Vermont Law School

The Vermont Veterans Law Project:

The Need, Practicality and Benefits of a Veteran Criminal Diversion Court in Vermont

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Independent Research Project

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DEFINITIONS AND ACRONYMS

AHS - Vermont Agency of Human Services

CBT - Cognitive Behavioral Therapy

CPT - Cognitive Processing Therapy

CCRCF - Chittenden County Regional Correctional Facility, So. Burlington, VT

CPT - Cognitive Processing Therapy

DOC - Vermont Department of Corrections

DOD - U.S. Department of Defense

IRB - Institutional Review Board

EMDR - Eye Movement Desensitization and Reprocessing

ISAP- Intensive Substance Abuse Program

MVRC - Marble Valley Regional Correctional Facility, Rutland, Vermont

NECC - Northeastern Correctional Facility, St. Johnsbury, VT

NOSCF - Northern State Correctional Facility, Newport, VT

NWSCF - Northwestern State Correctional Facility, Swanton, VT

PE - Prolonged Exposure therapy

PTSD - Post Traumatic Stress Disorder. For purposes of this project, PTSD refers only to service-connected PTSD.

SESCF - Southeastern State Correctional Facility, Windsor, VT

SIT - Stress Inoculation Training

SSCF- Southern State Correctional Facility, Springfield, VT

TBI - Traumatic Brain Injury

UCMJ - Uniform Code of Military Justice

USA - United States Army; including National Guard and Reserve components.

USAF - United States Air Force, including Reserve and Air National Guard components.

USCG - United States Coast Guard, including Reserve components.

USMC - United States Marine Corps, including Reserve components.

USN - United States Navy, including Reserve components.

VA - U.S. Department of Veterans Affairs

VA Benefits - The term "VA benefits" shall include, for purposes of this project, disability compensation, medical care, insurance, educational benefits, VA mortgages, Montgomery GI Bill benefits, Post-9-11 GI Bill benefits, or VA vocational rehabilitation benefits, or any combination thereof.

I. INTRODUCTION

The purpose of this project is to establish empirical evidence to support the creation of a Veteran's Court in Vermont and to examine the likelihood of success of such a program. This project indicates the need to gather information about the veteran population in the criminal justice system and to promote the public's interest in, and access to, such information.

The scope of this project is veterans who run into criminal legal issues as a result of PTSD, traumatic brain injury, adjustment disorder, anxiety, and other service related conditions, or a combination of any of these conditions in the State of Vermont; and are eligible for veterans benefits at the Department of Veterans Affairs. This project was approved by the Vermont Law School Institutional Review Board (IRB) on June 15th, 2016; and conditionally approved by the Vermont Agency of Human Services' IRB on September 8, 2016. Final approval was granted on February 15, 2017. All requirements set forth in 45 C.F.R. § 46 were met for this project.[1] This project was funded solely and completely by the author.

The information presented was gathered through the cited print and internet resources, as well as surveys, interviews, and on-site visits by the author to correctional institutions in Vermont. All 27 veteran participants were informed of the research project and confidentiality, and participated voluntarily. Each participant was assigned a participant identification number to protect their identity and maintain confidentiality. Each participant also signed a consent form assenting to their informed participation and for use of the gathered data. The consent form can be found in Appendix A. The surveys were distributed to inmate veterans at each of the 7 correctional institutions in Vermont. In order to better understand the need for a Veteran's diversion court in Vermont, the surveys asked questions related to military service, VA disability

[1] See 45 C.F.R. § 46.

rating, PTSD diagnosis, criminal charges and convictions, and prior treatment program participation. A copy of the survey can be found in Appendix B.

During the on-site visits, the author was given a guided tour through each facility and interviewed DOC representatives to better understand the current resources, infrastructure, living conditions, policies, and rehabilitation programs provided by the Vermont Department of Corrections. The author surveyed the law library at each facility, as well as the medical services and facilities available to the inmates. Each DOC representative discussed the day to day activities of the inmates and the facility, the available programs for rehabilitation and education, and community outreach programs in which the facilities participated both in the past and present.

In conjunction with the inmate surveys and outside research, the author interviewed Chief Justice Reiber, Vermont Supreme Court; Judge Brian Grearson, Vermont Chief Superior Judge; Michael Owens, Department of Veteran's Affairs Justice Outreach Liaison for White River Junction VA; Bob Arnell, Department of Corrections; Judge James J. Leary; New Hampshire 9th Cir. Court and presiding judge over New Hampshire Veteran's Track; as well as each facility's respective DOC representative.

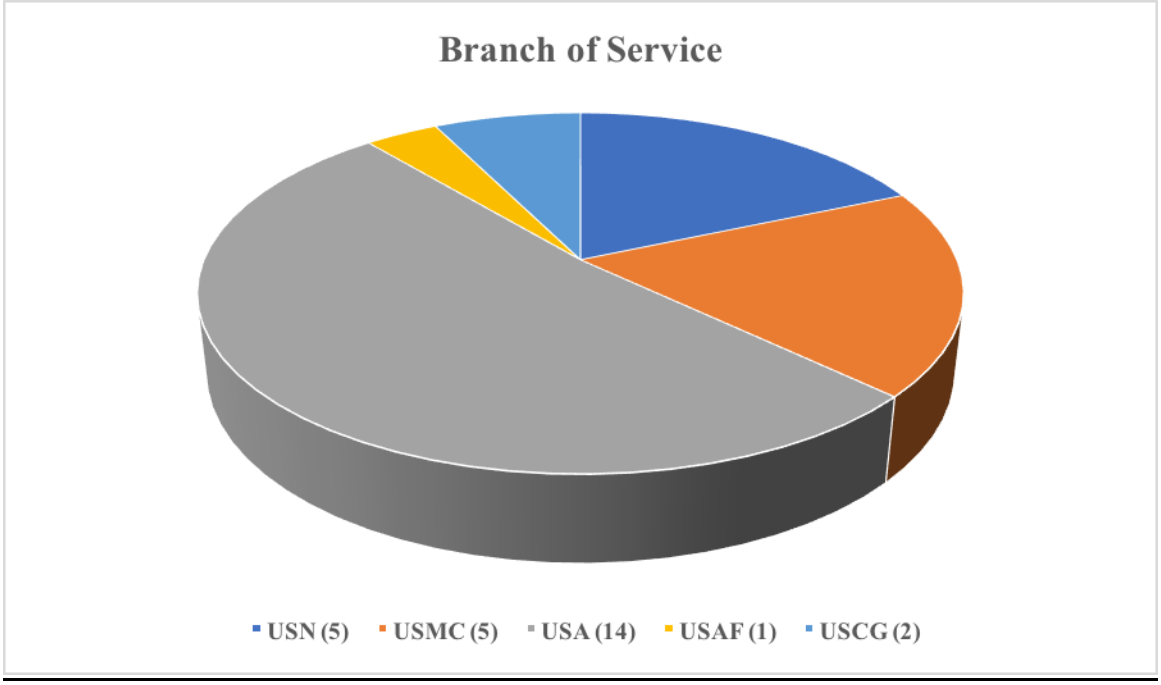
Two states that have enacted a veterans' treatment court are selected for comparison to Vermont. Texas, due to its notorious reputation as a severely retributive, as opposed to rehabilitative, criminal justice model; and New Hampshire, selected due to close geographical location, the history of sharing legal precedent with Vermont, and because they are facing similar issues with crime and drugs, such as the heroin epidemic. Both Texas and New Hampshire have Veteran's Courts currently in operation, and have resulted in reducing recidivism and ensuring the veteran is receiving treatment. Due to the close geographic proximity, the mental health

court and the veteran's court in Nashua, NH was selected for observation prior to the interview with Judge Leary. Nashua is home to New Hampshire's longest running Veteran's Behavioral Health Track, thus a larger amount of data is available for analysis. The author observed sessions conducted by both the mental health docket and the veterans docket in order to compare the processes.

II. SEVERAL ISSUES WERE IDENTIFIED THROUGH THE COURSE OF THIS PROJECT THAT WARRANTS JUDICIAL AND/OR LEGISLATIVE ACTION.

The results of the survey include: a breakdown of the veteran inmate population, status before incarceration, type of crime they were convicted of, the availability of a post-incarceration support network, and views on the creation of a veteran's court and other correctional sanctions used by the criminal justice system. The data presented using pie-charts in this document represent the entire State of Vermont. However, a numeric and facility specific chart of the raw data used to create each pie chart is available in Appendix C.

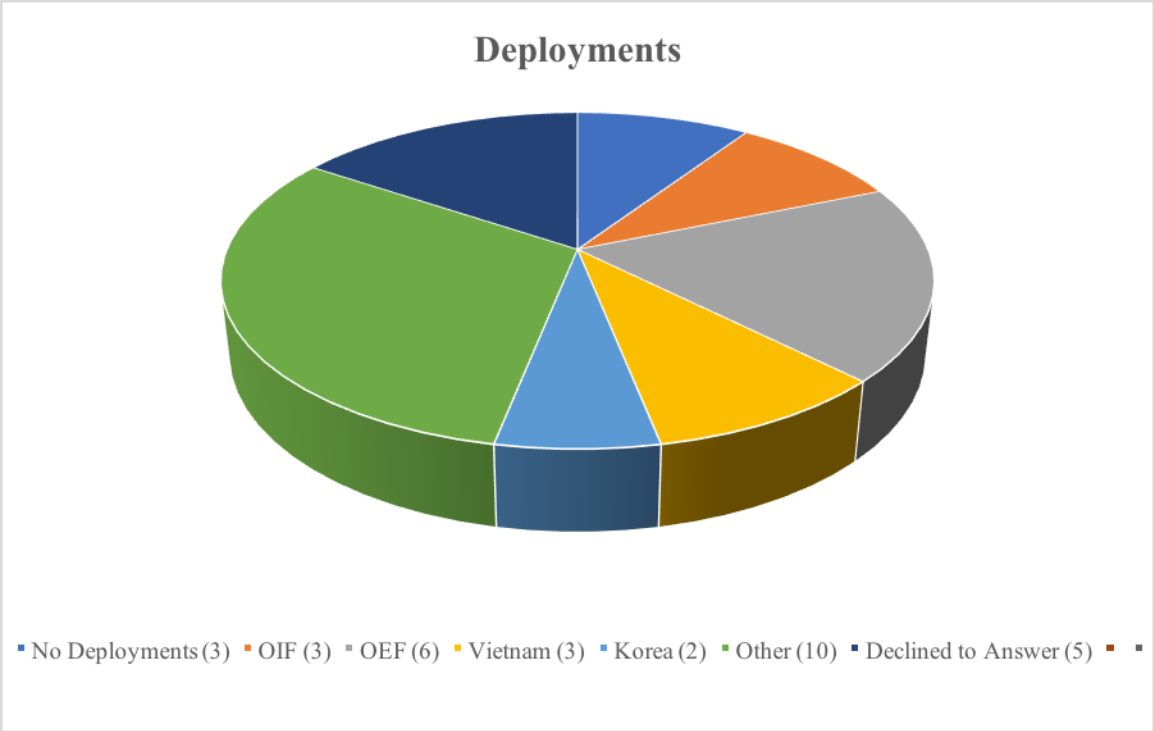
Figure 1



Of the veterans that participated in the survey, 51% were Army (USA), 18.5% were Navy (USN) or Marine Corps (USMC), 3.7% were Air Force (USAF), and 7.4% were Coast Guard (USCG) veterans.[2] These 27 veterans were deployed throughout the world, for a total of 32 individual deployments.[3] A possible explanation for the disparity in numbers is the length of an average Army combat deployment since the War on Terror began, which is a one-year to eighteen-month time period in which the Army veterans were constantly exposed to combat. The Marine Corps and Navy deployments are usually a six-month period, with Air Force deployments even shorter.

[2] See Figure 1 and Appendix C.
[3] See Figure 2 and Appendix C.

Figure 2



The veterans have a wide array of deployment locations, as indicated in Figure 2.[4] Five participants declined to answer, which may indicate that they did not deploy during their tenure in the military, or may indicate their discomfort with the question.[5] The "other" section of Figure 2 includes 10 deployments to locations such as Bosnia, Kosovo, South America, Kyrgyzstan, Kuwait, Qatar, Africa, etc. [6] These deployments were often in support of Operation Iraqi Freedom (OIF) or Operation Enduring Freedom (OEF).

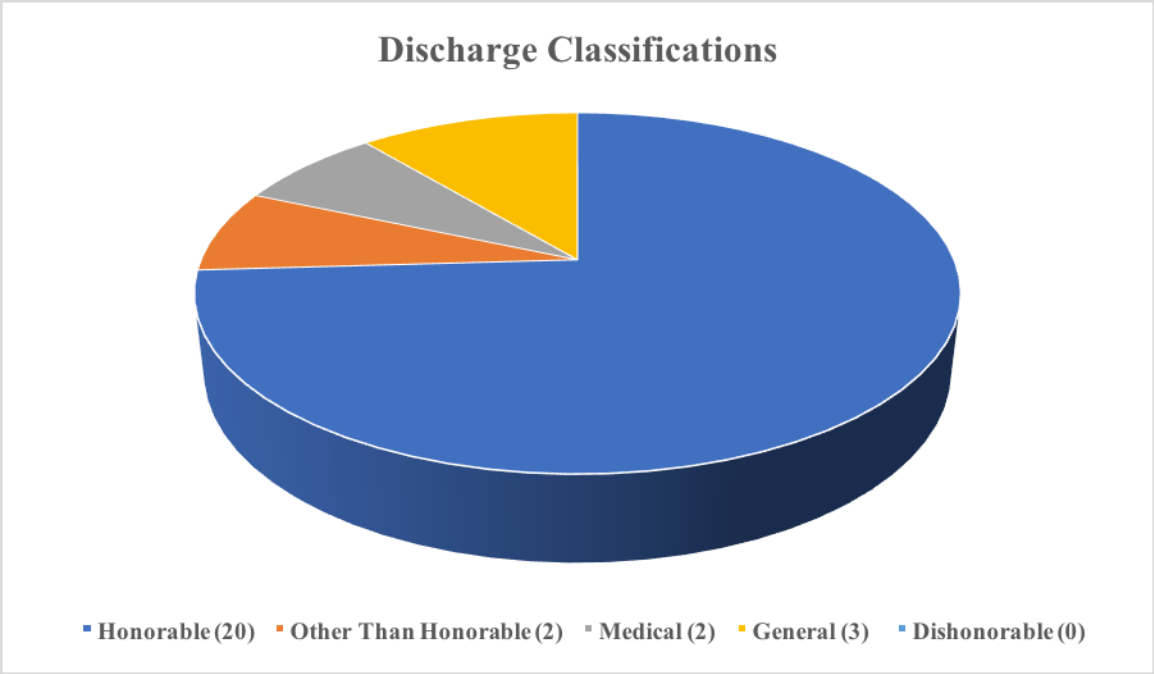
Mark Davis published an article in Seven Days about a 90-year old Vermont veteran Emory Woodall.[7] Woodall served in the US Army at the end of World War II in the Medical Corps, and is suffering from the early stages of dementia.[8] Woodall was incarcerated for a

[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] Mark Davis, *Inmate No. 144711 Is a 90-Year-Old Veteran,* Seven Days, March 22-29, 2017, at 18.
[8] *Id.*

violent outburst in his assisted living home at Brookwood Estate in North Springfield, VT.[9] Woodall argues that the nurse attacked him.[10] Brookwood Estate says that Woodall is no longer welcome there.[11] Thus, Woodall has nowhere to go and is incarcerated at Southern State Correctional Facility (SSCF) Springfield, VT.[12] Woodall was not a participant in the survey, thus no survey data reflects the information in this article. The issue is that prosecutors are willing to drop the charges against him, yet he remains incarcerated because he literally has nowhere to live.[13] "[Woodall] presents as an ornery man with dementia, and the question for us is: What to do with him? That's the immediate question."[14] While incarceration seems like the best alternative to homelessness, the DOC admits they are not equipped to handle veteran specific issues, discussed later.

