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Veterans Treatment Courts: A Nationwide Review of Enacting and Eligibility State Statutes

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Abstract

Veterans treatment court (VTC) is the fastest growing type of treatment court in the United States with over 600 VTCs in operation today. Despite this recent proliferation, minimal scholarship has been conducted investigating how the state-level statutory landscape influences VTCs. The current study begins to address this gap by comprehensively reviewing and analyzing state legislation that governs the enactment, operation, and eligibility requirements of VTCs nationwide. Our initial search reveals that 70% of states currently operating VTCs are statutorily authorized at the state-level, of which nearly two-thirds also enumerates operational and eligibility criteria, such as military status and branch, mental health diagnosis, the “nexus”, criminal history, military discharge status, offense severity and type, and more. Our analysis indicates considerable variation and nuance across states but coalesced into several unifying themes. The results provide insights on one of the many important powers involved in shaping the operational and eligibility elements of VTCs—state legislatures—and can serve as a catalyst for future research on the myriad factors involved in determining how we conceptualize VTCs and who is included in them.

Keywords

veterans treatment courts; VTCs; statutes; eligibility

Veterans Treatment Courts (VTCs) operate under a collaborative, or often referred to as, therapeutic court model offering specialized court programming to individuals who are involved with the criminal-legal system and are current or former members of the

military. VTCs have proliferated in the past decade, with over 600 currently operating in the United States (U.S. Department of Veterans Affairs, 2021). The VTC court model adopts similar principles as drug court and mental health court models, where participants focus on the underlying cause of their criminal behavior, typically through an intensive, phased program that involves treatment, case management, mentoring, and a collaborative courtroom workgroup (see Russell, 2009). This collaborative team is comprised of attorneys and the judge, and has expanded to members from varying disciplines, including Veterans Justice Outreach (VJO) Program specialists from the U.S. Department of Veterans Affairs (VA), clinical staff (from the VA and community), probation officers, court managers and coordinators, and more. According to policy makers and practitioners, VTCs offer a treatment-focused alternative to traditional punishment that acknowledges the sacrifice of military service, the propensity for trauma-inducing experiences as a result, and the unique contexts of having military experience that provide a community of support (Hawkins, 2010; Jones, 2013).

There are a variety of federal, state, and local governmental bodies and individuals, as well as funding sources, that can be identified as key drivers or influences on how VTCs are designed and operated across the country (see Figure 1). The U.S. Congress has signaled its support by passing legislation and authorizing federal funding to support the creation, and now the enhancement, of VTCs nationally. The Veterans Court Coordination Treatment Act of 2019 provides some oversight for the current and not yet established VTCs nationwide, alongside a steady stream of federal monies disseminated from the Department of Justice via the Veterans Treatment Court Grant Program (Veterans Court Coordination Treatment Act of 2019, 2019). This federal legislation aims to unify program approaches and establish policy language for states enacting or operating VTCs. The Bureau of Justice Assistance oversees the selection of sites to be federally funded, basing its decisions on the model of VTC being proposed including the individuals to-be-served (i.e., the target population) and key VTC program components (NADCP, 2018). The VA, through the VJO Program and in collaboration with the court, coordinates services for veterans accepted into VTCs, assuming these veterans are eligible for VA services.¹ Yet another federal agency, the Department of Defense, establishes policies and practices regarding the discharge status of veterans that also impact the population of veterans who enter VTCs.

At the state level, legislatures and judiciaries can both contribute to and shape how VTCs are established and who is eligible. Legislation has been passed in many states that are now operating VTCs to authorize and stipulate court operations and eligibility to institute a “checks and balances” of power, especially in reference to judges and how they oversee their courts (Shah, 2014). Another important state-level factor influencing VTC eligibility is funding. In addition to internal funding within the judicial system itself, VTCs can operate with funds that are external to the court, such as state government funding, in addition to other sources like grants and donations, which can either restrict or expand the target population of legal system-involved veterans and service members (Baldwin, 2016). For example, if VTCs are mandated to accept VA-eligible veterans only via legislation or state

¹Veterans who are not eligible for VA services may still be eligible for VTC participation depending on other criteria, and their service coordination would be addressed by other court team members.

court rules, then the court need not depend on any external sources of funding (Baldwin, 2016); however, such decisions may be at the expense of serving a wider range of veterans and service members.

At the local level, where VTCs are most immediately situated, there are a variety of individual actors and organizational bodies that can also influence VTC operation and eligibility (Easterly, 2017). As stated above, various funding sources may influence eligibility, which can also originate from local organizations or government agencies. Within the court itself, judges are in some cases granted sole discretion to determine the essential components of VTCs such as the appropriate target population, as opposed to other courts whereby VTC teams collaboratively make decisions about the operational components of the court. In other jurisdictions, it is the prosecutor who is given the authority to determine the target population (Holbrook & Anderson, 2011). To greater or lesser degrees, these influences play important roles in shaping operational and eligibility components within and across VTCs.

While there is general agreement among legislators, funding agencies, and key court team members that VTCs offer positive impact on the lives of legal system-involved veterans, it is less clear precisely how these governmental bodies and agencies, in addition to key court actors, coalesce to shape the operations and eligibility of VTCs. Within this broader question of ‘*who* influences the operation and eligibility of VTCs, and *how*’ lies an important knowledge gap: Namely, a more comprehensive understanding of the underlying legislation that enacts VTCs within states and determines eligibility into those VTCs (Arno, 2015). There is concern that the lack of uniformity in statute and the policies and procedures of VTCs may be producing inequities in the system, where those admitted by the courts become a “privileged class of criminal defendants” (Jones, 2013, p. 307). A lack of standardization is conducive to an environment that is ripe with unfairness, inequity, and an increased likelihood of bias. Pomerance (2019) sheds light on how this court-to-court variation may be a cause for concern:

From a practical viewpoint, these wide-ranging variances lead to problematic confusion among the general public about what the "Veterans Treatment Court" label truly means, as justice-involved veterans who are eligible to use the services of certain Veterans Treatment Courts are unequivocally barred from entering others. From a legal standpoint, these elemental distinctions from one court to another are even more troubling. Through these classification-based variances, states risk breaching the command of the Fourteenth Amendment of the United States Constitution, which orders that no state shall deny "equal protection of the laws" to any person within its jurisdiction

(p. 429).

Knowledge regarding the variations in how VTC operations and eligibility are shaped by important bodies, agencies, and individuals, and in the current study, the influence of state legislatures more specifically, can help explain and address impediments to providing access to services for military and criminal populations (Arno, 2015). The current study contributes

to this broader endeavor by systematically reviewing and synthesizing the state statutes that govern the enactment, operation, and formulation of eligibility of VTCs across the U.S.

LITERATURE REVIEW

Veterans Treatment Courts (VTCs) offer an alternative to traditional processes for individuals who are in contact with the criminal-legal system and hold active-duty or veteran status. These courts are situated in a collaborative or treatment court model, which relies on therapeutic jurisprudence frameworks to focus the role of court intervention on providing treatment for an underlying area of need that is related to the cause of criminal behavior (Rowen, 2020; Winick, 2002). Therapeutic jurisprudence also asserts greater judicial discretion in motivating individuals to succeed where, “judges seek to actively and holistically resolve both the judicial case and the problem that produced it” (Winick, 2002, p. 1061). Under this framework, the law and courts can offer a therapeutic impact through humane and psychologically driven approaches to legal matters.

For over three decades, the drug court model has served as the foundation for the creation and expansion of other treatment court programs, including VTCs, which are ultimately designed to serve specific target populations that have underlying substance use disorders (SUD) contributing to their involvement in the criminal-legal system (DeVall, Lanier, & Baker, 2022). Among the legal system-involved veteran population, their needs may either predate or stem from their time in the military. Post-traumatic stress disorder (PTSD), traumatic brain injuries (TBI), SUD, military sexual trauma (MST), and other mental and physical health concerns are well-documented in this population (Finlay et al., 2019b; Tsai, Finlay, Flatley, Kaspro, & Clark, 2018; Wilson, 2018).

VTCs model their “best practices” after drug court best practices established by the National Association of Drug Court Professionals (NACDP, 2018). Some of these practices include a non-adversarial approach, integration of treatment services, abstinence, early identification, and coordination among court actors and service providers (NACDP, 2018). VTCs also frequently incorporate a mentoring component within their programming, typically on a voluntary basis and managed and carried out by veterans themselves (Douds & Hummer, 2018). VTCs also highlight service provision collaboration with the VA (Clark, McGuire, & Blue-Howells, 2010). Huskey (2015) suggests that VTCs are not just following “in the footsteps of those specialized courts; they are the next step in rehabilitative justice” (p. 179). That is, they have the potential to reform, or currently are reforming, the way courts think about those entering the legal system and the underlying causes of the crimes committed.

