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States Serving Those Who Served: Connecticut General Statutes Section 54-56e

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I. INTRODUCTION

The wars in Afghanistan and Iraq, Operating Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF), respectively, resulted cumulatively in the deployment of over 2.2 million troops¹ and were the longest military operations by the United States since the Vietnam War.² As a result, there is a large population of veterans who returned home with not only physical wounds, but also invisible wounds that often go untreated.³ Of the veterans suffering from these invisible wounds, 44% report readjustment difficulties, 48% strains on family life, 47% outbursts of anger, 49% post-traumatic stress, and 32% an occasional loss of interest in daily activities.⁴

Connecticut is home to over 240,000 veterans from the wars in Afghanistan and Iraq.⁵ Veterans in the state of Connecticut are fortunate to have a channel to aid in the readjustment process: the Connecticut Veterans Legal Center ("CVLC"). The mission of the CVLC is to help veterans recovering from homelessness and mental illness overcome legal

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¹ INST. OF MED. OF THE NAT'L ACAD., RETURNING HOME FROM IRAQ AND AFGHANISTAN: ASSESSMENT OF READJUSTMENT NEEDS OF VETERANS, SERVICE MEMBERS, AND THEIR FAMILIES 13 (2013) available at <http://www.nap.edu/catalog/13499/returning-home-from-iraq-and-afghanistan-assessment-of-readjustment-needs>.

² *Id.*

³ Kate Cahoy, Jon Fougner, Sofia Nelson & Eric Parrie, *SB 114: Improving Pre-Trial Diversion to Meet the Unique Needs of Connecticut's Veterans*, CONNECTICUT VETERANS LEGAL CENTER (Feb. 2012), <http://www.cga.ct.gov/2012/VAdat/Tmy/2012SB-00114-R000228-CT%20Veterans%20Legal%20Center-TMY.PDF>.

⁴ INST. OF MED. OF THE NAT'L ACAD., *supra* note 1.

⁵ Cahoy et al., *supra* note 3.

barriers to housing, healthcare, and income.⁶ The CVLC has served hundreds of veterans across the state, aiding them in the many struggles resulting from post-war life.⁷

Unfortunately, one of the struggles veterans face is their susceptibility to becoming involved with the criminal justice system.⁸ In an effort to ensure that Connecticut's veterans receive proper treatment for their invisible wounds, rather than become subject to criminal convictions, the Connecticut Veterans Legal Center, in conjunction with the Veterans Legal Services Clinic at Yale Law School, worked to expand access for veterans to existing jail diversionary programs through the adoption of SB 114.

The legislation provides judges expanded opportunities to direct veterans involved in the criminal justice system to individualized treatment plans. Such plans focus on recovery and readjustment as an alternative to incarceration. Further, it integrates mental health treatment and drug treatment by channeling veterans to institutions best suited to treat them.⁹

This comment will reflect on SB 114, now codified in Connecticut General Statutes § 54-56e. The comment will begin by explaining the reasons the passage of this law and similar laws nationwide are necessary to ensure that veterans are served as productively as they served the nation.¹⁰ The presence of post-traumatic stress disorder ("PTSD") in veterans, substance abuse in veterans, the criminal activity that results from veterans suffering with PTSD and/or substance abuse and the presence of veterans in the criminal justice system are inclusive of, but not limited to, the reasons explicating the necessity of this law. Part III will explain the history of Veteran Treatment Courts ("VTCs") in other states and the positive impact VTCs have had on the veteran population. Part IV will summarize the drafting efforts of the CVLC and the Veterans Legal Services Clinic at Yale Law School. It also will feature important parts of the legislative process. It will then explain the effects of the law specific to the veteran population in Connecticut. It will also touch on the effects of similar laws at the national level. Generally, jail diversionary programs for veterans help reduce problems related to incarceration, including overcrowding in jails, state finances, and recidivism. Part V will present critiques of the law in Connecticut and similar laws in the nation, although the information presented throughout this comment will overwhelmingly support Connecticut General Statute § 54-56e.

⁶ *Our Mission*, CONNECTICUT VETERANS LEGAL CENTER, <http://ctveteranslegal.org/mission/the-need> (last visited Feb. 17, 2015).

⁷ Cahoy et al., *supra* note 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

II. BACKGROUND SUPPORTING PASSAGE OF LAW

Veterans returning home face unique hardships. These hardships include the prevalence of PTSD, substance abuse, criminal activity as a result of suffering with PTSD, and as such an increasing presence in the criminal justice system. § 54-56e, by design, addresses these hardships.

A. Prevalence of PTSD in Veterans

Posttraumatic Stress Disorder is a condition where the sufferer endures stress and anxiety¹¹ resulting from exposure to a traumatic event.¹² The traumatic event, or events, recurs through different manifestations, which may last more than a month.¹³ The sufferer typically struggles with the feeling of utter helplessness.¹⁴ The trauma that causes the PTSD resurfaces over time within the sufferer's psyche, disrupting his or her thoughts and behaviors.¹⁵ PTSD is not exclusively unique to veterans; however, those who experienced military life have a far greater chance of suffering from the disorder than those in civilian life.¹⁶ Service related injuries, trauma, and the daily demands associated with active military duty are among the many risk factors associated with military life.¹⁷ The consequences of PTSD include substance abuse, suicide, marital problems, and unemployment.¹⁸

Due to the current onset of a large population of veterans in the nation, Iraq and Afghanistan veterans might be more likely to experience PTSD due to changes in modern warfare. These changes, including greater

¹¹ Heathcote W. Wales, *Causation in Medicine and Law: The Plight of the Iraq Veterans*, 35 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 373 (2009) (citing ASHLEY R. HART II, AN OPERATOR'S MANUAL FOR COMBAT PTSD: ESSAYS FOR COPING 6 (2000)).

¹² AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 467–68 (text rev. 4th ed. 2000).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 468.

¹⁶ Erin M. Gover, *Iraq as a Psychological Quagmire: The Implications of Using Post-Traumatic Stress Disorder as a Defense for Iraq War Veterans*, 28 PACE L. REV. 561, 565–66 (2008).

