

HOW INVOLVEMENT WITH THE CRIMINAL JUSTICE SYSTEM IMPACTS VA BENEFITS

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PRESENTER: LIZ TARLOSKI




- Staff Attorney, focused on Training, BVA representation, and CAVC litigation
- Previously a Staff Attorney at Legal Aid of Southeastern PA (LASP) - Veterans Advocacy Project
- Served as a Visiting Professor of Practice at the William & Mary Law School Lewis B. Puller, Jr. Veterans Benefits Clinic

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AGENDA



- A look at the numbers...
- Fugitive Felon Status
- Benefits for Incarcerated Veterans (and Duty to Assist)
- Apportionment
- Post-Release – Resources and Restoring Benefits
- Veteran Treatment Courts and Veteran Justice Outreach
- Useful Practice Tips for advocating for Justice Involved Veterans

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JUSTICE-INVOLVED VETERANS

- **Definition: Former service-members who have been detained by or are under the supervision of the criminal justice system**
 - www.research.va.gov/currents/0918-VA-researcher-examines-Vets-who-collide-with-criminal-justice-system.cfm#

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A LOOK AT THE NUMBERS...

- **Percentage of the prison population who identify as veterans is about the same as the percentage of veterans in the general population (5% in Federal prisons, 8% in State prisons)**
- **2021 Census – 6.4% of the U.S. population is veterans**

But...

- ACLU.org – News and Commentary- Our Veterans Need Support, Not Incarceration
- <https://bjs.ojp.gov/library/publications/veterans-prison-survey-prison-inmates-2016> (Veterans in Prison: Survey of Prison Inmates)

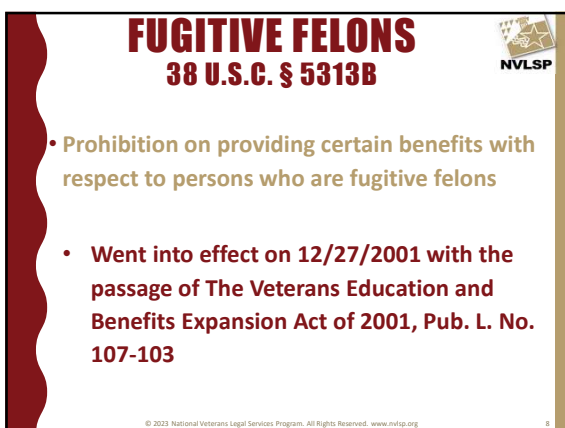
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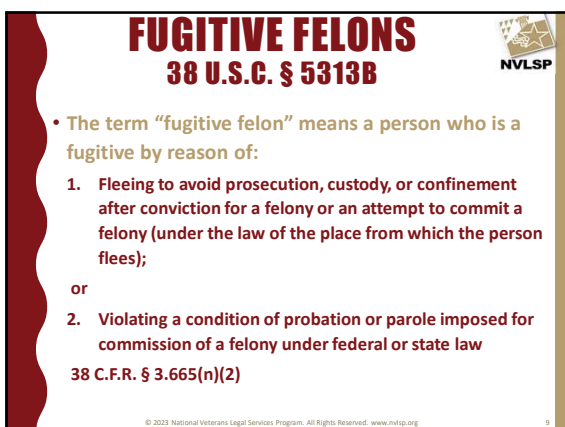
A LOOK AT THE NUMBERS...