[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*

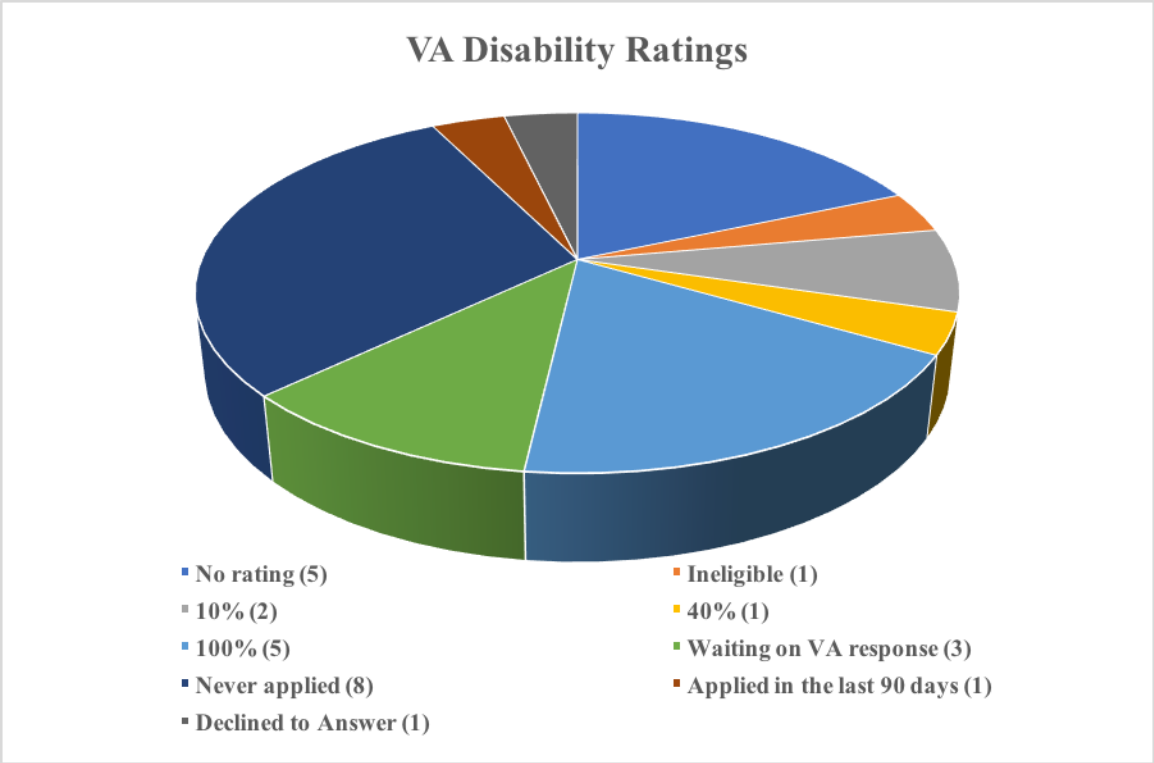
Figure 3



The majority of veterans incarcerated are eligible for veterans benefits and treatment at the VA, with 92% receiving an honorable, general or medical discharge.[15] None of the incarcerated veterans have a dishonorable discharge.[16] However, there remain a handful of veterans that may not qualify, and must change their discharge classification through an appeals process in order to become eligible for VA benefits.[17]

[15] See Figure 3 and Appendix C.
[16] *Id.*
[17] *Id.*

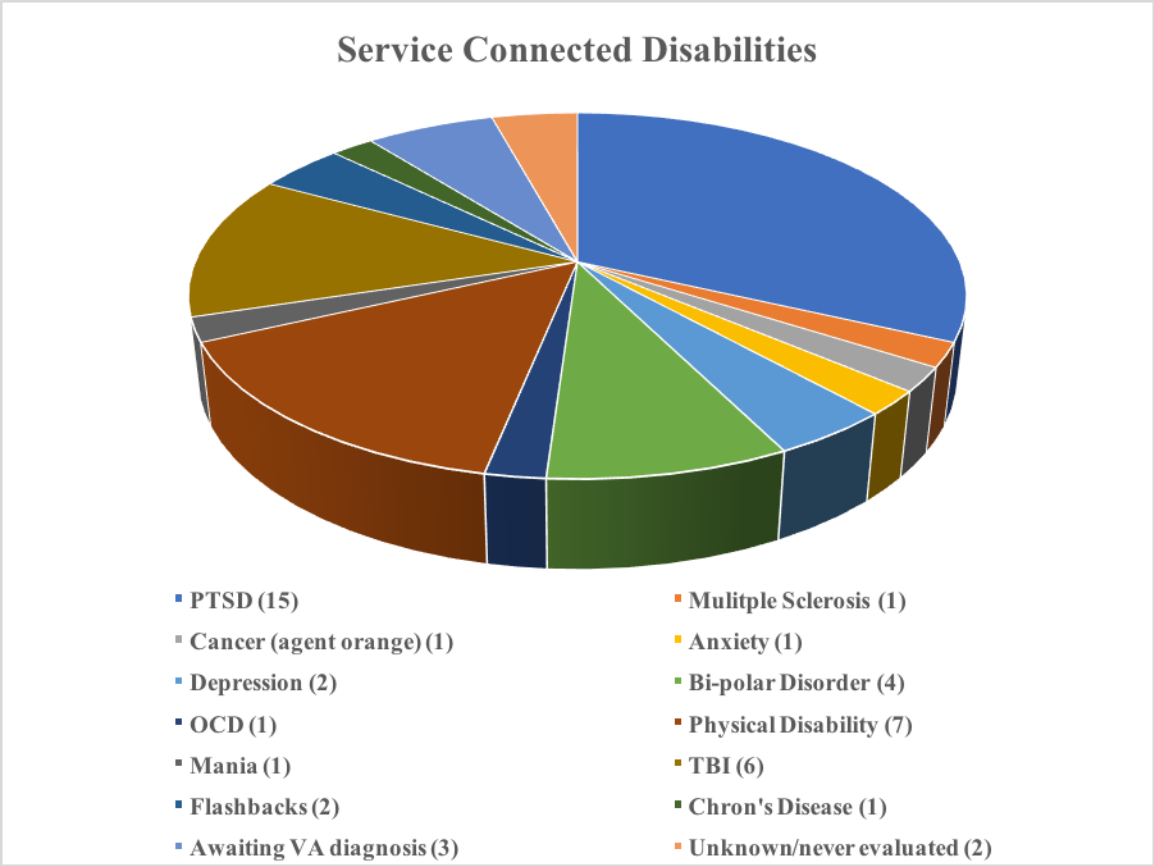
Figure 4



The veterans currently incarcerated in Vermont have a wide array of VA disability ratings.[18] However, the largest population amongst the veterans are those who have never applied for, or are awaiting the VA's response to, their disability rating.[19] 30% of the survey participants have never applied for their benefits through VA.[20] Only one veteran was ineligible for VA benefits due to an unsatisfied time in service requirement.[21] Of those who applied and received a rating, 100% are eligible for continued care at the VA due to their service-connected disability.[22]

[18] See Figure 4 and Appendix C.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*

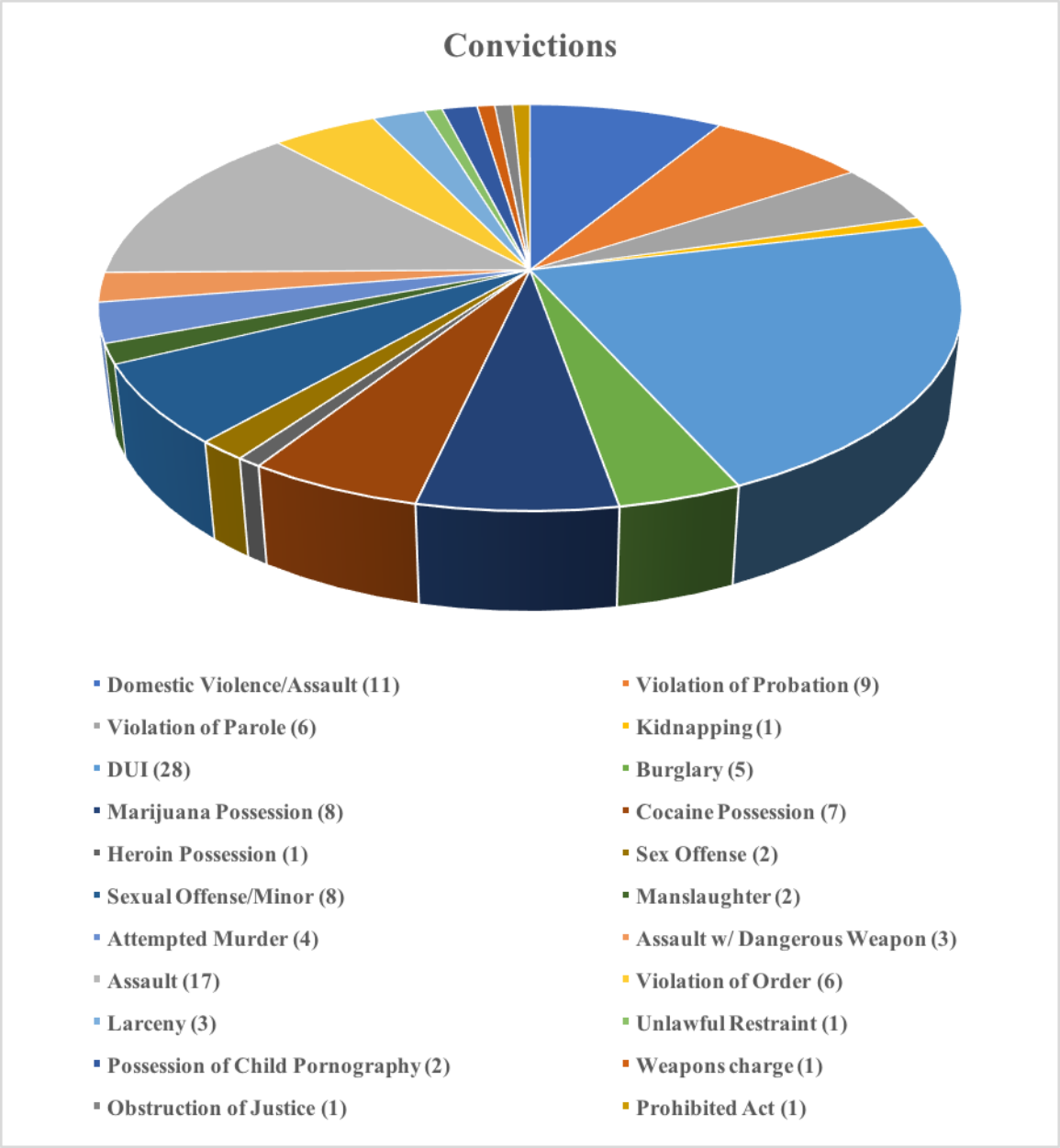
Figure 5



The majority of veterans incarcerated in Vermont have PTSD, and a handful still await diagnosis or have never been evaluated after discharge from the military.[23] 74% of the participants in the survey had PTSD or PTSD symptoms.[24] 18% of the participants in the survey did not have a VA diagnosis or have never been evaluated.[25] This last statistic is especially important for the veteran inmates' access to justice issue, discussed later.

[23] See Figure 5 and Appendix C..
[24] *Id.*
[25] *Id.*

Figure 6



As demonstrated above, the majority of veterans incarcerated have been convicted of domestic violence, driving under the influence, drug possession, or assault.[26] As previously discussed, 74% of veterans incarcerated in Vermont reported having PTSD, or symptoms

[26] See Figure 6 and Appendix C.

thereof.[27] All of the previously mentioned offenses can be causally linked to PTSD and the symptoms thereof, or other service-connected disabilities.

According to DOC representatives, the veterans that participated in the survey are usually well-behaved and have very few rule violations or issues with other inmates. Every facility representative interviewed during the facility visits indicated that the veterans "do not give them problems" and usually are "exemplary inmates" and abide by the rules of the facility; sometimes even taking leadership roles and working within the facility. However, this view is limited in that it only applies to the veterans that were identified as a result of this project, because DOC does not have a system in place that identifies veterans at intake.