¹⁷ Susan Stuart, *All Roads Lead from Vietnam to Your Home Town: How Veterans Have Become Casualties of the War on Drugs*, 6 ALB. GOV'T L. REV. 487, 501 (2013) (noting “the daily demands include carrying heavy equipment; witnessing and experiencing traumatic events during deployment; being separated from family members; experiencing occupational stress and boredom when serving in isolated sites; and being the object of discriminatory treatment and, in some cases, acts of violence based on gender, race/ethnicity, or sexual orientation.”) (citing INST. OF MED., *Substance Use Disorders in the U.S. Armed Forces*, 29 (2013)).

¹⁸ Beth Totman, *Seeing the Justice System Through A Soldier's Eyes: A Call to Action for Maryland to Adopt A Veterans Treatment Court System*, 16 J. HEALTH CARE L. & POL'Y 431, 435 (2013) (noting that half of deployed service members reported having a friend seriously wounded or killed, forty-five percent reported seeing dead or seriously injured civilians, and over ten percent reported injuries or hospitalizations) (citing

Press Release, RAND CORP., *One in Five Iraq and Afghanistan Veterans Suffer from PTSD or Major Depression*, <http://www.rand.org/news/press/2008/04/17.html> (last visited Feb. 28, 2015).

lengths of deployment, multiple deployments, and a heightened emphasis on air power and special operations troops, put soldiers in increasingly dangerous situations. In addition, military training techniques that encourage emotional numbing and turning soldiers into “Rambo-like killing machines”¹⁹ are also likely to contribute to increased incidence of PTSD. As one soldier noted quite plainly, “the military teaches you how to have PTSD.”²⁰

The fact that the government does not have the ability to draft new recruits requires soldiers to serve longer deployments multiple times, thus increasing the likelihood of veterans developing PTSD.²¹

PTSD is a treatable disorder;²² in fact, studies indicate that certain treatments are so effective that they have the possibility of eliminating all PTSD symptoms.²³ Half of the veterans suffering with PTSD are likely to recover in two years and 20 to 30 percent are likely to recover within five years.²⁴ However, in 2007 only half of the veterans from the wars in Afghanistan and Iraq who acknowledged they were suffering from PTSD or a similar problem stated they were interested in receiving treatment.²⁵ A study conducted of treatment seeking veterans suffering with PTSD confirmed that they believe the public stigmatizes veterans with PTSD; the most common stereotypes being that of violent and crazy.²⁶ These perceived stigmatizations are a major deterrent to seeking treatment. Other deterrents include avoidance of talking about traumatic events and how the public perception of these events and of PTSD would affect their families.²⁷ Of those that do not seek treatment, mental health clinicians face common obstacles that prevent them from properly identifying the symptoms of PTSD in many veterans.²⁸ This leaves a large group of

¹⁹ Stuart, *supra* note 17, at 507.

²⁰ *Id.*

²¹ Tiffany Cartwright, “*To Care for Him Who Shall Have Borne the Battle*”: The Recent Development of Veterans Treatment Courts in America, 22 STAN. L. & POL’Y REV. 295, 300 (2011) (The increased length of deployment is due in part to the lack of the use of a draft by the Government).

²² EFFECTIVE TREATMENTS FOR PTSD: PRACTICE GUIDELINES FROM THE INTERNATIONAL SOCIETY FOR TRAUMATIC STRESS STUDIES 1 (Edna B. Foa et al. eds., 2d ed. 2009).

²³ Mark A. McCormick-Goodhart, *Leaving No Veteran Behind: Policies and Perspectives on Combat Trauma, Veterans Courts, and the Rehabilitative Approach to Criminal Behavior*, 117 PENN ST. L. REV. 895, 903 (2013) (stating that “studies suggest that effective PTSD treatments involve exposure-oriented therapies to overcome avoidance behaviors”); *See also* David P. Valentiner, *Coping Strategies and Posttraumatic Stress Disorder in Female Victims of Sexual and Nonsexual Assault*, 105 J. ABNORMAL PSYCHOL. 458 (1996).

²⁴ ERIC NEWHOUSE, *FACES OF COMBAT PTSD & TBI: ONE JOURNALIST’S CRUSADE TO IMPROVE TREATMENT FOR OUR VETERANS* 19 (Issues Press 2008).

²⁵ *Id.* (citing an interview with Dr. Matthew Freidman, Executive Director of the Veterans’ Administration National Center for PTSD).

²⁶ Brett T. Litz, *Research on the Impact of Military Trauma: Current Status and Future Directions*, 19 MILITARY PSYCHOL. 217, 222 (2007).

²⁷ Dinesh Mittal et al., *Stigma Associated with PTSD: Perceptions of Treatment Seeking Combat Veterans*, 36 PSYCHIATRIC REHABILITATION J. 86 (June 2013).

²⁸ *Id.*

²⁹ Heathcote, *supra* note 11, at 375.

veterans susceptible to the consequences related to PTSD. In addition, true PTSD figures “are expected to be higher than the current estimates” because, among other things, many veterans live in denial²⁹ and intentionally mask their symptoms.³⁰ Untreated PTSD affects not only the suffering veterans, but also the well-being of others, as untreated PTSD “can lead veterans to behave irresponsibly, impulsively, violently and self-destructively.”³¹

B. Substance Abuse

One of the unintended consequences of traditional PTSD treatment is that it provides veterans with access to controlled substances. Although these medications are prescribed to treat mental illness, they are easily abused. As a consequence, prescription drug abuse has risen more rapidly in the military population than in the civilian population.³² In fact, “holders of prescriptions for pain medications were found to be nearly three times more likely to misuse prescription pain relievers than those who did not have a prescription.”³³ Research has proven that veterans with a prescription drug abuse problem use the drugs as a means of self-medication to manage symptoms rather than treat the internalizing effects induced by their trauma.³⁴

Veterans also turn to other forms of substance abuse as a coping mechanism to their PTSD or mental health disorder that resulted from military life.³⁵ In fact, veterans suffering from PTSD are at a higher risk of suffering worse substance abuse problems than veterans who do not have PTSD.³⁶ Veterans from the wars in Afghanistan and Iraq are also at an increased risk of suffering from substance abuse than those in their civilian age population.³⁷ Similar to prescription drug abuse, general drug abuse has been considered a self-medication strategy for veterans suffering from PTSD symptoms.³⁸ Because of these factors, there are increasing concerns

²⁹ *Id.* at 374.

