

PUTTING THE “VA” IN VTCs: HOW FACILITATING VA ACCESS CAN MAKE VETERANS TREATMENT COURTS MORE EFFECTIVE

RYAN FOLEY & JAMIE ROWEN†

ABSTRACT

This Article argues for better integration between Veterans Treatment Courts (“VTCs”) and the Department of Veterans Affairs (“VA”) by increasing court staff’s training and knowledge about VA benefits. VA healthcare, housing, education, and monetary benefits can provide the stability and hope that many VTC participants need to successfully complete their court-mandated rehabilitation. We posit that VTC teams should include members who are knowledgeable about all VA services. Integration with the Veterans Health Administration (“VHA”), which can provide free or low-cost mental healthcare and substance use disorder care,¹ should be among the most important priorities for VTCs, with the goal of reducing recidivism for addiction-related offenses. Additionally, VTCs with staff trained to refer veterans to the appropriate Veterans Benefits Administration (“VBA”) programs² would help participants plagued by

† Ryan Foley is Supervising Attorney at the New York Legal Assistance Group (“NYLAG”) Veterans Practice and received his J.D. from the University of Miami. Jamie Rowen is an Associate Professor of Legal Studies and Political Science at the University of Massachusetts, Amherst and Director of the Center for Justice Law and Societies; Rowen is also a Research Affiliate at the Center of Excellence for Specialty Courts at the University of Massachusetts Medical School. She earned a J.D. and Ph.D. from Berkeley School of Law. The authors thank Lilian Alvino for her research assistance, as well as JoNel Newman, Melissa Swain, Erin Hoover, Alice Kerr, Michael Bailey, and the student volunteers with the University of Miami School of Law Health Rights Clinic. They would also like to thank Andrea Finlay, Sean Clark, Julie Baldwin, David Smelson, and the many VA and court personnel who shared their knowledge about VTCs. They also wish to thank the *Wake Forest Journal of Law & Policy* editorial staff. This project was generously funded by National Science Foundation Career Award 1845165. All opinions expressed are those of the authors and not of Veterans Administration or VTC personnel.

¹ See SIDATH VIRANGA PANANGALA & JARED S. SUSSMAN, CONG. RSCH. SERV., R42747, HEALTH CARE FOR VETERANS: ANSWERS TO FREQUENTLY ASKED QUESTIONS 6, 31 (2020).

² See Maureen McCarthy, *VA Mental Health Care Found Superior to Care in the Private Sector*, U.S. DEP’T VETERANS AFF. (Apr. 15, 2016), <https://www.blogs.va.gov/VAntage/27029/vv->

homelessness, lack of education, and other social disadvantages begin to build promising futures. We provide detailed information about the range of services available through the VA and call for greater integration of these two disparate but increasingly interdependent organizations—the VA and VTCs—so those who need VA benefits most do not suffer from inadequate access to the benefits they have earned.

I. INTRODUCTION

After listening to an introduction from the Veterans Treatment Court team about what to expect in the program, the first question from the newest court participant was, “What will happen to my housing?” He explained that, after months of bouncing between different shelters, he recently obtained a VA “sponsored” housing voucher and finally moved into his own apartment. Despite serious criminal charges pending against him and just having heard the long list of expectations from the court, including mandatory mental health treatment and drug testing, his biggest concern was that he would find himself homeless again. In a room full of advocates who just promised that they would be there to help him along the way, the silence in response to his question was deafening. After an awkward pause, the judge assured him that his new case manager would look into it with him.

This was not the first, and certainly not the last, veteran who has asked this same question.³ Why did no one know the answer, and how can this lack of knowledge, which has a significant impact on veterans’ well-being and success in treatment court,⁴ be prevented? Scholars and practitioners have called attention to the unique benefits that these VTCs have provided since 2004, when a district court in Anchorage, Alaska, developed a specialized track for veterans in treatment court, and following the rapid spread of

mental-health-care-found-superior-care-private-sector (illustrating that referrals to mental health programs profoundly benefit veterans).

³ See Jack Tsai et al., *A National Study of Veterans Treatment Court Participants: Who Benefits and Who Recidivates*, 45 ADMIN. POL’Y MENTAL HEALTH 236, 239 (2018). In this study of 7931 VTC participants, the authors found that most participants in VTCs “exited the program in the same situation they entered.” *Id.* at 240. For example, over 60% of those participants who did not have housing when they entered the program did not have housing when they left the program. *Id.* at 241.

⁴ Robert M. Bossarte et al., *Housing Instability and Mental Distress Among U.S. Veterans*, 103 AM. J. PUB. HEALTH 213, 215 (2013).

Veteran’s Treatment Courts⁵ after Buffalo created one in 2008.⁶ Modeled after adult drug treatment courts, VTCs are designed to provide additional support to former service members with substance use and/or mental health disorders who are either facing criminal charges (in pre-plea courts) or probation (in post-disposition courts).⁷

Despite growing interest in the efficacy of VTCs, there is surprisingly little attention paid to the role of the main institution that provides treatment for the VTC participants—the Department of Veterans Affairs.⁸ This institutional relationship is increasingly recognized by Congress, which recently allocated significant funding for the creation of Veterans Justice Officers (“VJOs”) to staff VTCs around the country.⁹ In January 2020, Congress passed a bill to create a Veterans Treatment Court Program within the Department of Justice with the goal of developing “best practices” for VTCs nationwide.¹⁰ Along with the Veterans Suicide Prevention Task Force, which has investigated the benefits of VTCs in suicide prevention since the Task Force’s creation in 2019, this bill underscores the significant local, state, and national investment into VTCs.¹¹

However, in order to develop “best practices,” policymakers and advocates need a better understanding of how these courts operate—specifically how they provide access to the treatment that the participants need. Veterans are a particularly high-risk group for both substance use and criminal offending.¹² Veterans with substance use disorders are more likely to have criminal histories, with

⁵ VTCs are a general term for a treatment court that only allows qualifying veterans with substance use and/or mental health disorders and offers criminal justice benefits (either reduced or dismissed charges if pre-plea, or probation if post-disposition) for those who comply with court ordered psychological treatment. Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENG. J. CRIM. & CIV. CONFINEMENT 357, 363, 369 (2009). These courts have different definitions of a veteran, but they generally require that the participant enlisted in military service. *See id.* at 364.

⁶ *Id.*

⁷ AM. U., VETERANS TREATMENT COURTS: 2015 SURVEY RESULTS 11, 13 (2016).

⁸ *See* Andrea K. Finlay et al., *Logic Model of the Department of Veterans Affairs’ Role in Veterans Treatment Courts*, 2 DRUG CT. REV. 45, 49–50 (2019).

⁹ Veterans Treatment Court Improvement Act, H.R. 2147, 115th Cong. § 2(a) (2018); *see also* Julie M. Baldwin & Erika J. Brooke, *Pausing in the Wake of Rapid Adoption: A Call to Critically Examine the Veterans Treatment Court Concept*, 58 J. OFFENDER REHAB. 1, 1–29 (2019).

¹⁰ Veterans Treatment Court Coordination Act, H.R. 886, 116th Cong. § 2(a) (2020).

¹¹ Exec. Order No. 13,861, 3 C.F.R. § 8585 (2019).

¹² Nicole R. Schultz et al., *Criminal Typology of Veterans Substance Abuse Treatment*, 54 J. SUBSTANCE ABUSE TREATMENT 56, 56 (2015).

charges that include both nonviolent and violent offenses, than civilians with substance use disorders.¹³ Studies show an average of eight arrests among justice-involved veterans, and about 70% of veterans in jails and prisons have been incarcerated before.¹⁴ Further, the limited studies of VTC outcomes show mixed results. The most comprehensive study of VTCs across the country showed a 14% reincarceration rate within eleven months of program completion, which is significantly less than the recidivism rates for those involved in drug treatment courts.¹⁵ In one study, the author found that graduates of the Alaska Veterans Court had lower recidivism rates compared with the overall recidivism rate in Alaska, but there were clear racial disparities in who completed the program.¹⁶ By contrast, another study found that participants in a large, urban VTC were significantly less likely to be rearrested during the three-year follow-up period compared with a control group of probationers who were eligible for the VTC but opted out.¹⁷

Most VTC scholarship to date focuses on the role of criminal justice personnel such as the prosecutor, probation officer, defense attorney, or judge.¹⁸ There has also been increased attention to the role of mentors, as VTCs often tout veteran-peer mentorship as a crucial factor contributing to their success.¹⁹ However, the personnel who connect the VTCs with the VA often play the most critical role in VTCs.²⁰ Here, where the treatment provider is an enormous

¹³ Daniel M. Blonigen et al., *Criminal Recidivism Among Justice-Involved Veterans Following Substance Use Disorder Residential Treatment*, 106 ADDICTIVE BEHAVIORS 1, 2 (2020).

¹⁴ *Id.*

¹⁵ Tsai et al., *supra* note 3, at 239; Ojmarrh Mitchell, *Assessing the Effectiveness of Drug Courts on Recidivism: A Meta-Analytic Review of Traditional and Non-Traditional Drug Courts*, 40 J. CRIM. JUST. 60, 62 (2012).

¹⁶ See Jack W. Smith, *The Anchorage, Alaska Veterans Court and Recidivism: July 6, 2004 – December 31, 2010*, 29 ALASKA L. REV. 93, 103, 107 (2010).

¹⁷ Richard D. Hartley & Julie Marie Baldwin, *Waging War on Recidivism Among Justice-Involved Veterans: An Impact Evaluation of a Large Urban Veterans Treatment Court*, 30 CRIM. JUST. POLY REV. 62, 71–72 (2019).

¹⁸ See ANNE S. DOUDS & EILEEN M. AHLIN, *THE VETERANS TREATMENT COURT MOVEMENT STRIVING TO SERVE THOSE WHO SERVED 75* (2019); see, e.g., Lisa M. Shannon et al., *Examining Implementation and Preliminary Performance Indicators of Veterans Treatment Courts: The Kentucky Experience*, 63 EVAL. PROGRAM & PLANNING 54, 57–58 (2017); see also Russell, *supra* note 5, at 365–67.

¹⁹ Caroline I. Jalain & Elizabeth L. Grossi, *Take a Load off Fanny: Peer Mentors in Veterans Treatment Court*, 31 CRIM. JUST. POLY REV. 1165, 1169–70 (2020); Anne S. Douds & Don Hummer, *When a Veterans' Treatment Court Fails: Lessons Learned from a Qualitative Evaluation*, 14 VICTIMS & OFFENDERS 322, 323 (2019).

²⁰ See Smith, *supra* note 16, at 101.

bureaucracy with rigid rules about what services it offers, who can access them, and when and how they can be accessed, the court cannot effectively order treatment, or reasonably punish those for not accessing treatment, if the court does not understand how access to VA treatment actually works.²¹

To address these scholarly and practical concerns, this Article provides insights into the relationship between VTCs and the VA and offers ways to improve it. We focus on the opportunities and the limits of current practices that integrate VA services into VTCs and posit that VTC teams must include members knowledgeable about all VA services, not only those that initially appear most relevant to the court. Integration with the Veterans Health Administration, which can provide free or low-cost mental healthcare and substance use disorder care,²² should be among the most important priorities for VTCs with the goal of reducing recidivism for addiction-related offenses. Additionally, VTCs with staff trained to navigate Veterans Benefits Administration programs would help participants plagued by homelessness, lack of education, and other social disadvantages begin to build promising futures.²³ Finally, we offer additional insights on improving relationships between VTCs and the VA, so that those who could benefit from VA benefits the most do not suffer from inadequate access to the benefits they have earned.

II. DEVELOPING A SPECIALTY COURT FOR VETERANS

VTCs are part of a larger body of specialized courts designed to help individuals in the criminal justice system who are suffering from substance use and mental health disorders.²⁴ The idea behind treatment courts is that criminal offenders with substance use disorders in drug courts, or mental health disorders in mental health courts, should work to address their addiction or underlying mental health issues rather than be simply punished with jail time.²⁵ Participants give up certain due process rights and gain access to a host

²¹ See, e.g., Finlay et al., *supra* note 8, at 52 (illustrating that VTC sentencing does not always line-up or comply with VA guidelines).

²² See PANANGALA & SUSSMAN, *supra* note 1, at 6.

²³ See Finlay et al., *supra* note 8, at 52.

²⁴ Russell, *supra* note 5, at 357.