- **Almost 1/3 of America's war veterans have been arrested or booked into jail – double the rate among civilians**
- **Veterans with PTSD are 60% more likely to be incarcerated than those without it and more likely to have a substance use disorder, which can lead to incarceration**
- **Over half of veterans in the Criminal Justice System have mental health or substance use disorders**
 - ACLU.org – News and Commentary- Our Veterans Need Support, Not Incarceration
 - <https://bjs.ojp.gov/library/publications/veterans-prison-survey-prison-inmates-2016> (Veterans in Prison: Survey of Prison Inmates)


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FUGITIVE FELON BENEFITS



- **VA compensation and pension are not payable on behalf of a veteran for any period during which he or she is a fugitive felon**
 - 38 C.F.R. § 3.665 (e)(1), (n)
- **Other VA Benefits are also terminated, including health care, education, VR&E, and life insurance**
 - 38 U.S.C. § 5313B(c) 38 C.F.R. §§ 3.665(n), 3.666(e), 21.3135(j), 21.4135(n), and 21.7135(aa)

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FUGITIVE FELON CLAIMS




VA instructs its adjudicators to:

- **Take no action on new claims or HLR requests**
- **Discontinue development on and cancel any pending claims or requests for HLRs**
- **Disallow any claims for increased benefits, but**
- **Continue processing any pending legacy appeals**
 - Manual M21-1, XIV.8.2.e

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FUGITIVE FELON OFFENSE CODES



- **Before June 2014 – VA assumed that anyone with an active felony arrest warrant was a fugitive, regardless of fleeing status**
- **In 2014, VBA determined that one of the following codes must be associated with the check of the National Crime Information Center (NCI) – Fed. Gov't database for crime-related info**
 - VBA Letter 20-14-09

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FUGITIVE FELON OFFENSE CODES



- 4901 – Escape
- 4902 – Flight to Avoid Prosecution
- 4999 – Flight Escape
- 5011 – Parole Violation
- 5012 – Probation Violation
- 8101 - Juvenile Offender Abscond While on Probation
- 8102 –Juvenile Offender Abscond While on Parole

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FUGITIVE FELON MATCHING SYSTEM



- Matching System agreements exist between OIG and law enforcement agencies
- OIG periodically sends lists of veterans receiving benefits who match with requirements of fugitive felon to VA and will thereafter provide support in determining legal status
- VA is then responsible for processing these lists
 - Manual M21-1, XIV.8.1.d

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FUGITIVE FELON PROCESS



- Notice of adverse action sent and 60 days to respond with evidence or request a hearing
- Date benefits will be suspended will be the later of:
 - the date of the warrant, or
 - 12/27/2001 (when 38 U.S.C. § 5313B went into effect)

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FUGITIVE FELON PROCESS




- The proposed adverse action letter must include the following info about the warrant:
 - name and telephone number of the warrant agency
 - warrant number
 - date of warrant, and
 - warrant offense description and/or code
- Manual M21-1, XIV 8.2.b

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FUGITIVE FELON




- Evidence to submit showing veteran was not in fugitive felon status:
 - copy of a court order that clears or vacates the warrant w/in 30 days of issuance
 - evidence that a court specifically determined the warrant was void from its inception because of mistaken identity or a defect in the warrant

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FUGITIVE FELON




- Evidence to submit showing veteran was not in fugitive felon status (cont'd):
 - states or uses the terminology “nunc pro tunc,” which means the court order applies retroactively to correct an earlier court order, or
 - a police report or statement from the SSA or other gov’t agency, a bank, or other reporting agency that supports a claim of identity theft
- Manual M21-1, XIV 8.2.b

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FUGITIVE FELON WHEN A WARRANT IS CLEARED




- “In most cases in which a warrant is dismissed, recalled, or quashed, a valid warrant was still pending through the date the warrant was cleared.”
- “VA benefits are subject to adjustment from the warrant date (or the effective date of 38 U.S.C. § 5313B) until the date the warrant was recalled, dismissed, or quashed.”