While there are limited evaluations on VTC effectiveness and efficacy in extant scholarship (Baldwin et al., 2022; Baldwin & Brooke, 2019; Erikson, 2016; Lux, 2022; McCall, Tsai, & Gordon, 2018), there is a growing body of literature citing VTC’s impacts on the populations they serve and documenting process evaluation metrics (e.g., Shannon et al., 2017). While these studies reveal promising and positive effects of VTCs, in order to move forward with rigorous evaluations that expand the evidence base on VTC operations and eligibility, the various bodies, agencies, and individuals that shape important features of these courts must first be reviewed. Little has been documented in the literature to date

on specifically how VTCs are legislated at the state level and how this legislation may be influencing the operation of VTCs, namely the eligibility criteria required for admittance. Below, we highlight some of the definitional and eligibility-related issues that have emerged from the literature to help frame our statutory review.

VTC definitional inconsistencies

Despite that many VTCs claim to operate under “best practices”, there is wide variation in how they operate and who they accept (Baldwin, Hartley, & Brooke, 2018; Finlay et al., 2019a). Even with federal legislation backing the establishment and funding of VTCs nationwide, considerable differences in operational and eligibility components of VTCs persist. Federal statute does not provide a definition for VTCs or outline their core components. Further, much of the extant literature surrounding VTCs arrives at the same conclusion: there is a lack of consistency in established knowledge or codification of the definition of a VTC and its core criteria for operation and admission (Timko et al., 2016), even with guidance from the Ten Key Components of Drug Courts (NADCP, 2018). It is possible that these operational and eligibility inconsistencies stem from the absence of clear definitions at the federal level.

Existing research provides a backdrop for understanding the current landscape of VTCs. Timko et al. (2016) conducted a longitudinal review of VTC characteristics and criteria for acceptance and participation. Their review of VA data spanning across three years, collected through the VJO Program, revealed growing consistency in characteristics and criteria across programs, including primary jurisdiction at the county level, an average of 22-24 participants, and 18-19 months in programming for felony convictions. The results indicated that many courts expressed an “openness to veterans of different backgrounds and status”, which included individuals with ‘other than honorable’ (OTH) discharge statuses or prior criminal records (Timko et al., 2016, p. 1). Timko et al. (2016) address the importance of eligibility for allocating resources, ensuring rigorous evaluation of programs, and developing systematic tools for acceptance based on empirical evidence; however, this research fails to mention the limitations that precede acceptance and participation processes, which may be linked to VTC enacting and eligibility legislation. Although Timko et al.’s (2016) study was essential for expanding our understanding and knowledge of VTC characteristics, the data were limited to reports from court personnel, primarily VJO staff.

Attention has also been paid to the front end of the system—or where and how veterans are identified for VTCs. Baldwin and colleagues (2018; 2022) documented the identification and referral processes of eight VTCs in the U.S., finding that an array of practices reflecting much variation in eligibility criteria exists. While their evaluation of these processes is the most comprehensive to date, variation in eligibility criteria came from court-based reviews and the originating statutes were not addressed. In particular, the study focused on identifying and verifying military status, but it did not define the types of military status that are eligible for these courts. Definitional and operational issues may be contributing factors to the lack of documented literature on how or why a potential participant might be excluded from the court.

The only existing study, to our knowledge, that reviewed existing and pending VTC legislation was conducted by Clark and colleagues (2010) more than a decade ago. Their study revealed considerable variation across statutes, aside from the inclusion criteria that the individual must have a mental health or substance abuse concern. They noted that numerous operational and eligibility elements were “not specified,” including, for example, whether the VTC is considered a pre- or post-dispositional program. The lack of specification regarding VTC program components draws attention to the definitional concerns that are related to the vague conceptualization of a VTC (Baldwin & Brooke, 2019). More specifically, their study raises the question as to whether VTCs are true diversionary programs or alternative treatment courts (Arno, 2015). Since Clark et al.’s review in 2010, little has been documented in the literature regarding the legal governance of these specialty courts.

VTC eligibility (and exclusion) inconsistencies

While elements of VTCs’ operations may overlap from court-to-court and the emphasis on treatment may be consistent across VTCs, there are important substantive differences in who is eligible and accepted into the court versus who is denied and therefore excluded (Pomerance, 2019). These differences are largely due to a variety of influences, including the existence and interaction of legislation, court rules, and/or the VTC team (Timko et al., 2016). For example, some VTCs may be legislatively constrained in terms of who they can and cannot admit into their courts based on the offense type and severity (Clark et al., 2010; Erickson, 2016). In other cases, veterans and service members may decline admission to VTCs because an operational criterion of the court is that a guilty plea must be entered *prior* to participation (Erickson, 2016).

The summary provided by Timko et al. (2016) not only captures just how varied VTC eligibility criteria can be across courts, but also helps explain why they vary, due in part to the dynamics of and interactions between court rulings and state statutes. Among the core requirements for admission into VTCs documented in studies is the presence of a diagnosed mental health disorder or SUD. This is a common criterion for therapeutic courts, as the model implies, and is the first among the core principles of evidence-based drug court practices (NADCP, 2018). A diagnosis is central and makes inherent in statute and policy the necessary reliance on clinical assessments to classify these individuals.

Another eligibility component referred to in the VTC literature is the “nexus”. The nexus most commonly refers to the court’s requirement that an explicit connection must be made between the criminal charge and an underlying mental concern that stems from the defendant’s time in the military. In a review of U.S. statutes that include a mitigating factor provision for veteran status and a mental health disorder, Sivanich (2021) found that 50% of states had some statutory language offering punishment alternatives for this population. In Baldwin and Hartley’s (2022) evaluation of eight VTCs, five required a nexus to exist for individuals to be eligible for acceptance into the VTC. The nexus is also sometimes linked with criteria restricting admission to only those veterans who have experienced combat (Arno, 2015; Clark et al., 2010; Pomerance, 2019). The rationale reflects both the likelihood of finding a nexus, as well as the moral and legal obligation to offer specialized services

to combat veterans (Arno, 2015). However, properly classifying and assessing the nexus, as well as establishing this causal link, has drawn criticism among practitioners and legal scholars (Jones, 2013; Pomerance, 2019).

An eligibility criterion that is intimately linked to this notion of a nexus is the offense type. In many VTCs profiled in the legal literature, violent offenses are excluded from the privilege of treatment court programs and diversionary court processes (Arno, 2015; Hawkins, 2010). Highlighting a similar trend, in an empirical study carried out by Douds and colleagues of 17 Pennsylvania-based VTCs, they found that while every court in this sample reported admission of veterans charged with non-violent charges, violent crimes were acceptable on a far less consistent basis (Douds, Ahlin, Howard, & Stigerwalt, 2017). Only a quarter of these VTCs reported definitively allowing for aggravated assault charges, whereas the remaining courts reported making these determinations on a case-by-case basis. Weapons and sexual assault charges were accepted by no VTCs in this sample (Douds et al., 2017). Contrarily, in a review of 461 VTCs across the country, Flatley and colleagues found that the majority of the courts (almost two-thirds) considers a participant with a violent offense charge, while 18% considers domestic violence charges while still excluding other violent offenses (Flatley, Clark, Rosenthan, & Blue-Howells, 2017).² One motivation behind this reasoning is that in some courts, domestic violence is not categorized as a “violent offense” and therefore is admissible for those VTCs (Arno, 2015; Pomerance, 2019). While legal scholars question the disparity here, there is some evidence to suggest that this decision is influenced both by perceptions about domestic violence cases compared to other violent offenses, and by local court discretion. For instance, a 2021 survey study by Luna and Redlich found that VTC actors (i.e., judges, coordinators, VJOs) were more likely to accept domestic violence cases than involuntary manslaughter into the court program, suggesting that perceptions of what constitutes “violence” and varying interpretations of statutory requirements may influence local level eligibility determinations.

CURRENT STUDY

Overall, there is limited research chronicling the evidence-base for the array of VTC eligibility criteria that have already been documented in prior studies. To date, research enumerating the types of veterans that can be treated safely and effectively or the use of evidence-based assessment instruments and systematic procedures has not been the driving force behind establishing and determining eligibility criteria within VTCs at the legislative level and beyond (Timko et al., 2016). Documenting the variation in eligibility criteria across VTCs and linking them closely to evidence-based assessments and justice frameworks may be a step in the right direction for advancing an effective VTC model. Arno (2015) contends that in order to maximize the potential benefits of VTCs, there must be coordination at the state level and a focus on standardizing the VTC model.

The current study fills an important gap in the literature by providing a comprehensive state statutory review of legislation that enacts VTCs and outlines those statutes’ operational and

²An important distinction within this study is that VTCs reported whether they “considered” violent offenses, which may differ from the courts “accepting” violent offenses on a definitive or case-by-case basis.

eligibility criteria. We review statutory code and records to develop a unique database and analysis of VTC operational and eligibility criteria. It is beyond the scope of this study to review the additional eligibility and operational criteria that exist at state court or local levels; however, where possible, we provide this contextual information to direct readers to additional information and resources.