²⁵ Bruce J. Winick & David B. Wexler, *Drug Treatment Court: Therapeutic Jurisprudence Applied*, 18 *TOURO L. REV.* 479, 481 (2002); BRUCE J. WINICK, *PROBLEM SOLVING COURTS: SOCIAL SCIENCE AND LEGAL PERSPECTIVES* 211–12 (Richard L. Wiener & Eve M. Brank eds., 2013).

of social services designed to keep them on track.²⁶ Upon graduation, they usually receive some type of criminal justice benefit.²⁷ For pre-plea courts, offenders may receive dismissed or reduced charges.²⁸ For post-disposition courts, they may receive less time on probation or probation rather than a jail sentence.²⁹ VTCs are primarily modeled after drug treatment courts, though they also draw on practices from mental health courts.³⁰ The main difference is that some type of military service is required to access the VTC.³¹ Furthermore, unlike the two other courts, VTCs have access to additional social services resources in the form of local, state, and federal programs for veterans.³²

Although VTCs are created by courts and are not formally associated with the VA, the local VA medical center's ability to provide treatment is an important factor in the creation of VTCs as well as in their operations.³³ In Anchorage, where the first VTC was created, court personnel immediately contacted the local VA medical center to help set up the court.³⁴ According to a founding judge, "[t]he VA and Municipal Prosecutor both conditioned their agreement to participate in the Veterans Court on having the right to refuse to allow otherwise eligible individuals entry into the Veterans Court due to their current offense, criminal history, or history with the VA."³⁵ In other words, the local VA helped dictate who would be eligible for this court, linking eligibility for the VTC to eligibility

²⁶ Martin Reisig, *The Difficult Role of the Defense Lawyer in a Post-Adjudication Drug Treatment Court: Accommodating Therapeutic Jurisprudence and Due Process*, 38 CRIM. L. BULL. 216, 218 (2002).

²⁷ See *id.* at 216.

²⁸ See RYAN S. KING & JILL PASQUARELLA, THE SENT'G PROJECT, DRUG COURTS: A REVIEW OF THE EVIDENCE 3 (2009), <https://www.sentencingproject.org/wp-content/uploads/2016/01/Drug-Courts-A-Review-of-the-Evidence.pdf>.

²⁹ See *id.*

³⁰ Russell, *supra* note 5, at 364–65.

³¹ E.g., *Veteran's Court Eligibility Criteria*, KITSAP COUNTY, <https://www.kitsapgov.com/pros/Pages/Veteran'sCourtEligibility.aspx> (last visited Oct. 17, 2021).

³² Carole House et al., *State Veteran Benefit Finder*, CTR. FOR NEW AM. SEC. (Nov. 11, 2019), <https://www.cnas.org/publications/reports/state-veteran-benefit-finder>.

³³ Eric D. Button, *The Diffusion of Veterans Treatment Courts: An Examination of Political, Social, and Economic Determinants at the County Level 2*, 37 (Dec. 1, 2017) (unpublished M.A. thesis, University of Arkansas) (on file with ScholarWorks, University of Arkansas).

³⁴ Smith, *supra* note 16, at 97.

³⁵ *Id.*

for VA services.³⁶ This made sense since the creation of a VTC was predicated on the availability of treatment services for participants.³⁷ Ensuring availability of treatment through the VA meant that the court’s founders were not asking other service providers to take on a new population or mandating that participants engage with services they cannot access or that do not exist.³⁸ VTCs are more likely to emerge in states where there are a significant number of veterans and corresponding veterans services, such as a local VA medical center.³⁹ In 2017, nearly a third of these unique courts required VA eligibility.⁴⁰ Participant outcomes are frequently measured in relation to the participant’s ability to get VA services.⁴¹ In other words, VTCs may not be formally affiliated with the VA, but they are highly interdependent.

Despite heavy reliance on VAs to provide treatment in VTCs, personnel in these courts frequently lack knowledge about VA benefits that are essential to the treatment plan.⁴² The military service-related eligibility requirements for diversion to VTCs vary across the country and even within the same state.⁴³ These requirements often are dictated by state laws and funding restrictions, but all courts consider individuals’ service component, length of service, and character of discharge.⁴⁴ Depending on the specificity of the eligibility requirements (or lack thereof), determining whether an individual is, in fact, eligible for VTC diversion based on their military service history can be complicated.⁴⁵ This becomes only more

³⁶ *Id.* at 96.

³⁷ *Id.*

³⁸ *See id.* at 98, 100.

³⁹ Interestingly, the number of veterans actually decreases the likelihood of a VTC in certain counties but, at the state level, the higher the veteran population, the more likely a VTC exists. Button, *supra* note 33, at 37, 41.

⁴⁰ BESSIE FLATLEY ET AL., U.S. DEP’T OF VETERANS AFF., VETERANS COURT INVENTORY 2016 UPDATE: CHARACTERISTICS OF AND VA INVOLVEMENT IN VETERANS TREATMENT COURTS AND OTHER VETERAN-FOCUSED COURT PROGRAMS FROM THE VETERANS JUSTICE OUTREACH SPECIALIST PERSPECTIVE 3 (2017).

⁴¹ For example, Tsai et al.’s analysis of VTC outcomes focuses on how VTCs improve access to housing, which the VA assists with through its host of benefits. Tsai et al., *supra* note 3, at 237, 242.

⁴² Smith, *supra* note 16, at 101 (noting that veteran-defendants are rarely matched with a probation officer who can direct them to VA resources).

⁴³ Christine Timko et al., *A Longitudinal Examination of Veterans Treatment Courts’ Characteristics and Eligibility Criteria*, 17 JUST. RSCH. & POL’Y 123, 125–26 (2016).

⁴⁴ *Id.*

⁴⁵ *Id.*

complicated when courts must determine if an individual is, in fact, eligible for relevant VA services, as each VA benefit and program has its own eligibility requirements.⁴⁶ A VTC team can only effectively determine whether an individual is a good candidate for participation if a VTC team member can correctly assess whether that individual's circumstances meet all requirements for participation.⁴⁷ While these evaluations may include a typical drug court evaluation, such as a risk and need assessment or whether those accused or found guilty of felonies or offenses classified as violent are allowed in the court, there may also be a question of access to VA services.⁴⁸ After all, a treatment court should not accept someone to whom it cannot provide treatment. Accurate eligibility determinations are far from a guarantee when some VTCs have minimal to no VA training or interaction.⁴⁹

VTCs' difficulty in making accurate eligibility determinations becomes even more apparent the less relevant the VA benefit seems to the core mission of the court—providing substance use and mental health treatment.⁵⁰ A veteran may have access to VA-sponsored housing vouchers, for example, but not have access to VA healthcare because of his or her discharge status, length of service, or branch (e.g., National Guard or Reserves versus active duty Air Force, Navy, Marines, or Army).⁵¹

There are multiple reasons for VTCs' lack of VA knowledge, including the basic fact that the VA was not designed to work with criminal justice institutions.⁵² The VA, as initially envisioned, was

⁴⁶ 38 U.S.C. § 1710.

⁴⁷ See Smith, *supra* note 16, at 99–100.

⁴⁸ N.Y. ST. DEP'T OF HEALTH, DEVELOPING A TRAINING CURRICULUM ON THE NEEDS OF VETERANS IN THE CRIMINAL JUSTICE SYSTEM USING RESULTS FROM AN EVALUATION OF THE BUFFALO VETERANS TREATMENT COURT 1, 3 (2011), <https://nyshealthfoundation.org/wp-content/uploads/2017/11/developing-training-curriculum-buffalo-veterans-treatment-court-november-2011.pdf> [hereinafter DEVELOPING A TRAINING CURRICULUM].

⁴⁹ OFF. OF THE EXEC. SEC'Y OF VA., VIRGINIA VETERANS TREATMENT COURT STATEWIDE STRATEGIC PLAN 5–6 (2019).

⁵⁰ DEVELOPING A TRAINING CURRICULUM, *supra* note 48, at 1.

⁵¹ UMAR MOULTA-ALI & SIDATH VIRANGA PANANGALA, CONG. RSCH. SERV., R43928, VETERANS' BENEFITS: THE IMPACT OF MILITARY DISCHARGES ON BASIC ELIGIBILITY 12–13 (2015).

⁵² See *VA History: History – Department of Veterans Affairs (VA)*, U.S. DEP'T VETERANS AFF., https://www.va.gov/HISTORY/VA_History/Overview.asp (last updated May 27, 2021) (explaining the original intention and capacity of the VA).

meant to provide hospice care to the aging veteran population.⁵³ Having expanded far beyond its original mission, today the VA is the largest integrated healthcare system in the United States⁵⁴ and the nation’s second-largest federal employer—second only to the Department of Defense.⁵⁵ The VA also administers benefits and services for service-connected disabilities (and in some cases non-service-connected disabilities), rehabilitation, employment, education, housing, and life insurance to veterans, their families, and their survivors, as well as handling burials and memorials for eligible service members.⁵⁶

Recent scholarship has called for a better understanding of the central role that the VA plays in many VTCs, emphasizing that the VA needs to be understood as a separate entity with its own rules and regulations.⁵⁷ The VA continues to adapt to meet the growing needs of the veteran population, and has now evolved to provide support for justice-involved veterans (“JIVs”), those former service members who find themselves arrested or in jail.⁵⁸ VTCs and VAs, through their mutually beneficial work, can address shortcomings in both the VA and the criminal justice system. However, for progress to continue, additional focus must be placed on increasing both the level and the consistency of expertise in VTCs.

⁵³ *Id.* “Following the Civil War, many state Veterans homes were established. Since domiciliary care was available at all state Veterans homes, incidental medical and hospital treatment was provided for all injuries and diseases whether or not of service origin.” *Id.*

⁵⁴ *About VHA*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/health/aboutvha.asp> (last updated Apr. 23, 2021).

⁵⁵ *Id.*; see also *Federal Agencies List*, OFFICE PERS. MGMT., <https://www.opm.gov/about-us/open-government/Data/Apps/Agencies> (last visited Sept. 27, 2021).

⁵⁶ *I Am a Veteran*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/opa/persona/index.asp> (last updated Mar. 11, 2021).

⁵⁷ Finlay et al., *supra* note 8, at 54–55.

⁵⁸ 38 U.S.C. § 2022; Jessica H. Blue-Howells et al., *The U.S. Department of Veterans Affairs Veterans Justice Programs and the Sequential Intercept Model: Case Examples in National Dissemination of Intervention for Justice-Involved Veterans*, 10 PSYCH. SERVS. 48, 48 (2013); Finlay et al., *supra* note 8, at 47 (“Over 90 percent of veterans in VTCs, eligible for VA care, receive some VA treatment services while under court supervision – most commonly mental health or substance use disorder treatment.”); Andrea K. Finlay, Address at Veterans Court Conference on Mental Health and Substance Use Disorder Diagnoses and Treatment Use Among Veterans in Veterans Treatment Courts - Identification of Treatment Needs and Interventions (June 1, 2018) (notes on file with author).

III. THE VJOs AND VTCs

Over the past two decades, the VA has been engaged in efforts to aid JIVs, the term for veterans who are under some form of criminal justice supervision (e.g., probation or parole) or detention.⁵⁹ By 2007, the VA recognized the significant link between incarceration and homelessness: a four-fold increase in risk of homelessness for veterans with a history of incarceration.⁶⁰ As part of its effort to combat veteran homelessness, the VA created a new program called Healthcare for Reentry.⁶¹ This program focused on aiding veterans in prisons or jails who were transitioning back into the community.⁶² Providers trained in counseling and social work developed individualized reentry programs with a focus on housing, mental health and substance use treatment, and other psychosocial needs.⁶³ The Veterans Justice Outreach program, which currently operates as the VA's official liaison program for VTCs, emerged from this effort and focuses not only on reentry but also on diversion and other programs to keep veterans out of detention.⁶⁴

While VJOs are now understood to be central members of the VTC team, this was not always the case.⁶⁵ As the VJO program was being created, an advisory board of treatment court judges worked with the VA to develop the relationship between this new position and the growing number of VTCs.⁶⁶ Though there were only a handful of VTCs when the VJO program began, they immediately developed trainings and programming to ensure that VJOs

⁵⁹ Andrea K. Finlay et al., *A Scoping Review of Military Veterans Involved in the Criminal Justice System and Their Health and Healthcare*, 7 HEALTH & JUST., 1, 2 (2019).

⁶⁰ Laurel A. Copeland et al., *Clinical and Demographic Factors Associated with Homelessness and Incarceration Among VA Patients with Bipolar Disorder*, 99 AM. J. PUB. HEALTH 871, 874 (2009).

⁶¹ *Health Care for Re-entry Veterans Services and Resources*, U.S. DEP'T VETERANS AFF., <https://www.va.gov/homeless/reentry.asp> (last updated Nov. 15, 2021).

⁶² *Id.*

⁶³ U.S. DEP'T OF VETERANS AFFAIRS, VETERANS TREATMENT COURTS AND OTHER VETERAN-FOCUSED COURTS SERVED BY VA VETERANS JUSTICE OUTREACH SPECIALISTS (2021), <https://www.va.gov/HOMELESS/docs/VJO/Veterans-Treatment-Court-Inventory-Update-Fact-Sheet-Jan-2021.pdf>.

⁶⁴ *Veterans Justice Outreach Program*, U.S. DEP'T VETERANS AFF., <https://www.va.gov/homeless/vjo.asp> (last updated Oct. 5, 2021).

⁶⁵ See *Veterans Justice Advocates*, VETERANS JUST. PROJECT, <https://www.vetjuspro.com/8e> (last visited Oct. 6, 2021).