³⁰ *Id.*

³¹ *Id.*

³² Susan Stuart, *All Roads Lead from Vietnam to Your Home Town: How Veterans Have Become Casualties of the War on Drugs*, 6 ALB. GOV'T L. REV. 489, 494 (2013).

³³ Karen H. Seal et al., *Association of Mental Health Disorders with Prescription Opioids and High-Risk Opioid Use in US Veterans of Iraq and Afghanistan*, 307 J. AM. MED. ASS'N. 940, 940 (2012).

³⁴ Moira Haller & Laurie Chassin, *The Influence of PTSD Symptoms on Alcohol and Drug Problems Internalizing and Externalizing Pathways*, 5 PSYCHOL. TRAUMA: THEORY, RES. AND POL'Y. 484 (2013.).

³⁵ Mittal et al., *supra* note 25.

³⁶ Stuart, *supra* note 31, at 502.

³⁷ *Id.* at 503.

³⁸ TERRI TANELIAN, *INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY* 134–36 (2008).

for the direct correlation between drug abuse problems and PTSD in veterans who recently returned home from Afghanistan and Iraq.³⁹

In addition to drugs, alcohol is a common substance abuse coping mechanism amongst veterans. In fact, “heavy drinking is an accepted custom ... that has become part of the military work culture and has been used for recreation, as well as to reward hard work, to ease interpersonal tensions, and to promote unit cohesion and camaraderie.”⁴⁰ A study reveals that upon returning home, alcohol abuse in veterans’ increases by 27%.⁴¹ Reports indicate that as military personnel transition from active service to veteran status drinking behaviors change, including more frequent binge drinking.⁴² Alcohol abuse has been linked to the relationship between veterans suffering from PTSD and aggressive behavior, indicating that alcohol promotes this aggressive behavior. A further implication of this aggressive behavior correlates PTSD with criminal activity.⁴³

C. Criminal Activity in Relation to Veterans Suffering with PTSD

This aggression resulting from PTSD symptoms and alcohol as a coping mechanism is one of the many things that create a clear connection between PTSD and criminal activity. It has been well documented that returning service members are at a “high risk for contact with the criminal justice system.”⁴⁴ In an extreme example, a 2008 New York Times article documented 121 cases of returning veterans who, shortly after returning from Iraq and Afghanistan, were charged with homicide.⁴⁵ The same article released information involving 150 cases of domestic and child abuse involving service members.⁴⁶ A 1983 study of Vietnam veterans found a significant relationship between PTSD and crime, correlating these results most closely with weapon charges, DUIs, disorderly conduct and

³⁹ Stuart, *supra* note 31, at 506.

⁴⁰ *Id.* at 491 (citing INST. OF MED., SUBSTANCE USE DISORDERS IN THE U.S. ARMED FORCES 29 (2013)).

⁴¹ Andrew J. Saxon, *Returning Veterans with Addictions: Issues and Implications for Clinical Practice*, PSYCHIATRIC TIMES (July 14, 2011), <http://www.psychiatristimes.com/military-mental-health/returning-veterans-addictions>.

⁴² Deborah J. Brief et al., *Web Intervention for OEF/OIF Veterans With Problem Drinking and PTSD Symptoms: A Randomized Clinical Trial*, 81 J. COUNSELING AND CLINICAL PSYCH. 890 (2013).

⁴³ Cynthia A. Stappenbeck et al., *The Effects of Alcohol Problems, PTSD and Combat Exposure on Nonphysical and Physical Aggression Among Iraq and Afghanistan War Veterans*, 6 PSYCHOL. TRAUMA 65, 68 (2014).

⁴⁴ Major Evan R. Seamone, *Reclaiming the Rehabilitative Ethic in Military Justice: The Suspended Punitive Discharge As A Method to Treat Military Offenders with PTSD and TBI and Reduce Recidivism*, 208 MIL. L. REV. 1, 22 (2011) (citing Sean Clark et al., *Development of Veterans Treatment Courts: Local and Legislative Initiatives*, 7 DRUG CT. REV. 171, 174 (2010)).

⁴⁵ McCormick-Goodhart, *supra* note 22, at 904 (citing Deborah Sontag & Lizette Alvarez, *Across America, Deadly Echoes of Foreign Battles*, N.Y. TIMES (Jan. 13, 2008), <http://nyti.ms/wNERZ6>).

⁴⁶ Cartwright, *supra* note 20, at 299.

assault.⁴⁷ A similar study of Vietnam veterans compared those with PTSD to those without PTSD. This study reported that veterans with PTSD were 34.1% more likely to be involved in criminal activity.⁴⁸

There are many reasons for the high crime rates among the veteran and service member population. Included in this is the “survivor mode” veterans face in civilian life.⁴⁹ A consequence of this mode is that in order to alleviate the guilt associated with survival mode, veterans engage in dangerous behaviors.⁵⁰ Survivor mode has been reported to manifest in three ways: dissociative syndrome, sensation-seeking syndrome, and depression-suicide syndrome.⁵¹ The dissociative state is the one through which veterans are most likely to commit a crime.⁵² During the dissociative state, veterans enter into a “search-and-destroy mindset in which their automatic reaction is to find and kill any perceived source of danger.”⁵³

The sensation-seeking syndrome involves veterans with PTSD who participate in dangerous behavior in attempt to recreate the rush of combat.⁵⁴ These recreations lead to the commission of behavior that constitutes “high-risk crimes.”⁵⁵ Additionally, a report concluded “behaviors that promote survival within the combat zone may cause difficulties during the transition back to civilian life. Hypervigilance, aggressive driving, carrying weapons at all times, and command and control interactions ... can result in negative and potentially criminal behavior back home.”⁵⁶

The depression-suicide syndrome involves veterans who have a difficult time adjusting to civilian life including “tolerating and regulating negative emotions.”⁵⁷ They also engage in emotional numbing and avoidance.⁵⁸

Veterans, especially those with PTSD, are at a higher risk of engaging in criminal activity because of the inherently dangerous circumstances

⁴⁷ McCormick-Goodhart, *supra* note 22, at 904.