METHODS

This study involves a nationwide statutory review of legislation that enacts the establishment, and/or enumerates the operational and eligibility criteria, of VTCs. To begin, two research team members carried out web-based searches to identify and obtain existing VTC enacting and eligibility statutes across the United States. We gleaned government websites from each U.S. state, in addition to carrying out more general Internet searches of common legal resources like FindLaw, Justia, and Casetext. To ensure that legislation was most current, we conducted individual searches for each state, rather than extracting from websites with statutory compilations (e.g., Government Publishing Office, n.d.).

Currently, 48 of the 50 U.S. states operate VTCs. In the two states researchers could not identify legislation pertaining to veterans' court services or evidence of the operation of VTCs statewide, Connecticut and Vermont, researchers contacted pertinent court stakeholders for corroboration that no VTCs are presently in operation.³ Of the 48 states with VTCs currently in operation, we identified 34 with statutory backing (see Table 1). In the remaining 14 states, the VTCs are not statutorily endorsed at the state level, but rather are established by the courts and operate under state court rules and local policies and procedures.

To be considered a state with VTC enacting legislation within this study, the statutory language must include explicit language that refers to (1) the establishment, creation, or operation of a veterans or military-specific court or program, including diversion, supervised treatment/probation, or both (n=30), or contain language that allows for (2) the establishment of problem solving, specialty, or treatment courts more broadly, allowing for the creation of veterans courts (n=4) amongst others (e.g., mental health, co-occurring, drug, driving while intoxicated (DWI), etc.). We identified 38 statutes across the 34 states with VTC enacting statutes and created a database containing all relevant sections of the statutory language for subsequent analysis.

We reviewed each enacting statute among the 34 states to determine if they contained language pertinent to VTC operations and eligibility (shown in Table 1). We identified these criteria related to VTC admission embedded within the enacting statutes of 12 states. We also identified 11 states with eligibility statutes that were distinct from the previously identified enacting statutes, of which there were 14 statutes total.⁴ In West Virginia,

³To ensure that our search was thorough and comprehensive, we contacted Vermont's treatment court programs manager and the Attorney General's Office to verify that Vermont does not currently provide diversionary or treatment court services to veterans that are veteran specific. It was relayed that veterans are serviced within the broader mental health, substance use, and DWI court populations. Researchers followed the same process, connecting with a member of the Connecticut Judiciary who confirmed that despite the myriad court services that veterans can access, the state does not provide veterans diversionary or treatment programs that are exclusive to veterans only.

elements of eligibility were embedded in both the enacting statute as well as an entirely distinct statute. We noted that 12 of the 34 states with VTC enacting statutes are void of any eligibility criteria. In other words, in these 12 states, the statutory purview extends only to the establishment of the court but does not speak to the operational or eligibility elements of VTCs. Once we identified the distinct eligibility statutes, we stored the full content of all relevant sections of the statutes for subsequent analysis. In the present study, 22 states and their 26 corresponding VTC eligibility statutes were included in our final analytic sample (see Figure 2) for which the findings are presented below.

ANALYSIS

We used an inductive approach to develop codes that identify and track operational and eligibility criteria emerging across states. Following the first read through, we formulated a list of eligibility codes. Using the list as a guide, we iteratively reviewed the statutes to ensure that all codes were applied where necessary. The research team engaged in numerous debriefing sessions after each iteration of coding to ensure the criteria are categorized consistently and in ways that are true to the legislation's meaning (Morse, 2015). To further organize and track the application of codes, we created a second database, where we further distilled categories by presence (1) or exclusion (0), or absence (unassigned) of an eligibility code. This database provided a numerical tabulation to cross-check the qualitative analysis and ensure statutes were included and categories reflected in all instances.

Terminology

As part of the coding and analysis, we rely on prior scholarship and existing statutory language to define and operationalize the terms and concepts present in the statutes, which are further examined as operational and eligibility criteria.

Enacting statutes—refer to legislation executed in a state that specifically authorizes the creation and operation of VTCs.

Eligibility statutes—refer to the elements within enacting and/or eligibility legislation that provide for the various criteria used to determine who can be admitted to VTCs.

Veterans treatment court—refers to specialty or collaborative courts—or dockets, tracks, or divisions within courts—with treatment programming that specifically services either veterans or military servicemembers who are legal system involved, in lieu of alternative carceral outcomes. Despite having substantively similar core elements, the labels of veterans courts range, including “veterans treatment courts”, “veterans diversionary courts”, “military service members courts”, “veterans dockets”, “veterans track”, and more.

Veteran status—refers to the term “Veteran” being present within the statute while describing the treatment/target population of the court. Examples include, “‘*Veteran*’ [emphasis added] means a person who has served in the military” (Florida Statute §

⁴Eleven states have 14 statutes because three states (Colorado, Indiana, & Massachusetts) have two eligibility statutes each that are distinct from the statutes that enact VTCs in their respective states.

394.47891) or, “A preadmission screening and evaluation assessment shall include all of the following: (1) A determination of the *individual's veteran status* [emphasis added]. A review of the DD Form 214 ‘certificate of release or discharge from active duty’ satisfies the requirement of this subdivision” (Michigan Compiled Laws 236-1961-12 § 600.1203).

Military status—refers to “military service members” being present within the statute while describing the treatment population. One state indicated the following: “A superior or circuit court may establish a veterans track within an existing drug court or mental health court, through which the court monitors veterans and *active duty members of the military* [emphasis added] with mental illnesses, substance abuse issues, or both...” (New Hampshire Revised Statute § 490-I:1).

Armed Forces—refers to the United States Air Force, Army, Coast Guard, Marine Corps, Navy, and Space Force.

National Guard—refers to state-based military personnel that become part of the reserve components of the United States Army and the United States Air Force when activated for federal missions. Members of the Guard can serve dual missions, state and federal, and can be called into full-time service to support Army combat missions (U.S. Department of Veterans Affairs, 2015).

The Reserve—refers to military personnel of the United States Air Force, Army, Coast Guard, Marine Corps, Navy, or Space Force that do not have a state mission and cannot be called to respond to state-based emergencies like floods and hurricanes. Akin members of the Guard, the Reserves can be called on full-time into combat situations (U.S. Department of Veterans Affairs, 2015).

Pretrial diversion—concerns the decision of a prosecutor or other authorized party of the court to refer a defendant to a diversion program in lieu of prosecution (usually occurring in the pre-charge disposition stage of the criminal legal system) on the condition that the case shall not be charged at all *or* if charged, that the criminal charges against the defendant shall be either dismissed after a specified period of time, so long as the defendant successfully completes the program.

Post-plea probation—indicates that participants are actively enrolled in veterans’ treatment programming and are supervised in the community following a plea (i.e., post-adjudication) and usually in lieu of imprisonment. In some cases where court participants are being supervised in the community, a sentence is imposed following a guilty plea to later be dismissed upon successful completion of the VTC (i.e., deferred sentence). Although diverted from incarceration, some court participants on probation who successfully complete the program may be ineligible for expungement of their record.

Mental health diagnosis—is conceptualized as encompassing any clinically diagnosed mental health condition or diagnosis directly affecting one’s mental state and mental health, including (but not limited to) post-traumatic stress disorder, SUDs (e.g., opioid use disorder, alcohol use disorder), military sexual trauma, and traumatic brain injury.

Nexus—refers to determining whether an explicit connection can be made between the criminal charge and underlying mental health concerns that are either a direct consequence of, or stemming from, the defendant's time in the military.

FINDINGS

Our analysis of the statutory language across the states with VTCs in operation revealed considerable variation and nuance but coalesced into several unifying themes. The funnel displayed in Figure 3 illustrates that approximately 71% (34/48) of states with VTCs are statutorily enacted, while the remaining 29% (14/48) operate entirely outside of state statutory purview. Less than half (22/48) of the states with VTCs outline operational and eligibility criteria in statute.

Of the 34 states with VTC enacting statutes, almost two-thirds (65%, $n = 22/34$) also have operational and eligibility criteria outlined, while the remaining 12 states' legislation surrounding VTCs is limited to enactment only (i.e., these states do not outline these criteria in statute). Among the states with any mention of VTC operational elements or eligibility in statute ($n=22$), half ($n = 11$) include eligibility criteria within existing VTC enacting statutes, 10 states have eligibility criteria that are housed in distinct eligibility statutes, and one state – West Virginia – has eligibility both embedded in its enacting statute and contained within a separate eligibility statute (see Figure 4).

Key operational & eligibility criteria

Although only 22 states possess VTC eligibility requirements within statute, there are seven states from the group with enacting statutes only (AZ, KS, ME, NH, PA, RI, VA) where the statutory language only briefly speaks to a few surface-level operational and eligibility criteria, such as veteran or active duty status.⁵ To include these cases in our review of any operational or eligibility criteria, albeit surface-level only, the sample size of Table 2 was expanded to the original sample size of enacting statutes ($N=34$). Table 2 displays three surface-level operational and eligibility criteria to begin our analysis: (1) whether the establishment of eligibility criteria and court provisions are explicitly deferred to, or shared with, the courts, (2) whether veterans, active service members, or both are eligible for entry into VTCs, and (3) the specific military branches that are eligible for VTC admission by state. Of the states ($n=12$) with enacting statutes only, five states (AZ, KZ, ME, PA, VA) made explicit mention of deferment of operational and eligibility standards to the court, while four states (AZ, ME, NH, RI) also referred to the veteran/military status of prospective court participants within their enacting statutes.⁶

Deferred or shared eligibility authority—Of the 34 states with enacting statutes, 15 states explicitly defer or share eligibility-creating authority to/with the courts, of which 10

⁵The research team agreed that these 7 states should not be included in the final analytic sample because they only speak to military status and/or whether eligibility criteria should be shared with the legislature or deferred to the courts. These eligibility criteria are surface-level and do not highlight the core components (e.g., mental health diagnosis, offense type, etc.), and therefore, the corresponding states were excluded from further analysis.

