

Winter 2017

UNCONVENTIONAL REHABILITATION: Military Members' Right to Veterans Treatment Court

Dan Devoy (JD '10)

Golden Gate University School of Law, ddevoy@ggu.edu

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/pubs>

Recommended Citation

56 Judges J. 14 (2017).

This Article is brought to you for free and open access by the Faculty Scholarship at GGU Law Digital Commons. It has been accepted for inclusion in Publications by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

HEINONLINE

Citation: 56 Judges J. 14 2017

Provided by:

Golden Gate University School of Law Library



Content downloaded/printed from [HeinOnline](#)

Wed Mar 1 12:22:57 2017

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[Copyright Information](#)

UNCONVENTIONAL REHABILITATION

Military Members' Right to Veterans Treatment Court

By Daniel R. Devoy



veterans are offered treatment and opportunities to prove they are willing to rehabilitate. Veterans are surrounded by other veterans, receive health treatment for their specific injury, and meet regularly with veteran mentors and/or U.S. Department of Veterans Affairs (VA) counselors. Moreover, veterans treatment courts connect veterans to their earned benefits, such as disability compensation for military injuries, education benefits, job training, home loans, and health care. Access to these benefits can help veterans regain their footing and transition to a more productive civilian life.

Without veterans treatment courts, many veterans could be incarcerated, meaning they would be removed from their family and support system. This often leads to a repeated cycle of incarceration. In 2014, there were approximately 11,000 veterans who received treatment in veterans treatment court.⁸ If these courts did not exist, many of these veterans would have been incarcerated. The average cost to incarcerate an individual in the United States is approximately \$29,000 per year.⁹ If these 11,000 veterans were to be incarcerated, the total cost would exceed \$319 million per year. Accordingly, veterans treatment courts not only help veterans get their life back on track, but also save taxpayers a substantial amount of costs. Moreover, those who go through veterans treatment court are less likely to be arrested again. For example, the very first veterans treatment court enjoyed a 0 percent recidivism rate in its first year.¹⁰

A number of veterans treatment courts have grown out of community justice courts as well as drug and mental health courts. These alternative courts were created based on an understanding that some criminal defendants face significant obstacles to being productive members of society and that an alternative process could achieve greater success by reducing

You have the right to remain silent. . . . You have the right to an attorney. . . . Are you a military veteran?" If you are arrested in Tulsa, Oklahoma, this is what you will hear after you are read your *Miranda* rights.¹ In Tulsa and in more than 300 law enforcement jurisdictions in the United States, being a military veteran entitles a person to participate in an alternative court, a veterans treatment court.² As unique as it sounds, arrested military veterans can choose to go to veterans treatment court rather than face punishment in the traditional criminal justice system.

As the longest war in American history is concluding in Afghanistan and Iraq, more than 2.6 million military members have returned home.³ Nearly half suffer from mental health or physical injuries⁴ and

one-fifth will be diagnosed with post-traumatic stress disorder (PTSD).⁵ These issues make it difficult for veterans to reintegrate into civilian life and may lead to homelessness, unemployment, arrest, or worse.

Nearly 700,000 veterans are in the criminal justice system.⁶ Many of the charges involve alleged conduct caused by, or associated with, addiction or mental health injuries.⁷ Traditionally, the criminal justice system in the United States has concentrated on punishment to alter behavior. This model, however, has been particularly unsuccessful when applied to military veterans.

A veterans treatment court provides an alternative to incarceration. These courts offer structure, accountability, and treatment for mental health injuries and addiction. Instead of incarceration,

recidivism. Similarly, veterans who come into the criminal justice system are better served by alternative courts. Building on the philosophy underpinning these courts might provide further insights that could benefit the criminal justice system more broadly and society as a whole. Without question, communities benefit from reduced recidivism. Therefore, a brief history and synopsis of veterans treatment courts and an exploration of what works is in order.

