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No Veteran Left Behind? Perspectives on VTC Eligibility Criteria for Justice-Involved Veterans in Multiple Jurisdictions Across the United States

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Abstract

The explosive growth of veterans treatment courts (VTCs) in the United States has raised questions concerning which justice-involved veterans (JIV) are eligible and ultimately selected for participation. For instance, should VTCs be more inclusive in their selection processes, and is it possible to do so within existing court parameters? Using data from 145 interviews of team members working in 20 VTCs across the country, this study explores the perceptions of those personnel on a range of factors impacting eligibility determinations of JIV. These include the decision-making processes of VTC teams, determinations of the nexus between a veteran's military service and their offending behavior, and the capacity of jurisdictions to provide treatment and services to all JIV, either through Veterans Affairs programs or community providers. Findings illustrate the variability of VTCs nationwide and suggest that specific midcourse alterations are necessary to fulfill stated court missions.

Keywords

Veterans treatment courts; eligibility; specialty courts; Veterans Affairs

Declaration of Interest Statement

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Introduction

Veterans treatment courts (VTCs) began in Buffalo in 2008 and since then have experienced dramatic growth (Douds & Ahlin, 2019). In 2011 there were 53 VTCs nationwide (Holbrook & Anderson, 2011); today, it is estimated that there are over 600 VTCs, serving at least 10,000 justice-involved veterans (JIV) across the country (DeVall et al., 2022). Their ranks increased steadily throughout the 2010s, but their growth accelerated markedly after H.R. 866 (2021) was signed into law in August of 2020 (Craddock, 2022), providing services and support for JIV facing charges. These veterans often suffer the symptoms of a mental health disorder, such as post-traumatic stress disorder (PTSD), cognitive impairment from a traumatic brain injury (TBI), substance use disorder (SUD), military sexual trauma (MST), or a combination thereof (see Clark et al., 2010; Council on Criminal Justice, 2022; Hartley & Baldwin, 2019; Justice for Vets, n.d). A primary role of these courts is to connect the justice-involved former (or sometimes current) military member to available treatment and services, either within the Department of Veterans Affairs (VA) network or via community providers linked to VTCs. However, significant questions remain: which of these service members are eligible for participation in VTCs? How are eligibility determinations made?¹ What happens to those JIV who either refuse to participate in VTCs, or are not accepted if the JIV does not meet the established criteria of the court in the veteran's jurisdiction? The presiding judge in what is considered the first VTC in the United States, the Honorable Robert Russell, believed that VTCs should err on the side of inclusion when determining eligibility, and look for ways to bring more JIV into the courts:

With respect to eligibility, the Buffalo court and many others accept all veterans with a clinical diagnosis of serious and persistent mental health disease, or drug or alcohol addiction. We believe all veterans should be eligible because all veterans deserve special consideration for their willingness to serve and defend their nation. (Russell, 2014: 395)

While not everyone agrees with this assessment, we think it is critical to ask the individuals who are working with JIV to offer their unique perspectives on who should—and who should not—be eligible to participate in VTCs. To accomplish this, we conducted a series of in-depth, semi-structured interviews with VTC team members in 20 jurisdictions across the country as part of a larger research project. During these interviews, we broached the topic of eligibility with those who felt knowledgeable enough to discuss how their VTC decides which veterans meet the necessary inclusion criteria. Previous research has demonstrated that clear, substantive differences exist in who is eligible and accepted into VTCs versus those excluded (Pomerance, 2019). We were interested in gaining team members' perspectives on how eligibility was determined in their VTC, as well as their views on how VTCs *should* make these decisions. While research suggests that these differences are due to a variety of influences, such as legislation detailing eligibility and individual court rules (see Timko et al., 2016), we wanted to hear the perspectives of VTC

¹The definition of who is a 'veteran' remains variable, and can change. For example, in late 2106, President Barack Obama signed the Miller-Blumenthal Veterans Health Care and Benefits Act that sought to increase access to a host of veterans' benefits for previously excluded reservists and national guard members. With the passage of this act, a new pool of service members became eligible for VTCs in many states.

team members themselves. We found that while some VTCs are guided by state statutes outlining which JIV may be considered (Rapisarda et al., this volume), in practice, the substantial variability in eligibility criteria detailed by Timko et al. (2016) is apparent, and the subjectivity involved in making final decisions on which veterans are ultimately selected proves to be the rule, rather than the exception, in most of the courts included in our analysis. In the following article, we briefly highlight previous research on VTC eligibility issues, and then present our analysis of 145 interviews with a range of VTC team members: Judges, defense attorneys, prosecutors, veterans justice outreach (VJO) specialists, court coordinators or managers, community mental health providers, probation officers, social service providers, and mentor coordinators. Team members addressed critical issues related to the participation of JIV in VTCs; taken together, their combined voices offer a unique perspective on VTC eligibility that policy makers and the public should consider when assessing how best to respond to the problems and needs of JIV.

VTC Eligibility Criteria: A Review of Previous Research

The VTC model evolved out of the larger treatment court movement, specifically drug courts and mental health courts, due to the number of veterans struggling with either or both (Douds & Hummer, 2019). VTCs developed in ad hoc fashion in individual jurisdictions based primarily on available court and community resources. As the VTC model spread nationally, a core set of requirements or principles – such as an honorable or general discharge, specific criminogenic needs, and willingness to participate in treatment court as a part of a goal-focused team – emerged that served as the basis for new courts for military veterans to be established. Many of these requirements have been subjected to little empirical scrutiny. It has been posited that certain policies and practices based on these requirements, including which JIV are eligible for VTCs, have the potential to be discriminatory (see Baldwin & Brooke, 2019). Though variations exist, the core components of the VTC model:

combine a judge and a court team trained in mental health and substance abuse intervention, knowledgeable about veteran culture and military experience, a peer mentoring component that provides instrumental support and supports adaptive recovery, and the in-court presence of a U.S. Department of Veterans Affairs (VA) Veterans Health Administration (VHA) Veterans Justice Outreach (VJO) Specialist, who facilitates access to VA health care and other benefits. (Clark et al., 2014: 417)

In an analysis of the earliest implemented VTCs, Clark and colleagues (2010) document the differences in 24 courts on criteria – in addition to eligibility – such as the treatment court model on which the VTC is based, criminal charges allowed, VA staff role, and whether mentoring is a component of the court. In the early VTC era, eligibility was restricted to honorably discharged veterans who had mental health issues arising from service in a combat zone or hazardous duty area *and* had committed a nonviolent misdemeanor (Cavanaugh, 2011; Erickson, 2016). Later developments in the absence of a template, coupled with vague statutory guidance at the state level, resulted in jurisdictions determining eligibility for their VTCs based on factors such as the extent of local VA resources and community organizations that have developed initiatives to assist JIV (Council on Criminal Justice, 2022).