– Manual M21-1, XIV.8.2.H

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HYPO #1



- A felony arrest warrant is issued for a veteran on 3/3/2021
- Court clears the warrant 3 weeks later on 3/24/2021
- On 4/25/2021, a computer match shows the issuance of a felony arrest warrant for this veteran with a “Flight Escape” code
- VA eventually sends the veteran a notice of adverse action which the veteran receives on 5/30/2021

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SURVEY #1




- Why is the veteran not considered a fugitive felon for purposes of VA benefit suspension?
 - A. The code associated with the warrant was ‘Flight Escape,’ which is not one of the required codes
 - B. The warrant was cleared w/in 30 days of issuance
 - C. Veteran received notice the warrant was issued more than 30 days after the warrant was issued
 - D. VA sent the proposal of adverse action more than 30 days after notice of the warrant

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SURVEY #1

ANSWER




B

- The warrant was cleared w/in 30 days of issuance
- A copy of a court order that clears or vacates the warrant within 30 days of issuance will not trigger a fugitive felon process for VA purposes

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FUGITIVE FELON


OIG REPORT



VA OIG 21-002401-190, Aug. 3, 2022

- VBA did not process felony referrals from 2012 and 2013
- VBA did not process 46% of felony referrals sent by the OIG in 2019 and 2020
- Due process notices did not comply with VBA policies and procedures

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INCARCERATED

VETERANS

VA BENEFITS

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INCARCERATION AND BENEFITS



- Congress has greatly restricted and, in some cases, eliminated, the amounts of VA benefits and manner in which they may be paid while the veteran, dependent, or survivor entitled to these benefits is incarcerated for a felony

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FELONY DEFINITION



- “Felony” is any offense punishable by death or imprisonment for a term exceeding one year, unless specifically categorized as a misdemeanor under the law of the prosecuting jurisdiction
 - 38 C.F.R. § 3.655(b)
- But, “felony” includes a high misdemeanor under the laws of a state which characterizes as high misdemeanors offenses that would be felony offenses under Federal law
 - 38 C.F.R. § 3.655(n)(3)

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FELONIES/MISDEMEANORS



- Felony examples: kidnapping, home burglary, murder
 - Usually min. of one year of imprisonment
- Misdemeanor examples: DUI, simple assault, disorderly conduct
 - Usually a year or less imprisonment
- Sentencing and grades/classes/degrees vary by state
- Some crimes may be classified as a misdemeanor OR felony, depending on location, so when assisting a veteran, be sure to identify what the conviction is for/how it is defined

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CONVICTION DEFINITION



- A “conviction” occurs when the accused is found—or pleads—guilty, regardless of the manner of sentencing
 - *Mulder v. McDonald*, 805 F.3d 1342 (Fed. Cir. 2015)
- Once a beneficiary is convicted, VA may apply the statute; VA is not required to wait until the claimant has exhausted all of his or her post-conviction appeals and received a “final” conviction
 - 38 U.S.C. § 5313(a)(1); 38 C.F.R. § 3.665(a)
 - *Wilson v. Gibson*, 753 F.3d 1363, 1367 (Fed. Cir. 2014)

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CHARGES V. CONVICTION



- Unless they are a fugitive felon, a veteran must be **CONVICTED** of a crime before benefits are impacted
- A veteran could be arrested and held in a penal institution awaiting trial and still be receiving and entitled to full benefits

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INCARCERATION DEFINITION




- The following do not constitute “incarceration”:
 1. Confinement in a mental institution, even if the commitment was due to a judgment that the individual was not guilty of felony charges “by reason of insanity”
 - *Philbrook v. McDonough*, 15 F.4th 1117 (Fed. Cir. 2021); VA Gen. Coun. Prec. 3-90 (Mar. 20, 1990)
 2. Participation in a work release program or residence in a halfway house pending completion of a full sentence
 - 38 U.S.C.S. § 5313(a)(2); 38 C.F.R. § 3.665(b)

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INCARCERATION DEFINITION




- The following do not constitute “incarceration” (cont’d):
- 3. Incarceration in a foreign prison
 - VA Gen. Coun. Prec. 10-2001 (May 24, 2001)
- 4. A felony conviction resulting in a sentence of “community control with conditions”
 - VA Gen. Coun. Prec. 59-91 (June 24, 1991)

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THE GENERAL RULE 38 C.F.R. § 3.655(a)