⁶Note that these states did NOT outline any eligibility criteria beyond authority of eligibility creation and military status/branch, hence why they were excluded from the final analytic sample displayed in Tables 3 and 4.

share authority with the legislative body. For example, despite that Colorado has operational and eligibility criteria outlined in statute, in Colorado Revised Statute § 13-5-144, it is stated that, “In establishing any such program [for the treatment of veterans and military service members], the chief judge, in collaboration with the probation department, the district attorney, and the state public defender, shall establish program guidelines and eligibility criteria.” Similarly, Georgia’s statute provides eligibility and exclusion criteria related to the types of pleas and offenses accepted into the court, but also denotes the following:

Each veterans court division shall establish a planning group to develop a written work plan. The planning group shall include judges, prosecuting attorneys, sheriffs or their designees, public defenders, community supervision officers, and persons having expertise in services available to veterans. The work plan shall include eligibility criteria for the veterans court division.

(Georgia Code § 15-1-17b).

Within a handful of enacting statutes (AZ, KS, ME, PA, VA), the establishment of eligibility criteria is deferred entirely to the courts. For example, in Arizona, regardless of the specialty court, eligibility criteria are dictated by the superior court judge (and not based in state legislation): “The presiding judge of the superior court shall establish the eligibility criteria for referral to the homeless court, veterans court, or mental health court” (Arizona Revised Statute § 22-601).

Veteran & military status—Twenty-one states with enacting statutes, eligibility statutes, or both explicitly indicate the populations—veterans and/or active-duty military members—that their VTCs serve. The majority of states with VTC eligibility outlined in statute extend VTC services to both veterans and current members of the military (n = 16), while five states appear to restrict services to individuals of veterans-status only. In a handful of cases (e.g., WI, WV) where enacting statutes have broader reach (i.e., statutes that enact problem-solving courts, which can include drug courts, mental health courts, veterans courts and more), the statutory language includes more generic populations like “court participants” or “defendants” as opposed to referring explicitly to “veterans” or “service members.”

Military branch—Of states that denoted “veteran” or “active members of the military” within statute (n=21), most (n=15) specify at least one particular branch of military service that is eligible for admission (i.e., Armed Forces, National Guard). Six states specify veteran and or service member status without elaborating further on the types of military service required for admission (CA, IN, MI, MN, NH, NJ), allowing for increased flexibility in the interpretation of military service type. Of the 34 states with VTC enacting and/or eligibility statutes, 13 states do not make any mention of veteran or military status. However, seven of these 13 states (AZ, PA, UT, VA, WA, WI, WY) do not specify this status because they do *not* have eligibility criteria written into statute. Rather, the VTCs within these states are limited statutorily to VTC enactment. Unsurprisingly, the branch most widely and explicitly specified in statute as being eligible for VTC admission is the U.S. Armed Forces (n=15). Following closely behind is the National Guard (n=11), and the least explicitly denoted branch is the Reserves (n=5). Only one-third of VTCs that specify service in the Armed Forces (n=15) as eligible for admission into VTCs also specify accepting members of the

National Guard (n=5). It is important to note that the lack of any specification of military branch, or only specifying one branch and not the others, does not necessarily insinuate exclusion from the court, but rather, may be an indication of more leeway and flexibility in interpreting the code.

An in-depth examination of VTC operational & eligibility criteria

Our analysis of the final analytic sample of states (n=22) reveals a variety of domains reflecting both the common and sparing operational and eligibility/exclusion criteria used by VTCs nationwide. These domains include: (1) program type, (2) mental health diagnosis and the nexus, (3) agreement to participate, (4) amenability to treatment, (4) criminal history, (5) military discharge status, and (6) offense severity and type. Throughout our presentation of the findings, we provide example statutory language to illustrate the convergence and divergence of criteria across VTCs and uncover some of the nuances appearing within and across these statutes. We also display the findings across three tables: Table 3 includes adjudication-specific information and basic criteria about court participant characteristics, Table 4 homes in on the types of mental health conditions and related issues initially noted in Table 3 (e.g., PTSD), and Table 5 consists of criteria focused on criminal history, discharge status, and offense severity and type.⁷

Program type: Pretrial diversion and post-plea probation—According to statute, participants may gain access to veterans court programming via different pathways, the two most common being pretrial diversion or post-plea probation. The most common path of entrée into VTCs is following a guilty plea (n=14/22). Five states in our analytic sample operate VTCs with post-plea options only (CO, FL, HI, LA, WY). Ten states statutorily enact participants to receive pretrial diversion services (pre-plea), which typically includes sentence deferment so long as participants are enrolled in treatment and successfully complete the program (see Table 3). In seven states with VTC eligibility statutes, it is unclear by viewing only statute whether the courts accept participants on a pre or post plea basis, or both.

Nine states statutorily allow for both pre-trial diversion and probation. A few states offer both pretrial and probation options to veterans in two distinct courts, including California, Florida, and Minnesota, each enacted by separate statutory codes. For example, in California, depending on the criminal charge and criminal history, veterans and military service members may have the option to enter a military diversion court pre-plea (California Penal Code §1001.80), or veterans treatment court post-plea (California Penal Code § 1170.9). Minnesota has similar statutory guidance:

Optional veterans treatment court program; procedures for eligible defendants.

A county or judicial district may supervise probation under this section through a veterans treatment court...

(Minnesota Statutes 609.1056 § 5).

Creation of county and city diversion programs; authorization.

⁷More detailed information on eligibility for admittance into VTCs can be found in the notes of Table 5.

Any county or city may establish and operate a veterans pretrial diversion program for defendants eligible under subdivision 1 without penalty under section 477A.0175. "Pretrial diversion" means the decision of a prosecutor to refer a defendant to a diversion program on the condition that the criminal charges against the defendant shall be dismissed after a specified period of time or the case shall not be charged, if the defendant successfully completes the program of treatment...

(Minnesota Statutes 609.1056 § 6).

Most states that offer pre-plea and post-plea options include multiple paths or tracks within the same court that originate from one statutory code for which veterans or service members can participate in VTC programming, exemplified by the following code:

(3) In any criminal case in which a defendant is a veteran and the defendant meets the eligibility criteria for the veterans court division, the court may refer the case to the veterans court division: *A. Prior to the entry of the sentence, if the prosecuting attorney consents; B. As part of a sentence in a case; or C. Upon consideration of a petition to revoke probation* [emphasis added]

(Georgia Code § 15-1-17b).

Texas also operates multiple tracks for veterans and servicemembers enacted by one statute and held within the same VTC program:

A defendant is eligible to participate in a veterans treatment court program established under this chapter only if [...] *the court in which the criminal case is pending or in which the defendant was convicted or placed on deferred adjudication community supervision* [emphasis added]...

(Texas Government Code § 124.0020).

Mental health diagnosis & the nexus—The modal eligibility criterion of the analytic sample is establishing the presence one or more mental health condition(s) (68%, n=15/22). Nine of these statutes allude to the necessity of a nexus between military experience and the criminal charge, often linked to or driven by existing mental disorders. The degree of specificity surrounding the existence or type of mental health condition that must be present for VTC eligibility varies widely across states. In some states (CA, FL, HI, MN, MS, NV, TX), in addition to using encompassing language like “mental illness”, their statutory language also explicitly specifies a list of mental health diagnoses (see Table 4 for more detail) that satisfy this eligibility criterion and often make mention of a nexus. Example language includes:

...to which [the court] may assign a defendant [...] if the defendant is a veteran or member of the military and: *Is diagnosed [...] as suffering from: (1) Mental illness, alcohol or other substance use disorder, posttraumatic stress disorder or a traumatic brain injury* [emphasis added], any of which appear to be related to military service [...] (2) *Military sexual trauma* [emphasis added]...

(Nevada Revised Statute § 176A.280).

Conversely, the statutory language for the mental health eligibility criterion in a few states (AR, CO, MA) lack the degree of specificity manifested in other states, also insinuating the potential for a wider range of acceptable conditions for VTC entrée. For example, in Colorado, a participant may qualify for VTC program admission, “if the defendant [...] *is suffering from a diagnosable mental health condition* [emphasis added] that is related to the veteran's military service...” (Colorado Revised Statute § 18-1.3-202.5). Massachusetts’s statute is similarly vague and does not require a nexus determination: “...has demonstrated *symptomatology suggestive of a mental illness* [emphasis added]...” (Massachusetts General Law Part IV, Title II, Chapter 276A § 10-11).