While eligibility criteria vary across jurisdictions (Baldwin, 2015; Baldwin, et al., 2018; McGuire et al., 2013, Tsai et al. 2018, Rapisarda et al., this volume), all VTCs follow a similar framework and employ common elements to determine participant eligibility². For example, in a statewide assessment of Pennsylvania's (PA) VTCs, Douds et al. (2017) identified eight common considerations for determining program eligibility: (a) military discharge status, (b) combat experience, (c) treatment needs and available treatment options, (d) relationship between military service and offense (the 'nexus'), (e) current offense type, (f) criminal history, (g) victim input, and (h) plea requirements. Of the 17 VTCs assessed by Douds et al. (2017), none would accept veterans facing sex crimes or weapons charges, only a handful would consider those with homicide charges, and 14 of the 17 courts considered aggravated assault charges on a case-by-case basis. However, variations do exist among courts in the state. Over half of the PA VTCs would not consider a veteran who had been dishonorably discharged (10 of 17), and 12 of the 17 would consider other than honorably (OTH) discharged veterans on a case-by-case basis (Douds et al., 2017). PA is not out of step in comparison to other states (see Flatley et al, 2017). A national assessment conducted by Baldwin (2015) noted the ad hoc nature of determining eligibility in VTCs. While the majority of courts did *not* definitively exclude veterans with dishonorable or bad conduct discharges or require that the veterans be eligible for VA services, in practice, these veterans were routinely excluded. Additionally, 57% of these courts allowed veterans charged with violent felonies to be considered for participation (Baldwin, 2015).

There have been efforts in recent years to standardize eligibility and participation criteria in VTCs nationwide. The National Conference of Commissioners on Uniform State Laws drafted a model act allowing veterans to participate in treatment courts regardless of the character of discharge from the service (Lennon, 2020; National Conference of Commissioners on Uniform State Laws, 2017). A broad approach to eligibility nationwide would result in more inclusive courts, and potentially serve JIV with the most pressing service needs. Such inclusivity is not yet in consistent practice across the U.S. Currently, eligibility decisions are impacted by a multitude of factors at the federal, state, and local levels. For instance, the discharge granted at separation from service is a Department of Defense decision (see Siedor, 2020) that has significant consequences for veterans that encounter the criminal justice system. A 2016 review of discharge status by Harvard Law School's Veterans Legal Clinic revealed that 6.5% of all veterans who served since 2001 have been excluded from VA services due to their discharge status, which amounts to 125,000 veterans. During this period the rate of veterans released due to a dishonorable discharged has remained the same (about 1% of all discharges were for bad conduct). What *has* changed during this period is that an increasing number of veterans have received other than honorable (OTH) discharges. Between 2001 and 2013, 5.8 % of all discharged veterans received other than honorable discharges.³ Without full access to VA services, it is likely

²Basic eligibility criteria of the 20 courts in our study are presented in tabular form in the earlier article in this volume detailing the study's protocol (Byrne et al., 2024). Half of the VTCs had no eligibility exclusions based on a veteran's discharge, 19 excluded veterans charged with homicide, sex offenses, arson, and/or other violent crimes, and 9 courts had at least a stated requirement of a 'nexus' between a veteran's military career and subsequent criminal offending.

³The Veteran's Legal Clinic (2016: 12) report highlighted the discretionary nature of discharge status across the branches of the military: "What is more, significant disparities exist among the administrative separation practices of the various service branches. The Army, Navy, Air Force, and Marine Corps each has its own separation regulations and policies. Moreover, within each branch, different units and commands may implement those regulations and policies in a different manner. Thus, service members who engage

that these veterans are at a heightened-risk for involvement in crime; these justice-involved veterans with other than honorable discharges are also at-risk for denial of access to VTCs, because these jurisdictions have policies and practices in place that exclude these veterans (Veterans Legal Clinic, 2016). This is a double blow that the Harvard researchers viewed as undeserved, given the discretionary nature of this discharge determination. They found major variations in the use of OTH discharges by branch of service that is not related to the behavior of veterans. Instead, they found it was the product of discretionary decisions by commanders. They go on to note that “Congress specifically noted that the discretion given to commanders for administrative separations can result in unfair outcomes, and gave veterans the benefit of the doubt by only excluding those who received or deserved a Dishonorable discharge by court-martial. Because the VA’s regulations have presumptively excluded all veterans with administrative Other Than Honorable discharges, the VA is failing to act in accordance with Congress’s decision” (Veterans Legal Clinic, 2016: 13).

Individual state legislatures have passed statutes that both call for the creation of VTCs and provided guidelines for who should be served. These statutes also typically outline *exclusionary criteria* that disqualify a candidate from participating in the VTC (Rapisarda et al., this volume). These exclusionary criteria may focus specifically on a military member’s discharge status to include only those who have been honorably discharged or may focus on the charged offense. For example, the Montgomery County (PA) VTC typifies the types of exclusionary offenses: murder or manslaughter, felony sex crimes, and drug distribution charges (Montgomery County Veterans Treatment Court, n.d.). Other VTCs also prohibit those charged with arson, gun crimes, or certain acts of violence from participating as well (Seamone et al., 2018). The types and severity of offenses that might be considered have expanded since the earliest courts, with VTCs often considering the totality of a veteran’s background to determine if the specific VTC is equipped to serve their particular needs (see Douds & Ahlin, 2019; Hartley & Baldwin, 2019; Shannon et al., 2017). One assessment of the offenses that brought veterans into VTCs demonstrates that although a wide range of crimes are committed by participants, the most prevalent offense types were drug crimes, driving under the influence (DUI), and theft/fraud cases (Baldwin, 2017).