Change Begins in Buffalo

The first veterans treatment court was established in 2008 in Buffalo, New York.¹¹ At that time, the Honorable Robert Russell served on the drug court and mental health court.¹² He began to notice an increase in the number of veterans appearing on the docket.¹³ At the same time, several of his staff members, who were veterans themselves, were assisting veteran defendants in drug court.¹⁴ Judge Russell noticed this assistance was beneficial to the defendant.¹⁵ He theorized that more could be done to ensure veterans were connected to specific resources they needed when facing criminal charges.¹⁶ By collaborating with local community resources, Judge Russell founded the first veterans treatment court.¹⁷

As Judge Russell continued his success with the first veterans treatment court, other jurisdictions began to take notice, and the idea quickly spread. By 2010, there were 24 veterans treatment courts;¹⁸ by 2012 there were 88,¹⁹ and currently there are 306 veterans treatment courts in the United States.²⁰

The main decisions about the scope and breadth of a veterans treatment court include who are the eligible veterans, the status of their discharge, type of offense involved, if the veteran has a mental health injury, and whether the veteran has a criminal record. The National Conference of Commissioners on Uniform State Laws is drafting a Veterans Court Act for use by the various states.²¹ While there are several variations to veterans treatment courts, the basic model centers on collaboration between the criminal justice system and important community resources. The most influential and vital individual in veterans

treatment court is the presiding judge. The judge must be flexible, must want the veteran to succeed, and must be willing to work with the veteran to understand any mental health factors that caused the crime. Most importantly, the judge must be willing to monitor the veteran throughout the treatment plan. At the same time, the court must be aware that it owes a duty to the public to bring justice to the aggrieved individual, protect society at large, and work to prevent repeat offenses.

Expansion of Veterans Treatment Court—Santa Clara County, California

“You don’t decrease recidivism when you deny services to people who need help,” according to the Honorable Stephen V. Manley of the Santa Clara County, California, Veterans Treatment Court.²² “If we don’t address it now, are we going to wait until there’s another crime? That doesn’t make sense.”²³

The Santa Clara County court was created shortly after the creation of Judge Russell’s court in 2008.²⁴ Judge Manley, who also founded the drug treatment court and mental health court in Santa Clara County, was extensively qualified to manage the veterans treatment court. He possessed over 30 years of monitoring the most at-risk defendants in the system.²⁵ Judge Manley believes that the court must not only treat the veteran, but also act in the interest of public safety, protect the victim, and make sure the victim has received restitution.²⁶ Judge Manley is exactly the type of judge that is needed to make the court work. He understands the balance between the potentially conflicting views of the individuals and the organizations involved.

Judge Manley has grown to understand the mindset of many military veterans and promotes the idea that each treatment plan is unique and the court cannot simply treat all defendants the same.²⁷ Post-traumatic stress disorder (PTSD) is the perfect example of unique treatment. Without treating PTSD, many veterans may reenter the criminal justice system at a later date. Citing the number of Vietnam veterans with PTSD currently behind bars, Judge Manley

believes that these veterans were left untreated upon their return home and he vowed not to make the same mistake with returning Afghanistan and Iraq veterans.²⁸ Treatment for those with PTSD consists of individual therapy or similar mental health counseling. This type of treatment reduces an individual’s PTSD symptoms and reduces the rate of repeat offenses.²⁹ It is exactly this type of treatment that separates veterans treatment court from the traditional criminal justice system model.

The Santa Clara County Veterans Treatment Court is an outlier in that it accepts all military veterans regardless of discharge status.³⁰ Accordingly, even a dishonorably discharged veteran is entitled to appear in the court.³¹ In addition, unlike many veterans treatment courts, Santa Clara County does not exclude veterans due to the seriousness of the crime and accepts both misdemeanor and felony cases.³² The openness of Santa Clara County therefore casts a wider net of participation and is able to support more veterans. By doing so, Santa Clara County has the potential for a far greater impact in the community.