⁶⁶ Interview with Jack O'Connor, Buffalo Veterans Treatment Court Volunteer Coordinator (May 2020) (on file with author).

served as effective liaisons between VTCs and the VA.⁶⁷ Judge Russell in Buffalo, New York, along with the head of the Buffalo court’s mentor program, started working closely with the VJO office to educate them on VTCs.⁶⁸ The Buffalo model, built from existing drug courts, became the standard for training other communities to create VTCs.⁶⁹ Soon, the National Association of Drug Court Professionals (“NADCP”) began a program dedicated to helping courts set up VTCs, and drew on this model that emphasized peer mentors, sobriety, and an understanding of military culture.⁷⁰

The creation of the VJO bolstered the newly burgeoning VTC movement, and the relationship between this VA office and these new courts continues to deepen.⁷¹ Funding enabled more positions for these specialists, who are increasingly associated with VTCs.⁷² By fall 2019, there were 364 funded VJOs across the country, each working within VTCs and/or criminal justice settings to ensure that qualifying veterans can access services.⁷³ The VA reports that VJOs now work in 601 VTCs.⁷⁴ VJOs do more than just help VTCs; they also work in jails to identify veterans and ensure that they connect with VA services.⁷⁵ For example, VJOs can assist incarcerated veterans who receive disability benefits to apportion all or part of those benefits to their spouse or children, rather than lose the benefit entirely.⁷⁶ In many jurisdictions, it is now standard practice for jails to screen for military service, to ensure VJOs can initiate contact and help the veteran or his or her family gain access to VA-administered benefits.⁷⁷

⁶⁷ See Anne S. Douds et al., *Varieties of Veterans’ Courts: A Statewide Assessment of Veterans’ Treatment Court Components*, 28 CRIM. JUST. POL’Y REV. 740, 742 (2017).

⁶⁸ Interview with Jack O’Connor, *supra* note 66; see also Robert T. Russell, *Veteran Treatment Courts*, 31 TOURO L. REV. 385, 392–93 (2015).

⁶⁹ Russell, *supra* note 68, at 399–400.

⁷⁰ See *About Us*, JUST. FOR VETS, <https://justiceforvets.org/about> (last visited Oct. 6, 2021).

⁷¹ Finlay et al., *supra* note 8, at 52; DOUDS & AHLIN, *supra* note 18, at 74–75.

⁷² Finlay et al., *supra* note 8, at 47.

⁷³ Interview with Sean Clark, VJO National Coordinator (September 2019) (on file with author).

⁷⁴ U.S. DEP’T OF VETERANS AFFAIRS, *supra* note 63.

⁷⁵ U.S. GOV’T ACCOUNTABILITY OFF., GAO-16-393, VETERANS JUSTICE OUTREACH PROGRAM: VA COULD IMPROVE MANAGEMENT BY ESTABLISHING PERFORMANCE MEASURES AND FULLY ASSESSING RISKS 11 (2016).

⁷⁶ 38 C.F.R. § 3.665 (2020).

⁷⁷ Sean Clark & Matthew Harris, Address at the Stepping Up Initiative, Stepping Up 101: A Primer for Veterans Justice Outreach Specialists (June 2019).

One of the more important services that VJOs working in correctional facilities offer is to identify veterans, and connect qualifying veterans with a VTC, if available, and provide information to encourage their participation.⁷⁸ While it may seem to be a given that a qualifying veteran would want the services, the calculation is not so simple. Low-level offenders may not see the benefit of submitting to the demanding requirements of a treatment court, preferring to take their chances in a regular criminal justice process that leaves them free from supervision sooner or with fewer demands.⁷⁹ Further, they may be wrongly concerned that their criminal justice involvement may compromise their VA benefits.⁸⁰ VJOs can provide information about the kinds of services available should the qualifying veteran decide to join the VTC.⁸¹

This inter-institutional arrangement is not without complication. VJOs have to be invited into the court—they are not automatically able to join a VTC working group—and early courts did not always recognize the need for a dedicated staff member who worked for the VA.⁸² Over time, and with national trainings as part of the NADCP emphasizing the role of the VJO in VTCs, their presence has become standard practice.⁸³ Still, VJOs may be unclear as to what their role in a VTC is or should be given that the original emphasis was on locating veterans and helping them with reentry, not acting as a care provider in a court setting.⁸⁴ Courts also may be unclear of exactly what role a VJO should play on the VTC team. While the VJO has the potential to be a link to countless VA services, in many VTCs, VJO participation is often limited to facilitating VA appointments and verifying VA treatment compliance.⁸⁵

⁷⁸ KIERRA ZOELICK, JUST. PROGRAMS OFF., THE ROLE OF VETERANS JUSTICE OUTREACH SPECIALISTS IN VETERANS TREATMENT COURTS 2 (Dec. 2016), <https://www.american.edu/spa/jpo/upload/aunewsvjofinal.pdf>.

⁷⁹ Stacey-Rae Simcox & Morgan MacIsaac-Bykowski, *Veteran Treatment Court Coordination Act of 2019: Support for Justice Involved Veterans to Improve Health and Wellness Outcomes*, A.B.A. HEALTH ERESOURCE (Nov. 4, 2020), https://www.americanbar.org/groups/health_law/publications/aba_health_resource/2020-2021/november-2020/vet-tre.

⁸⁰ Duke Chen, *Benefits Available to Veterans After Incarceration*, OFF. OF LEGIS. RSCH., <https://www.cga.ct.gov/2016/rpt/2016-R-0028.htm> (last visited Oct. 8, 2021).

⁸¹ U.S. DEP'T OF VETERANS AFFAIRS, *supra* note 63.

⁸² Russell, *supra* note 68, at 393.

⁸³ See SEAN CLARK, U.S. DEP'T OF VETERANS AFFAIRS, VA SERVICES FOR VETERANS INVOLVED IN THE JUSTICE SYSTEM: THE VETERANS JUSTICE OUTREACH (VJO) INITIATIVE (2009).

⁸⁴ See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 75, at 1 (2016).

⁸⁵ See *id.*

As the VJO program has grown, it has become evident that VJOs are playing different roles in different places.⁸⁶ Moreover, given their specialization in criminal justice-related issues, not all VJOs understand the diverse services offered by the VA.⁸⁷ This is unsurprising given the complexity of many VA programs. Further, since many VJOs do much more than work with a VTC, VTCs with just one VJO, who also may be working in the jails and prisons, or with JIVs in non-VTC criminal proceedings, may be short-staffed.⁸⁸ Assigning VJOs multiple duties as they attempt to assist veterans, many of whom are suffering from mental health and substance abuse issues,⁸⁹ requires that they navigate a complex, slow-moving bureaucracy.⁹⁰ The position is stretched thin, negatively impacting the veterans being served.⁹¹ Non-VA affiliated case managers, who typically help participants gain access to state and other social services programs, are not always a solution.⁹² Unless these individuals have worked in the VA, or utilized the programs themselves, they will have little to no knowledge of what VA programs are even available.⁹³ This knowledge gap will ultimately affect court processes, as there are no other stopgaps for a judge to learn what is actually possible.⁹⁴

Before providing more detailed suggestions for better integrating the VJO into the VTC, in the following section we outline a number of services and benefits available through the VA, with

⁸⁶ For example, at the 2021 Annual Meeting of National Association for Drug Court Professionals, the Director of the VJO program reiterated that VJOs are playing a variety of roles in courts and that there is confusion as to what they are supposed to do. Katharine Stewart, VJO Program Director, Address on Collaborative Case Management in a VTC at NADCP 2021 Annual Conference (Aug. 15, 2021). She clarified that VJOs are available to synthesize what is going on at the VA, identifying the top needs, not going into the details, and helping with information about evidence-based treatment. *Id.*

⁸⁷ VA Portland Health Care System, U.S. DEP'T VETERANS AFF., https://www.portland.va.gov/services/Veterans_Justice_Outreach_VJO_Program.asp (last visited Nov. 22, 2021).

⁸⁸ ZOELLICK, *supra* note 78, at 3.

⁸⁹ Russell, *supra* note 5, at 357.

⁹⁰ See *Why Is VA So Slow? What Can You Do About It?*, VETERANS BENEFIT GROUP GOODMAN DONNELLY, <https://veteransbenefitgroup.com/why-is-va-so-slow-what-can-you-do-about-it> (last visited Oct. 9, 2021).

⁹¹ ZOELLICK, *supra* note 78, at 2–3.

⁹² See Kerry Murphy Healey, *Case Management in the Criminal Justice System*, NAT'L RSCH. ACTION 1, 1 (1999).

⁹³ *Why Is VA So Slow? What Can You Do About It?*, *supra* note 90.

⁹⁴ DOUDS & AHLIN, *supra* note 18, at 75.

detailed information about how they might serve VTC participants. This information is useful not only for those working as VJOs, but for all VTC team members to better understand the basics about what services are available, what services are not available, and for whom they are available. This latter part—who gets benefits—is one of the more complicated aspects of the VA and, by extension, an important and understudied part of VTCs. It is crucial for VTCs to understand that it is not the case that participants are either eligible for everything or eligible for nothing.⁹⁵ Rather, each VA benefit or program has its own set of eligibility criteria, and exceptions abound.⁹⁶ The misconception that VA benefits are “all or nothing,” which often dissuades veterans themselves from visiting the VA or applying for benefits,⁹⁷ should be extinguished by VTCs if they are to help the veterans they wish to connect with services.

IV. UNDERSTANDING HOW VA BENEFITS CAN SUPPORT VTC PARTICIPANTS

Given the important role of social capital and material resources in treatment court success,⁹⁸ VTCs that can maximize VA healthcare, housing, disability, rehabilitation, employment, and education for their participants should be more likely to see improvements in metrics of recidivism and continued treatment. This is particularly salient for veterans given the well-documented relationship between housing and employment on treatment court outcomes and the myriad of benefits that a veteran can receive.⁹⁹

⁹⁵ See generally U.S. DEP'T OF VETERANS AFFAIRS, FEDERAL BENEFITS FOR VETERANS, DEPENDENTS AND SURVIVORS (2019); Alex Horton, *VA Unlawfully Turned Away Vulnerable Veterans for Decades, Study Says, With 400,000 More at Risk*, WASH. POST (Mar. 5, 2020), <https://www.washingtonpost.com/national-security/2020/03/05/veterans-va-bad-paper-study>.

⁹⁶ *VA Benefits for Service Members*, U.S. DEP'T VETERANS AFF., <https://www.va.gov/service-member-benefits> (last visited Oct. 9, 2021).

⁹⁷ Megan Hammons, *VA Disability Compensation vs. Pension*, VETERANAID.ORG (June 14, 2017), <https://www.veteranaid.org/blog/va-disability-compensation-vs-pension>.

⁹⁸ See Sarah L. Belgrad, Predictors of Graduation and Termination from Veteran Treatment Court (Aug. 17, 2017) (unpublished Ph.D. dissertation, Chicago School of Professional Psychology – Los Angeles) (ProQuest); see also John R. Gallagher et al., *Predicting Termination from Drug Court and Comparing Recidivism Patterns: Treating Substance Use Disorders in Criminal Justice Settings*, 33 ALCOHOLISM TREATMENT Q. 28, 28–43 (2015).

⁹⁹ See generally John R. Gallagher, *Drug Court Graduation Rates: Implications for Policy Advocacy and Future Research*, 31 ALCOHOLISM TREATMENT Q. 241 (2013); Janice D. McCall et al., *Veterans Treatment Court Research: Participant Characteristics, Outcomes, and Gaps in the Literature*, 57 J. OFFENDER REHAB. 384 (2018); John R. Gallagher et al., *Improving Graduation Rates in*

Many individuals assume the U.S. Department of Veterans Affairs is solely a health care provider for military veterans.¹⁰⁰ While this was one of the primary intentions in its creation and continues to be one of the essential services it handles, the agency provides a wide array of social services and benefits to the veteran population.¹⁰¹ Split into three partner administrations, the Veterans Health Administration, the Veterans Benefits Administration, and the National Cemetery Administration,¹⁰² the VA is tasked with implementing and running essential programs covering the vast needs of the veteran community.¹⁰³ For VTCs, the VHA, which runs the 171 medical centers and 340 outpatient clinics across the country,¹⁰⁴ is the essential partner for successful operation.¹⁰⁵ For the majority of VTC participants, the VHA will be the medical provider for mental health and substance abuse outpatient services.¹⁰⁶ The VA’s placement of the VJO within the VHA is a clear indication that the VA understands that importance.¹⁰⁷ However, VTCs that ignore or underappreciate the value of the VBA and the supportive role it can play for veterans are making a significant error.

A. *Who Is a “Veteran” for VA Purposes?*

Before diving into the myriad of benefits in the VA system, it is important to first note that not all individuals who served in the military are eligible for all benefits.¹⁰⁸ The VA defines a veteran as “a person who served in the active military, naval, or air service and who was discharged or released therefrom under conditions other

Drug Court: A Qualitative Study of Participants’ Lived Experiences, 17 CRIMINOLOGY & CRIM. JUST. 468 (2017).

¹⁰⁰ David J. Shulkin, *Why VA Health Care is Different*, 33 FED. PRAC. 9, 9 (May 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6369034>.

¹⁰¹ *VA History: History – Department of Veterans Affairs (VA)*, *supra* note 52; *About VA*, U.S. DEP’T VETERANS AFF., https://www.va.gov/about_va (last visited Oct. 9, 2021).