- Who: Any person specified in paragraph (c) of this section who is incarcerated
- Where: in a Federal, State, or local penal institution
- When: in excess of 60 days for
- What: conviction of a felony
- will not be paid compensation or DIC in excess of the amount specified in paragraph (d) of this section beginning on the 61st day of incarceration

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38 C.F.R. § 3.665(c) APPLICABILITY




1. A person serving a period of incarceration for conviction of a felony committed after 10/7/1980
2. A person serving a period of incarceration after 9/30/1980 (regardless of when the felony was committed) when:
 - The person was incarcerated on 10/1/1980; and
 - An award of compensation or DIC is approved after 9/30/1980
3. A veteran who, on 10/7/1980, was incarcerated in a Federal, State, or local penal institution for a felony committed before that date, and who remains so incarcerated for a conviction of that felony as of 12/27/2001

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38 C.F.R. § 3.665(d) AMOUNT PAYABLE DURING INCARCERATION




- If Vet's combined SC disability rating is 20% or more, Vet will receive payment at the 10% disability rate
 - Ex: Single Vet is rated at 40% and receiving \$731.86 per month before incarceration. After 61st day of incarceration for conviction of a felony, Vet will receive \$165.92 (the 10% rate)
- If Vet's combined SC disability rating is 10%, Vet will receive payment at half of the 10% disability rate
 - Ex: Vet is rated at 10% and receiving \$165.92 per month before incarceration. After 61st day of incarceration for conviction of a felony, payment will be reduced to \$82.96.

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DISABILITY COMPENSATION APPLICATIONS AND APPEALS




- The limitation in the payment does **NOT** lower the veteran's SC disability rating level
- Initial applications, increases, appeals, etc. can continually be pursued (with exceptions for TDIU)

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BENEFITS GENERALLY RESTORATION OF BENEFITS




- Upon release from incarceration, the payment amount returns to the level for the actual disability rating
- *Conviction overturned on appeal.* If a conviction is overturned on appeal, any compensation or DIC withheld as a result of incarceration for the conviction (less the amount of any apportionment) shall be restored to the beneficiary (must notify VA within a year)
 - 38 C.F.R. § 3.665(m)

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DISCONTINUED BENEFITS: PENSION




- Unlike disability compensation or DIC, VA completely stops pension payments to incarcerated beneficiaries effective the 61st day of imprisonment
- VA pension benefits are stopped for any type of conviction that results in incarceration, whether the offense is a misdemeanor or a felony

– 38 C.F.R. § 3.666

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DISCONTINUED BENEFITS: PENSION




- When a Vet is entitled to both SC compensation and NSC pension, compensation shall be awarded as of the 61st day of imprisonment in lieu of the pension the Vet was receiving
- But, if Vet has a spouse or child, Vet will be notified of the effect electing compensation will have on the amount payable through apportionment. Change in award to compensation will take place after Vet makes decision to change to compensation.

– 38 C.F.R. § 3.666(d)

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DISCONTINUED BENEFITS: PENSION



- Like disability compensation and DIC, NSC pension otherwise payable to the incarcerated beneficiary may be apportioned to family members
- The effective dates of termination and resumption of pension payments are the same as those for compensation

– 38 C.F.R. § 3.666

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HYPO #2



- A single veteran is receiving \$550 in VA NSC pension, and has a SC rating of 30% (\$508.05/month)
- Because pension is the greater benefit, the veteran receives \$550 a month
- The veteran is subsequently incarcerated for conviction of a misdemeanor

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SURVEY #2



- How much in VA benefits will the veteran receive on the 61st day of incarceration?
 - A. Nothing
 - B. Half the 10% SC rate
 - C. The 10% SC rate
 - D. The 30% SC rate

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SURVEY #2 ANSWER




D

- The 30% SC rate
- On the 61st day of imprisonment, VA is required to change the benefit to SC compensation, as it is now the higher of the two benefits. Because the incarceration is for a misdemeanor, rather than a felony, the compensation benefits are not reduced further
- If incarceration had been for a felony, payment would be reduced to the 10% SC rate

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SPECIAL ISSUE: TDIU




- A vet who has been awarded TDIU *prior* to incarceration is subject to the normal reduction (payment at 10% rate)
- There is no requirement to *discontinue* TDIU solely because a Vet is incarcerated and, thereby, removed from the work-possible environment (VAOPGCPREC 13-97)

BUT....