While some may say the eligibility rate of the Santa Clara County court is too broad, Judge Manley points to the success rate of his court.³³ Currently the court has a 15 percent recidivism rate.³⁴ This rate is far lower than for traditional criminal courts.³⁵ The primary reason for success is the military culture itself, which places an emphasis on a rigid structure and



Daniel R. Devoy is a visiting associate professor at Golden Gate University School of Law and the director of the school’s Veterans Legal Advocacy

Center. Previously, he performed pro bono work, advocating on behalf of veterans. He is also a veteran of the U.S. Army. He can be reached at ddevoy@ggu.edu.

discipline. When veterans are placed together, they fall back on their military teamwork training and do not want to be responsible for letting the team down. This is contrasted with traditional prison sentences, where the individual alone faces the challenge of survival without a support group. By engaging a team and a support group, the veteran is faced with responsibility, not only for his or her own rehabilitation, but also for the success of the team. This frame of mind transports the veteran back to his or her military days and a time when the veteran enjoyed great success in life.

mentor is of vital importance and is often just the sort of individual that is missing in the life of a veteran.

Along with the collaboration with the VA, Judge Manley believes peer mentors are a strong predictor of success.³⁹ Says Judge Manley, “If you have someone who has been through what they are going through, it’s much more powerful and meaningful. You can motivate them to turn their lives around; you can guide them through the VA system.”⁴⁰

The Santa Clara County Veterans Treatment Court has enjoyed great success. Not only has the rate of recidivism

Once it is determined the individual is eligible, the veteran has the choice to participate.⁴⁴ If the veteran chooses to do so, a VA benefit check is performed and a mental health provider screens the veteran.⁴⁵ The provider, not the court, decides what treatment the veteran needs in regard to mental health treatment.⁴⁶ Most often this treatment consists of VA counseling.⁴⁷ Veterans who fail to follow their treatment or those who violate a court order may face fines, community service, jail, or entry back into the traditional criminal justice system.⁴⁸

Participants in the court are given a detailed handbook that outlines the program.⁴⁹ Veterans are required to read and consent to the rules of the handbook before they begin treatment.⁵⁰ All participants must acknowledge their responsibilities and consequences of failure via their signature on multiple pages of the handbook.⁵¹

Graduation requirements for the Tulsa program are clear and provided to the veteran in the handbook. Among other requirements, veterans must

- Have no missed, abnormal, or positive drug tests for six months;
- Have no major sanctions for 90 days; no minor sanction for 30 days;
- Be employed or attending school full-time or be exempted;
- Have a high school diploma or receive a GED or be exempted;
- Have completed a treatment and case management plan;
- Have made payment in full of veterans treatment court program fees; and
- Have completed volunteer requirements.⁵²

As with many veterans treatment courts, graduation from the program is the final day in court. It is not unusual to hear the judge require all those in attendance to clap for the graduate and to offer a handshake.⁵³ As a reward for successful completion, the veteran has his or her life on track and may possibly have the criminal charge reduced or dismissed.

While a requirement to read a handbook may seem excessive, it is a small price to pay to avoid the traditional criminal

While there are several variations to veterans treatment courts, the basic model centers on collaboration between the criminal justice system and important community resources.

Who is on this team? The veteran is supported by a VA representative and treatment staff, doctors, substance-abuse counselors, probation officers, a public defender, and, most importantly, a peer mentor.³⁶ A peer mentor is a fellow veteran who lives in the local community and “sponsors” the veteran.³⁷ In the military, a service member is surrounded by peers. These peers look out for one another and act as a team. This support network disappears for many upon reintegration into civilian life. But with a peer mentor, a veteran can experience the familiar feeling of camaraderie. As fellow veterans, peer mentors understand the unique stresses of being a veteran while living a civilian life. Over time they often become friends with the defendant veteran. This relationship allows the mentor to become a close friend of the veteran and gives the mentor credibility to address the court on behalf of the veteran.³⁸ A peer

been reduced, but many veterans have now become productive members of society. Without the veterans treatment court, it is entirely possible that these same veterans would have been outcasts in society. By offering successful rehabilitation and not punishment, the Santa Clara County Veterans Treatment Court has succeeded in its mission.