¹⁰² *How The VA Is Structured (and Why It Matters to You)*, U.S. DEP’T VETERANS AFF. (Dec. 8, 2010), <https://blogs.va.gov/VAntage/812/how-va-is-structured-and-why-it-matters-to-you>.

¹⁰³ *About VA*, *supra* note 101.

¹⁰⁴ Veterans Health Administration, ALLGOV, <http://www.allgov.com/departments/department-of-veterans-affairs/veterans-health-administration?agencyid=7146> (last visited Oct. 17, 2021).

¹⁰⁵ Finlay et al., *supra* note 8, at 48.

¹⁰⁶ *See id.*

¹⁰⁷ U.S. DEP’T OF VETERANS AFFAIRS, VHA DIRECTIVE 1162.06(1): VETERANS JUSTICE PROGRAMS (VJP) 3–4 (2020).

¹⁰⁸ *See* 38 U.S.C. § 101(2), (13)–(15).

than dishonorable.”¹⁰⁹ Much like how VTC eligibility requirements consider the classification of a veteran’s military service and the conditions under which they left active duty, so too does the VA when considering eligibility for benefits.¹¹⁰ It would be impossible to include all relevant information related to each factor, but this Article will touch on the two most crucial to benefits: service component and discharge status. Though this Article only focuses on these two components, we encourage that a more in-depth analysis be conducted whenever an initial investigation suggests a veteran as ineligible for benefits.

When looking at the VA’s definition of a veteran, the first key phrase is “served in the active military.”¹¹¹ Active military service includes “(A) active duty; (B) any period of active duty for training during which [a person is] disabled or die[s] from a disease or injury incurred or aggravated in the line of duty; and (C) any period of inactive duty training” in specific limited circumstances.¹¹² Essentially, this means that to qualify, an individual must have served in the military in a full-time capacity or have been injured or killed during select periods of full-time training.¹¹³ Service members in any of the six branches of the Armed Forces—Army, Navy, Marine Corps, Air Force, Coast Guard, and, now, Space Force—would meet the active service requirement.¹¹⁴ Individuals who served in the Reserves, Air or Army National Guard, military academies, and certain offices in the Public Health Service, National Oceanic and Atmosphere Administration, and Environmental Science Services would only qualify in certain circumstances.¹¹⁵ Individuals in that second category would likely need to have been called up to full-time active duty for federal purposes to meet the active service requirement—most individuals in this category with a qualifying period of service will have served in an overseas deployment.¹¹⁶ This means that VTCs with flexibility to admit participants who served in a service component other than the six branches of the Armed Forces may not be

¹⁰⁹ *Id.* § 101(2).

¹¹⁰ *Id.*

¹¹¹ *See id.*

¹¹² *Id.* § 101(24).

¹¹³ *Id.*

¹¹⁴ *Id.* § 101(10); 10 U.S.C. § 9081(a).

¹¹⁵ *See* 38 U.S.C. § 101(2), (10), (21)(A)–(D), (24)(A).

¹¹⁶ *Id.* § 101(21).

considered a veteran by the VA, and thus may be ineligible for any services or benefits.

The second key phrase in the VA’s definition of a veteran is a discharge that is “other than dishonorable.”¹¹⁷ A military discharge is given when a service member is released from active duty.¹¹⁸ Individuals will be assigned a discharge status dependent on the reason for separation that falls into one of two categories: administrative¹¹⁹ or punitive.¹²⁰ Administrative separations occur when the command seeks to involuntarily separate a service member through a non-judicial process.¹²¹ Administrative discharges include: “uncharacterized,” which is given to individuals who separate prior to completing 180 days of military service and does not attempt to characterize service as good or bad; “honorable,” which is given to those who met or exceeded the conduct and performance standards of the military; “general, under honorable conditions,” which is given when an individual’s performance was satisfactory, but fell short in terms of military duty and conduct; and “other than honorable,” which is given when the individual’s service involved a serious departure from the conduct and performance expected.¹²²

Punitive discharges are awarded by a sentence of a court-martial.¹²³ A “bad conduct” discharge is issued for lesser offenses, while a “dishonorable” discharge is typically reserved for serious offenses such as murder, desertion, rape, and the like.¹²⁴ For purposes of VA services and benefits, a “dishonorable” discharge serves as a complete bar.¹²⁵ Pursuant to the statutory definition, a former service member with a “dishonorable” discharge status is not a

¹¹⁷ *Id.* § 101(2).

¹¹⁸ *Id.* § 101(18).

¹¹⁹ 32 C.F.R. § 724.108 (2020).

¹²⁰ *Id.* § 724.111.

¹²¹ See VETERANS LEGAL CLINIC, HARV. L. SCH. ET AL., TURNED AWAY: HOW VA UNLAWFULLY DENIES HEALTH CARE TO VETERANS WITH BAD PAPER DISCHARGES 3 (2020), <https://www.legalservicescenter.org/wp-content/uploads/Turn-Away-Report.pdf>.

¹²² U.S. DEP’T. OF LABOR, VETS USERRA FACT SHEET #3: FREQUENTLY ASKED QUESTIONS – SEPARATIONS FROM UNIFORMED SERVICE, CHARACTERIZATIONS OF SERVICE, AND EFFECTS ON RIGHTS AND BENEFITS UNDER USERRA 5–8, <https://www.dol.gov/sites/dolgov/files/VETS/files/USERRA-Fact-Sheet-3-Separations.pdf>.

¹²³ See VETERANS LEGAL CLINIC, *supra* note 121, at 3.

¹²⁴ 38 C.F.R. § 3.12(d)(2)–(3) (2020); U.S. DEP’T. OF LABOR, *supra* note 122, at 4.

¹²⁵ *Applying for Benefits and Your Character of Discharge*, U.S. DEP’T VETERANS AFF., https://www.benefits.va.gov/benefits/character_of_discharge.asp (last updated Dec. 10, 2020).

“veteran.”¹²⁶ On the other end, an “honorable” discharge is the only discharge status that meets the discharge eligibility requirement for all benefits.¹²⁷ While “general, under honorable conditions” discharge will allow for most benefits, it bars the individual from some education benefits.¹²⁸ And “other than honorable” and “bad conduct” discharges require a VA “character of service determination” to determine whether statutory or regulatory bars prohibit VA from providing services and benefits.¹²⁹ Reports have found that the Department of Defense (“DOD”) does not grant discharge status in an equitable manner, with factors like race, sexual orientation, and disability having significant impacts; one such study found that between 2006 and 2015, Black service members had a 61% higher chance of facing a general or special court martial than their White peers.¹³⁰

Post-discharge, service members can attempt to upgrade their discharge status or secure a favorable character of service determination from the VA.¹³¹ A discharge upgrade is a process in which an individual petitions the DOD for a change in his or her character of service based on arguments of equity or propriety.¹³² It is a challenging process with low success rates.¹³³ However, cases where individuals were discharged under “Don’t Ask, Don’t Tell,”¹³⁴ or where the discharge was related to mental health conditions, including post-traumatic stress disorder (“PTSD”), traumatic brain injury (“TBI”), or sexual assault or harassment (including military sexual trauma), are now to be considered more liberally.¹³⁵ A successful discharge upgrade can result in amended military records that

¹²⁶ 38 U.S.C. § 101(2).

¹²⁷ *Applying for Benefits and Your Character of Discharge*, *supra* note 125.

¹²⁸ MOULTA-ALI & PANANGALA, *supra* note 51, at 7.

¹²⁹ *Id.* at 1, 6; *see also* 38 C.F.R. § 3.12 (2020).

¹³⁰ *See* VETERANS LEGAL CLINIC, *supra* note 121, at 5–6.

¹³¹ *Id.* at 2, 8.

¹³² 32 C.F.R. § 70.8(a)(3)(i)–(ii), (a)(4)(iii) (2020).

¹³³ *See* VETERANS FOR AMERICA, THE AMERICAN VETERANS AND SERVICEMEMBERS SURVIVAL GUIDE 324 (2008).

¹³⁴ *Don’t Ask, Don’t Tell*, ARMY REV. BOARDS AGENCY, U.S. ARMY, <https://arba.army.pentagon.mil/dadt.html> (last visited Oct. 16, 2021); *Don’t Ask, Don’t Tell (DADT)*, COUNCIL OF REVIEW BOARDS, U.S. NAVY, <https://www.secnav.navy.mil/mra/CORB/pages/ndrb/dadt.aspx> (last visited Oct. 16, 2021).

¹³⁵ *DOD Memoranda Guiding Discharge Review Boards on PTSD, TBI, and MST*, Section on *Discharge Upgrades & Military Record Changes*, STATESIDE LEGAL (Nov. 2020), <https://statesidelegal.org/dod-memoranda-guiding-discharge-review-boards-ptsd-tbi-and-mst>.

reflect the new discharge status and will provide all the benefits of that higher status.¹³⁶ A separate process done with the VA, a character of discharge determination, does not change the discharge status that an individual was given by the military.¹³⁷ However, it can impact what benefits the VA will provide.¹³⁸ Individuals with “other than honorable” or certain “bad conduct” discharges can ask the VA to review or re-review their military service to determine if it will be considered “honorable for VA purposes.”¹³⁹ This process involves proving to the VA that service was “honest, faithful, and meritorious” other than minor discipline issues or proving to the VA that the individual was “insane” at the time of the misconduct resulting in discharge.¹⁴⁰ A favorable result will allow an individual to access all VA benefits other than some education benefits.¹⁴¹

Both discharge upgrades and character of discharge determinations are complicated processes with low success rates, which often require the intervention of an attorney for a favorable result.¹⁴² Success in these processes is often the difference between a veteran having no access to the VA or being able to use many, or all, of the VA’s programs and services.¹⁴³ Discharge status factors into the VTC eligibility process for every single participant.¹⁴⁴ Regardless of whether a VTC can accept veterans with “bad paper”¹⁴⁵ or can only accept veterans with “honorable” and “general” discharges, VTCs should be pointing all veterans with a less-than-honorable discharge in the direction of resources that can help increase their benefit eligibility. They should also be cognizant of the grey zones created by every discharge between “honorable” and “dishonorable.” For example, an “other than honorable” veteran with a favorable character of service determination can use the VA for healthcare, including VTC mandated mental health and substance

¹³⁶ VETERANS FOR AMERICA, *supra* note 133, at 343.

¹³⁷ *Military Discharge Status and What it Means for Your Entitlement to VA Benefits*, CHISHOLM CHISHOLM & KILPATRICK LTD (Apr. 24, 2017), <https://cck-law.com/blog/military-discharge-status-and-what-it-means-for-your-entitlement-to-va-benefits>.

¹³⁸ See 38 C.F.R. § 3.12(e) (2020).

¹³⁹ *Military Discharge Status and What it Means for Your Entitlement to VA Benefits*, *supra* note 137.

¹⁴⁰ 38 C.F.R. § 3.12(d)(4) (2020).

¹⁴¹ MOULTA-ALI & PANANGALA, *supra* note 51, at 7.

¹⁴² See VETERANS FOR AMERICA, *supra* note 133, at 343.

¹⁴³ *Id.* at 323.

¹⁴⁴ See MOULTA-ALI & PANANGALA, *supra* note 51, at 7.

¹⁴⁵ Timko et al., *supra* note 43, at 123.

abuse counseling.¹⁴⁶ Even with an *unfavorable* character of service determination, veterans with other than honorable discharges or certain bad conduct discharges can receive VA healthcare to treat service-connected medical conditions, which can include mental health services.¹⁴⁷ Thus, VTCs must check more than just discharge status if VHA-eligibility is a VTC eligibility component, and VTCs must ensure that policies to restrict certain discharge statuses are not built based solely on the assumption that VHA-eligibility would not exist.¹⁴⁸

Recent research reveals the wide variation between VA services available to bad paper veterans across the country is largely caused by a systemic misunderstanding of the law within the VA.¹⁴⁹ Denial of benefits may be illegal,¹⁵⁰ but more concretely, the VA's failure to correctly implement its own eligibility requirements results in thousands of the most vulnerable veterans being kept from accessing earned benefits every year.¹⁵¹ One report on the VA reveals that, “[s]ince 1980, more than 575,000 service members have received an Other Than Honorable, Bad Conduct, or Dishonorable discharge”—sometimes called a “bad paper” discharge—“representing about 7% of those with characterized discharges.”¹⁵² Eighty-one percent of these are “Other Than Honorable” discharges, which means that there was no court process to determine the discharge characterization.¹⁵³ Likewise, “more than 600,000 service-members since 1980 have received General discharge characterizations,” which can also affect access to some VA services.¹⁵⁴

Although these categories appear clear, their interpretation and application have contributed to gross inequalities among service members.¹⁵⁵ From 2009 through 2015, 22,000 service members

¹⁴⁶ ELIGIBILITY FOR BENEFITS CHART, MARINE CORPS AIR STATION IWAKUNI, <https://www.mcasiwakuni.marines.mil/Portals/112/Docs/sja/discharge%20list.pdf> (last visited Oct. 16, 2021).

¹⁴⁷ 38 C.F.R. § 3.360(a)–(b) (2020); *see also* 38 U.S.C. § 1720I(a)–(b) (authorizing mental health care for all veterans with other-than-honorable discharges who served in a combat theater or were sexually assaulted, physically assaulted, or sexually harassed).