A. Veterans have specific issues that differ from what is normally found in civilian defendants.

Judge Leary indicates that the reason why New Hampshire courts deal with veteran cases separately is the complexities of issues veterans face.28 He further argues that the types of issues veterans face also differ from the defendants in the mental health courts.29 Many defendants who attend mental health court sessions are suffering from conditions that they were either born with or developed from a non-military related incident.30 In contrast, the Veterans' Behavioral Health Track participants' respective illnesses are a result of traumatic events related to their military service or combat.[31]

There are currently 48,602 veterans in Vermont, of which 34,354 are combat veterans.[32] With the population of Vermont at approximately 625,741 people, 7% of the state's population is

[27] See Figure 5 and Appendix C.
[28] Interview with Judge Leary, Presiding Judge of Nashua Veteran's Court, Nashua, NH (Sept. 1, 2016).
[29] *Id.*
[30] *Id.*
[31]
[32] Department of Veterans Affairs, National Center for Veterans Analysis and Statistics, *Veteran Population*, (August 12, 2016, 9:17 pm), http://www.va.gov/vetdata/veteran_population.asp.

a veteran, and 5.5% are combat veterans.[33] To put the population in perspective, one out of every twelve Vermont citizens is a veteran. 40% of veterans in the United States do not seek VA treatment.[34] Applying this statistic to Vermont conservatively yields approximately 19,441 veterans that are not seeking any form of treatment through the VA.[35] Of these 19,441 veterans, 13,742 have seen combat.[36] Veterans are 41%-61% more likely to commit suicide, depending on how long they have been separated from the military.[37] The leading cause of death among inmates is suicide.[38] DOC investigated 634 self –harm incidents in 2014, and the rate has increased 10% in the past 5 years.[39] The survey indicates that 83% of the veterans incarcerated in Vermont suffer from some form of service-connected disability.

These issues are compounded by the issues veterans face domestically as well, such as divorce, meeting child support obligations, financial hardship, difficulty maintaining employment, etc.

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[33] See Suburban Stats, *Current Population Demographics and Statistics for Vermont by age, gender and race*, (Jul. 2, 2016), https://suburbanstats.org/population/how-many-people-live-in-vermont.
[34] Department of Veterans Affairs, Public Health, *VA Healthcare Utilization by Recent Veterans*, (Aug. 10, 2016 (4:17 pm), http://www.publichealth.va.gov/epidemiology/reports/oefoifond/health-care-utilization/.
[35] See Department of Veterans Affairs, National Center for Veterans Analysis and Statistics, *Veteran Population*, (August 12, 2016, 9:17 pm), http://www.va.gov/vetdata/veteran_population.asp.
[36] See *Id.*
[37] Department of Veterans Affairs, Public Health, *Suicide Risk and Risk of Death Among Recent Veterans*, (Sept. 12, 2016, 8:19 am), http://www.publichealth.va.gov/epidemiology/studies/suicide-risk-death-risk-recent-veterans.asp#sthash.7is0p1cp.dpuf
[38] Noonan, Margaret, U.S. Department of Justice, Office of Justice Programs, *Morality in Local Jails and State Prisons, 2000-2013 Statistical Tables*, (Sept. 17, 2016), http://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf.
[39] Department of Veterans Affairs, Public Health, *Suicide Risk and Risk of Death Among Recent Veterans*, (Sept. 16, 2016, 5:02 pm) , http://www.publichealth.va.gov/epidemiology/studies/suicide-risk-death-risk-recent-veterans.asp#sthash.qL944ux5.dpuf

B. The Vermont Department of Corrections' program is not properly resourced to rehabilitate complex veteran-specific issues.

Between 1990 and 2007, incarceration rates tripled in Vermont.[40] During the IRB review process through the Vermont Agency of Human Services, the representative from DOC openly admitted that the Vermont Department of Corrections is not equipped to handle a PTSD episode with the veteran inmates. Vermont Department of Corrections' inability to handle a sole episode of PTSD indicates that the incarcerated veterans are not receiving treatment for PTSD while incarcerated under their ward, and are thus not being rehabilitated. If rehabilitation does not occur while they are incarcerated and the veteran is stripped of his VA benefits that would grant access to treatment because of his conviction, then incarceration of the veteran becomes strictly retributive and counter-productive to the veteran's and the State's interest.

The DOC falls under the Vermont Agency of Human Services (AHS) in the hierarchical structure.[41] According to AHS's Department of Corrections Policy 363 § 4.2.1, passed in 1983, the DOC must ensure that "offenders have available to them all services which would be available to them as citizens of Vermont were they not under the care, custody, or supervision of the Department of Corrections."[42] The policy further states that the offender must pay for his own rehabilitation until his resources are exhausted, at which point the DOC assumes the cost.[43] During the AHS IRB approval for this project, the DOC representative's admission that the DOC is "not equipped to handle a PTSD episode" falls in direct violation of DOC's and AHS's own

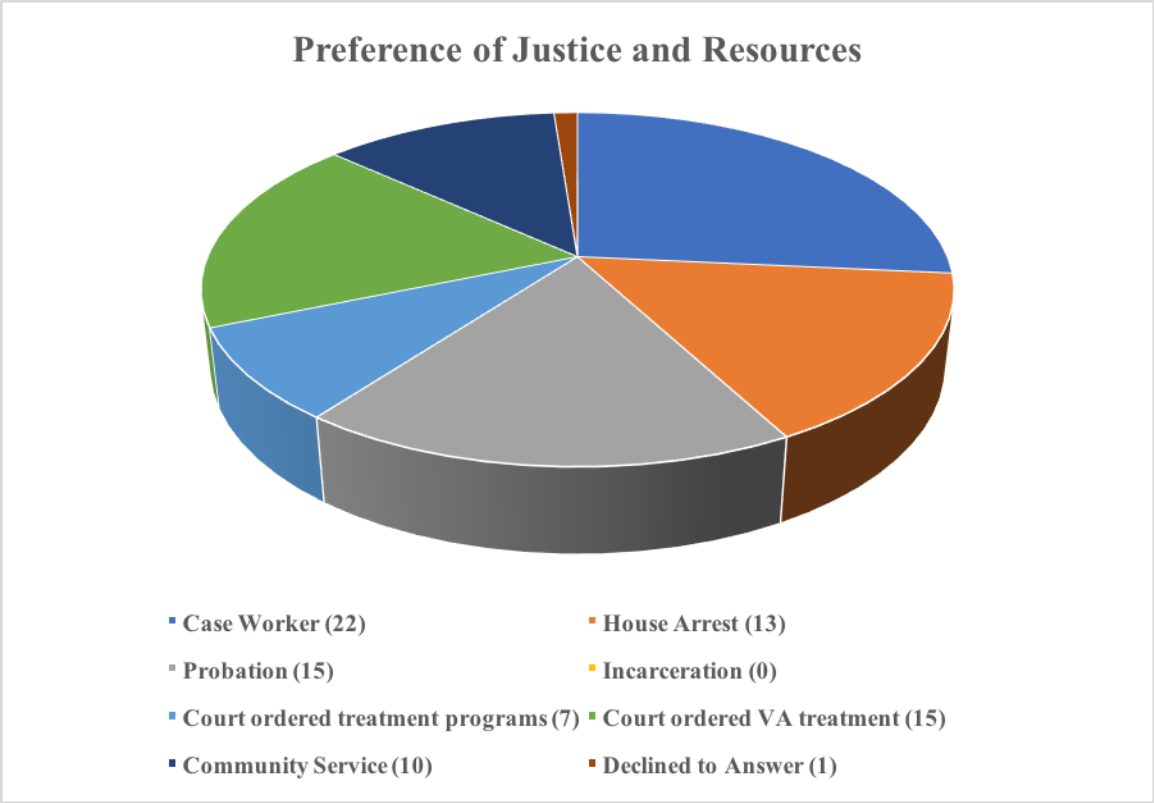
[40] Menard, Lisa, Department of Corrections, *Annual Report: FY 2015*, (Jun. 2, 2016, 3:47 pm), http://www.doc.state.vt.us/about/reports/fy15-doc-annual-report/view.
[41] Vermont Agency of Human Services, *AHS Departments*, (Sept. 28, 2016 (3:23 pm), http://humanservices.vermont.gov/departments.
[42] Vermont's Agency of Human Services, Department of Corrections Policy 363 § 4.2.1 (1983). (http://www.doc.state.vt.us/about/policies/pdu-general/rpd/correctional-services-301-550/361-370-programs-treatment-programs/363%20Alcohol%20And%20Drug%20Treatment%20Services.pdf).
[43] *Id.*

policy.[44] Follow up emails to Shawn Skaflestad, PhD, AHS IRB member, requesting a list of the IRB members to determine the identity of the DOC representative who made the statement went unanswered.[45] If the veteran has access to free VA treatment when he is not incarcerated by the DOC, then he should have access to the same quality of treatment while incarcerated under the DOC's care.[46]

During the scheduling phase of the project, in addressing the issue of a potential PTSD episode, another DOC representative stated that "on the weekend we don't always have the full mental health staff available nor are the caseworkers available who can work out any issues that arise." [47] This admission further supports the contentions that veteran specific needs are not being addressed by the DOC, and that the DOC and AHS are violating their own policy.[48]

[44] See *Id.*
[45] See, e.g. Email to Shawn Skaflestad, Ph.D., Vermont Agency of Human Services Institutional Review Board member, from author (Aug. 5, 2016, 10:58 am) (on file with author).
[46] See *Id.*
[47] Email from Robert Arnell, Vermont Department of Corrections, to author (Sept. 11, 2016, 8:01 pm) (on file with author).
[48] See Vermont's Agency of Human Services, Department of Corrections Policy 363 § 4.2.1 (1983).

Figure 7



A common veteran-specific issue found at each facility in Vermont was access to justice. Each facility in Vermont has a law library (some much better than others) and an online subscription to WestLaw. However, the subscription currently available to inmates does not include access to the Uniform Code of Military Justice (UCMJ). This is problematic in that veteran inmates that do not have a medical or honorable discharge may have difficulty being eligible for necessary treatment without a discharge reclassification. The law governing discharge classifications and appeals is found in the UCMJ and other applicable Department of Defense (DOD) regulations. A handful of inmates from different facilities also alleged being denied access to use the law library for purposes other than their criminal case or appeal, such as pending child support cases or other litigation.

To rectify the access to justice issue, the WestLaw subscription should be upgraded to include UCMJ and DOD regulation materials; and DOC or AHS should create a law library use policy stating that use of the law library should not be restricted. If it is deemed too costly to provide such a subscription upgrade, an alternative would be to purchase a hardcopy of the relevant material annually for the law library at each facility.

C. The Vermont Department of Corrections rehabilitative programs do not address the needs of incarcerated veterans.

Vermont DOC offers inmates with substance abuse issues treatment through the Intensive Substance Abuse Program (ISAP).[49] ISAP is run three times a week for six months.[50] The inmate must meet specific criteria in order to be eligible for ISAP.[51] First, the inmate must have a substance abuse disorder that is in need of intervention, be deemed appropriate for general population security level, and the DOC must determine that ISAP is the appropriate treatment.[52] Next, the inmate must be convicted of a crime that rises no higher than the moderate level on the DOC's severity scale, and score medium high to high on the DOC's risk assessment matrix.[53], The exception to this rule is if the inmate is incarcerated for a felony DUI, in which case he can score a medium on the risk assessment.[54] Furthermore, the DOC only extends this program to inmates who have to serve one to three years of incarceration.[55]

[49] Department of Corrections – Agency of Human Services, *ISAP Program Description*, (Jun. 12, 2016 7:15 pm), http://www.doc.state.vt.us/programs/substance-abuse-programs/intensive-substance-abuse-program-isap-1/.
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*

Of the nine rehabilitative programs listed in Vermont DOC's 2015 annual report, none address PTSD specifically.[56] The only treatments that remotely touch on veteran issues is the substance abuse programs.[57] However, each rehabilitative service offered by DOC is independent of each other, thus not having the capacity to address the complexity of veterans' issues, which usually involves several inter-related facets.[58] So, while a part of the issue is being addressed, the success of the DOC's programs is jeopardized by the failure to address the complexity of veterans' issues.[59] Furthermore, DOC cannot accurately account for how many veterans are in their custody. Therefore, DOC cannot properly provide services for veterans as required by their policy because they do not have a system for identifying who the veteran inmates are that may have veteran-specific issues.

The education programs available to inmates are extremely limited as well, with only high school diplomas or barber certification available. These programs are not sufficient for an individual to gain meaningful employment upon release, thus increasing the likelihood of recidivism. Most of Vermont correctional facilities have several solar panels just outside the walls of their respective facility. Some facilities have an area designed for agricultural purposes. With the increase in green energy interests, perhaps the DOC can host a program for veteran inmates in which the veteran gains vocational training in green energy or agriculture. If done through an accredited university or program, the veteran may be able to use their educational benefits (GI Bill or vocational rehabilitation) to pay for some vocational training received while incarcerated. This means more money for Vermont. Several veteran inmates interviewed

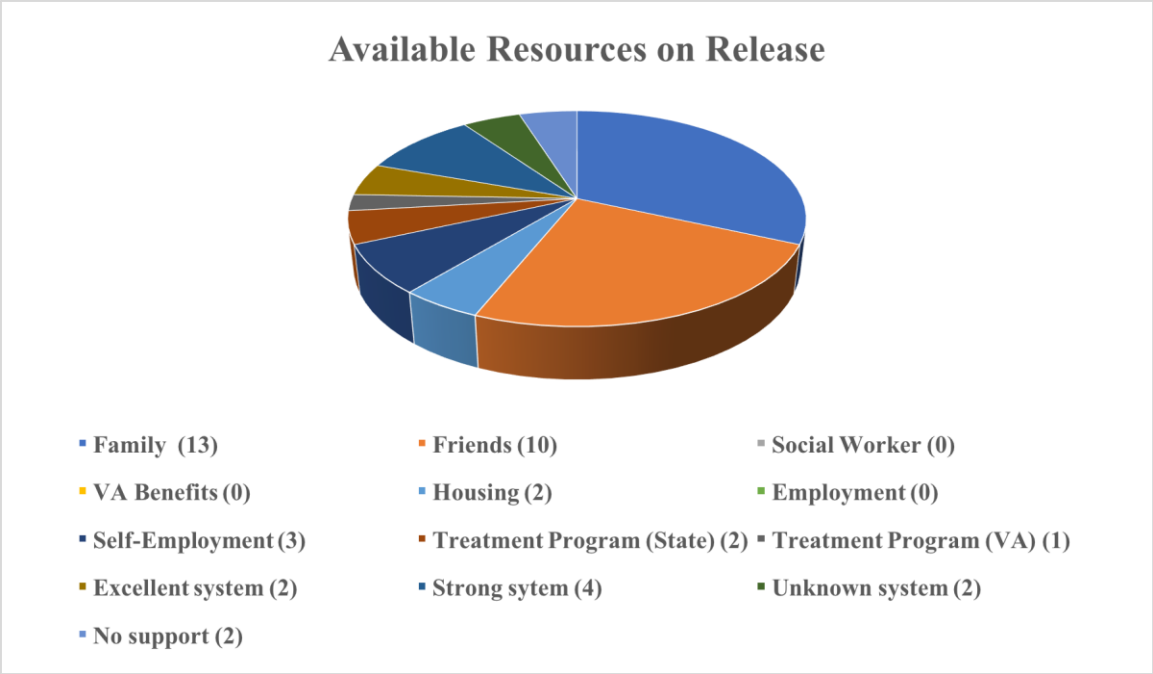
[56] Vermont Department of Corrections, *Annual Report: FY 2015*, (Sept. 12, 2016 9:17 pm), http://www.doc.state.vt.us/about/reports/fy15-doc-annual-report/view.
[57] *Id.*
[58] *Id.*
[59] *Id.*

indicated they still had education benefits that they had yet to utilize. Vermont's interest is served in creating this program because it will likely cause a decrease in recidivism, and gainful employment opportunity for the veteran upon release in a new industry that is on the brink of rapid expansion and growth.