Tulsa, Oklahoma

Tulsa, Oklahoma, is yet another example of a successful veterans treatment court and shows the transformative power of such a program. In Tulsa, an arresting police officer will ask the individual if he or she is a veteran.⁴¹ If so, the veteran is eligible for the veterans treatment court if the veteran is suffering from a mental health injury or substance abuse.⁴² In addition, only those who have committed nonviolent crimes can participate.⁴³

justice system. Additionally, the handbook promotes the idea of a rigid structure by placing the requirements of the program strictly on the veteran.

Requiring employment, education, and community service promotes confidence and a sense of belonging in the community. Drug testing and avoidance of sanctions support the strict requirements of the military-like structure of the program. Lastly, payment of the program fees furthers a sense of responsibility and lessens the cost of the program to the community.

Successes

A veteran, let's call him Eric, received an other than honorable discharge from the military due to an altercation with a military police officer at the end of his service.⁵⁴ Unbeknownst to Eric, he was also suffering from PTSD.⁵⁵ In addition, his wife passed away, and he was left as a single parent to his two-year-old child.⁵⁶ Upon appearing in the veterans treatment court, Eric received

counseling and the court assisted him in finding childcare so that he could keep his full-time job.⁵⁷ No other court would go this far for a defendant. Due to the help he received, Eric became another success story. His success is an example of the individualized treatment aspect of veterans treatment court.

Another veteran, let's call him Nicolas, served two combat tours overseas in both Iraq and Afghanistan.⁵⁸ Upon returning home, he developed an addiction to pain killers.⁵⁹ His addiction led to run-ins with the law, and he was eventually arrested for being in possession of a stolen check.⁶⁰ He was then given the choice of going to jail or spending a year in the veterans treatment court.⁶¹ He chose to participate in the veterans treatment court and credits it with saving his life.⁶² Through his work in the program, he was able to stop using pain killers and live a drug-free life.⁶³ His story is an example of the rehabilitation aspect of veterans treatment court.

Future Challenges and Needs

While veterans treatment courts have a strong structure and proven results, there are areas for improvement. There are a number of challenges faced by these courts. One is the lack of VA staffing.⁶⁴ As the courts expand, they depend on VA for mental health and other benefit-related services.⁶⁵ With more and more veterans entering into the program, not every jurisdiction has adequate staffing at the VA level to provide services.⁶⁶ The VA is not organized or structured around partnerships with the judiciary, and this leaves some veterans out in the cold and makes it challenging.⁶⁷ Additionally, not all veterans are qualified for VA care due to their discharge status and the courts struggle to find counseling and other resources for these veterans.⁶⁸

Veterans treatment courts are taking an increased role in monitoring public safety.⁶⁹ Since their creation in 2008, there is an increase in veterans being charged

Judges* Double your member value with this special offer from the Tort Trial & Insurance Practice Section (TIPS)!



Enroll for a joint Judicial Division/TIPS membership for \$60—a savings of \$25 in dues—and you'll gain access to these benefits:

- **ADDITIONAL NETWORKING OPPORTUNITIES.** Meet with other judges who preside over civil, commercial, and insurance law cases. As a national organization, TIPS offers a wealth of professional development and personal growth opportunities for judges.
- **A FORUM FOR IMPORTANT ISSUES.** TIPS works for its members, bringing information and opportunities that are important to you. Discuss emerging issues, new case law, and legislative and court decisions with others who recognize their importance and wish to analyze their implications.
- **TAILORED COMMITTEES AND GROUPS.** TIPS's Appellate Advocacy Committee and Dispute Resolution Committee provide judges with an informal forum for discussing ideas, opinions, and concerns about the profession.



Enroll as a joint Judicial Division/TIPS member today by calling the ABA Service Center at 1-800-285-2221.

*THIS OFFER IS AVAILABLE TO JUDGES ONLY.

with serious offenses involving public safety.⁷⁰ This puts pressure on the court to serve justice to the victim, while also simultaneously rehabilitating the veteran. It complicates the treatment plan because it places tension between the court's attempt to help the veteran and the desire of society to punish the defendant.