Aside from offense characteristics and discharge status, some state statutes, and individual VTCs, emphasize the establishment of the ‘nexus’ -- the link between an individual’s experiences in the military and diagnosed traumatic effects, and a connection between that trauma and the subsequent behavior that resulted in the veteran becoming justice involved -- as a prerequisite for inclusion (Rapisarda et al., this volume). From an eligibility standpoint, questions exist regarding *what* constitutes a nexus and *who* is best suited to make such a determination. Neither of these is an easy question to answer, nor is there evidence to suggest that a nexus must exist for participants to ultimately benefit from the treatment and services provided by VTCs. For instance, some individuals bring issues with them upon enlistment, and those issues (e.g., histories of sexual abuse and/or childhood physical abuse) are then exacerbated by experiences during their military service (Blosnich et al., 2014). In other scenarios, veterans are arrested for criminal charges that are entirely unrelated to their

in similar misconduct may receive disparate treatment: one may be retained, another may be discharged under General conditions, another discharged under Other Than Honorable conditions”.

military service (Culp et al., 2013). Whether veterans' behavior is a function of their time spent in the military, or if they were simply a former member of the military who would benefit from services, is an administrative and philosophical debate. Veterans who have been arrested for their third DUI might benefit from treatment irrespective of their alcohol use disorder (AUD) arising before enlisting, during their service, or afterward, and whether the AUD emerged as a result of their service or not.

Similarly, many VTCs also require a diagnosis of PTSD, MST, TBI, or SUD⁴ for the veteran to be eligible for participation, which is in alignment with research showing that the treatment court participants who benefit most are those who have the highest risk and/or the greatest needs. (NPC Research, 2019; Yerramsetti et al., 2017). The past decade plus has seen an expansion of the types of veterans becoming involved in the justice process, and who may be served by VTCs.⁵ Establishing a direct link between combat experience, trauma, and subsequent criminal offending can be a challenging task⁶. A decade ago, a quarter of veterans in state and federal prison (25%) reported that they had seen combat while in the military (Bureau of Justice Statistics, 2015). The most recent data on veterans in jails and prisons indicates this figure has not changed appreciably (28% of state prison inmates, 21% of federal prison inmates; see Maruschak, Bronson, & Alper, 2021). Further, there is an ongoing debate regarding who is best able to provide a clinical diagnosis for the issues delineated above, or for the nexus between a disorder and subsequent criminal offending. Should this assessment be performed exclusively by a forensic psychiatrist, or are other professionals (e.g., licensed clinical social worker, clinical psychologist, probation officer) able to complete such a task to help determine court eligibility?

The basis for diagnoses outlined above is not to be taken lightly if the VTC in question is legislatively mandated to include only those veterans with demonstrable trauma. In the more than 600 VTCs in the U.S., there are a broad range of criteria used to determine VTC participant eligibility (Douds et al., 2017; U.S. Department of Veterans Affairs, 2021). At present, 48 states have VTCs as a specialty court type (Connecticut & Vermont being the exceptions), and 34 states have *enacting* statutes establishing a basis for VTCs (Rapisarda et al., this volume). Of these 34 states, 22 also have *eligibility* statutes that set forth specific eligibility criteria for courts to follow when considering potential participants. Timko et al. (2016) indicated that a disjunction may exist between the needs of the veteran population in any given jurisdiction and how statutes define VTC-eligible veteran populations. In those states without enacting statutes – and even in some states with eligibility statutes – many jurisdictions have created VTCs by Court Rule or practice, without explicitly stated eligibility criteria (Lennon, 2020). In these cases, participants are often assessed for inclusion by VTC team members, with final decisions coming from district attorneys, judges, or both. As with most justice policy, factors at the state and local levels have the greatest influence in determining which participants are served by VTCs. While discharge

⁴For a discussion of these issues and how they impact veterans, see Council on Criminal Justice (2022).

⁵In the first VTCs, which were outgrowths of the larger drug court movement, the majority of participants were honorably discharged, male veterans charged with misdemeanors, typically drug possession (Clark et al., 2010). More recently, the target population has been expanded, both in terms of offense types and with respect to veterans' backgrounds (see Baldwin, 2017).

⁶In 2017, the Department of Defense provided more comprehensive guidance for considering how MH issues from military service contributed to offending behavior, and to have this information presented to military discharge and review boards for possible reconsideration of negative discharge decisions (see Kurta, 2017).

decisions and which veterans qualify for VA services occur at a higher level (i.e., the DoD, the VA), funding and resources at the local level, coupled with the discretion of VTC team members and the local culture, drive both the number and type of veteran served by the VTC, within statutory parameters (Shah, 2014). Most of these statutes are broad enough in scope to allow for final decisions to be made by the individual courts. Relatedly, in those VTCs that are post-disposition, veterans may be declined admission to the VTC because an operational criterion of the court mandates that a guilty plea must be entered *prior* to participation (Erickson, 2016). An eligible veteran may decline to participate in treatment court with such a provision in place – for any number of reasons – and opt for disposition of their case in the traditional court process.

Documenting the variation in eligibility criteria across VTCs and linking them closely to evidence-based assessments and justice frameworks, is necessary for advancing an effective VTC model. Interviews of VTC court personnel have been conducted in case study format (see Shannon et al., 2017) as a means of gauging court practices in one jurisdiction. While a review of eligibility and operational criteria existing individually at state court or local levels is important in establishing a framework for consistent court structure, the current study's aim is on eligibility criteria at the ground level as perceived by key VTC team members. More specifically, we detail how key VTC personnel view eligibility criteria in their courts, how policies are applied to particular offense types in their jurisdictions, and the specifics of the decision-making processes underlying the flow of participants into their respective courts.