The incarcerated veterans indicated that a case worker that aided in access to housing, treatment and benefits would be the most beneficial to rehabilitation, and would have helped prior to incarceration.[60] When asked about their plan and resources on release, no veteran indicated that they had a job lined up (except three, who were self-employed before being incarcerated), planned on using VA benefits, or had a social worker to help them gain access to benefits.[61] Only two indicated that they had housing lined up, and three are entering treatment programs.[62] Four veterans indicated that they do not have any support or an idea of what they would do on release.[63]

[60] See Figure 7 and Appendix C.
[61] See Figure 8 and Appendix C.
[62] *Id.*
[63] *Id.*

Figure 8



III. THE VA HAS A WEALTH OF TREATMENT PROGRAMS AND RESOURCES AVAILABLE AT NO COST TO ELIGIBLE VETERAA.NS.

A. Individual Treatment Programs have been effective in addressing and reducing PTSD's impact on the veteran's criminal behavior.

The Department of Veteran's Affairs currently has several treatment programs and resources in place to treat, or aid in the management of, veteran specific issues. The VA recognizes a causal connection between PTSD, substance abuse, and major depressive disorders.[64] The VA also recognizes that veterans respond just as well to treatment as their

[64] Jeffreys, Matt, M.D., Department of Veteran's Affairs National Center for PTSD, *Clinician's Guide to Medications for PTSD* (Jun. 8, 2016 4:07 pm), http://www.ptsd.va.gov/professional/treatment/overview/clinicians-guide-to-medications-for-ptsd.asp#meds.

civilian counterparts.[65] Resilient individuals showed the best results, and older individuals had the least response to medications.[66] The VA not only recognizes these facts, but also provides treatment at no cost to the veteran or a referring state court.[67] Treatments include Cognitive Behavioral Therapy (CBT), Cognitive Processing Therapy (CPT), Prolonged Exposure therapy (PE), Eye Movement Desensitization and Reprocessing (EMDR) and Stress Inoculation Training (SIT). Other treatments include medication treatment, complementary and alternative medicine, acceptance and commitment therapy, group treatment, and couples therapy.[68] Most of these treatments have been created by psychologists using research and resources from the National Center for PTSD in White River Junction.[69]

Cognitive behavior therapy (CBT) treatment involves a therapist that works with a veteran to change how the veteran thinks about their traumatic event.[70] The goal of CBT is to understand how one's thoughts can worsen symptoms such as anger, depression, or anxiety.[71] The therapist helps the veteran think about the world differently and more accurately.[72] It is also the most effective form of treatment for PTSD available at the VA.[73]

There are currently two forms of CBT offered by the VA: Cognitive processing therapy (CPT) and Prolonged Exposure therapy (PE). CPT was developed by Boston University psychologist Patricia A. Resick, PhD.[74] PE therapy was developed by Boston University

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[65] *Id.*
[66] *Id.*
[67] See *Id.*
[68] *Id.*
[69] DeAngelis, Tori, American Psychological Association, *PTSD Treatments Grow in Evidence, Effectiveness*, (Jun. 12, 2016, 8:35 pm), http://www.apa.org/monitor/jan08/ptsd.aspx.
[70] Department of Veterans Affairs, PTSD: National Center for PTSD, *Treatment of PTSD*, (Jun. 12, 2016), http://www.ptsd.va.gov/public/treatment/therapy-med/treatment-ptsd.asp.
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.*

psychologist Terence M. Keane, PhD.[75] Keane is also the director of the behavioral science division of the National Center for Posttraumatic Stress Disorder and a contributor to the original PTSD diagnosis.[76]

CPT involves four main parts.[77] First, the veteran learns about PTSD symptoms and how treatment can help.[78] Second, the veteran becomes more aware of his thoughts and feelings and is taught how to step back and analyze how the symptoms are affecting them at any given moment.[79] Third, the veteran learns coping skills for harmful thoughts and feelings.[80] Finally, the veteran learns about their changes in belief, which occurs once a traumatic event has been processed by the brain.[81] This has proven to be one of the most effective forms of treatment for PTSD.[82] Furthermore, this treatment is highly accessible because it is manualized and uniform for every patient, and thus easily administered.[83]

There are two forms of PE involved in the treatment for PTSD. The first form of PE therapy is in-vivo exposure, which involves repeatedly engaging in activities, behaviors and situations that the veteran would normally avoid due to PTSD.[84] Over time, the therapy has shown that it is effective in reducing fear or distressing emotions such as anxiety or depression; increasing the veteran's ability to recognize situations that the veteran normally avoids are not dangerous; and increasing the ability for the veteran to cope while distressed.[85] The second form

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[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] Center for Deployment Psychology, *Prolonged Exposure Therapy for PTSD*, (Jun. 23, 2016, 1:15 am), http://deploymentpsych.org/treatments/prolonged-exposure-therapy-ptsd-pe.
[85] *Id.*

of PE therapy is imaginable exposure, in which the veteran repeatedly revisits the traumatic event that triggered PTSD orally.[86] The veteran describes the traumatic event in the narrative.[87] The narrative is recorded, and the veteran listens to it repeatedly between sessions.[88] This method aids in the processing of the traumatic event in the brain, and helps the veteran cope during moments when the memory causes distress.[89]

Eye movement desensitization and reprocessing (EMDR) treatment was developed in 1987 by Dr. Francine Shapiro, and reported successful in treating patients in 1989's *Journal of Traumatic Stress*.[90] The treatment has since been accepted by practitioners internationally.[91] EMDR treats patients by directly altering the way the brain processes information.[92] When a traumatic event occurs, the brain cannot process the stimuli the way it would process information ordinarily, resulting in a moment that is "frozen in time".[93] The trauma can be re-triggered by similar smells, sounds, and images that were present at the time of the initial trauma.[94] The long lasting negative effect causes the veteran to view the world and other people differently.[95] Through EMDR, the brain processes are restored and the memory of the trauma does not cause a re-triggering of symptoms.[96] Furthermore, EMDR is not invasive or unnatural to the body, and has a minimal risk to the patient because it mimics what occurs during rapid eye movement (REM) sleep.[97] EMDR consists of sixty to ninety minute treatment sessions.[98] However, the

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[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] EMDR International Association, *How Was EMDR Developed?*, (Jun. 17, 2016 8:43pm), https://emdria.site-ym.com/?118
[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.*

number of sessions necessary is case dependent, and EMDR can be used in conjunction with other treatments.[99]

Medication treatment alone alleviates and minimizes symptoms of PTSD and minimizes side effects to the veteran.[100] This type of treatment targets four main symptoms of PTSD: intrusion, avoidance, negative alterations in cognitions or mood, and alterations in arousal or reactivity.[101] However, it is most effective when used in conjunction with one of the previously mentioned therapy programs such as CBT or EMDR.[102]

One form of medication treatment involves using medications that target neurotransmitters in the brain that are related to fear and anxiety.[103] These neurotransmitters include "serotonin, norepinephrine, gamma-aminobutyric acid (GABA), excitatory amino acids such as N-methyl-D-aspartate (NMDA), and dopamine, among many others."[104] The types of medications and dosage ranges the VA currently prescribes for PTSD are Selective Serotonin Reuptake Inhibitors (SSRIs), such as Sertraline (Zoloft) - 50 mg to 200 mg daily, Paroxetine (Paxil) - 20 to 60 mg daily, and Fluoxetine (Prozac) - 20 mg to 60 mg daily.[105] Other antidepressants used for PTSD treatment by the VA include: Mirtazapine (Remeron) 7.5 mg to 45 mg daily; Venlafaxine (Effexor) 75 mg to 300 mg daily; and Nefazodone (Serzone) 200 mg to 600 mg daily.[106]

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[98] EMDR International Association, *How Long Does EMDR Take?*, (Jun 12, 2016, 7:43 pm), https://emdria.site-ym.com/?121.
[99] *Id.*
[100] Jeffreys, Matt, M.D., Department of Veteran's Affairs National Center for PTSD, *Clinician's Guide to Medications for PTSD* (Jun. 8, 2016, 4:07 pm), http://www.ptsd.va.gov/professional/treatment/overview/clinicians-guide-to-medications-for-ptsd.asp#meds.
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*

Another form of VA medication treatment for PTSD includes the use of mood stabilizers.[107] This form of therapy is most commonly used for veterans with PTSD and bipolar disorder.[108] Medications used include Carbamazepine (Tegretol), Divalproex (Depakote), Lamotrigine (Lamictal), and Topiramate (Topimax).[109] Furthermore, atypical antipsychotics are recommended by the VA to treat psychotic and mood disorders co-occurring with PTSD.[110]

Finally, the VA has medications for treatment of specific PTSD symptoms.[111] For example, Prazosin has been found to be effective in decreasing nightmares associated with PTSD.[112] In a recent trial using military personnel on a prazosin regimen, the medication was taken during the day in addition to bedtime for nightmares.[113] The study showed a significant reduction in daytime PTSD symptoms as well as nightmares in military personnel.[114]

The only potentially addictive group of medications that the VA prescribes is benzodiazepines.[115] These medications include Lorazepam (Ativan), Clonazepam (Klonopin), Alprazolam (Xanax), and Diazepam (Valium).[116] However, the VA only prescribes their use for very limited purposes, allows prescriptions for no more than five days, and frequently evaluates the veteran to limit side effects and addiction.[117]

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[107] *Id.*
[108] *Id.*
[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.*

B. The VA's group treatment and couples therapy programs reduce domestic violence.

Veterans with PTSD have a 1.6 times greater likelihood for divorce, and 3.8 times greater odds of marital distress.[118] Men are more likely to show symptoms of PTSD than their female counterparts.[119] Women are more susceptible to the symptoms of PTSD than men because men tend to be more expressive with their symptoms.[120] Furthermore, veterans are more likely to have domestic aggression, especially when the veteran has been diagnosed with PTSD.[121] In veterans of wars from prior eras, 33% of veterans who have PTSD showed some form of domestic aggression, as opposed to 15% of veterans without PTSD.[122] However, this problem has only been compounded with the wars in Iraq and Afghanistan.[123] Veterans who served in these conflicts have shown a fourfold increase in the interpersonal relationship problems than their prior-era counterparts.[124] This is higher than the national increase in individual psychopathology symptoms.[125]

The problem for both groups is the contention between the emotional numbing symptoms of PTSD and the relationship satisfaction the veteran experiences.[126] Furthermore, the hyperarousal symptoms of PTSD, such as anger or aggression, have been linked as a cause of domestic violence for veterans.[127] In a recent study of 49 Army National Guard soldiers who had returned from Iraq after a 12-month deployment, the wives indicated an increase in

[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *Id.*

individual distress because they perceived problems that the soldier was unable to recognize.[128] Couples therapy is beneficial because it promotes communication between the soldier and the family, thus increasing the level of satisfaction in the relationship for both parties.[129] An increase in satisfaction in the relationship directly results in a decrease in domestic violence.[130] Furthermore, a separate study of veterans who were participating in PTSD treatments at the VA indicates that 79% veterans wanted their families more involved in their PTSD treatment. [131]

PTSD has been linked to marital and intimate relationship problems.[132] Treatment programs at the VA include couples therapy, in which the VA includes the veteran's significant other in the assessment and treatment of PTSD.[133] This can prove to be extremely helpful in domestic violence situations, particularly in circumstances where the significant other is unaware of PTSD's triggers and symptoms.[134] The VA recognizes that when a significant other is participating in the treatment, it is more effective.[135]

While all of these previously discussed treatments are available to the veteran before incarceration, the issue is only 60% of eligible veterans from Operations Iraqi Freedom, Enduring Freedom and New Dawn actually seeks treatment.[136] Of the 723,582 veterans who sought treatment at the VA, 685,540 (94.7%) sought treatment for mental disorders.[137] This number consists of the 60% that sought treatment, leaving 40% of the veteran population

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[128] *Id.*
[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] Monson, Candace Ph.D., National Center for PTSD, *Couples and PTSD,* (Jun. 10, 2016, 1:30 pm), http://www.ptsd.va.gov/professional/continuing_ed/flashfiles/couplestherapy/Player/launchPlayer.html?courseID=1397&courseCode=MM-001.
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] Department of Veterans Affairs, Public Health, *VA Healthcare Utilization by Recent Veterans*, (Aug. 10, 2016, 4:17 pm), http://www.publichealth.va.gov/epidemiology/reports/oefoifond/health-care-utilization/.
[137] See *Id.*

unaccounted for concerning mental health diagnosis or treatment.[138] As previously indicated, 30% of the veteran inmates surveyed in Vermont never applied for benefits through the VA.[139]

IV. THERE ARE REMEDIES THAT WILL AID IN ADDRESSING THE AFOREMENTIONED ISSUES.

A. A Veteran's Court is the most immediate and efficient solution to address veterans' issues.

The appropriate and most immediately effective solution to preventing veterans from becoming hardened criminals, reducing recidivism rates, and to achieve justice is to establish a Veterans Court in Vermont. The Vermont Supreme Court has authority to create such a court under Chapter II § 31 of the Vermont Constitution, which allows the state Supreme Court to divide the lower courts into "functional divisions".[140] Furthermore, under Chapter II § 30, "[t]he Supreme Court shall have administrative control of all the courts of the state".[141] Therefore, the Vermont Supreme Court has the authority to create a veterans court under the Vermont Constitution.[142]