Courts also suffer from a severe shortage of peer mentors.⁷¹ It is difficult to have a mentor for every veteran, although, ideally, every veteran would have a mentor.⁷² Some courts have more than 300 participants and do not have a mentor for each veteran.⁷³ Obtaining mentors takes training and coordinating.⁷⁴ Further, there are some jurisdictions that do not have a large number of veterans in their population to even qualify as peer mentors. Currently, there are more than 13,000 veterans served by the courts, but only 5,000 mentors.⁷⁵

In an attempt to combat this problem, many courts have asked successful graduates of the court to come back and serve as a mentor.⁷⁶ Because mentorship is such a vital component of veterans treatment court, previous graduates become crucial as they not only understand the veteran mindset, but also what the veteran is going through within the court system.⁷⁷

Finally, as with all new government programs, funding is badly needed for the courts.⁷⁸ As more and more veterans return home from Iraq and Afghanistan, the risk of criminal behavior increases because so many of these veterans suffer from a mental health injury.⁷⁹ As the docket for the court increases, more resources of the court, the district attorney, the public defender, and VA will be consumed. Funding will be needed to continue to succeed and meet the increased demand for services.

If these challenges can be met, veterans treatment courts can grow and continue their success. Their success not only is vital for the veteran, but it is in the best interest of the community. The fact that these veterans are kept out of the traditional criminal justice system saves costs for other criminal courts. Saving these costs may potentially expand their resources and reduce recidivism in other courts.

Veterans Have Earned the Right to Veterans Treatment Court

Military veterans are a tremendously underserved and sympathetic population. Due to their service and the gratitude of the nation, they have earned the right to rehabilitation. Moreover, those who suffer from military-related injuries, such as PTSD, are entitled to treatment. This is especially true when PTSD is the underlying cause of the committed offense. At the same time, those who are the victims of a crime committed by a veteran are entitled to restitution. Veterans treatment courts provide the perfect blend of treatment, gratitude, and justice. The last eight years have established a pattern of success, and there is no reason to believe this success cannot continue.

Due to the creation of the veterans treatment courts, thousands of individuals have avoided joining the ranks of incarcerated veterans, while at the same time rehabilitating themselves.⁸⁰ By providing treatment for mental health injuries and substance abuse, veterans treatment courts have reduced the risk of repeat offenses. Without these courts, thousands of veterans would face incarceration, homelessness, unemployment, and untreated mental health injuries. Thanks to the creative and collaborative legal justice approach introduced by Judge Russell in 2008, thousands of veterans are once again some of the most productive and upstanding members of society. ■

Endnotes

1. *Keeping Veterans with PTSD Out of the Justice System*, U.S. DEP'T OF VETERANS AFFAIRS, <http://www.ptsd.va.gov/public/community/keeping-PTSD-vets-out-JS.asp> (last updated Aug. 13, 2015).

2. *2016 Veterans Day Field Kit*, JUSTICE FOR VETS, 12 (2015), http://www.justiceforvets.org/sites/default/files/gallery/Veterans%20Day%20Field%20Kit%202016_Final.pdf.

3. *After the Wars—Post-Kaiser Survey of Afghanistan and Iraq War Veterans*, WASH. POST (Oct. 20, 2015), http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2014/03/30/National-Politics/Polling/release_305.xml.

4. *Id.*

5. *How Common Is PTSD?*, U.S. DEP'T OF

VETERANS AFFAIRS, <http://www.ptsd.va.gov/public/PTSD-overview/basics/how-common-is-ptsd.asp> (last updated Oct. 3, 2016).

6. MARGARET E. NOONAN & CHRISTOPHER J. MUMOLA, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SPECIAL REPORT NCJ 217199, VETERANS IN STATE AND FEDERAL PRISON, 2004 (2007).

7. *Id.*

8. *Statement on the Tragedy in Montgomery County, PA*, JUSTICE FOR VETS, <http://www.justiceforvets.org/node/224> (last visited Nov. 29, 2016).

9. Annual Determination of Average Cost of Incarceration, 80 Fed. Reg. 12523 (Mar. 10, 2015).

10. R.T. Russell, *Veterans Treatment Court: A Proactive Approach*, 1 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT, 357-72 (2009).