Seven of the 22 states with VTC eligibility criteria do not explicitly specify that prospective participants require a mental health diagnosis for entry. However, the absence of specification does not by default imply that mental health issues need not be present. Six out of 7 of the states without the existence of an explicit mental health eligibility criterion in statute also defer eligibility determinations, in full or in part, to the court (GA, IL, UT, WA, WV, WY). Therefore, the lack of specification in statute could very well be created by the court and present in state and local court rules.

Amenability to treatment—Although infrequently outlined across eligibility statutes, a minority of states include language surrounding the idea of amenability or willingness to treatment and change by participants. Two statutes (IL, MS) briefly outline this criterion as an exclusion criterion, wherein the collaborative court may exclude prospective participants if, “The defendant *does not* [emphasis added] demonstrate a willingness to participate in a treatment program” (730 Illinois Compiled Statutes 167/20; Mississippi Code § 9-25-1). Whereas, in New Jersey’s statute, “amenability [...] to participation in the services of the program” is to be considered by the collaborative court in conjunction with other eligibility criteria while making VTC admission determinations (New Jersey Revised Statute § 2C:43-26).

There is considerable variation and nuance in the statutory code surrounding who determines amenability to treatment and change, even of the small number of states (IL, MI, NJ) that make explicit mention of it in their code. Illinois and Mississippi rely on “the court” to make the determination of amenability to treatment/change while also simultaneously considering other legal and extralegal factors (e.g., military discharge status, offense type, etc.), stating that “A defendant may be admitted into a veterans and servicemembers court program only upon the consent of the defendant and *with the approval of the court* [emphasis added]...” (730 Illinois Compiled Statutes 167/20) and “*The court having jurisdiction over a person for a matter before the court shall have the final determination* [emphasis added] about whether the person may participate in the Veterans Treatment Court program” (Mississippi Code § 9-25-1). In Illinois, while the court is deemed responsible for making admission decisions, if the defendant is charged with a Class 2 (or greater) felony, then, “...the defendant may be admitted into a veterans and servicemembers court program only *upon the agreement of the prosecutor...*” (730 Illinois Compiled Statutes 167/20).

As is demonstrated by Illinois’s statute (above), the “collaborative process” that VTCs are built on appears to have limits (i.e., Class 2 felonies and above). Based on statute and

overlooking the collaborative decision-making process entirely, VTCs in New Jersey are required to operate and determine amenability in addition to other important eligibility considerations under prosecutorial discretion:

...the prosecutor shall have the sole discretion to determine if an eligible service member qualifies for and is admitted to the Veterans Diversion Program [emphasis added] pursuant to P.L.2017, c.42 (C.2C:43-23 et al.) after consideration of [...] the amenability of the servicemember to participation in the services of the program [...]

(New Jersey Revised Statute § 2C:43-26).

Criminal history—A third of the sample (n=7/22) excludes prospective participants with a criminal history from participation in VTCs. Nearly all statutes that exclude participants based on criminal history include a certain profile of felony offenses, most often including serious violent offenses (e.g., homicide, sexual offenses, assaults that result in serious bodily harm, armed robbery, intentional discharging of a weapon) (see footnotes in Table 5 for more detail). The statutes of a few states (i.e., HI, IL) factor in the length of time since the participant's last conviction (if any). For example, participants in Illinois VTCs may be eligible for participation if the crime they were charged with is non-violent and their most recent prior conviction occurred 5+ years ago:

A defendant *shall be excluded* from Veterans and Servicemembers Court program if any of one of the following applies: (1) *The crime is a crime of violence [...]* (3) *The defendant has been convicted of a crime of violence within the past 5 years [emphasis added]* excluding incarceration time, parole, and periods of mandatory supervised release

(730 Illinois Compiled Statutes 167/20).

Military discharge status—Only six states' statutes mention military discharge status of any kind as a consideration for VTC admission, of which three explicitly exclude those who have been dishonorably discharged from the military.⁸ Of the remaining three, two states' statutes (FL, MI) defer to the court's discretion in determining eligibility based on discharge status, while the remaining state statute (HI) definitionally includes only veterans who have been discharged honorably, which implies – albeit not explicitly stated as an exclusion criterion – that any discharge status besides honorable is excluded. Overall, only one-fourth, or 27.3%, of states (n=6/22) with eligibility outlined in statute are statutorily bound to considering military discharge status at all when determining VTC eligibility. This implies that courts, and not solely the legislative bodies, play a large role (i.e., court discretion) in determining eligibility of prospective participants based on military discharge status.

Offense severity & type—Of the states with operational or eligibility requirements outlined in statute, it is more common for these statutes to *not* specify the severity of eligible offenses—misdemeanor versus felonies. In almost every statute that explicitly noted

⁸In West Virginia, despite that dishonorably discharged veterans are statutorily barred from entering VTCs, statute explicitly indicates that other-than-honorable (OTH) cases are eligible for court admittance.

the severity of the offense committed, it also allows for admission of both misdemeanor and felony offenses (n=7), although researchers observed notable restriction on the types of felonies allowed into the courts (see Table 5) (often excluding sexually violent crimes, homicide, child abuse, DWIs resulting in death, and more).⁹ In states that indicate specific crime types (n=11/22) – broadly categorized in Table 5 as violent and non-violent – it is most common for non-violent crimes to be eligible for VTC admission, whereas the inverse is much less common (n=2/22). It is common practice for statutes to list offenses that are *ineligible* for entrée into VTCs, rather than indicating the types of offenses that are admissible, especially among felony offense types. Eleven out of 22 states (50%) statutorily specify that *violence* is a key contingency for court exclusion. The most common offenses, most of which are felonies and have a component of violence, statutorily excluded from VTCs include: homicide, aggravated assault, armed robbery, sex crimes and stalking, child abuse and neglect, and DWIs that result in severe bodily harm or death (see footnotes in Table 5 for more detail).

DISCUSSION

This is the first study, to our knowledge, that reviews and descriptively analyzes existing VTC enacting, operational and eligibility statutes across the United States. Understanding the legal landscape of legislation surrounding VTCs brings us closer to developing equitable and evidence-based standards for inclusion in this type of treatment court. Our review of statutes across the country identified the prevailing eligibility criteria for entry into these courts, yet also revealed the substantive gaps in consistency and uniformity that would be necessary for an evidence-based intervention.

First, we found that approximately 70% of states where VTCs are currently in operation are statutorily enacted at the state level, yet less than half have any eligibility criteria for VTC admission outlined in statute. A major implication of this finding is the paramount role of the court in determining eligibility for participant admission into VTC programming. More than half the states with operating VTCs rely entirely on the court for eligibility authority (i.e., no statutory oversight is currently in place), and even the states with eligibility statutes stipulated are still relying in part on the court's discretion. This highlights the importance placed on judicial and prosecutorial discretion in VTC operations. While some scholars have identified judicial discretion as a central tenet of this court model (Hawkins, 2010; Russell, 2009), other scholars suggest that it not only creates a tension between courts' discretion and legislatures' attempt at homogenizing VTC standards and procedures (Edwards, Hinojosa, & Hassan, 2019; Pomerance, 2018), but it also enables a situation ripe for disparate use of eligibility criteria and due process, as well as unequal treatment claims (Jones, 2013; Pomerance, 2019; Rowen, 2020). Essentially, the absence of statutory uniformity and clarity may mean that a "privileged class" of defendants are created within the court system (Jones, 2013) and within the VTC itself (Pomerance, 2019). As a result of these disparities, some scholars suggest the risk for violating the 14th amendment increases, where some veterans get access to treatment and others do not (Pomerance, 2019).

⁹It is important to note that simply because a statute does NOT explicitly indicate a certain crime severity as eligible for admission, does not automatically indicate exclusion. These criteria are not mutually exclusive.

Considering the variation in statutorily based operational and eligibility criteria across states with legislation in place demonstrates the importance of two overarching themes: (1) the types of criteria most commonly appearing across state statutes often reflects those program components deemed as most pivotal to the VTC model and (2) how eligibility criteria might exclude certain types of veterans. In reference to the former, legislating the presence of a mental health diagnosis for admittance situates VTCs firmly within the treatment court model and therapeutic jurisprudence framework (Winick, 2002). This key eligibility criterion ensures that service member and veteran populations who have made contact with the criminal-legal system are provided with access to a continuum of alcohol use, substance use, and other related treatment services (NADCP, 2018).