In doing so, the State of Vermont would effectively reduce spending on incarceration within the state and in out-of-state for-profit prisons. Each veteran that participates saves taxpayers a minimum of $50,000 for each year that the veteran would otherwise be incarcerated within the state.[143] If the veteran is female, it saves the state $85,000.[144] The national average

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[138] *Id.*
[139] See Figure 4 and Appendix C.
[140] Vt. Const., Ch. II § 31
[141] *Id.*
[142] See *Id.*
[143] Woolf, Art, Burlington Free Press, *Economist Asks Why Vermont Prisons Cost So Much*, (Jun. 27, 2016, (3:47 pm), http://www.burlingtonfreepress.com/story/money/industries/2015/06/24/economist-questions-vt-prisons-cost-much/29220629/.
[144] See *Id.*

cost for one inmate is $31,000, thus making Vermont the fourth most expensive program in the nation for incarcerating its citizens.[145] If every veteran currently incarcerated was diverted from incarceration using a VA program, the state would have saved $1.3 million in 2016 alone. Furthermore, a veterans court is easily implementable in that it requires little effort by each key party. Forty other states that have veterans courts or diversion programs have seen a decrease in recidivism rates.[146]

Here, DOC staff interviewed for this project indicated their belief that the courts should provide "[m]ore lead way on the veterans, especially the ones that are dealing with PTSD."[147] These men and women see these incarcerated veterans and their struggle with service connected disabilities everyday, and see the remedy to the situation is leniency with the courts and treatment through the VA, and to prevent incarceration.

i. <u>The Supreme Court, and most states, recognize PTSD as a mitigating factor in criminal proceedings.</u>

The U.S. Supreme Court has stated that PTSD and military service can be considered mitigating factors in capital cases.[148] In *Hodge v, Kentucky*, Defendant Hodge had posttraumatic stress disorder.[149] Unable to control his behavior and his emotions because of PTSD, the defendant turned to drugs and alcohol to numb his feelings.[150] Justice Sotomayor opined that the defendant's condition could have been diagnosed at the time of his trial.[151] The Court further

[145] See *Id.*
[146] See, e.g., Buffalo Veterans Treatment Court, *Buffalo Veterans Treatment* Court, (Sept. 1, 2016, 11:39 pm), http://www.buffaloveteranscourt.org/.
[147] Email from Goddeau, Bruce, Vermont Department of Corrections, to author (May 13, 2017, 10:27 am) (on file with author).
[148] *Hodge v. Kentucky*, 81 USLW 3306, 133 S.Ct. 506, 184 L.Ed.2d 514 (2012).
[149] *Id.*
[150] *Id.*
[151] *Id.* at 507.

held that failure of defense counsel to explore and present evidence of PTSD and military service was sufficient to warrant relief for ineffective assistance of counsel, and a violation of the Sixth Amendment.[152]

Here, a veteran's court would be limited to crimes in which a symptom of the veteran's PTSD or other service-connected disability was a contributing factor in the commission of the crime. For example cases such as drug use, impaired driving or domestic violence are a result from symptoms of PTSD such as addiction, avoidance, anger, aggression, etc.

Forty states have created some form of veterans court, docket, or diversion program to deal with veteran specific issues such as PTSD and depression, and their link to criminal activity such as illicit drug use and domestic violence. Thus the infrastructure, resources and regulatory models are already in place for Vermont to use in creating a veterans court. The first veterans court was established in Buffalo, New York in 2008.[153] Buffalo's efforts resulted in recidivism rates plummeting from 50% to 5%.[154] Since then, forty states have developed 220 veterans courts that serve 11,000 veterans.[155] This constitutes a supermajority of the nation, with 4 out of 5 states having a veteran's court or diversion program.[156] Vermont and Massachusetts are the only two New England states that do not have a veteran's diversion court.[157] This is problematic because Vermont's veteran population is one of the highest in the nation, with 1 in every 12 people having veteran status.[158]

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[152] *Id.*
[153] Buffalo Veterans Treatment Court, *Buffalo Veterans Treatment* Court, (Sept. 1, 2016, 11:39 pm), http://www.buffaloveteranscourt.org/.
[154] *Id.*
[155] *Id.*
[156] See *Id.*
[157] See *Id.*
[158] See Department of Veterans Affairs, National Center for Veterans Analysis and Statistics, *Veteran Population*, (Aug. 12, 2016, 9:17 pm), http://www.va.gov/vetdata/veteran_population.asp.

ii. The stories of veterans courts throughout the country indicate high success rates.

Texas and New Hampshire provide excellent examples of veterans treatment courts successes. This is significant because Texas has a notorious reputation as a retributive justice state, as opposed to Vermont's legally progressive reputation. New Hampshire borders Vermont, and has a long history of sharing legal precedent with Vermont. Both states have enacted a veteran's court or docket in response to the issues veterans faced in the criminal justice system.

Texas established their veteran's court through the legislature with the passing of Senate Bill 1940 in 2009.[159] It is now found as Chapter 617 of the Texas Health and Safety Code.[160] There are now 11 veterans courts in Bexar, Dallas, Harris, Tarrant and Travis counties.[161] The Governor's Office Criminal Justice Division provides funding to each of these counties, and further funding is achieved by establishing fees not to exceed $1000.00, which is based on the veteran's ability to pay.[162] These fees are used solely for costs associated with the program.[163] This aspect of the Texas model can be applied in Vermont to address resource allocation issues.

New Hampshire established their Veterans Behavioral Health Track in Nashua in November 2014.[164] Due to the success of the Nashua program, New Hampshire Judiciary expanded the program to a second court in Manchester on June 1, 2016.[165] Unlike Texas, New

[159] Marchman, Judy L., Texas Bar Journal, *Veterans Courts in* Texas, (Sept. 18, 2016, 2:30 am) https://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=19656
[160] *Id.*
[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] New Hampshire Judicial Branch, New Release, *Judicial Branch Announces Launch of Second Veterans Behavioral Health Track – Alternative Program Within Manchester Circuit Court to Start June 1*, (Sept. 20, 2016, 10:33 am), http://www.courts.state.nh.us/press/2016/veterans.htm.
[165] *Id.*

Hampshire Judiciary established their diversion program without any involvement from the legislature by isolating the veterans' cases to one docket.[166]

Further efforts by New Hampshire include the New Hampshire Department of Health and Human Services' "Ask the Question" initiative. Under this initiative, identification of veterans happens at the time they come in contact with law enforcement. The question is whether the individual or a family member served in the military. The goal of this initiative is to improve access and quality of services by encouraging providers and law enforcement to identify veterans and their families and to provide appropriate, client-based services. The New Hampshire veterans court was created through a collaborative effort between the judiciary, district attorneys, and the VA Justice Outreach liaison (who serves as the liaison between the VA and the court).

The New Hampshire model includes the veteran in a collaborative treatment effort from the time of arrest. During arrest, the veteran is identified through the "Ask the Question" campaign. The prosecutor, defense attorney, defendant and the court enter into a contract in which the veteran signs a waiver to allow the release of medical information to the court for supervisory purposes, and agrees to jurisdictional requirements for the veterans court. The contract also explains what a veterans court is, what is expected of the veteran to succeed, and recourse for failure or non-compliance with the program. The contract serves as the court order for treatment, and is accepted by the VA. Furthermore, because a veterans court is a form of treatment for purposes of the VA, the Disabled American Veterans (DAV) is authorized to provide free transportation for the veteran to not only treatments at the VA or other medical care provider, but also to the veterans court sessions.

[166] Interview with Judge Leary, Presiding Judge of Nashua Veteran's Court, Nashua, NH (Sept. 1, 2016).

In Texas, Keith McDonald, age 37, was diagnosed with PTSD and depression after serving 10 years in the U.S. Army.[167] After his discharge, he turned to drugs to self-medicate.[168] McDonald was arrested and participated in the Texas Veterans Court, presided over by Judge Carr.[169] McDonald was not incarcerated, but participated in diversion that required six months of counseling.[170] Currently, McDonald is in school to become a chemical dependency counselor in Abilene, Texas.[171] "This program gives you an opportunity to work on yourself, and they'll take care of the legal problems. And, right now, I am the best that I've ever been".[172]

Andrew Rodriguez, a Marine who completed four combat tours overseas, was charged with assault and bodily injury to a family member.[173] Rodriguez had no prior arrests on his record, was diagnosed with PTSD, and his incarceration was a cause of his divorce.[174] During his incarceration, Rodriguez decided to participate in the Veteran's Court program.[175] Because of his participation and successful completion of the Veterans Court program, Rodriguez is now a full-time college student who is working on his degree in welding.[176]

Judge Carr has seen over 130 veteran cases in his Tarrant county veterans court, and 86% of those cases were successful, resulting in the veteran being rehabilitated and avoiding incarceration.[177] The unique aspect of the Texas Veterans Court is that the program includes job fair and career event attendance.[178] Judge Carr indicates that this and sanctions for stepping out

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[167] Silverman, Lauren, Kera News, *Veterans Court Helps Texas Vets Stay out of Prison*, (May 30, 2016, 3:27 am), http://keranews.org/post/veterans-court-helps-texas-vets-stay-out-prison
[168] *Id.*
[169] *Id.*
[170] *Id.*
[171] *Id.*
[172] *Id.*
[173] *Id.*
[174] *Id.*
[175] *Id.*
[176] *Id.*
[177] *Id.*
[178] *Id.*

of line are essential to the success of the program, as well as rewards for maintaining compliance with the program.[179] "You miss a meeting [and] that should get a swift response," he says, "We have a lot of sanctions at our disposal to corral someone so they don't break into a trend of non-compliance."[180]

Several success stories come from observing the veterans court in Nashua, New Hampshire.[181] Observation also provided an excellent example of the consequences for failure to comply with the contract/court order.[182] One case in particular stood out in why domestic violence should be included in the types of cases a veterans court adjudicates.[183] The veteran, only identified as Ronny, discussed in open court why he feels that the anger management at the VA has taught him so much, and that he is now very thankful and happy that he made the decision to seek treatment.[184]

Ronny was involved in a domestic violence incident and now participates in an 11-person group anger management treatment program.[185] Ronny further explained to Judge Leary that he was unsuccessful in individual anger management prior to his arrest, and that group treatment is far more effective.[186] As a result of his new treatment plan, he has worked out his issues with his ex-wife, and is collaboratively developing a parenting plan for his children.[187] He was initially charged with two counts of felony endangering the welfare of a child.[188] Due to his success in the program, he was able to avoid felony convictions and retain his VA benefits that provide him

[179] *Id.*
[180] *Id.*
[181] Interview with Judge Leary, Presiding Judge of Nashua Veteran's Court, Nashua, NH (Sept. 1, 2016).
[182] *Id.*
[183] *Id.*
[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] *Id.*
[188] *Id.*

with the treatment.[189] Judge Leary rewarded his active participation and progress in treatment by allowing him to come to court every three weeks, as opposed to bi weekly appearances.[190] Ronny also participates in substance abuse treatment, and is prescribed medication in conjunction with psychiatric treatment at the VA.[191]

On the other hand, the last case heard on the New Hampshire docket involved Phil, who was charged with drug related crimes, assault on his mother, intimidation, and disorderly conduct.[192] Phil stated to the VA liaison prior to the session that he refused to participate in the veterans court.[193] Phil was a no-show for his court appearance.[194] As a result, Judge Leary balanced the consequences of terminating his participation in the program and remanding the case back to the criminal court for prosecution, issuing a warrant for Phil's arrest, or issuing a violation within the veterans court.[195] Because his non-appearance is related to the avoidance symptom of PTSD, Judge Leary decided to give Phil one more chance and issued a violation.[196] However, he increased Phil's supervision to include a weekly appearance, and issued a stern warning that if Phil was a no-show again, he would be terminated from the program and his case would be remanded to criminal court for prosecution.[197] This indicates that a veterans court, while rehabilitative in nature, still holds the veteran accountable and provides recourse in the event of failure through a built-in system of checks and balances.[198]

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[189] *Id.*
[190] *Id.*
[191] *Id.*
[192] *Id.*
[193] *Id.*
[194] *Id.*
[195] *Id.*
[196] *Id.*
[197] *Id.*
[198] *Id.*

iii. A Veterans Court is an appropriate, practical and cost effective course of action for the Vermont Supreme Court to take that has tremendous public support.

The Vermont Supreme Court has the authority to divide the state's lower courts into functional divisions under the Vermont Constitution, Ch. II § 30. There are currently 48,602 veterans in Vermont, of which 34,354 have been in combat.[199] With the population of Vermont at approximately 625,741 people, veterans comprise of 7% of the state's population, and 5.5% of the state's population is a combat veteran.[200] To put the population in perspective, one out of every twelve Vermont citizens is a veteran.[201]

According to the survey participation results, there are at least 27 veterans incarcerated in Vermont. This number reflects only those veterans that stepped forward and identified themselves as veterans and participated in the survey. The author is aware of three other veterans that are incarcerated and did not participate in the survey. Using the DOC's expenditure data and only the number of participants in the survey; this translates into a total cost of $1,385,000.00 to incarcerate veterans for crimes that can be causally linked to their respective service-connected disability. This costs each Vermonter $2.11/year to incarcerate just the veteran population.