⁴⁸ Richard A. Kulka et al., *Trauma and the Vietnam War Generation*, NAT’L VIETNAM VETERAN’S READJUSTMENT STUD. (2013).

⁴⁹ Daniel Burgess et al., *Reviving the “Vietnam Defense”: Post-Traumatic Stress Disorder and Criminal Responsibility in a Post-Iraq/Afghanistan World*, 29 DEV. MENTAL HEALTH L. 59, 65–66 (2010) (defining survivor mode as a “state of mind where they attempted to be constantly aware of their surrounding environment in order to anticipate and react to potential attacks and threats”).

⁵⁰ Constantina Aprilakis, Note, *The Warrior Returns: Struggling to Address Criminal Behavior by Veterans with PTSD*, 3 GEO. J.L. & PUB. POL’Y 541, 553 (2005).

⁵¹ McCormick-Goodhart, *supra* note 22, at 905 n. 78 (defining this mode as an “altered state of consciousness, hyperalertness, hypervigilance, excessive autonomic nervous system arousal, and the use of survival skills and cognitive capacities learned in combat”).

⁵² Gover, *supra* note 16, at 567.

⁵³ Burgess et al., *supra* note 48, at 66.

⁵⁴ *Id.*

⁵⁵ Totman, *supra* note 18, at 442.

⁵⁶ Cartwright, *supra* note 20, at 300.

⁵⁷ Stappenbeck, *supra* note 42, at 68.

⁵⁸ *Id.*

surrounding their return to civilian life and the effects this transition can have on their mind.

D. Presence of Veterans with PTSD in the Criminal Justice System

Due to the abuse of alcohol and drugs, the destructive symptoms of PTSD and the consequences of adjusting to PTSD in civilian life, veterans are at an increased risk of being subjected to the criminal justice system. In fact, “the prevalence of veterans in the criminal justice system suggests that all major American conflicts produce veterans who have difficulty readjusting to civilian life and often break the law in the process.”⁵⁹ With the current influx of veterans and service members returning from the wars in Iraq and Afghanistan, it can be predicted that veterans’ presence in the criminal justice system will continue to rise.

There are multiple problems with veterans being put through the criminal justice system based on crimes resulting from PTSD and combat related stress. The most significant is that unlike the common criminal, veterans dedicate years of their lives to making sure the criminal justice system remains in place and the freedom through which the country stands on is maintained.

First, veterans come from different backgrounds within the population themselves and from a drastically different background than the incarcerated population. They are better educated than the common criminal.⁶⁰ 90% of veterans have a GED or high school diploma, and incarcerated veterans are twice as likely to have attended college than the common criminal.⁶¹ Additionally, veterans have a much shorter, if any, criminal history before incarceration than the common criminal.⁶²

While incarcerated, veterans are moved through the criminal justice system, commonly through channels that lack the proper resources required to properly treat them.⁶³ As a result of this improper treatment or complete lack of treatment, some veterans continue to remain in “survivor mode,” which has a high risk of exacerbating their PTSD symptoms,⁶⁴ while others may relive their PTSD by “the social stimuli found in prison,” causing them to revert to combat mode.⁶⁵

⁵⁹ Cartwright, *supra* note 20, at 298.

⁶⁰ Stuart, *supra* note 31, at 499.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Totman, *supra* note 18, at 433 (citing Mary Susan Littlepage, *Veterans Courts Try to Keep PTSD Victims Out of Jail*, TRUTHOUT (Mar. 30, 2010, 8:24 AM), archive.truthout.org/veterans-courts-try-keep-ptsd-victims-out-jail58123).

⁶⁴ Totman, *supra* note 18, at 444.

⁶⁵ *Id.* (citing *United States v. Brownfield*, No. 08-CR-00452-JLK, slip op., at 27 (D. Col. Dec. 18, 2009) (noting both the lack of prison treatment programs and the shortage of expertise in such programs in dealing with prisoners serving one year or less who suffer from war-zone related illnesses)).

III. OTHER STATES' ACTION: VETERAN TREATMENT COURTS

A. History

The severe symptoms and consequences veterans suffering with PTSD face in civilian life, their susceptibility to engage in criminal behavior, and the lack of resources available to incarcerated veterans prompted state legislatures across the nation to take action.

In January 2008, in Buffalo, New York, Judge Robert T. Russel established the first Veteran Treatment Court.⁶⁶ Judge Russel created a specific criminal docket for veterans, which matched offenders with veteran mentors to provide support⁶⁷ in a system designed to diagnose and treat PTSD which “combined the efforts of prosecutors, defense attorneys and mental health professionals.”⁶⁸ The system requires judges and attorneys to learn more “about the psychological aspects and interventions tailored to PTSD,”⁶⁹ with the ultimate goal to keep veterans with PTSD out of the traditional criminal justice system. This system provides “a treatment mechanism for the illness that sometimes manifests itself in criminal misconduct.”⁷⁰

Veteran Treatment Courts are structured similar to juvenile drug treatment courts. Just as other problem-solving courts, VTCs “change the future behaviors of litigants” and ensure “the future well-being of communities.”⁷¹ Moreover, “veterans’ courts explicitly project the attitude that participants should be honored for their service, and that they are being diverted from traditional sentencing because the government is grateful for their sacrifice.”⁷²

B. Effectiveness

As of June 2012, VTCs have been established in at least 104 jurisdictions spanning 28 states.⁷³ VTCs have been documented to show promising results.⁷⁴ Thus far, they have proven to be the “best practices in the management of mental illness and substance dependence.”⁷⁵ While the VTC system is still too premature to measure solid statistical outcomes,

⁶⁶ Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 357, 357 (2009).

⁶⁷ *Id.*

⁶⁸ Heathcote, *supra* note 11.

⁶⁹ *Id.*

⁷⁰ Hon. Michael E. McCarthy, *Diversionary Tactics: Alternative Procedures for the Prosecution of Military Veterans*, 50 DUQ. L. REV. 475, 479–80 (2012).