Methods

The current study originates from a larger project on VTC operations and service delivery. A complete detailing of the methodology, including participant recruitment, data collection procedures, and the analytic strategy is contained in an earlier article in this special issue (Byrne et al., 2024). For the current analysis, we focus on information coded in relation to eligibility policies, practices, and the history of participants who had begun the treatment court process and either successfully completed the program or failed to do so. These codes were queried in NVivo software and then focus-coded to discern more specific and nuanced themes pertaining to participant identification, eligibility and admittance to a VTC. Analytic memos were produced reflecting the larger themes emerging from this round of coding, which we collectively reviewed to produce the final iteration of findings. Researchers engaged in inter-rater agreement and member-checking strategies to verify the data veracity, analysis, and conclusions. Member-checking strategies involved providing analytic memos to our Advisory Board for review and commentary, which we later discussed in our monthly Advisory Board meeting. This process allowed us to refine the analysis and ensure we were capturing the most salient patterns. Most quotes are presented verbatim to preserve the tone and language of the participants, with a limited number of edits for readability or to preserve the confidentiality of interviewees and courts.

Findings

Interviewees provided valuable insights on the eligibility policies and practices of their respective VTCs. Team members discussed the process once prospective participants came under the purview of their court, usually via one of several avenues, including self-identification as a military veteran, defense counsel bringing their client's status to the court, information gleaned by local jails, or identification by community corrections personnel with whom the veteran may have had prior interactions. From our analysis, five primary themes emerged relative to team member perspectives on eligibility: (1) location of potential participants and initial engagement; (2) state statutory and court policy requirements; (3) the decision-making process and discretionary practices used by stakeholders to ascertain eligibility; (4) the nexus between a veteran's military service and offending behavior; and (5) capacity/available resources for providing services to VTC participants. Each theme is discussed below, and grounded by quotes that represent and contextualize the perceptions of VTC team members.

If You Build it, They Will Come: Locating and initiating engagement with JIV

Two of the initial lines of questioning were centered on how veterans became knowledgeable of the existence of VTCs in their jurisdiction, and relatedly, how team members became aware of newly arrested veterans who may be eligible to participate in a VTC. These questions revealed that in several jurisdictions, the individual veteran had to self-identify as a veteran, and if a veteran chose not to disclose, then this individual would not be considered for VTC programming even if they were potentially eligible. To address this problem, several jurisdictions had systems in place, such as relying on the Veterans Reentry Search Service (VRSS)⁷ or through direct outreach to jails by VJOs, to independently identify veterans in the arrest and jail populations. Once identified, various methods were used by VTC team members to contact and engage with these veterans, as outlined in the excerpt below:

[W]e can get referrals from not only the defense attorney but the VJO, sometimes they reach out if somebody's within the system, the state attorneys if they talk to the victim or somebody else is involved and says, "You know this person was in the military." Sometimes, a client might just hear about it from another friend or something, and they request it. – Public Defender, Site #3

Another approach to the identification process is to provide outreach to prosecutors and defense attorneys in these jurisdictions, highlighting the benefits and drawbacks of VTCs for JIV and their unique circumstances and needs. One defense attorney described the importance of vetting the VTC option for their client:

I don't know of any vet that has come into our system that has not been made aware that veteran treatment court is an option. The defense bar is very quick to bring that up because generally the alternative to treatment court is less desirable. At every turn, particularly with veteran treatment court, I think the defense bar is trying to

⁷VRSS is a secure website that enables correctional and other criminal justice system entities to identify inmates or defendants who have served in the U.S. military (U.S. Department of Veterans Affairs, n.d.).

inquire of their particular clients if that's an option so they can explore it. Because it's better for them. Also, in our forming days, we had a police officer involved that was command staff and they adopted a principle of when they arrest someone, part of their arrest questionnaire is whether or not they've served in the military irrespective of their discharge. – Defense Attorney, Site #5

Finally, team members in several jurisdictions mentioned the myriad reasons why some veterans do not want to self-identify. Some of the more common reasons perceived by court actors include: fear of losing VA benefits; poor experiences with VA services in the past; misperceptions about the length of service necessary and/or release status required to be eligible; and/or not wanting associations with the military due to past traumas during service. The following excerpts represent some veterans' concerns with entering VTCs, as perceived by team members:

Usually when we see a vet select a different court, it's because they don't necessarily identify [themselves] as a vet, or don't have that strong connection, that camaraderie, that the other vets we see do. – Court Coordinator, Site #10

When it comes to referrals, I think some people are eager to try it out. Some people are apprehensive, but they'll defer to the attorney who says, hey, this will be great for you. Some people are just mistrusting. They've had bad experiences. –Court Clerk, Site #20

The Ties That Bind: State statutory and court policy requirements

Even in those states with enabling and eligibility statutes, individual courts typically have wide latitude in the cases they can consider for inclusion, particularly at the misdemeanor level. Eligibility frequently is determined by whether: 1) the charging offense is one for which probation is a possible sanction, and 2) whether state statute and/or court policy stipulates that a participating veteran have an honorable discharge. Logically, crimes that carry mandatory prison terms are not considered, as the JIV would be unable to participate in a non-institutional treatment regimen. Therefore, if the crime is probation-eligible, and the veteran meets other criteria for inclusion (e.g., discharge status), then their case is typically accepted so long as the veteran agrees to the conditions of treatment court:

On the felony side, there's just a handful of things that are not probation eligible, so that narrows certain things down. There's not stuff that's specifically—on the misdemeanor side, there's nothing that's disqualifying defense-wise. The court cannot consider public safety because the legislature said participation increases public safety. The district attorney has no voice in our misdemeanor statute about who gets to participate or not. There's no gatekeeping on their part. It's a very, very broadly written statute. It's very good that way. – Defense Counsel, Site #1

[T]he way we handle referrals is...there's a list of charges that are not accepted into veterans court. [T]hey're eligible if they're VA healthcare eligible and even if they're not. It's mainly based on their legal history, and if the state attorney approves them to enter the program based on what's allowed in the statute. I'd say the majority are eligible. – VJO Specialist, Site #12