As indicated by the inmate survey, the veterans accounted for 28 DUI convictions, 11 domestic violence or assault convictions, 16 drug possession convictions, and 17 assault convictions. As previously discussed, these convictions can be causally connected to PTSD, which the majority of the participants suffer from. This clearly indicates that Vermont has a need for a veterans court. Many of these veterans could have sought treatment, rather than being

[199] Department of Veterans Affairs, National Center for Veterans Analysis and Statistics, *Veteran Population*, (Aug. 12, 2016, 9:17 pm), http://www.va.gov/vetdata/veteran_population.asp.
[200] See Suburban Stats, *Current Population Demographics and Statistics for Vermont by age, gender and race*, (Jul. 2, 2016), https://suburbanstats.org/population/how-many-people-live-in-vermont.
[201] See *Id.*

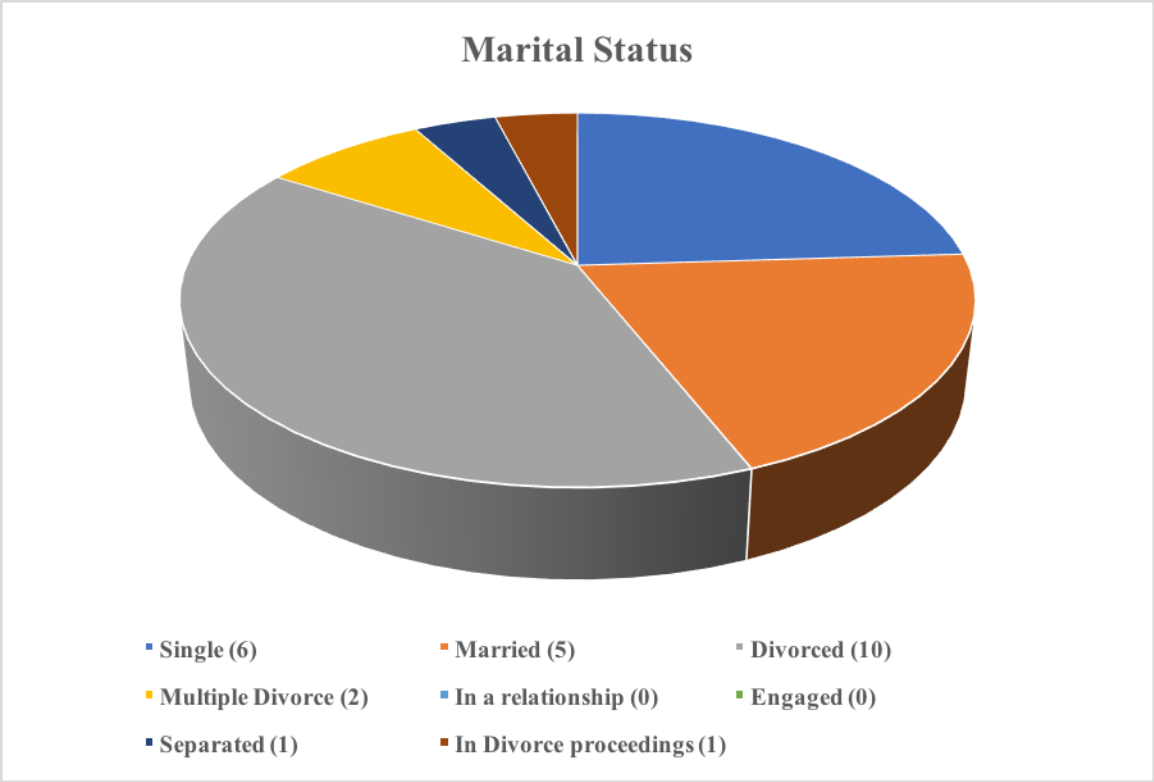
incarcerated.

The author interviewed Chief Justice Reiber and Chief Superior Judge Grearson on July 29, 2016 at 9 am at the Vermont Supreme Court. Consent was not obtained to record the interview, therefore no video or audio file exists. However, during the interview, both agreed that a Veteran's Court was a good idea.[202] Chief Justice Reiber suggested two ways in which a Veteran's Court could operate.[203] First, that the legislature could pass legislation granting venue for a centralized statewide Veteran's Court, preferably in White River Junction due to the close proximity to the Dept. of Veteran's Affairs center location.[204] Second, a Veteran's Court could be run on a specialized docket in the county courts or in the mental health court (as was done in New Hampshire).[205]

Furthermore, Chief Justice Reiber indicated that issues like domestic violence should be addressed in such courts as well.[206] His reasoning is that the resources allocated to running a veteran's court would "have a greater impact on the community because of the number of people that domestic violence affects."[207] There are 11 domestic violence convictions amongst the 27 survey participants, and 48% are divorced or have gone through multiple divorces.[208] The issues of contention were whether the mental health courts were sufficient to meet the needs of veterans; who would preside over a veterans treatment court; and resources to support it.[209]

[202] Interview with Paul Reiber, Chief Justice, Vermont Supreme Court, (Jul. 29, 2016).
[203] *Id.*
[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.*
[208] See Figure 9.
[209] *Id.*

Figure 9



Judge Grearson suggested that the needs of veterans are met through the mental health and drug courts already in place in Vermont.[210] This was also the contention of Judge Leary, New Hampshire's presiding judge over the New Hampshire Veterans' Behavioral Health Track. However, after less than a year presiding over the court, he changed his mind.[211] "It became obvious it was a different person, a different personality and a different set of symptoms." [212] "Participants in the Veterans Track sessions have a different attitude than other defendants who

[210] *Id.*
[211] Interview with Judge Leary, Presiding Judge of Nashua Veteran's Court, Nashua, NH (Sept. 1, 2016).
[212] Lane, Dave, Union Leader, *Judge James Leary on the bench: 'It's where I'm meant to be'*, (Jun. 4, 2016 6:22 pm), http://www.unionleader.com/apps/pbcs.dll/article?AID=%2F20150614%2FNEWS21%2F150619554&template=printart#sthash.pskXNBST.dpuf.

come before Leary. Out of respect for the court, the participants stand at parade rest, hands clasped firmly behind their backs. They address the judge as "sir," and answer his questions respectfully."[213]

Further contentions included who would preside over the veterans court, as the judges in the state already have been assigned to their duties.[214] However, a new judge does not necessarily need to be hired or assigned. If Vermont adopted a veterans docket, it could be run immediately following the mental health court, with the same judge presiding. If a veterans court were run immediately after the mental health court, it would allow for a better consideration of the respective differences in treatment resources and types of issues that veterans face; and no new judges would need to be hired. This practice mimics New Hampshire's Veterans Track in Nashua. Judge Leary heard 7 cases in just over an hour.[215] Another viable option is to have the Veterans Court, and other treatment courts, presided over by a magistrate. Magistrates are less costly to the State than a judge, carry the authority of law, and are well-qualified to oversee a treatment court.

By comparing observations of both the mental health court and the veterans court, it becomes clear that the veterans court, while similar to the mental health court, is far more effective for addressing veteran-specific issues. As Judge Leary indicated, the reasons for the separate docket for veterans from the mental health and drug courts is the resources that are available only to veterans, the complexity of issues that veterans face, the attitude of the veteran (usually very cooperative and respectful to the court), and the illnesses differ based on unique

[213] *Id.*
[214] Interview with Paul Reiber, Chief Justice, Vermont Supreme Court, (Jul. 29, 2016).
[215] Interview with Judge Leary, Presiding Judge of Nashua Veteran's Court, Nashua, NH (Sept. 1, 2016).

experiences that veterans have.[216] Furthermore, Judge Leary indicated that the veterans who appear before him are "usually confused about treatment and behaviors, and feel overwhelmed."[217] He further noted seeing significant changes in each respective veteran as their participation progressed.[218] Judge Leary cites the encouragement and support of the veteran's peers who are also in the program, and says that the veteran becomes "more aware" of their symptoms, treatments and resources available for them, and how to access those treatments.[219]

Michael Owens, the VA Justice Outreach Liaison, indicated that both he and the VA are more than willing to participate with the Vermont courts to treat veterans and to aid the rehabilitation process, and that the resources exist to do so at the White River Junction VA Hospital.[220] Of the cases he has encountered, Owens revealed that the most common infractions for veterans in the twin state region are domestic violence, driving under the influence of alcohol or drugs, missing child support payments, and drug possession charges.[221] The White River Junction VA already participates in a diversion program with the New Hampshire Behavioral Health Track. As such, the necessary infrastructure, resources, and experience are already in place at the VA for Vermont to send its veteran offenders free of cost.[222] Furthermore, under the Veteran's Choice Program (TRICARE, the insurance carrier for veterans), veterans may utilize civilian treatment plans if their local VA does not offer the particular treatment needed, at no cost to the veteran or to Vermont.[223]

However, when discussing Emery Woodall's case, Owens indicated that the White River

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[216] *Id.*
[217] *Id.*
[218] *Id.*
[219] *Id.*
[220] Interview with Michael Owens, Dept. of Veteran's Affairs Justice Outreach Liaison, White River Junction, (May 2016**).**
[221] *Id.*
[222] See *Id.*
[223] See *Id.*

Junction VA Hospital "is not equipped to handle patients who may have complicated, long term mental health needs. They prefer sending such patients to other providers." [224] This is great news for Vermont because the services needed can be provided by private practitioners within the State of Vermont, or a state program, and the costs will be paid by the VA insurance program at a pre-approved rate.

For those veterans who are not in need of such levels of treatment as Emery Woodall Jr., the White River Junction VA Center is ranked fourth in the nation for quality of care, and was rated a top performer by the VA for three consecutive years. [225] All the VA treatments and resources previously discussed are free for veterans who do not have a dishonorable discharge. [226] Unbeknownst to many Vermonters, the White River Junction VA campus is also home to the top-ranked PTSD research center in the nation. Many of the available VA treatments previously discussed were developed using resources from the PTSD center. The National Center for PTSD has been consistently adding to its vast collection of PTSD research since its establishment in 1989. Furthermore, several out-of-state veterans have chosen the White River Junction VA over closer VA centers in their respective states, coming from Rhode Island, New York, Massachusetts, Connecticut, New Hampshire, and Maine. This decision entails some veterans having to travel several hours to White River Junction instead of their local facility because of the quality of care available here. Many veterans are currently not seeking treatment for PTSD, depression, anxiety, or other symptoms that resulted from their service, or are seeking to self-medicate through illicit drug use. However, under a court order, the veteran would be forced to

[224] Mark Davis, *Inmate No. 144711 Is a 90-Year-Old Veteran*, Seven Days, March 22-29, 2017, at 18.
[225] See Department of Veterans Affairs, Office of Public and Intergovernmental Affairs, *Thirty-Two VA Medical Facilities Named "Top Performers",* (Sept. 17, 2016, 3:47 pm), http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2497.
[226] See Department of Veteran's Affairs, *Health Benefits*, (Sept. 17, 2016, 4:19 pm), http://www.va.gov/healthbenefits/apply/veterans.asp.

seek needed treatment.

The most efficient way to create the veterans court in Vermont is to model it after New Hampshire's Veterans' Track, while simultaneously using the Texas funding to pay for operating costs. Because Vermont already has a mental health court like New Hampshire, the court can create separate veterans dockets and hold veterans court sessions immediately after the conclusion of the mental health court, also as New Hampshire did. There are three ways in which a veteran can become involved in the veterans court: pre-trial diversion, sentenced to participate, or as a form of bail supervision.[227]

In New Hampshire, once the individual is identified as a veteran, the prosecution, the defense and the court offer the veteran to voluntarily participate in the Veterans' Behavioral Health Track. Upon veteran agreement, the court creates a contract that serves as a court order and waives jurisdiction to the veterans court. The contract lays out the conditions of the veterans court, what is required of the veteran who participates, the consequences for non-compliance, the reward for successful completion, and the length of time that the veteran must participate. Typically, veterans must participate for a full calendar year with no further criminal charges. The veteran also signs a HIPAA release that authorizes the veterans court to receive information about the veterans progress in treatment.

The projected cost of incarceration in Vermont is expected to reach $206 million by FY 2018 given the current trend. [228] Vermont's spending on corrections increased 129% between 1996 and 2008, going from $48 million to $130 million.[229] In fiscal year 2010, the Vermont Department of Corrections cost taxpayers $111.3 million, of which 8.3% was outside of the

[227] Interview with Judge Leary, Presiding Judge of Nashua Veteran's Court, Nashua, NH (Sept. 1, 2016).
[228] Justice Center, *Recent and Projected Growth in the Vermont Prison Population*, (Sept. 14, 2016, 2:17 am), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/vt20projected20growthv9pdf.pdf.
[229] *Id.*

corrections budget.[230] There was a daily average population of 2,248 inmates in Vermont, which costs taxpayers $49,502 annually for each inmate.[231] Additionally, as of August 2015, Vermont had 675 inmates sent to for-profit private prisons in Michigan, to the tune of $61.80 per day, per inmate.[232] Since 2004, Vermont has contracted with private prisons such as Corrections Corporation of America (CCA), who own and operate facilities in Kentucky and Arizona.[233] However, in June 2015, the contract between Vermont and CCA expired, and Vermont contracted with CCA's rival, GEO Group in Michigan.[234]

Of the survey participants, at least six indicated that they have been sent to prisons out of state, essentially isolated from their families and support networks here in Vermont. By sending these six veterans out of state for one year, Vermont has effectively lined the pockets of corporate, for-profit prisons with $135,342 of Vermont taxpayer dollars. This figures is not including costs associated with transportation to and from the out of state facility; security costs; or administrative fees, and most of these veterans stayed out of state for more than one year.

The financial costs pale to the human toll of incarceration. The leading cause of inmate deaths is suicide. [235] It is also the second leading cause of death for individuals between the ages 15 and 34 (this is the average age of most veterans coming out of the war on terror).[236] Suicide is also the tenth leading cause of death nationwide.[237] When linked with the fact that veterans

[230] *Id.*
[231] *Id.*
[232] Lipton, Beryl, Muckrock, *Vermont is outsourcing its inmates to private prisons in Michigan: The state of "Freedom and Unity" locks up a lot of people far away*, (Sept. 17, 2016), https://www.muckrock.com/news/archives/2015/aug/12/vermont-michigan-prisons/.
[233] *Id.*
[234] *Id.*
[235] Noonan, Margaret, U.S. Department of Justice, Office of Justice Programs, *Morality in Local Jails and State Prisons, 2000-2013 Statistical Tables*, (Sept. 17, 2016, 5:43 am), http://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf.
[236] Center for Disease Control, *Suicide: Facts at a Glance*, (Sept. 26, 2016, 6:46 pm), http://www.cdc.gov/ViolencePrevention/pdf/suicide-Datasheet-a.pdf.
[237] American Foundation for Suicide Prevention, *Suicide Statistics*, (Sept. 26, 2016, 6:40 pm), https://afsp.org/about-

are particularly susceptible to PTSD-related suicide, with an average of 22 veterans a day, it becomes apparent that incarcerated veterans are put at an increased risk for suicide when incarcerated.[238] The Vermont DOC has investigated 634 self –harm incidents in 2014, and the rate has increased 10% in the past 5 years.[239] This is unacceptable, especially when the cause of the crime is a result of the veterans' symptoms of a service-connected disability such as PTSD. When considering these statistics, by incarcerating a veteran for crimes related to a service-related condition, the courts may inadvertently be giving a potential death sentence, with PTSD filling the role of the executioner.