⁷¹ McCormick-Goodhart, *supra* note 22, at 908 (citing Greg Berman & John Feinblatt, *Problem-Solving Courts: A Brief Primer*, 23 LAW & POL’Y 125, 126 (2001)).

⁷² Cartwright, *supra* note 20, at 304.

⁷³ *The History*, JUSTICE FOR VETS, <http://www.justiceforvets.org/vtc-history> (last visited Jan. 10, 2014).

⁷⁴ Seamone, *supra* note 43, at 49.

⁷⁵ *Id.*

VTCs are predicted to have the same effect on lowering recidivism rates as drug treatment programs.⁷⁶ A promising example, “the original VTC in Buffalo serves as the symbol of the promise of veterans courts: none of the court’s fifty-six graduates have been rearrested, and seventy percent of veterans admitted finish the program.”⁷⁷ Additionally, the successes of VTCs extend beyond the availability of any statistical data regarding recidivism, as it is important to hope for the program to improve the quality of the individual veteran participant’s life.⁷⁸

A strong predictor of improving the quality of individual veterans’ lives and lowering recidivism rates is the mentoring programs established by VTCs. Veterans are mentored by other veterans, who share commonality in their experiences, their recovery, and their coping needs. This type of empathy is thought to be effective because the kind of empathy only a fellow veteran can provide is necessary for treatment and as a source of support that the traditional criminal justice system or a simple attempt to adjust to civilian life may not provide.⁷⁹ Participants in VTCs have “expressed strong feelings that only other veterans with PTSD could truly understand their experience.”⁸⁰ Research provides that this kind of camaraderie can help “diminish the legitimacy of stigmatizing public views and minimize the application of stereotypes to self.”⁸¹

In an attempt to effectuate the legitimacy of the programs available to the veteran population, it is important to recognize that some offenders choose criminal sentences instead of treatment programs due to the rigor of such programs,⁸² thus rebutting the criticism that these programs do not serve the purpose of the criminal justice system. The rigor of the programs explicates their effectiveness in lieu of serving a jail sentence. The programs were not designed to grant veterans preferential treatment in the court system over the common criminal, but rather to aid the veteran in overcoming the problems he or she has to deal with as a product of the hardships of the wartime experience. It must be made clear that the programs are not designed to be a way of keeping veterans out of jail and offering a much more appealing and easier alternative; rather the programs are rigorous and those involved work endlessly to help the veterans combat

⁷⁶ McCormick-Goodhart, *supra* note 22 at 917 (citing Patrick A. Langan & David J. Levin, *U.S. Dep’t of Justice, Recidivism of Prisoners Released in 1994* at 7, Bureau of Justice Statistics, (2002) (reporting 67.5 percent of the 272,111 prisoners released in 1994 were rearrested within three years).

⁷⁷ Stuart, *supra* note 31, at 506. (citing William H. McMichael, *The Battle on the Home Front: Special Courts Turn to Vets to Help Other Vets*, . A.B.A. J. (Nov. 1, 2011), http://www.abajournal.com/magazine/article/the_battle_on_the_home_front_special_courts_turn_to_vets_to_help_other_vets/).

⁷⁸ Russell, *supra* note 65, at 370.

⁷⁹ Seamone, *supra* note 43.

⁸⁰ Mittal et al., *supra* note 25.

⁸¹ *Id.*

⁸² McCormick-Goodhart, *supra* note 22, at 922.

any substance abuse, drug issues, and the effects of PTSD. This helps veterans adapt to life at home better than any incarceration sentence can.

In January 2011, President Barack Obama “recommended expansion of VTCs because of their tremendous value in addressing the “unique needs” of returning veterans with PTSD.”⁸³ In conjunction with the national need to provide special treatment to the nation’s service men and women, Connecticut took action. Through the enactment of SB 114 in Connecticut General Statutes § 54-56e, the CVLC worked to include veterans in the list of offenders eligible to seek alternatives to incarceration to criminal activity, namely treatment programs. While Connecticut did not take a measure as drastic as to establish a new judicial system, the CVLC’s efforts had the same goals as VTCs and are likely to achieve similar results: improving the quality of the lives of veterans in Connecticut suffering from PTSD.

IV. THE EFFECTS OF THE CONNECTICUT GENERAL STATUTES § 54-56E AND SIMILAR LAWS ACROSS THE NATION

President Barack Obama’s recommendation encouraging the “expansion of VTCs because of their tremendous value in addressing the ‘unique needs’ of returning veterans with PTSD,” in conjunction with the successes of VTCs across the nation, and the need to help the growing veteran population in Connecticut prompted the drafting of SB 114.⁸⁴

When SB 114 was drafted, there were 240,000 veterans residing in Connecticut.⁸⁵ The CVLC “helps veterans serve their communities as productively as they served their country. CVLC provides legal assistance to veterans struggling to overcome homelessness, addiction and unemployment.”⁸⁶ SB 114 was designed to provide judges with expanded opportunities to direct veterans toward individualized treatment plans, focusing on recovery and readjustment as an alternative to incarceration.⁸⁷ Further, it allows integration of mental health and drug treatment for veterans and channel them to institutions best suited to treat them.⁸⁸

When the bill was put up for a vote in the state legislative body, there was no opposition in the Connecticut Senate or the Connecticut House.⁸⁹ The lack of opposition demonstrates the desire to support veterans who risked their lives for the United States of America.

⁸³ Seamone, *supra* note 43; Barack H. Obama, *Strengthening Our Military Families: Meeting America’s Commitment*, p 1.6.1, at 12 (Jan. 2011).

⁸⁴ Seamone, *supra* note 43; Obama, *supra* note 82.

