

Should Connecticut Have a Veteran Treatment Court?

By JOSHUA GRUBAUGH

VETERAN TREATMENT COURTS (VTCs) have expanded across the country since the first one was created in 2008 by the presiding judge of the Buffalo, NY Drug and Mental Health Court. Judge Robert Russell had noted the growing number of veterans appearing on the docket and believed a mentoring program involving fellow veterans would lead to better outcomes for offenders and the state. Soon after launching the Buffalo VTC, other judges, veterans service organizations, and elected officials who had seen the same uptick in veteran criminal conduct copied the VTC model and deployed it throughout the US.

In the last 12 years, roughly 40 states have enacted some version of a VTC putting Connecticut in the minority of jurisdictions without one. Members of the Veterans and Military Affairs Section of the Connecticut Bar Association have formed an exploratory committee to investigate whether a VTC would better serve our veteran community and make sense for various stakeholders around the state. To be clear, this article is not an endorsement of VTCs for Connecticut. Rather, we write this article to share facts we have gathered, to solicit any ideas or feedback, and to start a conversation.

The information presented in this article is condensed from our own research, and from interviews of representatives who administer VTCs in New York, Rhode Island, New Hampshire, and Maine. We chose to focus on those four states to understand how others in the Northeast approach their programs.

When conducting these interviews, we wanted to understand how each VTC was organized, how they determined which veterans were eligible for services, who paid for the program, the



burden on judicial and other post-conviction state resources, and the effectiveness on veteran rehabilitation.

The Structure of a VTC

A VTC is meant to provide support and services to veterans accused of criminal conduct. Modeled after drug and mental health courts, the idea is to emphasize treatment over punishment. What a VTC looks like in practice varies widely from jurisdiction to jurisdiction. The key components of a VTC are 1) judicial oversight, requiring regular court appearances for veterans to ensure compliance with a therapeutic program; 2) mentoring by fellow veterans, or someone associated with the VA or a veteran service organization; and 3) the ability of the veteran to be connected with social services as well as mental and medical care.



For New Hampshire, their VTCs grew out of specialty courts. In 2017, the legislature provided that superior and circuit courts may establish a separate track, or docket, for veterans with mental health and substance abuse issues. The legislation cited ten key components necessary for a VTC, which, essentially, ask for the same guidelines mentioned above: a non-adversarial approach to veterans' care, continued judicial monitoring, mental health, drug and alcohol education, and partnership with the VA and community-based organizations.

In New Hampshire, there is no bar to what crimes are eligible for participation. However, the need to have the prosecutor and judge buy-in to get the veteran in the program means serious violent offenses do not qualify. Entry into and completion of a

treatment program may occur before or after a plea or sentence, depending on the offense and location of the VTC. One year after completing all court ordered programs and conditions, a veteran may file for annulment of their conviction, arrest, or sentence.

Maine grew their VTCs out of drug courts. The Maine legislature empowered their chief justice of the Supreme Judicial Court to establish VTCs, as well as to promulgate administrative orders and court rules. Up until relatively recently, only Augusta had a VTC, but a second one opened in Portland in 2019. Maine does not limit the type of offenses covered in their VTC. The interviewee we spoke with indicated he is seeking publication of guidelines to offer clearer rules, but as of now there are few limitations on what offense will bar entry. However, by practice the most seri-

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ous criminal offenses, such as murder and rape, are not program eligible.

Rhode Island's VTC is much more restrictive in terms of offenses that are eligible than Maine and New Hampshire. The VTC is only available in their District Court, limiting eligibility to those committing misdemeanor offenses that cap confinement at 12 months. It is also a jail diversion program, unlike some other VTCs that involve a sentence to confinement.

New York, by far the largest state of the four discussed here, also has the most VTCs. As is true in each of the four states we profiled, VTCs are not located in every county or judicial district. And there may be some differences over what offenses are eligible for the program in different counties within the state, depending on the judge and prosecutor in a region. Of New York's 62 counties, 37 have VTCs. The veteran must first plead guilty to be program eligible. Once an offender successfully completes the program, they can get a reduced sentence, and in some cases, expunge the offense.

Eligibility for a VTC Based on Veteran Status

38 U.S. Code § 101 defines veteran to mean "a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." In order to qualify for VA benefits, such as VA health care, a veteran must meet this statutory definition. This limits VA services to veterans with honorable or general, under honorable conditions, unless the veteran receives a discharge upgrade or VA recharacterization of the veteran's discharge status.

While that is the federal definition, each state makes its own determination on program eligibility. Being more inclusive than the federal government, though, increases costs to the state, because the VA will not cover medical care for veterans with "bad paper" discharges. Per a June 2016 inventory conducted by the Department of Veterans Affairs, most VTCs do not restrict eligibility to participate in the court program based upon the VA determination of eligibility.¹ VTCs typically use a more inclusive definition of veteran. Of the four Northeastern states we looked at, New York and Maine align with that majority.

New Hampshire used to allow veterans with bad discharges into their VTC program, but the funding source providing for that additional care dried up. So now New Hampshire requires the veteran to be VA eligible to enter a VTC.