Designating the crime profiles also presents a boundary of offense types and histories that the court feels capable of serving or for which the individual is deemed deserving of the court's benefit. However, the dynamic between prospective court participants' needs and the crimes they have committed may in certain circumstances be conflicting, causing a misalignment of treatment and legal goals. Our findings reveal that these circumstances vary widely by state, such that state legislation stipulates an often lengthy, albeit variable, list of criminal offense types (most commonly of a violent nature) that exclude veterans from VTCs. Extant literature also notes a junction of state legislation and prosecutorial discretion, specifically by district attorneys where they played a crucial role in determining eligible offenses, even in cases where legislation and state / local court rules already exclude certain offenses (Holbrook & Anderson, 2011). Restrictions on certain offense types outlined in statute may be misaligned with the therapeutic model of the court. In other words, the type and severity of offenses committed by prospective VTC participants may exclude them from program admission, despite the clinical and social needs they pose following assessment (Baldwin et al., 2016). Further yet, we found that the "nexus" is statutorily required among nearly two-thirds of states with a mental health condition listed as an eligibility criterion for consideration for VTC admission. The requirement of a "nexus" between criminal behavior and a mental health condition linked to military service, and in some cases a specific link to combat experiences, implies that a member or members of the VTC staff are responsible for making these arguably subjective determinations, which could result in disparate determinations and inequity.

To the contrary, scholars have also documented the importance of operational and eligibility diversification across VTCs outside of legislative and executive forces, as it allows for VTC teams the discretion to define eligibility based on the individualized treatment needs of court participants, and considering the variety of pertinent extralegal factors to those specific courts, including the availability of resources to respond to court participants' psychosocial needs (Douds & Ahlin, 2019; Pomerance, 2018). In other words, restricting eligibility to certain veterans and service members may be a consequence of factors beyond the individual, such as resource restrictions (e.g., see Byrne, 2020). These distinctions may be especially important if courts, for example, cannot provide the range of local services necessary to serve certain subpopulations of legal system-involved veterans (e.g., veterans and service members who are ineligible for VA services).

Reviewing state statutes also reveals what eligibility criteria are *not* established or enumerated in legislation. For example, very few state statutes refer to inclusion/exclusion based on military discharge status (and relatedly VA service eligibility) or risk/need profiles. First, our findings show that three states expressly deny entry into the VTC if someone has been dishonorably discharged from the military. Discharge status emerges as an especially important consideration because it is directly related to a veteran's eligibility for VA services and therefore also related to VTC admission (Baldwin et al., 2016). In some locales, VTCs will identify and admit only those veterans who are able to receive VA services, in part to help with gaps that exist in community-based services. Future research should consider the ways in which discharge status affects the inclusion of veterans in VTCs at the local court level and the provision of treatment and other benefits by the VA.

Second, evidence-based principles of correctional intervention guide agencies to rely on risk and need assessment information to determine if the program is appropriate (Bonta & Andrews, 2007). However, only one state in our review, Oregon, which is limited to state legislation that enacts VTCs, stated that "When appropriate, target medium-risk and high-risk offenders" (Oregon Revised Statute § 137.680). This is not to suggest that such a criterion should exist in legislation, rather it speaks to the unknown variation across VTCs related to inclusion as it pertains to the evidence-based consideration of risk and need. As federal legislation and funding agencies seek to support the implementation of evidence-based practices, criteria on risk and need and how these risks and needs are met will be important to establish in this body of research.

While our study brings forth a systematic review of the current legislative landscape of VTCs in the United States, it is not without limitations. First, our review being focused solely on state level statutes does not account for the impact of other important influences, such as policy and procedure that exists at the local level. This is confirmed by our finding that in at least 15 of the 34 states with VTC enacting statutes, there exists explicit language that either defers to or shares the creation of eligibility authority with the court. Furthermore, this study does not explore the dynamic between what is written in statute and how courts establish and determine eligibility in practice, shedding light on the misalignment that may exist between "law on the books" and "law in action" (Douds & Shultz, 2021). This is an important consideration such that VTC eligibility outlined in statute may look very different from the decision-making surrounding eligibility determinations that is carried out by VTC team members, especially alongside varying court-established policies and procedures. Expanding on the research of Baldwin and Hartley (2022), examining the inner workings of VTCs at the local and/or state level may help illuminate where there is convergence with and divergence from current best practices.

This study provides a comprehensive review of the state legislation shaping the establishment, operation, and eligibility of VTCs nationwide. By viewing what is (and is not) enumerated in statute, we are able to offer keen insights into the priorities of legislatures and the many and varied ways in which VTC operations are imparted by local courts and other influences at all levels of the government (see Figure 1). It is essential then to consider the role of state legislatures, among other important influences, when understanding what the best practices for VTCs are and if, and how, they are adopting and implementing them.

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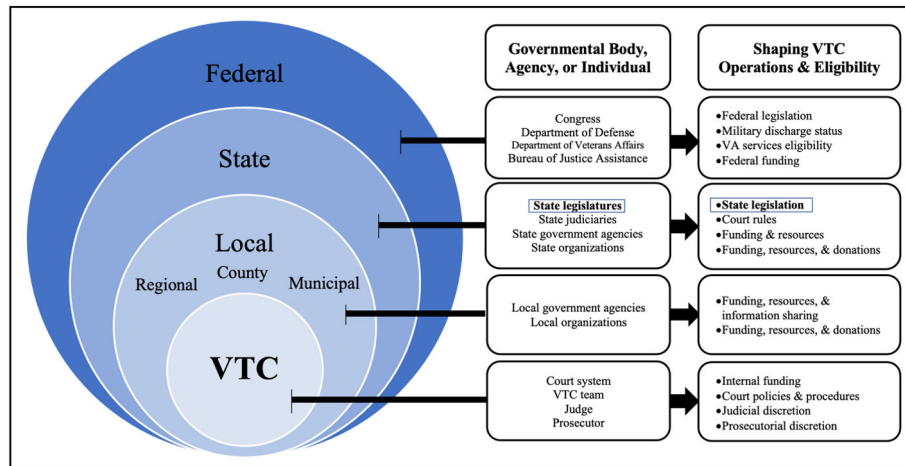


Figure 1. “The powers at play”: Shaping VTC operations and eligibility

Note: Figure 1 visually depicts the various governmental bodies, agencies, and individuals at federal, state, and local levels that all contribute to shaping the operations and eligibility of VTCs nationwide. The current study is situated at the state level (boxed in above), focusing on the influence of state legislation on the enactment, operation, and eligibility of VTCs.

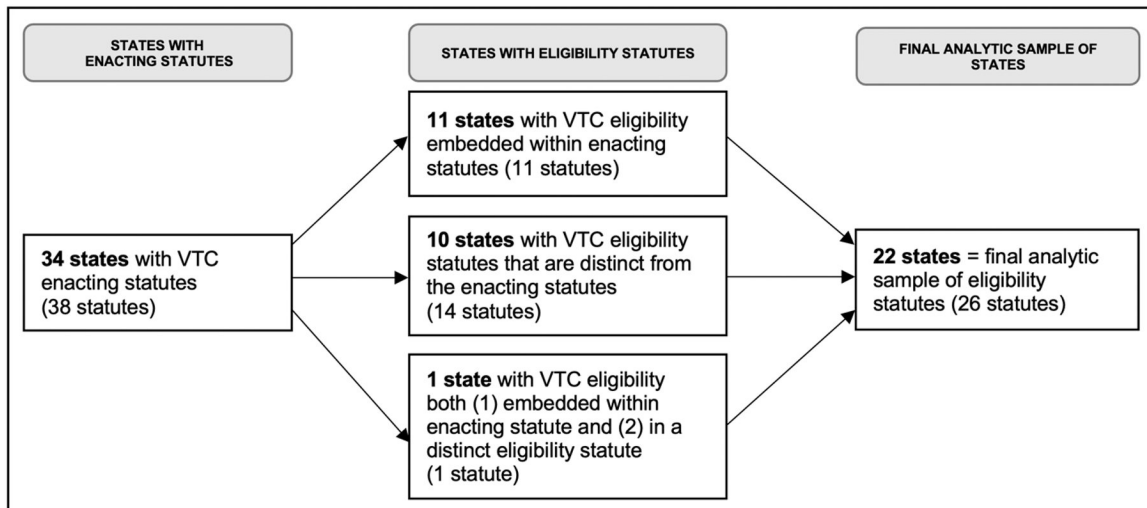


Figure 2. Final analytic sample: Identifying states with VTC statutes that outline operational and eligibility criteria (n=22)