While courts may have wide latitude under pertinent state statutes, they also must consider the requirements behind external funding sources that have certain guidelines as conditions for allocating resources. In these instances, eligibility decisions are determined as most contingent on the backgrounds of veterans and whether they are a complimentary fit to the parameters and requirements of the specific VTC program. Different treatment court models have been implemented across the U.S., and one model that is a hallmark of federal funding agencies is based on ensuring participant abstinence (see Bureau of Justice Assistance, 2023). Therefore, if the various treatment phases of the VTC require participants to be abstinent from drugs and alcohol as they move through the program, JIV with SUD may not be well-served or a good fit for those VTCs employing an abstinence approach. Team members described the challenge in striking a balance between abiding by the stipulations of funding sources while also simultaneously enrolling JIV whose needs have been largely unmet:

We have a much longer history doing Veterans Treatment Court than the statute itself. The statute says pretty much anyone can come in, but we have to align our program with what are the requirements of the funders, right? We're a funded program, and we have to meet those criteria, so for example, I would say if the funder said, like they say today, 'They must abstain from all substance'--that's challenging because there are some individuals who are here not because they have substance abuse issues, but because they have mental health issues, and they rely on cannabis, for example, as part of their treatment. Does that mean that person can't be in Veterans Court? – Judge, Site #1

I think the one issue is use of marijuana. Our grants are through SAMHSA [Substance Abuse and Mental Health Services Administration], so they're not supposed to be using marijuana, but in [STATE], marijuana's a ticket. It just really depends on the amount. I personally have no issue with it. If you have a note from a doctor that says you need this for your PTSD or you need this because it keeps you from having to be involuntarily detained on a mental health hold, then I don't have a problem with it. But because our grant money says it's an abstinence program, it becomes an issue. – District Attorney, Site #1

Bureaucratic requirements and restrictions (e.g., not having an honorable discharge) were another cause for frustration among interviewees, in that they felt hamstrung by subjective criteria along the decision-making chain, as well as a failure of the system to address needs while in service, that ultimately led to veterans being excluded from the VTC. This issue is doubly confounding when a resource or funding impediment exists as well:

I feel like there are a lot of vets that got screwed over by their commands and maybe received an OTH or less than honorable discharge for mental health or drug issues. Instead of working with them to try to help them get better and get back to a deployable status, they were just kicked out, and then now they're not eligible for VA services. Now the great thing about the VA is that a few years ago, they opened up the door to allow some OTH discharges to receive mental health services, and then they can apply for disability. If they get approved for disability, then they can apply for an upgrade in their discharge status. That I'm happy about that that the

VA saw that as an issue, and they took steps to make that right. I feel like there are a lot of vets with less than honorable discharges that need to be helped because that's the sole reason they got kicked out of the military. From a programmatic standpoint as the program coordinator, I understand why we do the things we do because we use the VA for treatment. We don't want them to have to pay for their treatment. They earned their VA treatment with their service. We use [the VA] for treatment, thus they have to be eligible for services at the VA, which is why we can't take those discharge statuses. Now I will say because the VA opened the door to some OTH discharges, we now look at OTHs on a case-by-case basis. If they have an OTH and they determine that the OTH was due to a mental health or substance use issue, which makes them eligible for VA services, then we will look at those on a case-by-case basis and we have started taking those but they're very few and far between. – Treatment Program Director, Site #6

In or Out—Who Decides? Decision-making processes and discretionary practices

Once a potential participant is brought to the attention of the team, their case is examined for suitability for inclusion into the VTC. This determination may be determined by one court team member (usually the district attorney or judge), but often occurs in consultation with the entire VTC team. This decision is made on the basis of not only whether the veteran's case meets basic inclusion criteria, but also whether the veteran is a suitable fit for treatment court. Giving an overview of their process, a team member in one jurisdiction stated the following:

It's a team effort, so I'm one of two prosecutors assigned to the Veterans Treatment Court. We have a second prosecutor who's a deputy city attorney. The city attorney handles misdemeanors within the city, and occasionally we'll get those, so we have to have the city attorney on, as well. As the prosecutor, it's kind of fluid. It's not a traditional adversarial system. It's a team effort. I will try and find cases to refer here. I will do trainings for prosecutors and also the private defense bar so that they know about us. I think my biggest role in the team is I'm the gatekeeper. With the exception of mentors, I'm the only one who's [a veteran] who's sitting at the table. Some of the treatment providers, but they aren't always at the meetings, so it's — you've got the gatekeeper to screen out the lingering war stories that don't add up, and for us we've got this big statute on point, but there are statutory requirements to be eligible for restorative relief. One, you've got to have prior military service, so a lot of times I can help kind of figure that out to determine who, what, when, where, and why. They've got to have a duty-related mental illness, and we've got a great treatment team that helps us with that. Finally, that duty-related mental illness must have resulted in the criminal offense. – District Attorney, Site #16

Court personnel in all 20 VTC jurisdictions alluded to some degree of subjectivity with respect to eligibility decisions even in those states that have eligibility statutes delineating specific eligibility for VTC participation. This degree of subjectivity in the decision-making process ranges substantially from jurisdiction to jurisdiction. The following excerpt represents a common response related to the discretion of the court in making eligibility determinations:

Yeah, there is a process. They[the clinicians] do all the assessments, and then if they meet the criteria, generally they are in. Of course, if they—they may not make the criteria, then they wouldn't be considered but sometimes—it's a lot of—we do have a lot of discussions if it's not straightforward like, "Yes, they make it." Sometimes in our court we take individuals that have previously completed the Vet Court but then happen to get into trouble again later in the future. – Court Coordinator, Site #20

Within the parameters of treatment court statutes, individual courts have latitude to weigh the merits of specific cases and ascertain if they are viable VTC participants. While some jurisdictions may have exclusionary criteria based on specific offenses or discharge status, others have wide discretion on the types of cases and participant backgrounds that are considered for participation in the VTC:

As you know, each judge is different. This particular judge is not a veteran, but he has a heart of gold for veterans. Sometimes the team says he's a little bit more lenient than he should be as it relates to eligibility as well as sanctions and incentives. How we determine eligibility is once whoever makes the referral, whether that referral comes from self-refer, the family, the criminal justice system, the attorneys, however it gets referred, it goes directly to the DA's office first. They want to make sure that individual is legally eligible prior to sending the information for the treatment [component] to then determine if they're eligible via a mental health and/or substance use issue. –VJO Specialist, Site #4

There are also diverging perspectives on whether veterans who are ineligible for VA services are in turn ineligible for inclusion in VTCs. Some jurisdictions unwaveringly restrict participation to *only* honorably discharged veterans who qualify for services through the VA, while others partner with community service providers already engaged via other specialty courts (e.g., drug courts, mental health courts) or non-profit organizations that have experience working with veteran populations to serve those JIV not eligible for VA services:

If someone had been part of the military, but they don't qualify for veterans benefits—generally, if they don't qualify—they haven't been in the armed services long enough to be able to qualify for benefits—then, even though they were part of the military, the veterans treatment court here will see if they can get services, and so they can become a member of the veterans treatment court. – Public Defender, Site #2

Much of this decision-making on which JIV are eligible to be served by a particular VTC is a function of the local context, and any one model cannot be transferred to a different setting without alteration. One team member eloquently detailed what many alluded to during their interviews – that VTCs can be discussed, planned, and developed as a framework before being implemented, but it is only once a court is established that the team gets a true sense of the population they are serving (e.g., their behaviors and treatment needs) within their specific jurisdiction and who may potentially be served by the resources available to the VTC:

I think when you create a problem-solving court in a community, you first need to figure out—there's the philosophy and the theory about it, what do you want the program to look like? Then you have to go back and collect data and really figure out who do you actually have in the community that's going to benefit from this program. You can't invent those people. They either exist in your community or they don't. When we started vet court, our district attorney only wanted people in this program who really had very little criminal history to begin with. Then because of service-connected disability or combat trauma, or if they came out on the other end and started getting into trouble. He had this vision, this romantic notion, of what vet court should look like. Being a PO at the time, I knew right off the bat that the vast majority of people in [this] community that are going to be veterans and criminal justice-involved probably had some criminal history before they went into the service, and they were probably—their involvement was probably due to low-level domestic violence stuff and DUI. I did about six months' worth of research and got back to him and said, "Look, these are the people that we have in [this city], and we need to create a program that's going to target that population, not a population that really doesn't exist." They went along with it, and it was the right thing to do. Those are the people we serve. We take everybody. We take somebody that's been in the military for five minutes or five years. We take all kinds of discharges, and we take people that have absolutely no ties or are not eligible for VA services. Our litmus test was can you show us that you were enlisted or a commissioned officer for even a day. We do that because those are the people that we have in this community. – Court Coordinator, Site #13

Even in the collaborative environment of a treatment court, there is a hierarchy within the decision-making process. Discussions on individual cases bring all team members to the table, but disagreements necessitate a final determination being made by one team member, typically the judge or district attorney as the representative of the state. While such a gatekeeper is necessary even in cooperative process, it can lead to discomfort among other team members, and a perception that the court does not follow said goals, missions, or policies and procedures:

One of the things [we need to work on], and I've had this discussion before, how I said the district attorney gets the say in whether or not we can bring people in. I don't think in some aspects that's fair. We've had this discussion before because if they met the criteria, which we put in our policies and procedures, then I think they should... be allowed to do the program. – Court Coordinator, Site #8

It is the district attorney who is the gatekeeper. If we have a veteran and he applies for the program, obviously, they're brought up on charges. They stand before the district attorney. The district attorney says, 'Hey, you're a good veteran. Thank you for your service. Sorry, you're not being admitted into this program.' We, the judge, the team cannot overrule that. – Mentor Coordinator, Site #8

We discuss as a team, and, at the end, the judge decides what we want to do. He does take into what we say, the team, and how we feel about the case. I will say the ones that we do get turned down are offenders that have multiple cases. Their

criminal background is multiple of the same charges that they're up for. [T]hose would be the most that get turned down, especially the violent and the multiple offenses for the same charge that they're up for. As far as what we pick, again like I said, it's based out of the team's input, how everyone feels about it, and, at the end of the day, what the judge has to say about it. – Probation Officer, Site #2

As suggested in the above quotes, despite the collaborative model of decision making that underlies many VTCs, in the end, it is typically either the judge and/or district attorney that has the ultimate say in who is eligible to participate or not.

What Happens in the Military Stays in the Military—Or Does It? The nexus and eligibility decisions

Ascertaining a definitive link between a veteran's time in service, the trauma they experienced, and how these traumatic experiences are related to the offense that led to justice-involvement – the nexus – is one of the more controversial aspects of determining eligibility for VTCs. A 2015 national survey of 129 VTCs found that only 21% required a nexus between a veteran's military service and the criminal offense that brought them before the court (American University, 2016). In most cases, the connection between service-related trauma and offending behavior is not clear-cut, and instead is the result of an assessment by either a member of the VTC team or an outside consultant. This lack of clarity has led some courts to discount the need for establishing such a connection, and instead, they view any justice-involved military veteran in need of services as a candidate for treatment. The following was a common response across multiple jurisdictions:

I don't think it's very difficult for anybody to link their trauma to their criminal behavior whether it'd be military trauma or not. Frankly, I personally don't care whether it's military trauma or other kind of trauma. We need to treat their trauma. I think it's morally reprehensible to say, 'Oh, you can only have this kind of trauma for us to help you'. That's unconscionable to me. I want to honor anybody who has any kind of trauma because they didn't ask for it. Do I want lift people up who have served our country? Absolutely. I want to lift anybody up who needs lifting up personally and to exclude somebody from services or from a criminal case disposition that's going to make it easier for them to find housing, to get a job, to have healthier relationships just because their trauma happened outside of a particular branch of the military, I find appalling. – Court Coordinator, Site #18

Establishing a clear causal link between a veteran's military service and the offense for which they are being considered for VTC enrollment is a nebulous undertaking. To date, there has been no consensus on which team member (clinician, forensic psychiatrist, probation officer) should make such a determination. The question also remains whether the genesis of factors that contributed to the veteran's offending behavior occurred prior to enlistment or during service. Further, if the service member had previously experienced trauma, did their military duty exacerbate these issues and contribute to their offending behavior? We found a variety of opinions regarding how the nexus is established, who can establish it, and its implications for VTC participation:

I think there should be a connection. If you're going to apply to be in a specialty court specifically for veterans based on your military service, there needs to be a connection between your military service, the crime you committed and your mental health and or substance use issues related to your military service which cause you to commit this crime. Otherwise, why have a specialized program just that goes beyond regular probation? – Treatment Program Director, Site #6

It's basically a double nexus between their mental health history, the legal charge, and their military background. That was the nexus that needed to be established to participate in the veteran's court, so who better to do that than a board-certified forensic psychiatrist? Now most of the other courts that were developing in [this state] at the time, they just said, 'well, if you were in the military and you have PTSD, that was enough for them to welcome the folks into their court programs.' We actually included with ours, a forensic assessment to establish that nexus, and to make a clinical recommendation for joining the court team, but also recommendations for the type of treatment that they in conjunction with their participation in the court program. – VJO Specialist, Site #6

Who determines the nexus? Well, I think it's the staffing team. We'll talk about these cases, and we'll go over it. The court will have some background then. We can all talk about it and make some decisions. Sometimes, we'll have some input from the defense attorney also. That'll help out because they've been talking to their client, so we'll get enough input. Then, I think, through the interview process, we'll get enough information to be able to make that determination. – District Attorney, Site #7

Across sites, interview participants largely diminished the importance of the nexus as a primary criterion for court entry. One judge stated, “We take all comers really. At the beginning I think the nexus was much more important [in the past] than it is to us now” (Site #7). When state statute indicates that the nexus play a role in the decision-making process but does not provide clear guidance on what the nexus is, how it should be determined, and by whom, VTC team members are left to make determinations based on their court's available resources, as well as the perspectives of key team members such as judges and prosecutors. The decision-making process becomes one of determining if a specific participant meets the specific VTC model and existing treatment and service modalities of the court:

There is a diversion statute in [this state] that does require a nexus, but it is not under either of the two that impact veterans. What the court has to be satisfied is that the person is eligible because they have a mental health substance abuse-related condition to a diagnosis that's tied to their military service, so in other words, your mental health condition has to be tied to the fact that you were in service and resulting from that as opposed to it resulted from the years prior to your service. That is usually when the court is satisfied with that element by receiving documentation from either their government service record, by the person who's diagnosed them and has treated them. – Judge, Site #1

No Room at the Inn: Capacity and available resources for providing services

Many interviewees indicated that the typical offense profiles of veterans within their VTCs were driving while intoxicated, domestic violence, non-domestic assaults, drug possession, and minor property and public order offenses. While these crimes may not be the most serious offenses for treatment courts to consider, there are logical factors that drive this trend. First, SUD is common diagnosis among JIV (Finlay et al., 2017), and these offenses are typical offending behaviors of substance users in general (Tsai et al., 2017). By bringing these cases into a VTC as relatively minor incidents, it allows veterans to be matched with services to address underlying issues driving their behavior *before* more serious offenses are committed. Second, in most jurisdictions these offenses are (or can be) probation-eligible, thus paving the way for entry into the VTC and subsequent community-based treatment. Third, both the VA and community providers have existing programs in place to address issues such as addiction and family relations (e.g., the VA's 'Strength at Home' program), therefore it seems reasonable that VTCs focus on participants who would benefit from pre-existing resources. Conversely, all but one of the 20 courts in our study prohibited participants accused of, or with a history involving, arson. This had less to do with the nature of the offense and more to do with the lack of available resources and services available to address the needs of such offenders:

We just shy away from current sex offenses, convicted sex offenders, and those with an arson history because of the difficulty of placing them in a residential setting. I know that's something that is a common theme across a lot of treatment courts, but we certainly shy away from that as well. Again, it's a case-by-case basis. It has to do with the availability of treatment for those folks. – **Court Coordinator, Site #2**

Unlike sex offense cases, VTCs include another group of individuals that appear to challenge their general tendency to exclude violent offenses – veterans charged with domestic violence:

For the most part, the domestic violence cases in [this county], at least, are normally [low-level] and misdemeanors. Those are all what I consider eligible. I think Veterans Court is a good avenue for those cases to go through because of the availability of services, counseling, treatment, so this is perfect for them. They go in—and what I normally notice—they come out a different person. As long as they're willing to do the program and do the services, get the treatment that's available, hopefully, it helps them.– **District Attorney, Site #7**

Services must be offered in an environment that adheres to the unique components of VTCs, such as meeting set milestones and proceeding through phases of the court as a team. Service providers in non-VA community settings may not have the capacity to offer treatment in a context unique and exclusive to a veteran population, thus negating a key element of VTCs. As a result, some courts opt to not admit those veterans ineligible for VA services because their available resources are incompatible with the assumptions of the VTC model:

If they have mental health issues at all, we can't accept them. It's just—we don't have the resources to help. If they're just substance abuse, we have [one program available], which is a contract. It's pretty good. If they've got mental health issues, they're not getting any help. – **Mentor Coordinator, Site #3**

The focus on JIV identified as high risk/high need may be rendering some ineligible for VTCs if they do not have access to VA services, because there may not be community resources available for this group. Most of the interviewees who discussed the target population for their VTCs indicated that their courts were structured to service high risk/high need offenders, however they would not have the resources to provide needed services without the VA providing for those JIV eligible for their services, grants from federal, state, and/or local government, or partnerships with nonprofits to serve JIV eligible for the VTC but not for VA services. Interviewees did not indicate that their courts sought out, for example, OTH (other than honorable) cases with high risk/high need JIV to receive treatment and services in the community. Even assuming the bulk of high risk/high need offenders will receive services through the VA, this focus may be counterproductive to reducing veteran offending, as the types of offenses for which veterans commonly find themselves in the justice process include acts such as driving while intoxicated, domestic conflicts, drug possession, and simple assault, which are not necessarily considered high risk/high need offenses:

The judge ultimately makes the decision. You don't have to be high risk/high need. That is the target audience, but our treatment court judge makes exceptions. I don't like the idea of just excluding someone because they're [not] high risk/high need. I also know that there's capacity in terms of we can't let everybody in just because they think this offer is a good offer. – **District Attorney, Site #5**

Discussion

Rowan (2020) states that the *raison-d'être* of veterans treatment courts is simply that veterans have distinct social and medical needs that are best addressed by a treatment court tailored specifically to those needs. However, the rapid growth of VTCs has resulted in a number of unintended consequences. While examining the eligibility criteria of 20 VTCs across the U.S., several themes emerged, including (1) location of potential participants and initial engagement, (2) state statutory and individual court requirements for inclusion, (3) offense characteristics and background of the veteran that drive VTC team decisions, (4) the nexus between a veteran's service time/experiences and their offending behavior, and (5) the capacity of treatment/service resources available to the court. The uniqueness of the eligibility decision-making process is particularly acute in states that have only enacting statutes for VTCs, or those states that have no statutory guidelines at all. In the latter context, VTCs are often based on pre-existent guidelines for other specialty courts, such as drug treatment courts. The most common strategy for determining eligibility in such states is for the VTC team to assess each JIV and collectively determine which cases are a fit for that specific VTC.

In terms of eligibility, criteria have been developed and adopted as policy, even without an evidence base that these criteria have any bearing on which veterans are best suited to the

VTC regimen (Timko et al., 2016). This infers that it is the veteran who should be the focus of consideration, not the act which drew them into the justice process. At worst, this may lead to the perception that eligibility decisions are arbitrary or biased, given that there is already variation in eligibility criteria across VTCs and no evidence base exists to validate strategies currently in place. Following this line of reasoning, another argument exists that the proliferation of VTCs – and the eligibility decision-making surrounding who can enter VTCs – are guided by perceptions of military veterans being both *deserving* and *worthy* of specialized intervention when they become justice-involved (Rowan, 2020), based on the personal sacrifices they've made in service to their country. Viewed through this lens, the philosophy of punishment is altered and delineates the restorative mission of the court and distinguishes it from the more retributive aspects of the traditional justice process (Huskey, 2015). Further, court practices and personnel engage in distinguishing between worthy and unworthy veterans (Rowan, 2020). This categorization can fundamentally impact the guiding principles of a court and which veterans are deemed eligible to participate. In turn, without clear and standardized eligibility criteria, questions of fairness and disparate treatment have been called to question (Arno, 2015).

This issue comes into even sharper focus when considering the etiology of criminal behavior for military veterans being less of a 'choice' or a by-product of a 'criminal lifestyle,' and more of an outcome of trauma suffered while in service to the country (see Huskey 2015). When such a perspective on offending is shared with the public, the notion of who the offender *is* transmogrifies and elicits greater empathy from the general public toward veterans and the issues with which they are struggling. This in turn may result in VTC personnel being more inclined toward inclusivity in eligibility considerations, particularly if there is a belief that the *totality* of veterans' backgrounds (including the discharge decision) is a function of military-experienced trauma, the absence of which would perhaps have led to a host of different life outcomes for the veteran.

What is certain is that VTCs are emblematic of the notion that rapid growth results in less structural consistency⁸ VTCs in the U.S. are the philosophical offspring of the first VTC in Buffalo, and of the overall drug/specialty court movement. But each court exists individually in a form shaped locally by law, policy, ideology, and available resources. The current study's findings demonstrate the allegiance VTC team members have for the court model, but also give voice to the frustration that many team members have for their inability to assist all JIV who could benefit, and what could be improved to prevent some from falling through the cracks (see Council on Criminal Justice, 2023).

The establishment of a VTC in a community to serve the justice-involved population is shown to be just an initial component of 'therapeutic jurisprudence' (see Perlin, 2013) for JIV. An entire infrastructure needs to be in place to serve the entirety of the population, and greater coordination between federal, state, and local governments is necessary for courts to function optimally. Most of the hundreds of VTCs currently operating are new enough to easily implement midcourse alterations, and revise standards to increase the

⁸The rapid growth in all of Illinois' problem-solving courts (PSCs) led the state's Supreme Court to propose uniform standards for the practices, procedures, and operations of all PSCs in the state (see Illinois Criminal Justice Information Authority, 2017).

pool of eligible JIV. Impediments to VTC participation are both real and perceived. For example, some courts simply do not have non-VA treatment resources in their jurisdictions, therefore making veterans without access to VA benefits, who would otherwise be eligible for VTC participation, a poor fit for these courts. Alternatively, some veterans not presently eligible for VA benefits due to their discharge status could avail themselves of cooperative efforts between the Departments of Defense and VA that help facilitate upgrading discharge statuses. However, this process is hampered – even after being streamlined – by the perception that it is too onerous (Axelrod et al., 2023).

Regardless of factors external to VTCs, moving forward, courts will need to meet their justice-involved populations where they are at, tailoring a treatment court that is responsive to the needs of their specific population. The courts cannot simply implement an established model that does not match what an individual court has already been practicing on the ground. The information we gleaned from interviews with team members from various VTCs across the country demonstrates that there is not a one-size-fits-all approach to establishing eligibility for VTCs, nor is such a unilateral method desired. When courts have the discretion to apply eligibility criteria that maximize connecting veterans to treatment and services, those who do participate will have a greater probability of success than if courts attempt to fit ‘square pegs in round holes.’ For example, one of our study jurisdictions was located in an urban center with multiple treatment options available for both VA-eligible and non-VA-eligible veterans. It also had a strong relationship and consistent funding from a community partner to provide services for less than honorably discharged veterans. Therefore, this court’s model for determining eligibility differed considerably from another jurisdiction housed in a rural setting, further away from a VA facility, and with no other treatment resources other than those with basic funding at the county level. No specialty court exists in a vacuum, and as our findings demonstrate, VTC team members work within the parameters they have been given. However, parameters can, and should, change based on the experiences of those working and participating in the courts, so that those who enter VTCs in the future will benefit from the experiences of their fellow service members who’ve gone before them.

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