Rhode Island is the most restrictive of the four states. In Rhode Island, the offender must have a trauma related offense to be program eligible. So not only does Rhode Island restrict access to a veteran based on federal eligibility for VA health care, they also require a nexus between military trauma and the crime.

For reference, the current Connecticut definition of veteran in CGS § 27-103(a)(2) defines a veteran as (1) honorably discharged

or released under honorable conditions from active service in the armed forces or (2) discharged under conditions other than dishonorable or for bad conduct and has a "qualifying condition" (i.e., a diagnosis of post-traumatic stress disorder or traumatic brain injury, or who have disclosed a military sexual trauma experience).

Costs of a VTC/Burden on Judicial Resources

To help reduce the administrative burden of starting a VTC, each of the four Northeastern states relied on the existing docket of a specialty court. For example, in New Hampshire, many of the VTCs started when judges found extra time on their docket when the specialty court had low attendance. The court would meet once a week or once a month at the same date and time, depending on the veteran population size and court availability.

There is also a need for judicial monitoring of the case, as the veteran proceeds through the treatment program. The representatives I spoke with indicated that these are non-adversarial proceedings typically without defense counsel present, where the program administrator advises the judge on the veteran's progress.

Another way to reduce costs is to rely on VA involvement, such as the Veterans Justice Outreach (VJO) specialists, who will work within the judicial system to identify veterans and link them up with VA services as soon as possible. There is also federal grant money available to start and run a VTC.

The Bureau of Justice Assistance (BJA) provides implementation grants up to \$500,000 for a period of 48 months. "Implementation grants are available to eligible jurisdictions that have completed a substantial amount of planning and are ready to implement an evidence-based adult drug court and veterans treatment court."² There are enhancement grants for VTCs already established, as well as statewide grants to help improve the efficacy of state agencies to enhance and expand VTCs or to help fund sub-jurisdictions not otherwise operating under a grant of money.

According to the BJA website, New York and Rhode Island have VTCs that are relying, in part, on a BJA grant. But the representative from Rhode Island indicated the money from the grant dried up, and their VTC is now run through the state budget. New York and Maine also rely on volunteers and community-based organizations to defray some of the costs associated with mentoring and counseling veterans. Information was not gathered on the exact cost for each jurisdiction to run their programs.

The cost of incarceration versus the cost of a diversionary program is also highly relevant to making a fully informed decision over the efficacy of a VTC. There are resources suggesting studies point to a large savings associated with drug courts, when treatment is pursued instead of incarceration for low level drug offenses. Those studies suggest the cost savings associated with reduced recidivism substantially outweigh the upfront medical and treatment costs. But this author is unfamiliar with the efficacy of

those studies, the cost of incarceration in Connecticut, and other relevant data points. Certainly, further discussion of implementing a VTC in Connecticut should grapple with that data.

Effectiveness on Reducing Recidivism and Rehabilitating Veterans

At this time, it appears detailed data on the effectiveness of VTCs in preventing future crimes is lacking. Each of the four individuals interviewed for this article expressed anecdotal evidence on the effectiveness of VTCs in reducing recidivism and creating better outcomes for veterans. However, the data does not demonstrate these anecdotes are representative, nor does it refute the possibility they are representative.³

Simply put, there does not appear to be sufficient data to confidently assert VTCs are a significant improvement to the lives of veterans. Perhaps additional data will develop relatively soon.

Does a VTC Make Sense for Connecticut?

Members within the Veterans and Military Affairs Section disagree whether Connecticut should develop a VTC. The arguments in favor highlight the unique nature of military service, the difficulties many veterans face reintegrating to civilian society, and the benefits of a mentoring program that features veterans helping each other.

The arguments against do not believe it fair, or even constitutional, to carve out special treatment under criminal law for any select group of individuals. That concern extends to the fair and equal treatment of all citizens in general and to crime victims in particular.

There also does not appear to be sufficient data, as of yet, to know whether VTCs better serve veterans than traditional diversionary programs. In Connecticut, under the accelerated rehabilitation statute, veterans already receive special status. They get two uses of the program within ten years, a benefit other criminal defendants do not receive.

So we in the Veterans and Military Affairs Section hope this article starts a conversation over the utility of VTCs in Connecticut. The next steps may include bringing in speakers to our meetings who can further educate us and any other interested party. We may also pursue a symposium if there is sufficient interest in learning more about VTCs.

If anyone has any ideas, information, suggestions, corrections, or anything they want to share at all relevant to this article, please feel free to reach out to the author at Joshua.Grubaugh@gmail.com, and I'll make sure to share it with our section. Thank you for reading. ■

Joshua Grubaugh is the principal of Grubaugh Law in New Haven. He is a veteran, and member of the CBA's Appellate Advocacy, Criminal Justice, and Veterans and Military Affairs Sections. His practice focuses on veteran disability and court-martial appeals.

NOTES

1. Flatley, B., Clark, S., Rosenthal, J., & Blue-Howells, J. (2017). 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. Washington, DC, US Department of Veterans Affairs, Veterans Health Administration, March 2017. Retrieved from: <https://www.va.gov/HOMELESS/docs/VJO/2016-Veterans-Court-Inventory-Update-VJO-Fact-Sheet.pdf>.
2. <https://bja.ojp.gov/program/drug-court-discretionary-grant-program/overview>
3. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5776060>

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