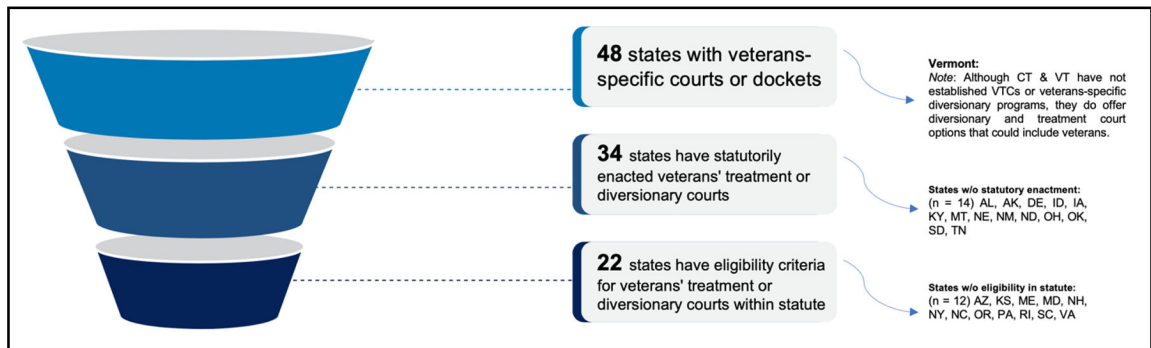


Figure 3. States with VTCs: Statutory enactment and eligibility

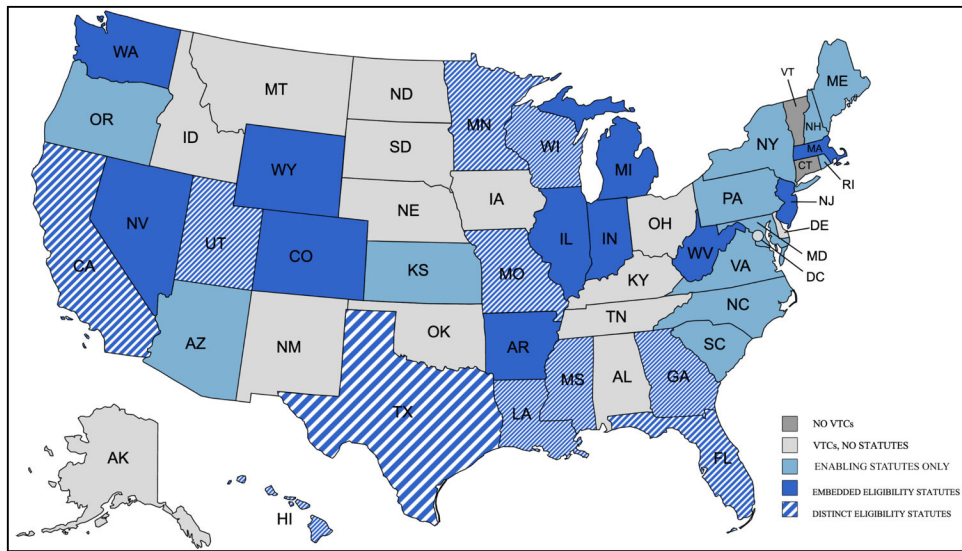


Figure 4. Mapping the VTC legal landscape across the United States

TABLE 1

VTC enacting, operational, & eligibility statutes by state (N = 34)

State (N = 34)	Enacting Legislation (n = 38)	Operational & Eligibility Legislation (n = 26)
Arizona	22-601	–
Arkansas	16-10-139	16-101-103
California	(1) 1170.9; (2) 1001.80	”
Colorado	13-5-144	(1) 16-7-207.5; (2) 18-1.3-202.5
Florida	(1) 394.47891; (2) 948.08	”
Georgia	15-1-17	”
Hawaii *	(1) SB314; (2) 706-605.1	”
Illinois	730-167/ 5 & 15	730-167/20
Indiana	33-23-16-10	(1) 33-23-16-12; (2) 33-23-16-13
Kansas	Unnamed	–
Louisiana	13-5366	”
Maine	4-8B-433	–
Maryland	16-207	–
Massachusetts	Acts (2014) 62-33	(1) 276A-10; (2) 276A-11
Michigan	236 of 1961-12-600.1201	236-1961-12-600.1203
Minnesota	609.1056-1-6	”
Mississippi	9-25-1	”
Missouri	478.008	”
Nevada	176A.280	176A.290
New Hampshire	490-I:1	–
New Jersey	2C:43-24	2C:43-26
New York	Senate Bill S1957A	–
North Carolina	7A-791	–
Oregon	137.680	–
Pennsylvania	42 § 916	–
Rhode Island	8-8-1.1	–
South Carolina	14-29-30	–
Texas	124.002	”
Utah	78A-5-303	”
Virginia	18.2-254.2	–
Washington	2.30.010 (3)	2.30.030 (2-3)
West Virginia	(1) 62-16-2 ; (2) 62-16-4	62-16-5 ” (62-16-4) [^]
Wisconsin	165.95	”
Wyoming	7-13-1606	7-13-1607
State Total	34	22

Notes. ” indicates that the state’s enabling and eligibility statutes are one in the same

– indicates that the state has no existing statute that speaks to VTC eligibility

* Sunset law that was repealed on June 30, 2022.

^ One of West Virginia's enacting statutes (62-16-4) contains eligibility criteria within, in addition to an entirely separate statute (62-16-5), which speaks solely to VTC eligibility criteria.

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TABLE 2

Authority of eligibility criteria formulation & military status by state (N= 34)

State	Defers to or Shares Eligibility with Court	“Veteran” in Statute	“Active Duty” in Statute	U.S. Armed Forces	National Guard	The Reserve	Branch Unspecified in Statute
AZ	x	–	–	–	–	–	x
AR	–	x	x	x	x	–	–
CA	–	x	x	–	–	–	x
CO	x	x	x	x	–	–	–
FL	–	x	x	x	x	–	–
GA	x	x	–	x	x	–	–
HI	–	x	–	x	x	–	–
IL	x	x	x	x	x	x	–
IN	x	x	–	–	–	–	x
KS	x	–	–	–	–	–	–
LA	–	x	x	x	x	–	–
ME	x	x	x	x	–	–	–
MD	–	–	–	–	–	–	–
MA	–	x	x	x	–	–	–
MI	–	x	–	–	–	–	x
MN	–	x	x	–	–	–	x
MS	–	x	–	x	–	–	–
MO	x	x	x	x	x	x	–
NV	–	x	x	x	x	x	–
NH	–	x	x	–	–	–	x
NJ	–	x	x	–	–	–	x
NY	–	–	–	–	–	–	–
NC	–	–	–	–	–	–	–
OR	–	–	–	–	–	–	–
PA	x	–	–	–	–	–	x
RI	–	x	x	x	x	x	–
SC	–	–	–	–	–	–	–
TX	–	x	x	x	x	x	–
UT	x	–	–	–	–	–	x
VA	x	–	–	–	–	–	x
WA	x	–	–	–	–	–	x
WV	x	x	x	x	x	x	–
WI	x	–	–	–	–	–	x
WY	x	–	–	–	–	–	x
Total	15	21	16	15	11	6	13

Notes. This table includes an 'x' only if an eligibility criterion or exclusionary criterion is explicitly stated in statute as applying to prospective participants of VTCs. In other words, the absence of an x does not automatically imply that those criteria aren't applicable to those states, but rather, that they aren't explicitly stated in statute. These criteria may still apply to VTCs but are not written in state legislation. – Indicates that an eligibility or exclusionary criterion is not explicitly enumerated in statute. Bolded x's indicate that eligibility criteria formulation is deferred solely to the courts. Therefore, eligibility criteria are not outlined in state statute.

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TABLE 3

Key VTC operational & eligibility criteria by states with statutorily outlined eligibility criteria (N=22)

State	Pre-Trial Diversion	Post-Plea Probation	Mental Health Diagnosis ^	Nexus	Agree to Participate	Does NOT Demonstrate Amenability to Tx
AR	–	–	x	–	x	–
CA	x	x	x	x	x	–
CO	–	x	x	x	–	–
FL	–	x	x	x	–	–
GA	x	x	–	–	–	–
HI	–	x	x	x	–	–
IL	–	–	–	–	x	x
IN	x	x	x	–	–	–
LA	–	x	–	–	x	–
MA	x	x	x	–	–	–
MI	–	–	x	–	x	–
MN	x	x	x	x	–	–
MS	–	–	x	–	x	x
MO	–	–	x	–	–	–
NV	–	–	x	x	–	–
NJ	x	–	x	x	–	x*
TX	x	x	x	x	x	–
UT	x	x	–	–	–	–
WA	–	–	–	–	–	–
WV	x	x	–	x	–	–
WI	x	x	x	–	–	–
WY	–	x	–	–	x	–
Total	10	14	15	9	8	3

Notes. This table includes an 'x' only if an eligibility criterion or exclusionary criterion is explicitly stated in statute as applying to prospective participants of VTCs. In other words, the absence of an x does not automatically imply that those criteria aren't applicable to those states, but rather, that they aren't explicitly stated in statute. These criteria may still apply to VTCs but are not written in state legislation. – Indicates that an eligibility or exclusionary criterion is not explicitly enumerated in statute. ^ Includes substance use disorders, traumatic brain injuries, post-traumatic stress disorder, military sexual trauma, and other diagnoses. *In NJ, the prosecutor considers whether the servicemember/veteran IS amenable to change / treatment, unlike IL and MS whereby an exclusion criterion is a *lack of* perceived amenability to change. 'Tx' denotes "treatment".

Table 4.