⁸⁵ Cahoy et al., *supra* note 3.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

A. Overcrowding in the Correctional System

On a national level, there is a serious problem with the correctional system. There simply is not enough room in the facilities to support the volumes of sentenced criminals. In fact, between 1970 and 2007, the prison population in the United States grew by 700%.⁹⁰ By 2011, the nation housed 25% of the world's prison population; a startling statistic considering the United States comprises only 5% of the world's population.⁹¹ This high volume of prisoners creates crowded conditions that increase the violence in correctional facilities. As a consequence of this, the correctional system is largely understaffed because states cannot afford to hire in proportion to the growing inmate population.⁹²

Unfortunately, the current correctional system, functioning as a highly understaffed institution, leads to gang violence, unattended fights, and multiple suicides.⁹³ Because the prison system perpetuates criminal activity and habits there is a higher chance of re-offending once released, which directly conflicts with one of the purposes of the criminal justice system.⁹⁴ Despite the fact that the pain and hardship associated with being incarcerated are designed to have a deterrent effect to those released from prison, it fosters a socialization of released prisoners to engage in criminal activity.⁹⁵ It has been suggested that "keeping certain offenders out of prison, shortening unnecessarily lengthy sentences, and emphasizing the development of rehabilitation programs can ultimately improve public safety."⁹⁶ Giving veterans a chance at rehabilitating instead of directly sending the mentally wounded heroes to a broken system is not only beneficial to the veteran population, but also to the safety of the American public.

⁹⁰ Lauren Salins & Shepard Simpson, *Efforts to Fix A Broken System: Brown v. Plata and the Prison Overcrowding Epidemic*, 44 LOY. U. CHI. L.J. 1153, 1157 (2013) (citing The JFA Inst., *Unlocking America: Why and How to Reduce America's Prison Population*, Nov. 2007, available at <http://www.jfa-associates.com/publications/srs/UnlockingAmerica.pdf>); Adam Liptak, *Inmate Count in U.S. Dwarfs Other Nations*, N.Y. TIMES, Apr. 23, 2008, available at http://www.nytimes.com/2008/04/23/us/23prison.html?pagewanted=all&_r=0 (comparing the enormous prison population in the U.S. with those of other countries).

⁹¹ Salins & Simpson, *supra* note 89, at 1157 (citing U.S. Dep't of Justice, Office of Justice Programs, *Corr. Populations in the United States, 2011*, at 2 (Nov. 2012), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cpus11.pdf>; *Combating Mass Incarceration The Facts*, ACLU (June 17, 2011), <https://www.aclu.org/combating-mass-incarceration-facts-1>).

⁹² Salins & Simpson, *supra* note 89, at 1169

⁹³ *Id.* (citing Martin H. Pritikin, *Is Prison Increasing Crime?*, 2008 WIS. L. REV. 1049, 1054–55 (stating that prisons are essentially schools for criminals, as inmates interact with other criminals and internalize the antisocial norms promulgated by the correctional facilities)).

⁹⁴ Salins & Shepard, *supra* note 89, at 1161–62.

⁹⁵ *Id.* (citing Dan Harris, *Prison Violence Can Heighten Public Danger*, ABC NEWS (June 7, 2006), <http://abcnews.go.com/GMA/LegalCenter/story?id=2048040&page=1> (analogizing the release of inmates from the current prison system to putting a pit bull in a cage, poking him with a stick, and subsequently letting him out in a classroom of kids)).

⁹⁶ Salins & Shepard, *supra* note 89, at 1188.

B. State Finances

Despite the understaffed nature of the correctional system, the amount of state finances allocated to the ever-growing prison system from state to state has been highly criticized. In 2011, the average state budget for prisons made it the second biggest budget consumer next to Medicaid.⁹⁷ Criticism stems largely from the diverted funding from other state necessities, primarily education.⁹⁸ However, in defense of the states, the increase in correction spending is necessary to keep up with the rising inmate populations.⁹⁹ Diversionary and rehabilitation programs save the state money, as incarceration is far more expensive than these programs.¹⁰⁰ Additionally, “one benefit for veterans who need treatment is that they often have access to federally funded services that similarly situated civilians do not, and thus securing appropriate treatment does not place an additional burden on their local community.”¹⁰¹

SB 114 was anticipated to save the state of Connecticut an estimated savings of \$1.2 million in fiscal year 2013, and \$2.5 million in fiscal year 2014.¹⁰² The estimations were based on the pre-trial diversion of veterans who have committed non-serious crimes.¹⁰³ When the bill was in the drafting phase, the majority of the estimates were projected in conjunction with the historical trends associated with veteran crime rates and other VTCs, estimating that a maximum of 100 individuals would qualify for the program and be diverted from prison annually.¹⁰⁴

A very important budgetary consideration of the bill is that it would not generate additional costs for the Department of Mental Health and Addiction Services (DMHAS) or the Department of Veterans’ Affairs

⁹⁷ Salins & Shepard *supra* note 89, at 1157; *State of Recidivism: The Revolving Door of America’s Prisons*, THE PEW CENTER ON THE STATES 1 (Apr. 2011), http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf.

⁹⁸ Salins & Shepard *supra* note 89, at 1157–58 (citing Benenson Strategy Grp., *National Research of Public Attitudes on Crime and Punishment* at 3 (Sept. 2010), available at http://www.mcoho.org/services/fcfc/exoffender_reentry/docs/PSPP_National_Research_web.pdf (“Voters would prefer to cut prison spending than cut K-12 education, higher education or health care, or raise property or business taxes.”)); Steven Hawkins, *Education vs. Incarceration*, AM. PROSPECT (Dec. 6, 2010), <http://prospect.org/article/education-vs-incarceration> (critiquing states’ increasing expenditures on incarceration over education, especially when the economic downturn has limited state spending); Sharon Dolovich, *Incarceration American-Style*, 3 HARV. L. & POL’Y REV. 237, 240 & n.23 (2009) (arguing that America’s “style” of incarceration does not reduce crime and promote public safety to expected levels but rather expends funds that could be “spent on more socially productive enterprises”).

⁹⁹ *Id.* Salins & Shepard, *supra* note 89, at 1157–58.

¹⁰⁰ McCormick-Goodhart, *supra* note 22, at 919.

¹⁰¹ Cartwright, *supra* note 20 at 304–05.