- The *assignment* of TDIU or *reinstatement* of a prior TDIU award, is prohibited during a period of incarceration
 - 38 C.F.R. § 3.341(b)

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BENEFITS: VA HEALTH CARE




- Incarcerated veterans do not forfeit their eligibility for VA health care; BUT
- VA may not provide hospital and outpatient care to an incarcerated veteran who is an inmate in an institution of another gov't agency when that agency has a duty to give the care or services
- This does not apply to veterans who are released from a prison or jail into a temporary housing program (such as a community residential re-entry center or halfway house)

– 38 C.F.R. § 17.38(c)(5)

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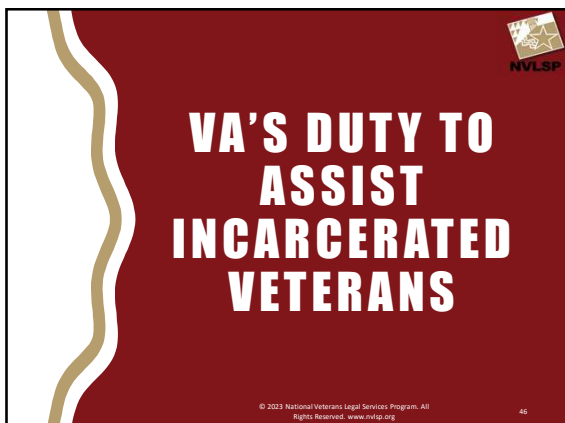
BENEFITS VR&E



- **Full benefits**
 - If incarcerated for something other than a felony
 - If in a work-release program or half-way house (residential re-entry centers), regardless of whether the conviction was for a felony
- **No subsistence benefits**
 - If incarcerated for a felony, VA may pay all or part of tuition, fees, books, supplies, and equipment, **UNLESS** another Federal or local program pays these costs in full

• 38 C.F.R. § 21.276

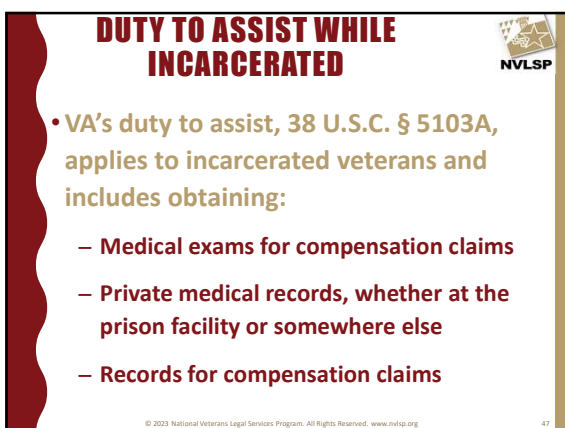
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VA'S DUTY TO ASSIST INCARCERATED VETERANS

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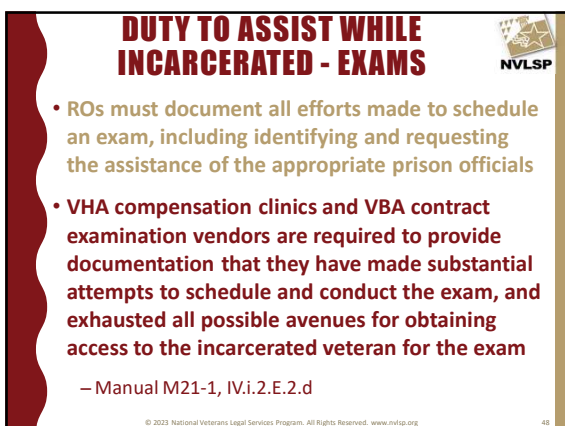