VTC eligible mental health-related conditions & considerations by state (n=15)

State	Mental Health “Disorder, Problem or Condition”	Substance Use Disorder	Post-Traumatic Stress Disorder	Traumatic Brain Injury	Military Sexual Trauma	Co-occurring substance use and mental health disorders
AR	x	x	–	–	–	–
CA	x	x	x	x	x	–
CO	x	–	–	–		–
FL	x	x	–	x	x	–
HI	x*	–	–	–	–	–
IN	x	–	–	–	–	–
MA	x	–	–	–	–	–
MI	x	x	–	–	–	–
MN	x	x	x	x	x	–
MS	x	x	x	x	x	x
MO	x	x	–	–	–	–
NV	x	x	x	x	x	–
NJ	x	–	–	–	–	–
TX	x	–	x	x	x	–
WI	x	x	–	–	–	–
Total	15	9	5	6	6	1

Notes. This table includes an ‘x’ only if an eligibility criterion or exclusionary criterion is explicitly stated in statute as applying to prospective participants of VTCs. In other words, the absence of an x does not automatically imply that those criteria aren’t applicable to those states, but rather, that they aren’t explicitly stated in statute. These criteria may still apply to VTCs but are not written in state legislation. – Indicates that an eligibility or exclusionary criterion is not explicitly enumerated in statute. *Requires that the mental health condition must be combat-related.

TABLE 5

Key VTC eligibility & exclusion criteria by states with statutorily outlined eligibility criteria (N=22)

State	Excludes Having a Criminal History	Excludes Dishonorable Discharge	Felonies Eligible	Misdemeanors Eligible	Violent Offenses Eligible	Non-Violent Offenses Eligible	Excludes Prior Felonies
AR	-	-	-	-	-	-	-
CA	-	-	-	-	-	-	-
CO	-	-	-	-	-	-	-
FL	-	x^g	x	x	-	-	-
GA	-	-	-	-	-	x^o	-
HI	x^a	x^h	-	x	-	x^p	x^p
IL	x	-	x	x	-	x^q	x
IN	-	-	x	x	-	-	-
LA	x^b	-	x^k	x	x^k	x^k	x^k
MA	-	-	-	-	-	-	-
MI	-	x^i	-	-	x^n	x^r	-
MN	-	-	x^l	x	x	x^l	-
MS	x^c	x	x	-	-	x^s	x^s
MO	-	-	-	-	-	-	-
NV	-	x	x^m	x	-	-	-
NJ	x^d	-	-	-	-	x^r	x
TX	-	-	x	x	-	-	-
UT	-	-	-	-	-	-	-
WA	x^e	-	-	-	-	x^r, t	x^t
WV	x^f	x^j	-	-	-	x^r, u	x^r
WI	-	-	-	-	-	x^r	-
WY	-	-	-	-	-	-	-
Total	7	6	8	8	2	11	7

Notes. This table includes an 'x' only if an eligibility criterion or exclusionary criterion is explicitly stated in statute as applying to prospective participants of VTCs. In other words, the absence of an x does not automatically imply that those criteria aren't applicable to those states, but rather, that they aren't explicitly stated in statute. These criteria may still apply to VTCs but are not written in state legislation. - Indicates that an eligibility or exclusionary criterion is not explicitly enumerated in statute.

^aHI: kidnapping, 1st degree robbery, sex trafficking; In terms of criminal history, veterans in HI become ineligible for VTC admittance if they have been convicted of a crime involving serious bodily injury or substantial bodily injury within the past 5 years.

^bLA excludes potential VTC candidates for prior felonies only in cases of homicide and sexual offenses, or cases in which DWI resulted in the death of a person. Veterans charged with DV-related crimes are considered; however, they are required to enroll in a domestic abuse intervention program and surrender their rights to possess a firearm while under supervision.

^cPrevious convictions for the following non-exhaustive list of violent felonies in MS are statutorily excluded from admission into VTCs: murder, rape, sexual battery, statutory rape of a child under the age of sixteen, armed robbery, arson, aggravated kidnapping, aggravated assault, stalking, or any offense involving the discharge of a firearm or where serious bodily injury or death resulted to any person.

d. In NJ, the following previous convictions excludes prospective participants from admission: murder, aggravated manslaughter, manslaughter, vehicular homicide, aggravated assault, disarming a law enforcement officer, kidnapping, aggravated sexual assault, sexual assault, robbery, carjacking, aggravated arson, burglary, extortion, strict liability or drug-induced deaths, terrorism, producing or possessing chemical weapons or biological agents, and racketeering.

e. In WA, statute prohibits admission into VTCs for both prior convictions and current charges of the following nature: serious violent offenses; sex offenses; alleging intentional discharge, threat to discharge, or attempt to discharge a firearm; vehicular homicide; or alleging substantial bodily harm or great bodily harm or death of another person.

f. Most violent crimes (of felony status) exclude military personnel (with active or veteran status) from entering VTCs in West Virginia, including sexual offenses; murder of a child by a parent, guardian, etc.; child abuse resulting in injury, use of forced labor, use of persons in debt bondage, malicious or unlawful assault or assault of a child near a school; abduction of a person, kidnapping or concealing a child, felony domestic violence, OR have been previously convicted in WV, another state or federal court of any of the aforementioned crimes, or DWI of alcohol, controlled substances or drugs (exceptions apply).

g. In FL statute, the chief judge and state attorney of the judicial circuit that creates and administers a veterans treatment court program have the exclusive authority to determine whether veterans who have been dishonorably discharged may participate in the veterans treatment court program within the circuit.

h. In HI, the statute defines that a veteran, “is a person who has been discharged honorably,” although the statute does not explicitly exclude a type of discharge.

i. MI statute requires that discharge status is disclosed to be considered in determining court admittance; however, a type of discharge is not specified for inclusion or exclusion.

j. While WV excludes dishonorably discharged veterans, it does include those who were discharged as OTH.

k. LA excludes potential VTC candidates for prior felonies only in cases of homicide and sexual offenses, or cases in which DWI resulted in the death of a person. Veterans charged with DV-related crimes are considered; however, they are required to enroll in a domestic abuse intervention program and surrender their rights to possess a firearm while under supervision.

l. In MN, the types of felony crimes accepted into the court include: (1) Felony DWI, financial exploitation of a vulnerable adult, 2nd degree assault, 1st degree burglary (occupied dwelling), residential burglary, simple robbery, nonresidential burglary, theft crimes (at any amount), check forgery, 4th degree assault, fleeing a peace officer.

m. In NV, most felony charges exclude veterans from entering VTCs including sexual offenses and class A felonies: aiding an act of terrorism, murder (first degree, second degree), kidnapping (first degree), child abuse/neglect, child pornography, and more.

n. Despite explicit language excluding violent individuals from the VTC (“...An individual is not eligible for admission into a veterans treatment court if he or she is a violent offender.”), statute allows for individuals who have committed intimate partner violence (i.e., “Assault on spouse, former spouse, individual with child in common, dating relationship, or household resident...”) to be admissible into VTC programming. See Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

o. In statute, GA excludes most veterans from entry into the veterans court division for having committed the following violent crimes: murder, armed robbery, rape, aggravated sodomy, aggravated sexual battery, aggravated child molestation, or child molestation. One exception to this ineligibility criterion is the case of a separate court supervised reentry program designed that more closely monitors veterans returning to the community after having served a term of incarceration.

p. HI: kidnapping, 1st degree robbery, sex trafficking; In terms of criminal history, veterans in HI become ineligible for VTC admittance if they have been convicted of a crime involving serious bodily injury or substantial bodily injury within the past 5 years.

q. IL excludes otherwise eligible veterans if the defendants were charged with at least one of the following crimes: first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, armed robbery, aggravated arson, arson, aggravated kidnapping and kidnapping, aggravated battery resulting in great bodily harm or permanent disability, aggravated domestic battery resulting in great bodily harm or permanent disability, aggravated criminal sexual abuse by a person in a position of trust or authority over a child, stalking, aggravated stalking, home invasion, aggravated vehicular hijacking, or any offense involving the discharge of a firearm. Additionally, the statute prohibits veterans who have been charged with aggravated driving under the influence that resulted in the death of another person.

r. In these states, statute doesn’t explicitly state the inclusion of certain non-violent crimes into VTCs; however violent crimes (often felonies) are explicitly excluded from eligibility into the VTCs.

s. Previous convictions for the following non-exhaustive list of violent felonies in MS are statutorily excluded from admission into VTCs: murder, rape, sexual battery, statutory rape of a child under the age of sixteen, armed robbery, arson, aggravated kidnapping, aggravated assault, stalking,

or any offense involving the discharge of a firearm or where serious bodily injury or death resulted to any person. Thus, MS VTCs do not accept crimes of violence.

^tIn WA, statute prohibits admission into VTCs for both prior convictions and current charges of the following nature: serious violent offenses; sex offenses; alleging intentional discharge, threat to discharge, or attempt to discharge a firearm; vehicular homicide; or alleging substantial bodily harm or great bodily harm or death of another person.

^uMost violent crimes (of felony status) exclude military personnel (with active or veteran status) from entering VTCs in WV, including sexual offenses; murder of a child by a parent, guardian, etc.; child abuse resulting in injury, use of forced labor, use of persons in debt bondage, malicious or unlawful assault or assault of a child near a school; abduction of a person, kidnapping or concealing a child, felony domestic violence, OR have been previously convicted in WV, another state or federal court of any of the aforementioned crimes, or DWI of alcohol, controlled substances or drugs (exceptions apply).

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