If the proposed solution is adopted, Vermont can completely erase the state's costs associated with treatment provided to incarcerated veterans by the transferring the treatments to the Department of Veteran's Affairs, which is federally funded. Veterans are entitled to drug rehabilitation, PTSD treatment, anger management, educational and vocational programs, and several other rehabilitative functions and treatments through VA benefits, which cost nothing to the state or the veteran. Furthermore, the DAV will provide free transportation to medical appointments for veterans. Therefore, it is easily accessible, eliminates costs to the state, and has sufficient resources and treatment plans to make a significant impact on the veteran's life and reduce recidivism. This is not only convenient for Vermont, but also appropriate as PTSD in veterans is mostly linked to events that occurred during their tenure in active duty federal service.

The Veterans Court can be modeled as a hybrid between New Hampshire and Texas

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suicide/suicide-statistics/.

[238] Department of Veterans Affairs, Public Health, *Suicide Risk and Risk of Death Among Recent Veterans*, (Sept. 16, 2016 5:02 pm) , http://www.publichealth.va.gov/epidemiology/studies/suicide-risk-death-risk-recent-veterans.asp#sthash.qL944ux5.dpuf

[239] Vermont Department of Corrections, *Annual Report: FY 2015*, (Sept. 17, 2016, 4:43 pm), http://www.doc.state.vt.us/about/reports/fy15-doc-annual-report/view.

models so as to address the operational costs associated with a veterans court. The New Hampshire model should be the primary model in that it involves only the judiciary in the creation process. However, as the Texas model does, the Vermont Supreme Court should also set fees for participants in the veterans court docket not to exceed $1,000.00, based on the veteran's ability to pay. Furthermore, the veterans court can impose fines for instances non-compliance in the program, the proceeds of which can also be used for operational costs. In effect, by creating a veterans court, the judiciary will have effectively created a financially self-sustaining, resource-saving operation that promotes the welfare and interests of society and helps veterans transition back to civilian life.

As of September 24, 2016, every VFW post in Vermont supports the proposition of creating a veterans court as a solution to address the service-connected conditions and issues that veterans face.[240] A petition further supports the Vermont Supreme Court in creating a veterans court in Vermont as an exercise of their authority under Ch. II. § 30 of the Vermont Constitution.

B. Identifying veterans at the time of arrest and intake at the correctional facilities will provide for eligibility for VA benefits, or participation in a treatment-oriented diversionary program.

The Vermont Department of Corrections claims to have a system to identify veteran status at intake. However, DOC cannot provide a number of veterans currently being held in their facilities due to lack of implementing the system. Therefore, the system currently being used is insufficient to account for how many veterans they have, as well as for purposes of identifying individuals who may have veteran-specific needs. Given that DOC cannot identify veterans who may have service-connected conditions such as PTSD, the question must be asked:

[240] Email from Allston Gilmond, State Adjutant, Vermont Veterans of Foreign Wars, to author (Sept. 25, 2016, 12:23 EST)(on file with author).

how is DOC able to provide treatment for PTSD in compliance with AHS policy? The answer is best stated by the veteran inmates themselves: "They don't."

Vermont should adopt a similar campaign to New Hampshire's "Ask the Question" initiative. This initiative should be part of police training, and is a simple initiative to replicate because it only involves asking whether an individual or his family ever served in the military. Once the information is collected, it should be reflected in the police report so as to alert the prosecutor that there may be one or more veteran specific issues at play in the case, and would serve as an identifier and qualifier for a diversionary treatment program. Further reasoning for this change is access to information. Veterans' organizations, as well as students (particularly those involved in criminal justice, history, politics, law, or other social sciences) can use the information about the veteran population to effectuate positive change and to identify issues, as demonstrated by this paper.

During the closeout and follow-up survey with DOC staff, in the third week of May 2017, several representatives indicated that they still do not have a system in place to account for veterans coming into or out of the facilities.[241] DOC was further unable to determine how many veterans had entered their facilities since the author's facility visits and veteran surveys took place.[242]

[241] See, e.g. Email from Bruce, Jonathan, Vermont Department of Corrections, to author (May 15, 2017, 10:38 am) (on file with author).
[242] See, e.g., *Id.*

C. Consolidation of the veterans currently incarcerated will benefit the State of Vermont, The Department of Veterans Affairs, and the veteran inmate.

Several of the stories of veterans courts throughout the country note that the bond amongst veterans and holding each other accountable contributes to the success of the participants. This bond can also be used to increase the economic efficiency of the State of Vermont, the efficiency and accessibility of the Department of Veterans Affairs, and better serve the incarcerated veterans.

The most efficient way to do this is through consolidation of the veteran inmates, whom are eligible for VA benefits, into one facility in close proximity to the VA Hospital in White River Junction. The facility in Windsor, Vermont would be the most opportune location, as it is less than twenty miles from White River Junction. Windsor is located in such a way as to allow reasonable travel for visitation, with the traffic coming from the north and northwest on I-89 or I-91, travelers from the west on Route 4, and the travelers from the south using I-91 or state highways from the southwest. Furthermore, the infrastructure already in place includes a large garden and greenhouses, which can be used by the veterans for therapeutic purposes, to support the running of the day to day operations of the facility by reducing food costs, or community outreach and donation purposes.

Once consolidated, DOC can utilize corrections officers to escort these veterans to and from the facility for treatment at the VA. The cost of transportation is far less than the cost of using the programs at the facility, and is far more effective at the VA due to their holistic approach to treatment. In doing this, rehabilitative and treatment programs that are currently being run at the Windsor facility will become more available to non-veterans, thus increasing the effectiveness and scope of the resources being invested in such programs. Furthermore, the cost

of the programs that the veterans in which they participate is shifted to the federal government because the VA is federally funded.

This would also increase access to justice in that the VA's Justice Outreach Liaison, Michael Owens, will be more accessible. Mr. Owens is currently a one-man, understaffed operation and, through no fault of his own, isn't able to get to each facility as easily or as often as the veteran inmates need. In consolidating the veterans to one nearby facility, the DOC and the VA can work collaboratively to address the specific needs of our veterans in such a way that Vermont may benefit from the federal funding of treatment.

While security is always a concern, as previously mentioned, the veteran inmates in Vermont do not "give [staff] any problems" and are compliant with DOC personnel and policy. Furthermore, the veterans are more likely to participate with the process if they are given access to treatment. As indicated by the survey, 81% of veterans wanted a caseworker that assisted them with access to resources for treatment, housing, or benefits.[243] The same number expressed their interest in participating in a court ordered or supervised treatment program. [244]

DOC staff interviewed in conjunction with this project overwhelmingly supported the idea of consolidation of the veteran inmates in a facility near White River to allow access to the VA.[245] The only counter argument from a DOC interviewee was the lack of handicap accessible facilities for those inmates in wheelchairs or with medical needs.[246] However, each facility should be in compliance with the Americans with Disabilities Act (ADA). The language of Title II of the ADA is very succinct: "no qualified individual with a disability shall, by reason of such

[243] See Figure 7.
[244] *Id.*
[245] See, e.g. Email from Bruce, Jonathan, Vermont Department of Corrections, to author (May 15, 2017, 10:38 am) (on file with author).
[246] Email from Granger, Christina, Vermont Department of Corrections, to author (May 15, 2017, 10:25 am) (on file with author).

disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."[247]

Title II of the ADA defines "public entity" to include "any department, agency, special purpose district, or other instrumentality of a State or States or local government." 42 U.S.C. § 12131(1)(B). The Supreme Court has held that the ADA applies to inmates.[248] In *Yeskey*, Justice Scalia stated, "[t]he text of the ADA provides no basis for distinguishing these programs, services, and activities from those provided by public entities that are not prisons."[249] Thus, Title II of the ADA extends to prisoners, and Vermont DOC and AHS is required by law to have facilities that are ADA compliant. Therefore, it is recommended that the DOC review each facility's compliance with the ADA. After an ADA compliance review, any deficiencies should be corrected. This will not only ensure the DOC and AHS are compliant with federal law, but will also allow for the consolidation of the veteran inmates so as to promote access to the VA.

V. CONCLUSION

There are several changes that would effectively aid in the better treatment of veterans in Vermont's criminal justice system. These solutions are: creating a Veteran's Court in Vermont, identifying veterans at either arrest or intake at the Department of Corrections, upgrading the Department of Correction's subscription to WestLaw in their law libraries to include the UCMJ and DOD regulations, and consolidating VA-eligible veteran inmates to the facility in Windsor, VT to participate in a collaborative treatment effort between the veteran, the DOC and the VA.

First and foremost, the creation of a Veterans Court in Vermont is certain to aid in

[247] 42 U.S.C. § 12132.
[248] *Pennsylvania DOC v. Yeskey*, 524 U.S. 206 (1998).
[249] *Id.* at 210.

alleviating prison overcrowding, recidivism issues, expenditures on incarceration, and a decrease in the amount of Vermont tax dollars going to corporate, for-profit prisons. A Veterans Court will also be very effective in preventing the loss of necessary medical care and benefits that allow the veteran to be a productive member of society upon release, as well as aid in decreasing veteran homelessness that may result from a conviction.

Further support for a Veterans Court can be found in the money that will be saved from diverted veterans that participate in VA programs, rather than incarceration and state-run programs. Furthermore, the veterans' absence from the programs provided by DOC and AHS would allow more non-veteran inmates to participate for the same cost. Addressing the heroin epidemic and domestic violence issues in Vermont will be significantly aided through the creation of a veteran's court because of how many people such a program would affect in a positive way. Finally, the rates of veterans who use their VA benefits and seek treatment will increase.

Based on the success other states have had throughout the country by implementing a Veterans Court, the willingness of the VA to collaborate with the state courts, the public's support, and the individual success stories previously discussed, it is highly likely that the program will be a success in Vermont as well.

Second, law enforcement should identify veterans at the time of arrest so as to allow for participation in the diversion program, and to alert DOC that there are specific needs that the veteran inmate will have that they are responsible for addressing. It is highly recommended that the DOC ensures that a policy is in place, and is utilized regularly, in which veterans are identified at intake. This will not only protect the veteran and his interests in rehabilitation, but also prison guards by identifying inmates who have advanced combat related skills and training

such as jiu jitsu, krav maga, or is a SERE school graduate; all of which are far more advanced than the training received by corrections officers.

In addition to, and after an ADA compliance review of each facility, the DOC should consider consolidating the veteran inmates to one facility in close proximity to White River Junction, Vermont. Consolidation will allow access to VA treatments and resources; and allow the veterans to draw support from each other in their respective treatment processes (as demonstrated in veteran treatment courts across the country).

Furthermore, the author urges the DOC to ensure that their law library has access to the UCMJ for those inmates who need to work on appealing their discharge classification in order to gain access to VA benefits upon their release or during their sentence. The absence of this material is a serious access to justice issue that sets our veterans up for failure and recidivism; and it can be quickly and easily resolved by a simple subscription upgrade.

It is a dire state of affairs for veterans, especially those of the recent war on terror. Suicide, poverty, divorce, homelessness, mental illness, disability and substance abuse are rampant within our ranks. These proposed solutions will result in a great return for Vermont, a reduction of the aforementioned issues, and save taxpayers hundreds of thousands of dollars. The State of Vermont needs to take a proactive and collaborative approach with the VA in order to address the presented issues by creating a veteran's treatment diversion court. The longer we wait, the more lives will be unnecessarily altered or lost to PTSD or other service connected disabilities.

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Dean Stephanie Willbanks – Vermont Law School Institutional Review Board

Vermont Agency of Human Services Institutional Review Board

Vermont Department of Corrections

Chief Justice Reiber – Vermont Supreme Court

Chief Superior Judge Brian Grearson – Vermont Judiciary

Bob Arnell – Vermont Department of Corrections

Stacy Boutillier – Southeast State Correctional Facility, Vermont Dept. of Corrections

Stephen Russell – Northeast Correctional Complex, Vermont Dept. of Corrections

Bruce Goddeau – Northwest State Correctional Facility, Vermont Dept. of Corrections

Jonathan Bruce – Northern State Correctional Facility, Vermont Dept. of Corrections

Ruthie Holmes – Chittenden Regional Correctional Facility, Vermont Dept. of Corrections

Conrad Cote – Marble Valley Regional Correctional Facility, Vermont Dept. of Corrections

Christina Granger – Southern State Correctional Facility, Vermont Dept. of Corrections

Michael Owens - Department of Veteran's Affairs, White River Junction, Vermont

Andrew Hammond – J.D. Candidate, Vermont Law School, Class of 2020

APPENDIX A: Research Consent Form

Vermont Law School
Research Consent Form

Study title: The Vermont Veteran's Law Project - Veterans, PTSD, Recidivism and crime.
Principle Investigator: Chris Whidden, J.D. Candidate
Department of Corrections Contacts: Bob Arnell; SESCF: Stacy Boutilier; NECC: Stephen Russell; NWSCF: Bruce Goddeau; NOSCF: Jonathan Bruce; CRCF: Ruthie Holmes; MVRCF: Conrad Cote; SSCF: Christina Granger.
Institutional Review Board Approvals: Vermont Law School; Vermont Agency of Human Services.
Primary Affiliation: Vermont Law School, South Royalton, VT 05068
Version Date: 2/9/2017

About this Consent Form:

Please read this form carefully. This form provides important information about participating in a research survey. As a research participant, you have the right to take your time in making decisions about participating in this survey. If you decide to participate in this survey, you will be asked to sign this form.

What you should know about this Survey:

Participation in this survey is voluntary. It is your choice to participate in the survey, or to decline participation. You may change your mind and stop participation at any time. Refusal to participate will not result in any penalty or loss of benefits to which you are otherwise entitled.

Study Funding and Disclosure of Special Interests of the Researcher or Vermont Law School.

This survey is not funded. Neither the researcher nor Vermont Law School has any special interests or conflicts of interest to report.