DUTY TO ASSIST WHILE INCARCERATED

- VA's duty to assist, 38 U.S.C. § 5103A, applies to incarcerated veterans and includes obtaining:
 - Medical exams for compensation claims
 - Private medical records, whether at the prison facility or somewhere else
 - Records for compensation claims

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DUTY TO ASSIST WHILE INCARCERATED - EXAMS


- ROs must document all efforts made to schedule an exam, including identifying and requesting the assistance of the appropriate prison officials
- VHA compensation clinics and VBA contract examination vendors are required to provide documentation that they have made substantial attempts to schedule and conduct the exam, and exhausted all possible avenues for obtaining access to the incarcerated veteran for the exam
 - Manual M21-1, IV.i.2.E.2.d

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DUTY TO ASSIST WHILE INCARCERATED - EXAMS


- If all efforts are exhausted, veteran's inability to attend = failure to report
 - Manual M21-1, IV.i.2.E.2.d



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DUTY TO ASSIST *WOOD V. DERWINSKI*


- CAVC found that there were insufficient facts to support a PTSD stressor and that, “while not a model to follow,” the duty to assist had been met in assisting the Vet in gathering evidence to corroborate the stressor
- The Court added that in deciding claims for incarcerated veterans, VA adjudicators should:
 - “tailor their assistance to the peculiar circumstances of confinement,” because “[s]uch individuals are entitled to the same care and consideration given to their fellow veterans”
 - 1 Vet. App. 190, 193 (1991)



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DUTY TO ASSIST *BOLTON V. BROWN*

- RO denied claim for increased PTSD rating
- BVA remanded for an exam
- VA clinic's chief medical officer wrote that the clinic was unable to find a contract psychiatrist to perform the exam at the prison and prison didn't have a physician who could perform the exam
- RO and BVA again denied claim, with RO noting that exam could not be performed because of Vet's incarceration
- CAVC vacated the BVA decision because BVA “ceased in its quest” to afford the Vet a new exam



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DUTY TO ASSIST
BOLTON V. BROWN




- “Under the unique circumstances presented by this case, where the Secretary has determined that the veteran is not available to participate in a VA examination under regular conditions, and in keeping with the ‘caution’ of *Wood*, ... a remand is required to provide the Secretary with another opportunity to fulfill his statutory duty to assist this appellant in developing the facts of his claim.”
- 8 Vet. App. 185, 192-197 (1995)

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DUTY TO ASSIST
MERCURIO V. NICHOLSON




- Following a BVA remand:
 - RO contacted prison about exam and was told Vet would not be able to leave, but did not receive a response when asked if an examiner could come to the prison
 - VA requested records twice (sent to prison’s PO Box), but received no response
 - BVA denied Vet’s claims

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DUTY TO ASSIST
MERCURIO V. NICHOLSON




- Records: CAVC found VA failed to comply with 38 U.S.C. § 5103A(b)(2):
 - Notice must (1) identify the records VA was unable to obtain; (2) explain the efforts VA made to obtain those documents; and (3) describe any further action the VA will take with respect to the claim
- Exam: CAVC found VA failed to follow up on exam and should determine what state official had authority to respond to its request and obtain a definitive answer from that official
 - 21 Vet. App. 401 (2006) (single judge, non-precedential)

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DUTY TO ASSIST

MERCURIO V. NICHOLSON




“Mercurio reflects that the Court will expect VA to fully comply with the VCAA’s duty to assist in obtaining relevant medical records from the facility where an incarcerated veteran is held, and to work with state or prison officials both in obtaining such records and in providing medical examinations when warranted.”