¹⁴⁸ U.S. DEP'T OF VETERANS AFFAIRS, *supra* note 95.

¹⁴⁹ Horton, *supra* note 95.

¹⁵⁰ *See* VETERANS LEGAL CLINIC, *supra* note 121, at 10–11.

¹⁵¹ *Id.* at 13.

¹⁵² *Id.* at 7

¹⁵³ *Id.* at 7–8.

¹⁵⁴ *Id.* at 8.

¹⁵⁵ *See id.*

with PTSD and TBI received so-called “bad paper” discharges that limited their access to services.¹⁵⁶ Over 100,000 LGBTQ+ individuals left the military with “bad paper” discharges between 1994 and 2011, and racial disparities and arbitrary discharge characterizations are well documented.¹⁵⁷ One military commander’s interpretation of mitigating circumstances, a prior service history, or their sympathy may affect these characterizations.

If these miscarriages of justice happen at the DOD and VA, where front desk staff are trained to understand eligibility issues, VTCs are even more likely to experience these issues.¹⁵⁸ VTCs turning away those who are eligible leave veterans again experiencing someone turning their back on them.¹⁵⁹ Bad paper discharges that fall into the grey zone of eligibility are only becoming more and more common.¹⁶⁰ Data shows that bad paper discharges have steadily increased since WWII, with more veterans from the Global War on Terrorism (or “GWOT,” comprised of Operation Enduring Freedom in Afghanistan, Operation Iraqi Freedom in Iraq, and other related operations) receiving bad paper discharges at four times the rate of WWII veterans and more than double the rate of Vietnam era veterans.¹⁶¹

VTCs must make it a priority to understand VA eligibility, specifically the complexities of the system that renders some veterans eligible for some benefits but not others, as well as ways to increase VA access. This will ensure they will be successful at finding potential participants in the most need and connecting those same veterans with the numerous programs across the VHA and VBA.

B. Health Care

VTCs are predicated around the idea that treatment for an underlying mental health or substance use disorder will reduce recidivism.¹⁶² And while disability benefits and housing vouchers are

¹⁵⁶ *Id.* at 5.

¹⁵⁷ *Id.* at 5–6.

¹⁵⁸ *See id.* at 5.

¹⁵⁹ *See* Steve Walsh, *VA Struggles to Reach Other-Than-Honorable-Discharge Vets in Need of Help*, NPR (Oct. 18, 2018, 5:02 AM), <https://www.npr.org/2018/10/18/657789457/va-struggles-to-reach-other-than-honorable-discharge-vets-in-need-of-help>.

¹⁶⁰ *See* Ali R. Tayyeb & Jennifer Greenburg, “Bad Papers”: *The Invisible and Increasing Costs of War for Excluded Veterans*, COSTS OF WAR 1, 1 (2017).

¹⁶¹ *Id.* at 1, 5.

¹⁶² Timko et al., *supra* note 43, at 131.

frequently important in creating the stability needed for future success, the first step in a VTC is establishing a treatment plan with the participant.¹⁶³ Unlike participants who must rely on community resources to meet the requirements of drug courts and mental health courts, VA eligible participants in VTCs are typically eligible for free or reduced medical care by virtue of their veteran status and their income level.¹⁶⁴ Veterans that meet the VA's active service requirement and have an "honorable" or "general" discharge or have an "other than honorable" or "bad conduct" discharge with a favorable character of service determination meet the first step of eligibility.¹⁶⁵ Veterans with an "other than honorable" discharge or "bad conduct" discharge with an *unfavorable* character of service determination may still receive treatment for service-connected medical conditions in some cases.¹⁶⁶

Next, for healthcare, the VA requires that if the individual served after September 7, 1980, they must have served twenty-four continuous months or the full period of their active duty, unless they were discharged for a disability related to their active-duty service or were discharged for a hardship.¹⁶⁷ Those who served prior to September 7, 1980, do not have a length of service requirement.¹⁶⁸ Finally, to determine how much a veteran may be responsible for paying toward care, the VA created several priority groups, which consider military service history, service-connected disability rating, income level, Medicaid eligibility, and other VA benefits eligibility.¹⁶⁹

VTCs should work to connect qualifying veterans who may not be accessing their healthcare benefits to VA services. A 2017 VA study found that the total VHA enrollee population was 8.3 million veterans, significantly less than the estimated total veteran

¹⁶³ KATHLEEN MOORE ET AL., SAMHSA, EVALUATION OF THE VETERANS TREATMENT COURT (VTC) PROGRAM 4 (2020).

¹⁶⁴ See *Basic Eligibility for VA Health Care*, U.S. DEP'T VETERANS AFF., https://www.va.gov/healthbenefits/resources/publications/hbco/hbco_basic_eligibility.asp (Apr. 23, 2019) (describing VA eligibility).

¹⁶⁵ Timko et al., *supra* note 43, at 125–26.

¹⁶⁶ *Id.* at 4; see also 38 C.F.R. § 3.360(a) (2020); 38 U.S.C. § 1720I (authorizing mental health care for all veterans with other-than-honorable discharges who served in a combat theater or were sexually assaulted, physically assaulted, or sexually harassed).

¹⁶⁷ *Eligibility for VA Healthcare*, U.S. DEP'T VETERANS AFF., <https://www.va.gov/health-care/eligibility> (last updated Sept. 17, 2020).

¹⁶⁸ *Id.*

¹⁶⁹ 38 C.F.R. § 17.36(b) (2020).

population of 18.3 million.¹⁷⁰ Current estimates suggest that less than 49% of veterans use the VA for their regular healthcare needs.¹⁷¹ As such, VTCs should not expect veteran participants to be enrolled at the VA or even know if they are eligible for services. It is also important that they be aware that attempting to enroll in VA healthcare for the first time may trigger the character of discharge determination process for “other than honorable” or “bad conduct” veterans when they are not in any position to present or gather evidence for their case. Analysis done through the priority group enrollment and patient surveys has found that the veterans most likely to utilize VHA healthcare are those with annual incomes below \$35,000, as well as those who consider themselves to be in poor health.¹⁷² Low-income veterans and veterans with service-connected disabilities are the most likely to receive their medical care for free from the VA,¹⁷³ which is a tremendous benefit to those in need.

For VTCs, the VA is an excellent partner for participants’ outpatient care needs. The VA provides mental health outpatient treatment that has been found to be superior to the private sector’s based on initial diagnoses, medication intervention, and long-term treatment.¹⁷⁴ The VA also tends to offer substantial substance abuse programs with both group and individualized therapy at VA medical centers and smaller specialized facilities.¹⁷⁵ In 2017, the VA expanded emergency mental health care, offering certain veterans with “other than honorable” discharges the ability to receive care for up to ninety days including inpatient, residential, or outpatient care.¹⁷⁶ Although, the launch of the program has experienced

¹⁷⁰ GRACE HUANG ET AL., WESTAT, 2017 SURVEY OF VETERAN ENROLLEES’ HEALTH AND USE OF HEALTH CARE DATA FINDINGS REPORT 10 (2018).

¹⁷¹ See National Center for Veterans Analysis and Statistics, *VA Utilization profile FY 2017*, U.S. DEP’T VETERANS AFF. 1, 3 (2020), https://www.va.gov/vetdata/docs/Quick-facts/VA_Utilization_Profile_2017.pdf. In 2017, 9.8 million veterans, 49% of all veterans, used VHA services. *Id.*

¹⁷² See HUANG ET AL., *supra* note 170, at 113.

¹⁷³ *Id.* at 1.

¹⁷⁴ *VA Mental Health Care Found Superior to Care in the Private Sector*, U.S. DEP’T VETERANS AFF. (Apr. 15, 2016), <https://blogs.va.gov/VAntage/27029/va-mental-health-care-found-superior-care-private-sector>.

¹⁷⁵ *VA Mental Health Services*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/health-care/health-needs-conditions/mental-health> (last updated Feb. 12, 2021).

¹⁷⁶ *VA Secretary Formalizes Expansion of Emergency Mental Health Care to Former Service Members with Other-Than-Honorable Discharges*, U.S. DEP’T VETERANS AFF. (June 27, 2017, 11:48 AM), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=2923>; U.S. DEP’T OF VETERANS

significant issues,¹⁷⁷ VTCs should be aware of this program while searching for longer-term care options for non-VHA eligible veterans. Lastly, community-based Vet Centers provide readjustment counseling to all veterans who served in periods of armed hostilities from the Vietnam era through the present, except those with a fully “dishonorable” discharge.¹⁷⁸

One important challenge for VTCs is participants’ ability to access inpatient, as opposed to outpatient, treatment.¹⁷⁹ Participants often require intensive substance use treatment, and those who continue to use while enrolled in the VTC may be required to enter an inpatient program.¹⁸⁰ Unfortunately, the VHA is limited in terms of inpatient program access.¹⁸¹ Even though the majority of VA medical centers have inpatient substance abuse programs and inpatient mental health programs, including programs for PTSD, the waiting lists for these programs tend to be significant.¹⁸² VTCs, whether through their VJOs or VA contact, should consistently monitor bed availability in these programs when determining participant eligibility. The VA MISSION Act,¹⁸³ a 2018 law, has created more funding for veterans to receive care in their communities in private health care settings, while the 2021 National Defense Authorization Act (“NDAA”) has set aside funding to assist homeless, women, and veterans with expanded mental health issues.¹⁸⁴ These important laws and future efforts may provide additional avenues for veterans to receive inpatient treatment. The VTC team should be familiar with these updates. Further, the VTC team should connect with non-VA health care providers that offer programs to

AFFAIRS, EXPANDING ACCESS FOR EMERGENT MENTAL HEALTH CARE FOR FORMER SERVICE MEMBERS, <https://www.co.monterey.ca.us/home/showdocument?id=38564>.

¹⁷⁷ U.S. DEP’T OF VETERANS AFFAIRS OFF. OF INSPECTOR GEN., DEFICIENCIES IN THE ADMINISTRATION OF EMERGENT MENTAL HEALTH SERVICES AT COATESVILLE VA MEDICAL CENTER 2 (2020).

¹⁷⁸ 38 C.F.R. § 17.2000(c) (2020).

¹⁷⁹ See Ronald D. Hester, *Lack of Access to Mental Health Services Contributing to the High Suicide Rates Among Veterans*, 11 INT’L J. OF MENTAL HEALTH SYS. 47 (2017).

¹⁸⁰ See FOURTH JUDICIAL CIRCUIT, PROBLEM-SOLVING COURTS OF CLAY COUNTY, FLORIDA: VETERANS TREATMENT COURT PARTICIPANT HANDBOOK 13 (2017).

¹⁸¹ See U.S. GOV’T ACCOUNTABILITY OFF., GAO-20-35, VETERANS HEALTH CARE 7 (2019).

¹⁸² *Id.* at 18.

¹⁸³ VA Mission Act of 2018, Pub. L. No. 115-182, 132 Stat. 1393 (2018).

¹⁸⁴ Veterans Health Care and Benefits Improvement Act of 2020, Pub. L. No. 116-315, 134 Stat. 4932 (2020).

veterans and fill the gaps where ineligibility or long waits would impact court participation or success.

In summary, VTCs should not assume that discharge status is the only determining factor for VHA eligibility, and they must collaborate with team members who are knowledgeable about how eligibility works. When unclear, VTCs need to consult knowledgeable VSOs or attorneys to see if a character of discharge determination has taken place. VTCs, through the VJO or other VHA representatives, must develop relationships with the mental health, substance abuse, and inpatient VA programs, as well as discuss the availability of emergency mental health care, Vet Centers, and non-VA facilities for ineligible veterans. Further, courts must closely monitor changes in the law that increase potential private health care access for sub-populations of the veteran community, which are frequently overrepresented in VTCs.

C. Housing

With a large percentage of participants entering VTCs housing insecure,¹⁸⁵ it would seem a logical extension for VTCs to place emphasis on establishing housing stability at the start of the program. How can a VTC participant focus on treatment if they are worried about where they will sleep that night? Studies show that many participants who were unsheltered obtained housing at program exit,¹⁸⁶ yet a significant number of veterans still leave their lengthy VTC programs without housing.¹⁸⁷ This is a result of differing priorities between VA and VTCs and a lack of knowledge of VA housing programs within VTC teams.¹⁸⁸

In 2012, the VA adopted as national policy a “Housing First” approach for its homeless programs.¹⁸⁹ Housing First is a “low-barrier, supportive housing model” that “provides individuals who are experiencing homelessness . . . with permanent housing as quickly as possible and [with] supportive services as needed.”¹⁹⁰ The model

¹⁸⁵ Tsai et al., *supra* note 3, at 239.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 241.

¹⁸⁸ *Id.* at 242–43.

¹⁸⁹ ANN ELIZABETH MONTGOMERY ET AL., U.S. DEP’T OF VETERANS AFFAIRS, HOUSING FIRST IMPLEMENTATION BRIEF (2014), <https://www.va.gov/homeless/nchav/docs/Housing-First-Implementation-brief.pdf>.