¹⁰² *An Act Concerning Services for Veterans in Pretrial Diversionary Programs* OFFICE OF FISCAL ANALYSIS, <http://www.cga.ct.gov/2012/FN/2012SB-00114-R000418-FN.htm> (last visited Feb. 13, 2014).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

(DVA) due to expanded enrollment in drug rehabilitation and other related programs.¹⁰⁵ The bill assures that the eligibility requirements for DMHAS will not change under this bill. Programs currently operated by DVA have capacity to accept additional participants.¹⁰⁶

Notably, Connecticut General Statutes § 54-56e allows veterans to use the accelerated rehabilitation program twice, rather than one-time.¹⁰⁷ This is not anticipated to result in a fiscal impact to the Judicial Department's Court Support Services Division as the number of repeat program users is anticipated to be minimal.¹⁰⁸

While most other expansions of funding for the criminal justice system have appropriated funds from the education system, the impact of Connecticut General Statutes § 54-56e on the education system is limited. Despite this, the removal of appropriation of funds to the education system is a major criticism stemming from increased funding of the correctional system. As mentioned, a major criticism of the states funding a national growth in the prison population is the important institutions the finances get taken from, most notably the education system. Despite the money saved from state to state in diverting veterans from jail for non-serious crimes, a budget still needs to be created for the jail diversionary programs. Budgets for diversionary programs require less funding than expansion of the correctional system. Connecticut General Statutes § 54-56e results in a potential revenue loss to the University of Connecticut by expanding the eligibility for tuition waivers. The exact revenue loss would be dependent upon the number of students eligible and accepted each academic year for matriculation; information which is not predictable.¹⁰⁹ The State of Connecticut, when considering the passage of the bill, relied more heavily on the other savings the program would generate for the state, rather than a potential revenue loss to the University of Connecticut.¹¹⁰

C. Recidivism

Treatment courts and rehabilitative programs not only have immediate effects on the state, primarily regarding the prison population and state finances, but also by remedying a problem: making criminal activity much less likely to happen again in the future than if a veteran was socializing with the criminal population in a prison. The primary long-term effect of VTCs and rehabilitative programs and the passage of laws such as

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *An Act Concerning Services for Veterans in Pretrial Diversionary Programs* OFFICE OF FISCAL ANALYSIS, <http://www.cga.ct.gov/2012/FN/2012SB-00114-R000418-FN.htm> (last visited Feb. 13, 2014).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

Connecticut General Statutes § 54-56e is the possible reduction in recidivism rates. This reduction furthers the savings at the state fiscal level and helps reduce the growing prison populations at a national level. Studies have revealed that drug courts reduce recidivism and save more costs than traditional probation or prison.¹¹¹ An authoritative study found that treatment required by VTCs saved taxpayers more than 79 million dollars over ten years.¹¹² It also must be noted that these estimates are considered conservative, as the savings are anticipated to go well beyond the ten-year mark.¹¹³

National recidivism rates have remained relatively steady despite increased corrections spending over the past few decades.¹¹⁴ In fact, evidence has suggested that increasing the amount of criminals incarcerated does not correlate with an improvement in public safety.¹¹⁵ As an alternative to the prison system for veterans, “programs that divert individuals from prison and that focus on rehabilitation may be more cost-efficient and more effective at reducing overall crime rates over the long term”.¹¹⁶

There are currently more than 2,300 drug courts operating throughout the United States,¹¹⁷ which receive both federal and state funding.¹¹⁸ With nearly 80% of the imprisoned population abusing alcohol and drugs, drug courts have been working to decrease both drug use and recidivism rates.¹¹⁹ The recidivism rate for incarcerated drug users who commit drug-related offenses within three years after release is approximately 70%,¹²⁰ while the

¹¹¹ Seamone, *supra* note 43 (citing Dwight Vick & Jennifer Lamb Keating, *Community-Based Drug Courts: Empirical Success. Will South Dakota Follow Suit?*, 52 S.D. L. REV. 288, 303–304 (2007)) (noting studies of recidivism and cost savings and how “most studies have found that drug court clients who participated in treatment were considerably less likely to recidivate than both untreated drug court clients and control subjects”).

¹¹² *Id.*

¹¹³ *Id.* (citing Michael W. Finigan et al., *Impact of a Mature Drug Court Over 10 Years of Operation: Recidivism and Costs (Final Report)*, NPC RESEARCH at 46–47 (2007), available at <http://1.usa.gov/xnNnpe> (estimating actual cost savings might be at least 111 million dollars)).

¹¹⁴ Salins & Shepard *supra* note 89 at 1158.

¹¹⁵ Jenni Gainsborough & Marc Mauer, *Diminishing Returns: Crime and Incarceration in the 1990s*, THE SENTENCING PROJECT, 3 (2000), available at http://www.sentencingproject.org/doc/publications/inc_diminishingreturns.pdf (explaining the diminishing marginal benefit of increased incarceration rates past a certain point).

¹¹⁶ *Id.*

¹¹⁷ *Types of Drug Courts*, NAT’L ASS’N OF DRUG COURT PROF’L, <http://www.nadcp.org/learn/what-are-drug-courts/models> (last visited Feb. 13, 2014).

¹¹⁸ Candace McCoy, *The Politics of Problem-Solving: An Overview of the Origins and Development of Therapeutic Courts*, 40 AM. CRIM. L. REV. 1513, 1526–27 (2003) (explaining that funding of drug courts originated federally under the 1994 Crime Act, which, in the late-1990s, granted approximately \$30 million a year for the establishment of drug courts, but as drug courts became “entrenched in local legal cultures, state and local governments began to implement drug courts on their own, without federal funding”).

¹¹⁹ *Types of Drug Courts*, *supra* note 116.

¹²⁰ Peggy Fulton Hora, *Through a Glass Gavel: Predicting the Future of Drug Treatment Courts*, in NAT’L CTR. FOR STATE COURTS, *FUTURE TRENDS IN STATE COURTS 2009*, at 134, 137 (Carol R. Flango et al. eds., 2009), http://www.ndcrc.org/sites/default/files/through_a_glass_gavel_0.pdf.

rate of recidivism for drug-court graduates is much lower, between 16 and 27% in the first two years after release.¹²¹ Reduced recidivism results in reduced prison costs and a reduction in “revolving-door” arrests and trials.¹²²

Connecticut General Statutes § 54-56e, VTCs, and similar laws from state to state are beneficial on the state level, the federal level, to the safety of the public and most importantly to the veterans who courageously served the country. While this comment serves to show overwhelming support of Connecticut General Statutes § 54-56e by applauding the reasons for the law, supporting similar actions of other states and explaining the positive effects of the law at the state level it is only fair to note how laws such as this, despite their positive purpose and effects, do not serve the purpose of the criminal justice system.