11. *The Buffalo Veterans Treatment Court*, VETERANS SERV. AGENCY OF ERIE CNTY., N.Y., <http://www2.erie.gov/veterans/index.php?q=buffalo-veterans-treatment-court> (last visited Oct. 20, 2016).

12. *Veterans Treatment Courts: The History*, JUSTICE FOR VETS, <http://www.justiceforvets.org/vtc-history> (last visited Oct. 20, 2016).

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *The Buffalo Veterans Treatment Court*, *supra* note 11.

18. *Vets in Crises Get a Change, Not a Cell*, U.S. DEP'T OF VETERANS AFFAIRS, <http://www.va.gov/health/newsfeatures/20120216a.asp> (last updated Apr. 17, 2015).

19. *Id.*

20. *2016 Veterans Day Field Kit*, *supra* note 2.

21. *Veterans Court Act*, UNIFORM LAW COMM'N, <http://uniformlaws.org/Committee.aspx?title=Veterans Court Act> (last visited Dec. 5, 2016).

22. Ken Olson, *Restorative Justice*, AM. LEGION MAG. (June 22, 2012), <http://www.legion.org/magazine/199513/restorative-justice>.

23. *Id.*

24. Diana Moga, *9 Questions with a Veterans Treatment Court Judge*, TASK & PURPOSE (July 11, 2016), <http://taskandpurpose.com/9-questions-veteran-treatment-court-judge>.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. Olson, *supra* note 22.
31. *Id.*
32. *Id.*
33. Moga, *supra* note 24.
34. *Id.*
35. *Id.*
36. Olson, *supra* note 22.
37. C.W. Nevius, *Veterans Get a Court of Their Own in S.F.*, S.F. GATE (Dec. 24, 2014, 5:54 PM), <http://www.sfgate.com/bayarea/nevius/article/Veterans-get-a-court-of-their-own-in-S-F-5978431.php>.
38. *Vets Courts Serve Veterans Not Just the Criminal System*, U.S. DEP'T OF VETERANS AFFAIRS, <http://www.paloalto.va.gov/features/vetscourt.asp> (last updated Apr. 20, 2015).
39. Moga, *supra* note 24.
40. *Vets Courts Serve Veterans Not Just the Criminal System*, *supra* note 38.
41. *Keeping Veterans with PTSD Out of the Justice System*, *supra* note 1.
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.*
48. *Id.*
49. *Tulsa County Veterans Treatment Court Participant Handbook*, TULSA CNTY. DIST. CT. (Oct. 29, 2012), available at http://www.ndcrc.org/sites/default/files/vtc_participant_handbook.pdf.
50. *Id.*
51. *Id.*
52. *Id.*
53. E.g., Nevius *supra* note 37; Olson, *supra* note 22.
54. Olson, *supra* note 22.
55. *Id.*
56. *Id.*
57. *Id.*
58. Jen Christensen, *Pill-Addicted Veterans Get Second Chance with Treatment Court*, CNN, <http://www.cnn.com/2014/08/26/health/veterans-treatment-court> (last updated Aug. 27, 2014, 3:25 PM).
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.*
64. Moga, *supra* note 24.
65. *Id.*
66. *See id.*
67. *Id.*
68. *Id.*
69. *See id.*
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.*
75. *2016 Veterans Day Field Kit*, *supra* note 2.
76. *See Vets Courts Serve Veterans Not Just the Criminal System*, *supra* note 38.
77. *Id.*
78. Olson, *supra* note 22.
79. *Id.*
80. *2016 Veterans Day Field Kit*, *supra* note 2.

REGISTRATION IS NOW OPEN FOR THE 2017 TRAFFIC COURT SEMINAR

**Beyond the Rearview Mirror:
Advancing the View in Today's Traffic Cases**

March 6–8, 2017

MANSION ON FORSYTH PARK • 700 DRAYTON STREET • SAVANNAH, GEORGIA

The complete agenda and all registration information can be found at
www.ambar.org/2017trafficseminar.