¹⁹⁰ *Id.* (citing Sam J. Tsemberis, *Housing First: The Pathways Model to End Homelessness for People with Mental Illness and Addiction Manual*, 5 EUR. J. HOMELESSNESS 235 (Jan. 2011)).

provides housing “without prerequisites for abstinence, psychiatric stability, or completion of treatment programs.”¹⁹¹ The approach is guided by the belief that “people need basic necessities like food and a place to live before attending to anything less critical, such as getting a job, budgeting properly, or attending to substance use issues.”¹⁹²

The VA supports three major housing programs focused on low-income and disabled veterans: VA’s Homeless Providers Grant and Per Diem Program (“GPD”), VA’s Supportive Services for Veterans Families Program (“SSVF”), and U.S. Department of Housing and Urban Development-VA Supportive Housing Program (“HUD-VASH”).¹⁹³ Each program targets different sub-populations of homeless veterans to tackle their different barriers.¹⁹⁴ The VA also offers home loans, which can help service members or their survivors become homeowners.¹⁹⁵

Knowledge of these different programs can aid VTC participants who are most vulnerable and most likely to struggle in or after a VTC program. GPD awards grants to community-based agencies that provide transitional housing and supportive services to homeless veterans.¹⁹⁶ GPD is often used as a first step in housing for many veterans, providing more freedom and flexibility than shelters while offering differing levels of social and medical services depending on the needs of the individual.¹⁹⁷ GPD-Low Demand is aimed at chronically homeless veterans who were unsuccessful in traditional housing programs, frequently due to their inability to meet

¹⁹¹ *Id.* (citing Sam Tsemberis, Leyla Gulcur & Maria Nakae, *Housing First, Consumer Choice, and Harm Reduction for Homeless Individuals with a Dual Diagnosis*, 94 AM. J. PUB. HEALTH 651–56 (Apr. 2004)).

¹⁹² *Fact Sheet: Housing First*, NAT. ALL. TO END HOMELESSNESS (Apr. 2016), <https://endhomelessness.org/wp-content/uploads/2016/04/housing-first-fact-sheet.pdf>.

¹⁹³ *Housing Assistance for Veterans*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/homeless/housing.asp> (last updated Feb. 19, 2019).

¹⁹⁴ *Id.*

¹⁹⁵ *VA Home Loans*, U.S. DEP’T VETERAN AFF., <https://www.benefits.va.gov/homeloans> (last updated July 28, 2021).

¹⁹⁶ U.S. DEP’T OF VETERANS AFFAIRS, FACT SHEET: VA PROGRAMS FOR HOMELESS VETERANS 5 (2018).

¹⁹⁷ *GPD Program: Seizing the Moment to End Veteran Homelessness*, U.S. VETS, <https://usvets.org/gpd-program-seizing-the-moment-to-end-veteran-homelessness/#:~:text=GPD%20transitional%20housing%20would%20operate%20within%20this%20comprehensive,get%20into%20permanent%20housing%20as%20quickly%20as%20possible> (last visited Oct. 9, 2021).

treatment participation and sobriety requirements.¹⁹⁸ GPD-Hospital to Hospital is set up to provide clinical follow-up care to homeless veterans following inpatient or emergency stays and to prevent them from being discharged to the streets, an emergency shelter, or extending their inpatient stay.¹⁹⁹ GPD-Clinical Treatment is arranged with an emphasis on case management and treatment services incorporated with temporary housing, providing a less intensive alternative to inpatient treatment programs.²⁰⁰ GPD-Bridge Housing is for short-term stays where veterans have been offered and accepted permanent housing, but the accepted housing is not yet available.²⁰¹ For GPD eligibility, veterans only need one day of active duty service and a discharge status other than dishonorable or bad conduct from a general court-martial (as opposed to a bad conduct discharge issued in a special court-martial).²⁰²

SSVF is a VA grant program that awards non-profit organizations funding to assist very low-income veterans and their families residing in, or transitioning to, permanent housing.²⁰³ SSVF organizations are able to provide a range of supportive services to eligible veterans designed to promote housing stability, including case management and temporary financial assistance.²⁰⁴ The SSVF program is not intended to provide long-term support for participants but rather is targeted at identifying veterans who are at risk of homelessness and keeping them housed or rapidly re-housing veterans who are currently homeless.²⁰⁵ SSVF is often used as the link to getting veterans from shelter or GPD into permanent housing, while also connecting veterans and families with the other non-VA resources available in their area.²⁰⁶ Like GPD, for SSVF eligibility,

¹⁹⁸ *Grant and Per Diem - Low Demand (GPD-LD)*, U.S. DEP'T VETERANS AFF., <https://www.va.gov/HOMELESS/nchav/gpd-ta/GPD-LD.asp> (Aug. 13, 2019).

¹⁹⁹ *Grant and Per Diem - Hospital-to-Housing (H2H)*, U.S. DEP'T VETERANS AFF., <https://www.va.gov/HOMELESS/nchav/gpd-ta/H2H.asp> (Feb. 22, 2021).

²⁰⁰ U.S. DEP'T OF VETERANS AFFAIRS, VA GRANT & PER DIEM PROGRAM: GRANT RECIPIENT GUIDE, 19 (2020).

²⁰¹ Letter from Deputy Secretary Sloan D. Gibson to Grantees of VA Homeless Providers Grant and Per Diem (GPD) Program (Mar. 1, 2016), <https://files.hudexchange.info/resources/documents/Deputy-Secretary-of-Veterans-Affairs-Letter-to-GPD-Grantees.pdf>.

²⁰² VA GRANT & PER DIEM PROGRAM: GRANT RECIPIENT GUIDE, *supra* note 200, at 10–11.

²⁰³ U.S. DEP'T OF VETERANS AFFAIRS, DEPARTMENT OF VETERANS AFFAIRS SUPPORTIVE SERVICES FOR VETERAN FAMILIES (SSVF) PROGRAM 1 (2021).

²⁰⁴ *Id.* at 1, 6.

²⁰⁵ *Id.* at 197–98, 200.

²⁰⁶ *Id.* at 48, 51.

veterans only need one day of active duty service and a discharge status other than dishonorable or bad conduct from a general court-martial.²⁰⁷

HUD-VASH is a uniquely beneficial program to help veterans most at risk of housing insecurity.²⁰⁸ It is a VHA-run program that combines HUD housing vouchers with VA supportive services to help homeless veterans find and sustain permanent housing.²⁰⁹ HUD provides specific rental assistance vouchers to veterans who are eligible for VA health care services.²¹⁰ Recipients must connect with VA case managers who will assist them in accessing health care, mental health treatment, and substance use counseling to help their recovery and to maintain housing in the community.²¹¹ As of 2019, there were 90,749 veterans with active HUD-VASH vouchers.²¹² Prior to 2021, veterans with an “other than honorable” or “bad conduct” discharge were ineligible for this program, even if they had a favorable character of service determination.²¹³ However, the 2021 NDAA has expanded the program to include “other than honorable” veterans, and efforts continue to further expand the definition to match those used by GPD and SSVF.²¹⁴ And while HUD-VASH vouchers have limitations, especially in areas with high cost of living,²¹⁵ they have had a massive impact on lowering the number of homeless veterans across the country.²¹⁶

²⁰⁷ *Id.* at 24.

²⁰⁸ FACT SHEET: VA PROGRAMS FOR HOMELESS VETERANS, *supra* note 196, at 6.

²⁰⁹ U.S. Department of Housing and Urban Development-VA Supportive Housing (HUD-VASH) Program, U.S. DEP’T VETERANS AFF., <https://www.va.gov/homeless/hud-vash.asp> (Mar. 30, 2021).

²¹⁰ *Id.*

²¹¹ FACT SHEET: VA PROGRAMS FOR HOMELESS VETERANS, *supra* note 196, at 6.

²¹² VA Programs for Homeless Veterans, U.S. DEP’T VETERANS AFF., https://www.va.gov/homeless/for_homeless_veterans.asp (last updated Feb. 18, 2021).

²¹³ *Expanding Eligibility for HUD-VASH*, NAT’L ALL. TO END HOMELESSNESS, <https://endhomelessness.org/wp-content/uploads/2019/07/HUD-VASH-2019-v2-FINAL.pdf> (last visited Oct. 16, 2021).

²¹⁴ *See id.*

²¹⁵ *See* Leo Shane III, *Thousands of Housing Vouchers for Veterans Went Unused Last Year, Hurting Efforts to End Homelessness*, MIL. TIMES (Jan. 14, 2020), <https://www.militarytimes.com/news/pentagon-congress/2020/01/14/thousands-of-housing-vouchers-for-veterans-went-unused-last-year-hurting-efforts-to-end-homelessness>.

²¹⁶ Steve Berg, *Positive Changes in FY2021 Spending: HUD-VASH Eligibility Expands*, NAT’L ALL. TO END HOMELESSNESS (Feb. 9, 2021), <https://endhomelessness.org/positive-changes-in-fy2021-spending-hud-vash-eligibility-expands>.

VA home loans may also provide an advantageous way for veterans to secure permanent housing for VTC participants.²¹⁷ VA home loans are provided by private lenders, but the VA guarantees a portion of the loan, which enables the lender to provide more favorable terms.²¹⁸ Major benefits come with VA home loans including no down payment, no private mortgage insurance, more flexible credit requirements, limits to closing costs, and greater forgiveness of past foreclosure or bankruptcy.²¹⁹ Eligibility for VA home loans matches the requirements for VHA healthcare discussed in the previous section.²²⁰ Unlike HUD-VASH, this VA administered program is handled by the VBA, rather than the VHA.²²¹

In summary, the VA has four different housing programs that VTCs should consider. Two of the programs, GPD and SSVF, are funded by the VA, but are handled by non-profit organizations in the community.²²² These programs have less restrictive eligibility requirements, which can be extremely beneficial to veterans with “other than honorable” or “bad conduct” discharges or those who served for a very short period of time.²²³ The VHA is responsible for the HUD-VASH program, which can connect homeless veterans with long-term housing vouchers and has seen a recent expansion in eligibility requirements.²²⁴ And the VBA oversees the VA Home Loans program, which can provide favorable terms for eligible veteran homebuyers.²²⁵ VTCs need contacts for each different option, which requires knowledge of local community agencies and an understanding of the needs of participants entering the program for referral purposes.

²¹⁷ *VA Home Loans*, *supra* note 195.

²¹⁸ *Id.*

²¹⁹ Chris Birk, *6 Unbeatable Benefits of VA Loans*, MILITARY.COM, <https://www.military.com/money/va-loans/6-unbeatable-benefits-of-v-a-loans.html> (last visited Oct. 16, 2021).

²²⁰ 38 U.S.C. § 3702(c).

²²¹ *About VBA*, U.S. DEP’T VETERANS AFF., <https://www.benefits.va.gov/BENEFITS/about.asp> (last updated Jan. 22, 2021).

²²² VA Homeless Providers Grant and Per Diem Program, 78 Fed. Reg. 12,600–01 (Feb 25, 2013); *see also* U.S. DEP’T OF VETERANS AFFAIRS, SUPPORTIVE SERVICES FOR VETERAN FAMILIES (SSVF) PROGRAM GUIDE 1 (2018).

²²³ SUPPORTIVE SERVICES FOR VETERAN FAMILIES (SSVF) PROGRAM GUIDE, *supra* note 222, at 22, 173.

²²⁴ *U.S. Department of Housing and Urban Development-VA Supportive Housing (HUD-VASH) Program*, *supra* note 209.

²²⁵ *About VBA*, *supra* note 221.

D. Disability

VTCs have a unique opportunity to connect participants to VA disability benefits, but it requires them to understand the benefits available and to come up with ways to involve accredited representatives²²⁶ in the court. The most comprehensive study of VTC participants to date reveals that, at VTC admission, 38% of participants were receiving VA disability benefits, a number that increased to 50% by program exit.²²⁷ While VTC participants may already be connected to the VA, VTCs can help individuals who have yet to access their benefits.

Obtaining VA disability benefits can be a long process. However, when participants are mandated to keep contact with the court and to receive treatment for their disability, they can improve their VA disability claims, specifically by increasing the amount of medical evidence they have, which will be beneficial to proving the existence or severity of their claimed disability.²²⁸ Monthly income from disability benefits can help participants find or maintain stability, especially early in the VTC process when court obligations can make employment challenging, and after graduation when the level of support decreases.²²⁹

The percentage of VTC participants already receiving VA disability benefits may appear high. However, as a subset of the veteran population where all participants have severe mental health or substance abuse issues, it is likely significantly lower than it should be. VTCs serve as a hybrid of mental health and drug courts, as VTCs condition entry on either or both a substance use and mental health disorder diagnosis.²³⁰ While most courts do not require the qualifying condition to be related to military service, in some cases, the qualifying condition either started in or was aggravated by

²²⁶ The VA accredits attorneys, agents, and Veteran Service Organization (“VSO”) representatives to help qualifying veterans apply for claims, ensuring the accredited individual has “good moral character” and is “fit” to represent veterans in claims. See *VA Veterans Benefits Administration, Accredited Representatives*, U.S. DEP’T VETERANS AFF., <https://www.benefits.va.gov/vso/> (last updated Nov. 9, 2021).

²²⁷ Tsai et al., *supra* note 3, at 239.