V. CRITIQUES

Connecticut General Statutes § 54-56e, has been critiqued for its preferential treatment of one group of citizens over another.

First of all, despite the hardships related to a veteran rejoining society and the wounded mentality of many returning veterans, it has been noted that veterans with these mental health disorders, including those stemming from genetic predisposition, childhood abuse, personal violence, and family factors are no different in their rates of drug abuse from the general population.¹²³ In other words, “incarcerated veterans tend to share the same risk characteristics as the general population for purposes of predicting incarceration.”¹²⁴ PTSD is not exclusive to veterans, it is associated with “traumatic events such as childhood abuse, rape, automobile accidents, terrorist attacks, and natural disasters,” events that both the veteran population and non-veteran population are equally susceptible to.¹²⁵

The unique position of veterans in modern American society speaks volumes to the respect deserved by veterans and gladly given by Americans from all different classes of the civilian population. The criminal justice system is arguably the oldest tradition that society is based around. American society functions primarily on traditions – from institutions to laws to personal norms, these traditions continue to shape the country and the lives of the individuals in the country, adjusting appropriately with time. That being said, it is extremely difficult to

¹²¹ *Types of Drug Courts*, *supra* note 116.

¹²² *Id.* (explaining that drug court programs save the community on average between \$4000–\$12,000 per offender).

¹²³ Stuart, *supra* note 31 at 498–99.

¹²⁴ *Id.* at 498.

¹²⁵ McCormick-Goodhart, *supra* note 22, at 902; AM. PSYCHIATRIC ASS’N, *supra* note 12, at 463–64.

comprehend how a class of people can have such a specialized status in society that they have the possibility of being exempt from one of the longest standing institutions in American society.

Further, it creates unequal treatment between similar criminals. Two individuals, in the same jurisdiction, with the exact same criminal history background, charged with the same crime, with the same lawyer and same judge presiding over them, could receive different sentences if one is a civilian and one is a veteran. The civilian could serve time in jail, while the veteran is permitted to continue on with their daily life, interacting with family and friends, and serving their sentence in a diversionary program much less daunting and time consuming than a prison sentence. The criminal justice system places a premium on fairness and consistency and this legislation threatens those principles.

The American Civil Liberties Union has taken issue with the preferential treatment given to veterans in the criminal justice system.¹²⁶ In fact, “one main concern voiced by the American Civil Liberties Union (ACLU) is that veterans will be afforded legal rights unavailable to civilians, thereby creating a distinct legal class of criminals based on their veteran status.”¹²⁷ In addition to expressing concerns about the disparity of veterans and non-veterans, the ACLU took issue with the disparity within the veteran population.¹²⁸ Specifically, “this term encompasses former service members with “very different experiences” and excludes “non-veterans who also suffer from PTSD.”¹²⁹ The ACLU has emphasized numerous times that “veterans should not receive preferential treatment - a ‘get out of jail free card’ simply because of their service in the military.”¹³⁰

As it relates to offenders with these unseen injuries, the military justice system is at odds with more than VTCs; it is at odds with itself, in the way it undermines the stated sentencing philosophy of rehabilitation of the offender, the way it erodes the professional ethic by denying core values, and the way it defies the moral obligation to advance the interests of both the veteran and the society he or she is permitted to remain in.¹³¹

¹²⁶ *Id.*

¹²⁷ Totman, *supra* note 18, at 453; Dahlia Lithwick, *A Separate Peace: Why Veterans Deserve Special Courts*, THE DAILY BEAST (Feb. 10, 2010, 7:00 PM), <http://www.thedailybeast.com/newsweek/2010/02/10/a-separate-peace.html> (quoting Lee Rowland of the ACLU of Nevada who opposes Nevada’s proposed veterans court bill because it gives “an automatic free pass based on military status to certain criminal-defense rights that others don’t have.”).

¹²⁸ McCormick-Goodhart, *supra* note 22, at 920. See *Hearing on Assembly Bill 187 of 2008 Before the S. Comm. on the Judiciary*, 75th Sess. 24–28 (Nev. 2009) (statement of Lee Rowland, ACLU of Reno, Nev.), available at <http://bit.ly/wPHFOG>.

¹²⁹ McCormick-Goodhart, *supra* note 22, at 921.

¹³⁰ McCormick-Goodhart, *supra* note 22, at 920; Cartwright, *supra* note 20, at 307; Dahlia Lithwick, *A Separate Peace: Specialized Courts for War Veterans Work Wonders. But Why Stop at Veterans?*, SLATE MAGAZINE (Feb. 11, 2010, 1:33 PM), <http://slate.me/w7FZcH>.

¹³¹ Seamone, *supra* note 43, at 3.

In spite of these critiques many view the preferential treatment the legislation provides as part of society's obligation to its veterans. Furthermore, the critique that the veteran courts are unfair is a critique that plagues all problem-solving courts because it is impossible to serve every similarly situated criminal defendant equally.¹³²

VI. CONCLUSION

Connecticut General Statutes § 54-56e and similar laws nationwide that provide special treatment of veteran criminal defendants are appropriate responses to the unique conditions veteran defendants face as they readjust to civilian life. Military personnel returning to civilian life face higher incidence of PTSD and substance abuse than other members of the civilian population. As a result, they are more likely to become involved with criminal activity and thus be involved in the criminal justice system. However, the criminal justice system is not equipped to properly treat the mental health issues veterans suffer with.

While Connecticut General Statutes § 54-56e and similar laws are criticized for creating a separate class of criminals and treating similarly situated citizens differently, reducing overcrowding in the correctional system and reducing recidivism rates are reason enough for all state legislatures to seriously consider expanding treatment programs and/or VTCs. Additionally, Connecticut General Statutes § 54-56e and similar laws nationwide are necessary to ensure that veterans are served as productively as they served the nation.¹³³

¹³² McCormick-Goodhart, *supra* note 22 at 922.