustained direction and outlet of rage and emotion, it constitutes a threat to public safety.”).

147. Jeff Wilkinson, *Base-Closing Threat Spurs S.C. Bills*, THE STATE, May 12, 2013, at A1, available at <http://www.thestate.com/2013/05/12/2767337/base-closingthreat-spurs-sc-bills.html>.

148. *Id.*

149. *Id.*

identified as key legislative measures they want states to adopt.¹⁵⁰ Passing the VTCPA, however, will increase the number of South Carolina's military-supportive laws, help the state potentially avoid future base closings, and aid in protecting the state's economy.¹⁵¹

IV. PROPOSED GUIDELINES FOR NEW SOUTH CAROLINA VETERANS TREATMENT COURTS

A. *Training of Key Personnel*

The NADCP is an organization dedicated to educating and assisting those involved in the implementation of drug courts and veterans treatment courts.¹⁵² This organization offers various training program options for the training of veterans treatment court personnel.¹⁵³ First, it offers personalized planning initiatives through which members of the NADCP travel to areas interested in starting veterans treatment courts or drug courts to train personnel.¹⁵⁴ This five-day training program is completely funded by the federal government.¹⁵⁵ Additionally, the NADCP provides a separate veterans treatment court mentor training program at four locations across the country.¹⁵⁶ Anyone wanting to be a mentor can attend these two-day training sessions.¹⁵⁷ Finally, the NADCP hosts biannual Veterans Treatment Court Conferences in Washington, D.C., for veterans treatment court leaders and personnel to share ideas and coordinate their efforts.¹⁵⁸ The next conference is set to take place in Washington, D.C., from July 14–17, 2014, and will provide a great learning opportunity for current and

150. *Id.* As of May 2013, South Carolina only adopted three out of the ten measures, thus trailing Virginia, Florida, North Carolina, and Georgia—all of which have adopted seven, six, five, and four of the measures, respectively. *Id.*

151. *Id.*

152. Telephone Interview with Christopher Deutsch, *supra* note 97.

153. *Id.* (explaining that the NADCP offers a five-day planning initiative course and a mentor court program training).

154. *Id.*; see also *Adult Drug Court Planning Initiative*, NAT'L DRUG COURT INST., <http://www.ndci.org/training/design-drug-court/adult-drug-court-planning-initiative> (last visited Mar. 15, 2014).

155. Interview with Christopher Deutsch, *supra* note 97; see also NAT'L DRUG COURT INST., *supra* note 154 (noting that there are no additional costs associated with the training program).

156. Interview with Christopher Deutsch, *supra* note 97. Training sessions are held in Rochester, Buffalo, Tulsa, and Orange County at their respective veterans treatment court facilities. *Id.*

157. *Id.*

158. *Id.* The last conference was held in early December of 2013. *Id.*; *Vet Court Con*, JUSTICE FOR VETS, <http://www.justiceforvets.org/vet-court-con> (last visited Mar. 14, 2014) (discussing the Veterans Treatment Court Conference that was held from December 2–5, 2013, in Washington, D.C.).

future veterans treatment court personnel.¹⁵⁹ Current veterans treatment court personnel and those interested in getting involved—particularly South Carolina veterans treatment court leaders—should strive to attend these training opportunities, as well as encourage and coordinate other local training programs.

B. Coordination with Community Service Providers

Service providers are major contributors to veterans treatment courts, and their services play a critical role in successfully treating veteran offenders.¹⁶⁰ In addition to the VA, South Carolina circuit solicitors should contact other established organizations to assist with veteran offender rehabilitation. For example, “Hidden Wounds is a non-profit organization headquartered in Columbia, South Carolina[,] whose mission is to help heroes battle the invisible war at home.”¹⁶¹ Hidden Wounds works to provide veterans and military personnel who are suffering from PTSD, TBI, and other psychological injuries with interim and emergency psychological treatment.¹⁶² Another organization, Stop Soldier Suicide, works to reduce veteran and service member suicides, partnering with other organizations like Give An Hour to provide mental health and substance abuse counseling, as well as assistance to military men and women across the nation free of charge.¹⁶³ Stop Soldier Suicide provides unique assistance to current service members by offering confidential assistance outside of the military so that soldiers can get help without facing repercussions from their military chain of command.¹⁶⁴ The Stop Soldier Suicide organization currently has local chapters in the Southeastern United States and is considering the possibility of opening a local chapter in Columbia, South Carolina.¹⁶⁵ Thus, local veterans treatment courts have access to a wide variety of treatment alternatives and programs that are not available to nonmilitary or nonveteran members.¹⁶⁶ Active communication and coordination with programs like Hidden

159. See, e.g., *NADCP 20th Annual Training Conference*, NAT’L ASSOC. OF DRUG COURT PROF’LS, <http://www.nadcp.org/2014-training-conference> (last visited Mar. 14, 2014) (announcing the date of the 2014 NADCP training conference).

160. See, e.g., Gales & Freese, *supra* note 15, at 25 (noting that veterans are provided several services that are not available to others, which is “[a] major reason for [the] success [of veterans treatment courts]”).

161. *About Us*, HIDDEN WOUNDS: “HELPING HEROES BATTLE THE INVISIBLE WAR AT HOME,” <http://www.hiddenwounds.org/about-us> (last visited Mar. 14, 2014).

162. *Id.*

163. *Partner Organizations*, STOP SOLDIER SUICIDE, http://www.stopsoldiersuicide.org/wordpress/?page_id=976 (last visited Mar. 14, 2014).

164. See *About*, STOP SOLDIER SUICIDE, http://www.stopsoldiersuicide.org/wordpress/?page_id=68 (last visited Mar. 14, 2014).

165. Telephone Interview with Adam Buchanan, Dir. of Outreach, Stop Soldier Suicide, (Oct. 13, 2013); *Local Chapters*, STOP SOLDIER SUICIDE, http://www.stopsoldiersuicide.org/wordpress/?page_id=178 (last visited Mar. 14, 2014).

166. See Seamone, *supra* note 54, at 39.

Wounds and Stop Soldier Suicide can potentially provide more funds, additional mentors, and an increased participation in local veterans treatment courts.

V. CONCLUSION

South Carolina, like every other state, has veterans and service members who suffer from PTSD, TBI, and substance abuse issues, all of which lead to increased numbers of veterans in the criminal justice system.¹⁶⁷ Existing veterans treatment courts in South Carolina have successfully rehabilitated and helped these service members become great parents, employees, soldiers, and citizens once again.¹⁶⁸ If the VTCPA is enacted, South Carolina service members will have more access to veterans treatment courts across the state, and veterans in rural areas can receive treatment without traveling to the few areas with VA centers. Current and future veterans treatment courts can, and should, take advantage of the various service programs to create effective and sustainable rehabilitation initiatives. Passing this bill and creating more veterans treatment courts in South Carolina will help serve the wounded warriors harmed by their service to this great nation.

John Furman Wall, IV

167. See Cavanaugh, *supra* note 6, at 470.

168. See *supra* notes 136–40 and accompanying text (discussing South Carolina’s veterans treatment courts).