²²⁸ See *How to File a VA Disability Claim*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/disability/how-to-file-claim> (last updated Oct. 1, 2021).

²²⁹ See *VA Disability Compensation*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/disability> (last updated Sept. 17, 2021).

²³⁰ *Veterans Courts*, NAT’L CTR. FOR STATE CTS., <https://www.ncsc.org/topics/alternative-dockets/problem-solving-courts/veterans-court/resource-guide> (last visited Oct. 16, 2021).

military service.²³¹ For example, of the 38% receiving benefits at admission, 46.5% reported compensation for a service-connected psychiatric condition.²³² As such, the expectation would be for a significant number of participants to enter with a mental health condition leading to receipt of disability benefits.

Further, while the data captures the percentage receiving benefits, it does not clarify whether the VA disability benefit received is for service-connected or non-service-connected disabilities (the latter of which is only available for totally disabled and very low-income veterans) or if the benefits amount accurately reflects the severity of the disability.²³³ Even though VTCs may not view connection to disability benefits as part of their core missions, increasing benefits assists with housing and can provide a consistent source of income while participants attempt to meet the rigorous treatment and court requirements. For this reason, it is critical that a VTC team member be familiar with the VBA.

The VA has two major disability benefits programs, both overseen by the VBA.²³⁴ The first benefits program is VA Service-Connected Disability Compensation (“Compensation”), a tax-free monetary benefit paid to veterans with disabilities that are the result of a disease or injury incurred or aggravated during active military service.²³⁵ Compensation requires a veteran to show that it is at least as likely as not that a current physical or mental health condition resulting in disability was incurred in, aggravated by, or caused by service.²³⁶ The VA considers five criteria when making a decision about the link between a disability and its origin: (1) direct service connection,²³⁷ (2) aggravation,²³⁸ (3) presumptive service connection,²³⁹ (4) secondary service connection,²⁴⁰ and (5) consequence

²³¹ See *Eligibility for VA Disability Benefits*, U.S. DEP’T VETERANS AFFAIRS, <https://www.va.gov/disability/eligibility> (last updated Aug. 13, 2021).

²³² Tsai et al., *supra* note 3, at 240.

²³³ *Id.* at 239–40.

²³⁴ *About VBA*, *supra* note 221.

²³⁵ *Compensation*, U.S. DEP’T VETERANS AFF., <https://www.benefits.va.gov/compensation> (last updated Feb. 13, 2019).

²³⁶ See 38 C.F.R. § 3.303(a) (2020).

²³⁷ *Id.* § 3.304(a).

²³⁸ *Id.* § 3.306(a).

²³⁹ *Id.* § 3.307(a); see also *id.* § 3.309(a).

²⁴⁰ *Id.* § 3.310(a).

of VA health care.²⁴¹ If granted, the VA then rates each individual disability in increments of 10%, from 0% to 100%, and veterans with multiple rated conditions receive an overall “combined” rating (using a method distinct from simple addition).²⁴² Monthly compensation increases with a veteran’s combined rating and number of dependents, with a single veteran rated at 100% receiving \$3,146 per month in benefits.²⁴³

The second benefits program is VA Non-Service-Connected Disability Pension (“Pension”), a tax-free benefits program payable to very low-income, disabled, or elderly veterans.²⁴⁴ In addition to requiring that recipients meet the VA’s definition of a veteran, Pension has several other qualifiers.²⁴⁵ First is a net worth limitation, which considers both assets and annual income.²⁴⁶ Next, the veteran must have at least ninety days of active duty, including one day during a wartime period, or if the active duty occurred after September 7, 1980, at least twenty-four months of service or a full period called up, along with one day during a wartime period.²⁴⁷ Last, the veteran must be sixty-five or older with limited or no income, totally and permanently disabled, a patient in a nursing home receiving skilled nursing care, or a recipient of SSI or SSDI.²⁴⁸ A single veteran with Pension will receive up to \$1,160 per month, however the amount can increase depending on additional care needs and out of pocket medical expenses.²⁴⁹

A VJO should be familiar with the basics of each program in order to help the veterans they work with determine which benefits or programs might be appropriate, regardless of whether they are working with incarcerated veterans, VTCs, or other JIVs. However,

²⁴¹ 38 U.S.C. § 1151(a).

²⁴² *About VA Disability Ratings*, U.S. DEP’T. VETERANS AFF., <https://www.va.gov/disability/about-disability-ratings> (last updated Dec. 10, 2020).

²⁴³ *2021 Veterans Disability Compensation Rates*, U.S. DEP’T. VETERANS AFF., <https://www.va.gov/disability/compensation-rates/veteran-rates> (last updated July 15, 2021).

²⁴⁴ *Eligibility For Veterans Pension*, U.S. DEP’T. VETERANS AFF., <https://www.va.gov/pension/eligibility> (last updated Sept. 29, 2021).

²⁴⁵ *Id.*

²⁴⁶ *2021 VA Pension Rates for Veterans*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/pension/veterans-pension-rates> (last updated July 15, 2021).

²⁴⁷ 38 C.F.R. § 3.3(2)–(3) (2020); *Eligibility For Veterans Pension*, *supra* note 244.

²⁴⁸ *Eligibility For Veterans Pension*, *supra* note 244.

²⁴⁹ *See 2021 VA Pension Rates for Veterans*, *supra* note 246.

VJOs are limited in their ability to provide assistance with the actual application or with appeals of denials.²⁵⁰

Given the complexity of the benefit programs and the lengthy process to receive a decision, VTCs should look elsewhere for assistance in helping veterans, particularly veterans with mental health conditions and housing insecurity, succeed in their initial applications and appeals. Veteran Service Organizations (“VSOs”), along with state, county, and local veteran service representatives, are trained to help veterans understand and apply for these VA benefits for no cost.²⁵¹ There are also legal service providers, law school clinics, and other non-profit organizations that have attorneys available to provide pro bono assistance with disability claims.²⁵² There are also attorneys and agents that are accredited who charge fees to veterans to assist with their claims.²⁵³ Since VJOs cannot assist directly with the claims process, they need to be aware of who in their community can. VTC teams should also consider how they can bring accredited representatives into the court to work directly with participants.

E. Education and Employment

One important way to combat addiction and reduce recidivism is to increase access to education and work opportunities.²⁵⁴ VA education and employment benefits may feel less urgent for older VTC participants and those struggling with homelessness but may be most important in the long run for younger participants hoping to build a stable future. The most recent data shows the mean age of VTC participants is 43.7 years old, putting them at working age.²⁵⁵ While younger veterans made up a smaller number

²⁵⁰ See *Justice Involved Veterans and Treatment Court*, U.S. DEP’T VETERANS AFF., https://www.va.gov/HEALTHY/Justice_Involved_Veterans_and_Treatment_Court.asp (last updated Apr. 16, 2021).

²⁵¹ *Accredited Representatives*, U.S. DEP’T VETERANS AFF., <https://www.benefits.va.gov/vso> (last updated Feb. 5, 2021).

²⁵² *Legal Help for Veterans*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/OGC/LegalServices.asp> (last updated May 5, 2021).

²⁵³ *Accredited Representatives*, *supra* note 251.

²⁵⁴ See, e.g., Christopher Uggen, *Work as a Turning Point in the Life Course of Criminals: A Duration Model of Age, Employment, and Recidivism*, 65 AM. SOCIO. REV. 529, 542–43 (2000); James S. Vacca, *Educated Prisoners Are Less Likely to Return to Prison*, 55 J. CORR. EDUC. 297, 297–98 (2004); Christy A. Visher et al., *Ex-Offender Employment Programs and Recidivism: A Meta-Analysis*, 1 J. EXPERIMENTAL CRIMINOLOGY 295, 295, 311 (2005).

²⁵⁵ Tsai et al., *supra* note 3, at 240.

of participants than originally anticipated in the creation of these courts, the declining overall veteran population suggests VTCs should expect a future increase in the number of Gulf War era and Post-9/11 veterans, who comprise about one-third of VTC participants in recent years.²⁵⁶ And while some may have total and permanent disabilities, many VTC participants will need to secure or maintain employment while also dealing with the mental health and substance abuse issues that brought them to the court, and depending on the court, potentially a criminal charge or conviction too.

The three largest VA programs providing critical education and workforce training are the various iterations of the GI Bill, the Veteran Readiness and Employment program (“VR&E,” formerly known as VocRehab), and Compensated Work Therapy (“CWT”).²⁵⁷

The GI Bill is an education benefit provided by the VA that helps qualifying veterans cover all or some of the costs of school or training.²⁵⁸ Many service members cite education benefits as the principal reason for joining the military.²⁵⁹ To be eligible for VA education benefits through the Post-9/11 GI Bill, a veteran must have served for ninety days, whether continuous or interrupted after September 10, 2001, and received an “honorable” discharge.²⁶⁰ To be eligible for VA education benefits through the older Montgomery GI Bill, a veteran must have served two years on active duty and have received an “honorable” discharge.²⁶¹ The GI Bill is the only benefit that individuals with a “general” discharge are not

²⁵⁶ *Id.*

²⁵⁷ See *About GI Bill Benefits*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/education/about-gi-bill-benefits> (last updated Dec. 30, 2020); *Veteran Readiness and Employment (Chapter 31)*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/careers-employment/vocational-rehabilitation> (May 18, 2021); *Information for Veterans - Compensated Work Therapy*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/HEALTH/cwt/veterans.asp> (last updated Oct. 13, 2021).

²⁵⁸ *About GI Bill Benefits*, *supra* note 257.

²⁵⁹ Meghann Myers, *Studies Tackle Who Joins the Military and Why, but Their Findings Aren’t What Many Assume*, MIL. TIMES (Apr. 27, 2020), <https://www.militarytimes.com/news/your-military/2020/04/27/studies-tackle-who-joins-the-military-and-why-but-their-findings-arent-what-many-assume>.

²⁶⁰ *Post-9/11 GI Bill (Chapter 33)*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/education/about-gi-bill-benefits/post-9-11> (last updated Oct. 7, 2021).

²⁶¹ *Montgomery GI Bill Active Duty (MGI-B-AD)*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/education/about-gi-bill-benefits/montgomery-active-duty> (last updated Oct. 18, 2021).

eligible for.²⁶² Only a discharge upgrade, not a favorable character of discharge determination, will make an ineligible veteran subsequently eligible for GI Bill benefits.²⁶³ The GI Bill can pay full tuition for public colleges or universities and a percentage of private or foreign universities, and can also provide a monthly housing allowance.²⁶⁴

Veteran Readiness and Employment is a VHA program designed to assist veterans with service-connected disabilities obtain suitable employment or independent living.²⁶⁵ Veterans meet with rehabilitation counselors who discuss and determine employment handicaps and assess veterans’ skills, abilities, and interests.²⁶⁶ Veterans are then placed on one of five different tracks: (1) re-employment, (2) rapid access to employment, (3) self-employment, (4) employment through long-term services, or (5) independent living, depending on the level of need.²⁶⁷ In addition to case management and employment services, VR&E can help pay for veterans’ vocational or educational training as well as housing assistance.²⁶⁸ While VR&E requires VHA eligibility and a service-connected disability, it does not require an “honorable” discharge, expanding educational opportunities for veterans who may be ineligible for the GI Bill.²⁶⁹ It also closely monitors the successes and failures of participants, so veterans who are unsuccessful with the program have increased

²⁶² *Applying for Benefits and Your Character of Discharge*, U.S. DEP’T VETERANS AFF., https://www.benefits.va.gov/benefits/character_of_discharge.asp (last updated Dec. 10, 2020).

²⁶³ *What Type of Discharge is Required to Qualify for the Post-9/11 GI Bill?*, U.S. DEP’T VETERANS AFF., https://gibill.custhelp.va.gov/app/answers/detail/a_id/942/kw/general%20discharge (last updated Nov. 6, 2018).

²⁶⁴ Jim Absher, *Post-9/11 GI Bill Rates*, MILITARY.COM (May 18, 2021), <https://www.military.com/education/gi-bill/gi-bill-tuition-rates.html>.

²⁶⁵ *Veteran Readiness and Employment (Chapter 31)*, *supra* note 257.

²⁶⁶ *VR&E Rapid Access to Employment Track*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/careers-employment/vocational-rehabilitation/programs/rapid-access-to-employment> (last updated June 8, 2021).

²⁶⁷ *See id.*

²⁶⁸ *Federal Benefits for Veterans Dependents and Survivors Chapter 3 Vocational Rehabilitation and Employment*, U.S. DEP’T VETERANS AFF., https://www.va.gov/opa/publications/benefits_book/benefits_chap03.asp (last updated Apr. 21, 2015).