Purpose of the Research

You are being asked to participate in a survey that is being conducted by the researcher to fulfill a writing requirement for graduation from Vermont Law School, as well as to gather empirical evidence to support the founding of a Veteran's diversion court in Vermont. I will be asking questions on military service, VA disability rating, PTSD diagnosis, criminal charges and convictions, and treatment program participation in order to better understand the need for a Veteran's diversion court in Vermont. This survey will help determine how a Veteran diversion court will operate, as well as help determine what sanctions and rehabilitative programs will be useful in the event a Veteran's diversion court is created.

THE ACTIVITIES INVOLVED IN THE SURVEY ARE LISTED BELOW.

Fill out the attached survey: 1-2 hours in a group setting.

Interview 1 hour: You may be selected for an interview with the researcher. If you are selected, you may decline to participate. The interviews may be video recorded. Any recording in this study will remain confidential.

Risks and Discomforts of Participation

All activities are written or verbal.

Some questions refer to PTSD and may be difficult to answer, and may potentially trigger a traumatic memory. If at any time you feel uncomfortable answering a question, you may skip that question, or end participation in the survey. If the questions trigger a PTSD episode, you may seek assistance through the current resources the Vermont Department of Corrections has in place at any time during or after this survey.

Further risks include the possibility that your confidentiality may be breached. However, there are protections in place to prevent such a breach. These protections include a unique personal

identifier code to conceal your identity, and any information resulting from this will be kept separate from the key used to decipher the code. The key will be destroyed immediately after potential interviewees are identified. Furthermore, all surveys and project related documents will be kept in the researcher's office under lock and key, and will be destroyed by December 31, 2019.

Inform the researcher if you wish to terminate your participation at any time during the survey or interview.

If you sustain research related injury, please inform a corrections officer, or contact **[insert DOC facility representative name and contact number here].**

If you have questions about your rights as a research subject, please inform a corrections officer, or contact **[insert DOC facility representative name and contact number here].**

If you have questions about the research study itself, please inform a corrections officer, or contact **[insert DOC facility representative name and contact number here].**

Benefits to Participation in the Research

You may not benefit directly from this survey. However, others in the future may benefit from the knowledge gained in connection with your participation.

Confidentiality of Information Collected as Part of the Research

Only your name will be collected to identify you for the purpose of a follow up interview for qualifying cases. This information will be used to identify you and to assign a randomly generated 6-digit personal identifier code. Your answers to the survey and any subsequent interview will remain confidential and only be available to the researcher. This data will also be stored separately from the raw survey data collected from this study. At the end of the study, the collected information will be stored for three years. At the end of the three year period, the

information will be destroyed.

The records identifying your name will be kept confidential and will not be made available to the extent permitted by the applicable laws and/or regulations. For example, your identity may be shared if information concerning a child in danger of abuse is revealed, pursuant to 33 V.S.A. § 4913.

Future Use of Data

If you agree, at the completion of this study, we would like to store the data we collect from you for possible future use. The data may be stored no longer than 3 years and may be used for future studies. After the 3 years has passed, the records will be destroyed. Any future projects will first be submitted to the Agency of Human Services for approval.

*I agree to allow information and materials collected from me for this study to be stored and used for future studies over the next three years to further understand PTSD, Veterans issues, recidivism, and crime.

___ Yes ___ No

Compensation for Participation

There is no compensation for participating in this survey. Participation is strictly voluntary and may be terminated at any time. Parole boards do not consider participation in this survey when making their determination concerning eligibility for parole.

Documentation of Informed Consent and Authorization:

· I have read this consent form and was given enough time to consider the decision to participate in this study.

· This research study has been satisfactorily explained to me, including possible risks and benefits.

· All my questions were satisfactorily answered.

· I understand that participation in this study is voluntary and I may withdraw at any time.

· I am signing this consent form prior to participation in any research activities.

· I am signing the attached HIPAA release authorizing the researcher to collect and use personal health information for purposes of this project, and do so voluntarily.

Date (MM/DD/YYYY) Signature of Participant

APPENDIX B: Survey

1) Are you a veteran of the U.S. Armed Forces? If so, please list your MOS and any deployment dates and locations.

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2) Do you have a VA Disability Rating? If so, what is your rating and please list conditions.

3) What was your discharge classification? (i.e. honorable, other than honorable, etc.)

4) Do you have service-connected PTSD? **YES** **NO**

5) Is this your first time being in the criminal justice system? **YES** **NO**

6) Please list all charges/convictions and approximate dates (month and year) of each.

7) If given the choice, would you prefer (circle all that apply):

   a. Incarceration

   b. Court ordered participation in treatment programs

   c. Court ordered treatment through the VA (if you are a veteran)

   d. Given a case worker that helps connect you with resources and aid for housing, addiction treatment, counseling, PTSD treatment, social security benefits, welfare and EBT programs

   e. Community service

   f. House arrest

   g. Probation

8) Have you participated in treatment programs through the VA? **YES** **NO**

9) Before your arrest, were you gainfully employed? If so, how much were you making at that job?

10) Before your arrest, did you have stable housing? **YES** **NO**

11) Are you currently married? Divorced?

12) If you were to be released today, do you have a strong support system in place (family, friends, etc.) to help with reintegration back into the community?

APPENDIX C: Raw Data Charts

These data charts were created using the responses from the veteran inmate participating in the survey found in Appendix B. The top row represents the individual facility, and the left row indicates the material being asked. Each affirmative response was added and put into the relevant cell of the chart. The right column indicates the total amount for the State of Vermont.

Branch of Service Data Chart

	NWSCF	MVRC	SESCF	SSCF	NOSCF	CRCF	NECC	Totals
USN	0	2	1	0	1	0	1	**5**
USMC	1	0	2	0	2	0	0	**5**
USA	1	1	2	9	0	0	1	**14**
USAF	0	0	1	0	0	0	0	**1**
USCG	0	0	0	1	0	1	0	**2**

Deployments Data Chart

	NWSCF	MVRC	SESCF	SSCF	NOSCF	CRCF	NECC	Totals
No Deployments	0	2	0	0	0	1	0	**3**
OIF	0	0	2	1	0	0	0	**3**
OEF	0	1	3	2	0	0	0	**6**
Desert Storm	0	0	0	0	0	0	0	**0**
Vietnam	0	0	0	3	0	0	0	**3**
WWII	0	0	0	0	0	0	0	**0**
Korea	0	0	0	2	0	0	0	**2**
Other	2	0	0	1	6	0	1	**10**
Declined to Answer	0	0	0	5	0	0	0	**5**

Discharge Classification Data Chart

	NWSCF	MVRC	SESCF	SSCF	NOSCF	CRCF	NECC	Totals
Honorable	2	2	2	8	3	1	2	**20**
Other Than Honorable	0	1	1	0	0	0	0	**2**
Medical	0	0	1	1	0	0	0	**2**
General	0	0	2	1	0	0	0	**3**
Dishonorable	0	0	0	0	0	0	0	**0**

Convictions Data Chart

	NWSCF	MVRC	SESCF	SSCF	NOSCF	CRCF	NECC	Totals
Domestic Violence/Assault	0	1	5	4	0	0	1	**11**
Violation of Probation	0	1	0	8	0	0	0	**9**
Violation of Parole	0	0	0	6	0	0	0	**6**
Kidnapping	0	0	0	1	0	0	0	**1**
DUI	0	10	2	14	0	1	1	**28**
Burglary	0	0	4	1	0	0	0	**5**
Marijuana Possession	0	6	0	0	0	0	2	**8**
Cocaine Possession	0	6	0	1	0	0	0	**7**
Heroin Possession	0	1	0	0	0	0	0	**1**
Sex Offense	2	0	0	0	0	0	0	**2**
Sexual Offense/Minor	1	0	3	2	1	0	1	**8**
Manslaughter	0	0	0	0	1	1	0	**2**
Attempted Murder	0	3	0	1	0	0	0	**4**
Assault w/ Dangerous Weapon	0	1	0	2	0	0	0	**3**
Assault	0	2	0	9	2	0	4	**17**
Violation of Order	0	1	0	2	0	0	3	**6**
Larceny	0	0	1	2	0	0	0	**3**
Unlawful Restraint	0	0	1	0	0	0	0	**1**
Possession of Child Pornography	0	0	0	1	0	0	1	**2**
Weapons charge	0	0	0	1	0	0	0	**1**
Obstruction of Justice	0	0	0	1	0	0	0	**1**
Prohibited Act	0	0	0	1	0	0	0	**1**

Service Connected Disabilities Data Chart

	NWSCF	MVRC	SESCF	SSCF	NOSCF	CRCF	NECC	Totals
PTSD	0	2	3	9	1	0	0	**15**
Mulitple Sclerosis	0	0	0	1	0	0	0	**1**
Cancer (agent orange)	0	0	0	1	0	0	0	**1**
Anxiety	0	0	0	1	0	0	0	**1**
Depression	0	0	1	1	0	0	0	**2**
Bi-polar Disorder	0	2	2	0	0	0	0	**4**
OCD	0	1	0	0	0	0	0	**1**
Physical Disability	0	1	2	2	2	0	0	**7**
Mania	0	0	1	0	0	0	0	**1**
TBI	0	0	1	4	1	0	0	**6**
Flashbacks	0	0	0	2	0	0	0	**2**
Chron's Disease	0	0	0	1	0	0	0	**1**
Awaiting VA diagnosis	1	0	1	1	0	0	0	**3**
Unknown/never evaluated	1	0	0	0	0	0	1	**2**

VA Ratings Data Chart

	NWSCF	MVRC	SESCF	SSCF	NOSCF	CRCF	NECC	Totals
No rating	0	1	0	1	1	1	1	**5**
Ineligible	0	1	0	0	0	0	0	**1**
10%	0	0	0	1	1	0	0	**2**
40%	0	0	0	1	0	0	0	**1**
100%	0	1	1	2	1	0	0	**5**
Waiting on VA response	0	0	2	1	0	0	0	**3**
Never applied	1	0	3	3	0	0	1	**8**
Applied in the last 90 days	1	0	0	0	0	0	0	**1**
Declined to Answer	0	0	0	1	0	0	0	**1**

Preference of Justice and Resources Data Chart

	NWSCF	MVRC	SESCF	SSCF	NOSCF	CRCF	NECC	**Totals**
Case Worker	2	3	4	8	3	0	2	**22**
House Arrest	2	1	4	4	1	1	0	**13**
Probation	2	1	1	6	2	1	2	**15**
Incarceration	0	0	0	0	0	0	0	**0**
Court ordered treatment programs	1	0	1	3	2	0	0	**7**
Court ordered VA treatment	2	1	2	7	2	0	1	**15**
Community Service	1	0	2	4	2	1	0	**10**
Declined to Answer	0	0	1	0	0	0	0	**1**

Available Resources on Release Data Chart

	NWSCF	**MVRC**	**SESCF**	**SSCF**	**NOSCF**	**CRCF**	**NECC**	**Totals**
Family	1	0	3	4	4	0	1	13
Friends	1	1	0	4	4	0	0	10
Social Worker	0	0	0	0	0	0	0	0
VA Benefits	0	0	0	0	0	0	0	0
Housing	0	0	0	0	2	0	0	2
Employment	0	0	0	0	0	0	0	0
Self-Employment	0	1	0	0	2	0	0	3
Treatment Program (State)	0	0	1	1	0	0	1	2
Treatment Program (VA)	0	0	0	1	0	0	0	1
Excellent system	0	0	1	0	0	1	0	2
Strong sytem	1	0	1	1	0	0	1	4
Unknown system	0	0	1	1	0	0	0	2
No support	0	0	0	2	0	0	0	2

Marital Status Data Chart

	NWSCF	MVRC	SESCF	SSCF	NOSCF	CRCF	NECC	Totals
Single	0	0	1	4	0	0	1	**6**
Married	0	0	1	1	2	0	1	**5**
Divorced	2	1	2	3	1	1	0	**10**
Multiple Divorce	0	1	1	0	0	0	0	**2**
In a relationship	0	0	0	0	0	0	0	**0**
Engaged	0	0	0	0	0	0	0	**0**
Separated	0	0	1	0	0	0	0	**1**
In Divorce proceedings	0	0	0	1	0	0	0	**1**

APPENDIX D: Fact Sheet

1. There are at least 30 veterans incarcerated in Vermont, 27 of which volunteered to participate in this survey. Unknown numbers are incarcerated out of state in corporate, for-profit, private prisons.
2. 74% of those veterans incarcerated in Vermont have service connected PTSD or PTSD symptoms.
3. Vermont veterans are most commonly incarcerated for crimes relating to domestic violence, driving under the influence, drug possession, failure to pay child support, or assault.
4. Vermont DOC has openly admitted that it is not equipped or prepared to handle PTSD and veteran specific issues.
5. Veteran treatment courts have shown success in reducing recidivism, increasing access to treatment, increasing treatment rates, decreasing costs, and diverting veterans from incarceration across the country.
6. 40 other states have some form of veteran treatment diversion program or court in place.
7. The White River Junction VA is ranked 4th in the nation overall for their quality of care and accessibility.
8. Prison overcrowding and resource allocation remains a problem in Vermont.
9. Vermont incarcerated veterans have collectively participated in 32 military deployments worldwide.

APPENDIX E: Solutions Checklist

Vermont Legislature/Vermont Supreme Court*

1. Collaborate with Michael Owens and the Department of Veterans Affairs in White River Junction to create a Veterans Treatment Court or Treatment Track in Vermont to divert veterans from incarceration to treatment through the VA.

2. Amend Act 195 to include language to compel prosecutors to recommend diversion for eligible veteran defendants.

3. Amend S.19 to include language that allows veterans to obtain a medical marijuana card from the State upon showing diagnosis of an eligible condition such as PTSD, anxiety, depression, etc, which satisfied through a disability and compensation award letter from the VA indicating diagnosis.

Vermont Department of Corrections/Vermont Agency of Human Services*

1. Conduct an Americans with Disabilities Act (ADA) compliance survey of each DOC facility.

2. Upgrade legal database subscription/law library to include an up-to-date access to the Uniform Code of Military Justice and other applicable DOD and VA regulations.

3. Create and/or enforce a policy in which DOC staff and arresting officers "ask the question" to identify veterans at time of intake, both at time of arrest and after sentencing.

4. Consolidate veteran inmates into one facility in close proximity to the VA and work collaboratively with Michael Owens to allow veterans better and more efficient access to benefits while incarcerated and/or upon release.