²⁶⁹ *See Eligibility of Veteran Readiness and Employment*, U.S. DEP’T VETERANS AFF., <https://www.va.gov/careers-employment/vocational-rehabilitation/eligibility> (last updated Sept. 30, 2021).

likelihood of being able to obtain increases in VA Disability Benefits or Social Security Disability Benefits.²⁷⁰

CWT is a VHA clinical vocational rehabilitation program that is offered at every VA medical center.²⁷¹ CWT frequently partners with VR&E to expand work opportunities for veterans.²⁷² The goal of the program is to provide support to veterans who have mental or physical limitations that have created barriers to employment to secure and maintain community-based competitive employment.²⁷³ To be eligible for CWT, an individual must be VHA eligible and have a disability, but that disability does not need to be service-connected, making it the least restrictive of the employment and education programs.²⁷⁴ Much like VR&E, a veteran must meet with a counselor who provides a vocational assessment to determine if the program is appropriate and, if it is, develop an employment plan.²⁷⁵ Depending on their level of need, veterans may be placed in transitional work, supported employment, community-based employment services, vocational assistance, supported self-employment, or supported education.²⁷⁶

In summary, the VA has anticipated the struggles of veterans to pay for education and find employment, particularly those veterans with disabilities. VTCs can potentially utilize the different services and benefits to help their participants overcome the issues that led them to the court as well as the challenges of a new criminal record. These programs can also potentially provide housing allowances to veterans struggling with insecurity. The emphasis a VTC places in these benefits largely will depend on the demographic makeup of the participants in that court, but VTCs should at least have contacts and resources for the advantage of interested veterans. This is especially true given the importance of education and other community resources to lower recidivism rates within treatment courts.²⁷⁷

²⁷⁰ SSA and VA Disability Benefits: Tips for Veterans, SAMHSA (Dec. 25, 2015), https://www.va.gov/HOMELESS/ssvf/docs/SSA_and_VA_Disability_Benefits_122415.pdf.

²⁷¹ *Information for Veterans - Compensated Work Therapy*, *supra* note 257.

²⁷² *See id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ Gallagher et al., *supra* note 99, at 470.

V. TOWARDS BETTER INTEGRATION OF VTCs AND VAS

Like all treatment courts, the success of a Veteran Treatment Court will likely be judged on outcomes such as the recidivism rates of its participants, whether they have better housing or employment after participation, as well as whether they are able to stay sober and even stay alive.²⁷⁸ Because of this, VTCs must evaluate all the factors that will impact a veteran participant, not just while they are in the court but also once they graduate. While strengthening compliance with treatment and building a strong mentorship team are important, ensuring access to basic needs beyond the confines of the VTC program is just as, if not more, important. VTCs should incorporate the wide array of benefits the VA can provide. The VA must recognize its essential support role in these courts and the potential value of VTCs as a pathway to help hard-to-reach veterans. Early studies have already found that VTC participants use a much higher percentage of VA services than non-VTC participants and likely need them beyond their participation in court-mandated treatment.²⁷⁹ Based on the needs presented by participants on VTC entry and exit, as well as recidivism rates,²⁸⁰ veterans need more support.

VTCs provide a unique circumstance where a struggling veteran can be linked with life-changing resources, but that can only happen if the VA recognizes the importance of its presence within the courts and VTCs start thinking outside the box of who else must be part of the team. Here, we outline several suggestions for improving the working relationship between VAs and VTCs and how to strengthen elements that already exist.

As a preliminary matter, we acknowledge the important work that all VJOs are doing in VTCs as well as criminal justice institutions. In previous sections, we explored the creation and growth of the VJO program, an innovative idea to address the needs of the JIV population. And while the program was initially met with hesitancy, with the growth of VTCs across the country, the VJO program is now viewed as a critical component to the courts, and lawmakers have designated funds to expand the program.²⁸¹ More

²⁷⁸ See Tsai et al., *supra* note 3, at 237.

²⁷⁹ Finlay et al., *supra* note 8, at 52.

²⁸⁰ See Tsai et al., *supra* note 3, at 237.

²⁸¹ Austin Igleheart, *Congress Passes Bill to Expand Veterans Justice Outreach Program and Incentivize New Veterans Treatment Courts*, NACO (Aug. 28, 2018),

VJOs is a positive for VTCs, but to truly maximize the impact for VTC participants, it is time to reconsider their role and opportunities to better utilize their unique position as a liaison with the VA.

First, we suggest the creation of specialized VJO positions. The expectation that VJOs should be providing prison outreach and assistance to non-VTC JIVs, while also working as a liaison to VTCs, which can range from dozens to hundreds of clients, is simply unrealistic. It would make sense for the VJO position to first be specified as either a VTC liaison, with considerations given to the size of the area VTC, or a prison outreach and traditional criminal court liaison. The positions should then take into account geographic zones, specifically in terms of VA and non-VA veteran programs that exist within the area. With this change, VJOs could have an opportunity to make a more meaningful difference for the JIVs they assist, as the sub-populations they serve would have similar issues, and they would be expected to manage fewer partner relationships. The VA has shown a commitment to this program,²⁸² but the next step for growth is specialization and focused impact.

VJOs, especially ones with greater focus on the VTC participants, should also not be the only VA representative in VTCs. All VTCs should have expertise on VHA benefits, VBA benefits, and non-VA community benefits. The VJO can fill the role for VHA benefits, but as the role is currently conceived, they do not have the training or bandwidth to serve as VBA benefits experts, too.²⁸³ The VA should consider different options to have representatives from the VBA be a regular, if not constant, presence in VTCs. Ideally, a VBA representative would attend the VTC hearings like a VJO in order to address issues and consider ways to connect participants to additional VA resources that may be more cost-effective. However, a VBA representative should not be thought of as the same as a VJO, who may be called upon frequently in VTC hearings for updates on treatment progress or scheduling future appointments.²⁸⁴ By contrast, access to VBA programs is not necessary for basic VTC

<https://www.naco.org/blog/congress-passes-bill-expand-veterans-justice-outreach-program-and-incentivize-new-veterans>.

²⁸² *Incarcerated Veterans*, U.S. DEP'T VETERANS AFF., <https://benefits.va.gov/PERSONA/veteran-incarcerated.asp> (last updated Aug. 4, 2020).

²⁸³ U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-564, VETERANS JUSTICE OUTREACH PROGRAM: FURTHER ACTIONS TO IDENTIFY AND ADDRESS BARRIERS TO PARTICIPATION WOULD PROMOTE ACCESS TO SERVICES (Sept. 14, 2021), <https://www.gao.gov/products/gao-21-564>.

²⁸⁴ See U.S. DEP'T OF VETERANS AFFAIRS, *supra* note 63.

participation compliance.²⁸⁵ As an alternative, a VBA representative could be made available to answer questions and provide guidance at key points in the VTC process. By ensuring that courts have someone that participants can speak to upon admission, mid-way through the program, and before graduation, the VA could provide regular evaluation of a participant’s circumstances and the VBA benefits that may be appropriate. Making the VBA representative a structured position, and potentially requiring VTC participants to contact the VBA representative for benefits assessments, would connect participants with needed benefits without placing that extra burden on current VJOs.

In designing and implementing its programs, the VA has acknowledged that it is not always best positioned to serve hard-to-reach veterans directly.²⁸⁶ The GPD and SSVF programs demonstrate VA’s realization that to combat veteran homelessness, the VA would need the help of non-profit community organizations who better understood the barriers and challenges facing a particular area’s veteran population. In a similar way, VTCs could draw on outside experts who can help veteran participants navigate problems beyond the scope of the VA representatives and court case managers. One place they could start are civil legal service organizations and law school clinics that focus on veterans’ services. Both can offer a wealth of knowledge, including a thorough understanding of benefits and resources at the federal, state, and local levels as well as the ability to solve issues that require legal intervention.²⁸⁷ In some cases, VHA and VBA programs may resolve some issues easily, but more often it will take work from both VA and outside advocates to get issues fixed. There is a natural fit for civil legal attorneys and law school clinics to take on this outside expert role.

²⁸⁵ See *What Is A Veterans Treatment Court*, JUST. FOR VETS, <https://justiceforvets.org/what-is-a-veterans-treatment-court> (last visited Oct. 17, 2021).

²⁸⁶ See OFF. OF MENTAL HEALTH & SUICIDE PREVENTION, U.S. DEP’T OF VETERANS AFFAIRS, NATIONAL STRATEGY FOR PREVENTING VETERAN SUICIDE 2018–2028 9 (2018).

²⁸⁷ While VTCs were designed with the understanding of the role that mental health and substance abuse play in criminal activity, the role of social disadvantages and poverty should not be overlooked. Tsai et al., *supra* note 3, at 5. And it cannot be understated that civil legal services are an extremely effective poverty fighting tool. Steve Gottlieb, *To Fight Poverty, We Must Have Civil Legal Aid*, WELLS FARGO STORIES (Mar. 22, 2021), <https://stories.wf.com/to-fight-poverty-we-must-have-civil-legal-aid>. A Legal Services Corporation study found that although “71% of households with veterans or other military personnel experienced a civil legal problem in the past year,” “only 20% of low-income Americans seek professional legal help.” LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 6 (2017).

The challenges involve accessing, inviting, and funding support. VTCs need to determine what organizations or clinics best fit their individual model and initiate the relationship. These courts are innovative in their approach to criminal justice, but they still need to overcome the frame of mind that civil legal needs are not a part of criminal justice rehabilitation. The population VTCs are serving will overlap with the population civil legal organizations are serving, and the sooner both civil and criminal sides of a veteran participant's problem can be identified, the sooner it can be resolved. Obviously, these organizations or clinics need additional resources to be effective partners to VTCs. This is where the VA needs to become creative and utilize recent legislation like the Veterans Health Care and Benefits Improvement Act of 2020,²⁸⁸ which requires the VA to provide legal services to homeless veterans and to fund wrap-around civil legal services to VTC participants.²⁸⁹

A successful VTC team is one that has the expertise to address the needs of the veteran participant from the moment they enter the court to long after they graduate. And while the current approach of a singular overstretched VJO is absolutely better than no intervention, it is not nearly where it could be, and should be, to fulfill the mission of these courts. To get closer, the VA needs to reaffirm its commitment to the VJO program through expansion and specialization as well as guarantee the involvement of VBA representatives. Courts also need to fill the gap for outside expertise by engaging with legal service organizations and law school clinics in recognition of the remaining needs of veteran participants. This will take funding as well as experimentation to get right, but VTCs have the attention and support to take risks for the veterans they serve.

VI. CONCLUSION

The possibilities to improve VTCs are numerous, and a truly successful court will likely need a combination of the above suggestions, including specialized VJOs, involvement of VBA representatives, and community partnerships with local legal service organizations. To accomplish this, funding must be increased. The reality is that some courts will continue to operate without a VJO, or will have

²⁸⁸ Veterans Health Care and Benefits Improvement Act of 2020, Pub. L. No. 116-315, 134 Stat. 4932 (2020).

²⁸⁹ *Id.* § 4202.

a VJO stretched between multiple roles, and it will be on court personnel to be aware of policies to determine which benefits the veteran participant can access and recognize what community partners can be brought in to help them. This is especially true if the participant might be eligible for VA benefits but is not accessing them.

On top of growing funding for VTCs through allocations to adult drug courts, Congress recently passed the Veterans Treatment Court Improvement Act.²⁹⁰ This act will provide an additional \$20 million for VTCs (its proponents wanted \$5 billion)²⁹¹ in order to make available grants, technical assistance, and information on best practices for running a VTC.²⁹² This increased number of VTCs will no doubt put strain on local VAs to make sure that there is adequate personnel to work in the court and connect veterans to local VA services. This challenge will be more acute where courts are not near VA clinics.

As the more than 500 current VTCs push forward,²⁹³ we should be continuing to push the bar on what success actually looks like. We see justification of the rapid creation of VTCs around the idea that our military veterans are worthy of additional support.²⁹⁴ If that is the case, these courts should also help connect veterans with the social services available to ensure they are in a position to thrive going forward.

In sum, efforts to improve veteran well-being will not be possible without recognition of the important role the VA plays in VTCs, and resources to better integrate VTCs and VAs. Just as military culture is used to build comradery and help with compliance, the earned benefits of military service, including healthcare, housing, and disability, should be fought for so the participants can be made whole. Courts should look for ways to build bridges to the VHA and VBA, and the VA should want to have VJOs and other liaisons in these courts to help vulnerable veterans in need of support. A veteran should not be in fear of leaving the court homeless, unemployed, or unable to support themselves. These unfortunate

²⁹⁰ 34 U.S.C. § 10651(a).

²⁹¹ Harm Venhuizen, *Congress Approves Bill Giving Federal Support to Veterans Treatment Courts*, MIL. TIMES (July 21, 2020), <https://www.militarytimes.com/news/your-military/2020/07/21/congress-approves-bill-giving-federal-support-to-veterans-treatment-courts>.

²⁹² *Id.*

²⁹³ Douds & Hummer, *supra* note 19, at 322.

²⁹⁴ Jamie Rowen, *Worthy of Justice: A Veterans Treatment Court in Practice*, 42 L. & POL'Y 78, 90 (2020); Baldwin & Brooke, *supra* note 9, at 1–29.

consequences will continue to happen if VTCs do not build in their expertise and knowledge of the processes and procedures to connect veterans to available benefits. More knowledgeable VJOs will help, creative partnerships with the VBA will help, and relationships with local legal service organizations will help. While each VTC may look different, and as a result will need a different combination of these modifications, they are the keys to creating a transformative court for our veteran community. In supporting such reforms, the VA and VTCs as a whole will send a message of what these courts are here to do: help veterans.