– Jonathan Hager, *VA’s Duty to Assist Incarcerated Veterans*, 1 VETERANS L. REV. 231 (2009)

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DUTY TO ASSIST WHILE INCARCERATED



• Summary

- VA will assist veterans with obtaining an exam while incarcerated either by sending someone to a facility or bringing them to the exam
- VA should fulfill their duties under the VCAA in requesting records
- If VA fails to adequately attempt to assist incarcerated veteran, seek review/appeal

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APPORTIONMENT



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APPORTIONMENT




- Entirely separate legal benefit from the Vet's claim and is NOT automatic
 - VA will alert the veteran that benefits may be apportioned and how dependents can apply
 - VA will alert dependents if aware of their existence and can get their addresses
 - VA will accept apportionment claim from either veteran or family member
 - Manual M21-1, VI.iii.1.B.1.b, 2.b

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APPORTIONMENT ELIGIBLE BENEFITS




- VA benefits that CAN be apportioned
 - Compensation
 - DIC
 - Pension
 - VR&E subsistence, if not incarcerated for a felony
- VA benefits that CANNOT be apportioned
 - Education Subsistence Benefits, unless Chapter 30 rate (Montgomery GI Bill Active Duty)
 - Beneficiary or dependent is a fugitive felon

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COMPENSATION APPORTIONMENT ELIGIBILITY




- Eligibility:
 - Relationship: Spouse, children, or dependent parents
 - Amount Paid: All or part of the compensation not paid to the incarcerated veteran
 - Individual Need: Consideration shall be given to
 - Dependent's income and living expenses
 - Amount of compensation available for apportionment
 - Needs and living expenses of other dependents
 - Special needs of any dependent
 - 38 C.F.R. § 3.665; Manual M21-1, VI.iii.1.B.2.h

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PENSION APPORTIONMENT ELIGIBILITY



- **Eligibility:**
 - **Relationship:** Spouse or children
 - **Dependent must meet the income requirements for Survivor's Pension (without consideration of the veteran's income)**
 - **Amount Paid:** rate payable under death pension law or the rate the veteran was receiving at the time of imprisonment, whichever is less
 - 38 C.F.R. § 3.666; Manual M21-1, VI.iii.1.B

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APPORTIONMENT APPLICATION



- **VA Form 21-0788, Information Regarding Apportionment of Beneficiary's Award**
- **Info needed:**
 - Monthly income
 - Net worth
 - Monthly living expenses
 - How much the veteran is already contributing
 - If claimant is living with someone else and holding themselves out as their spouse

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APPORTIONMENT APPLICATION



1. INFORMATION ABOUT YOU

Full Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Email: _____

2. INFORMATION ABOUT THE VETERAN

Full Name: _____

Address: _____


City: _____ State: _____ Zip: _____

Phone: _____

Email: _____

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APPORTIONMENT APPLICATION




- If application received w/in 1 year of VA notification to the potential claimant of right to apportionment, then paid back to the 61st day of incarceration
- If there is an overpayment from continuing to pay veteran when Vet was not eligible for benefits, then payment will be no earlier than the first of the month following the month for which VA last paid the veteran the full rate of compensation

– Manual M21-1.VI.iii.1.B.2.d

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APPORTIONMENT APPLICATION




- Financial hardship on veteran is NOT considered as it would be if veteran was not incarcerated
- VA will consider whether claimant has a financial need for apportionment
- Usually won't ask for additional documentation unless something looks inflated on application
- No notice of proposed adverse action to veteran in these cases

– Manual M21-1, VI.iii.1.A.3

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APPORTIONMENT NOTIFICATION



- When granting an apportionment, VA advises the dependent that the apportionment is *temporary and subject to discontinuation*, without due process, after incarceration ends

– Manual M21-1, VI.iii.1.B.1.i

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APPORTIONMENT PAYMENT



- Apportionment stops when incarceration ends and apportionee is notified of the right to reapply if not living with veteran
- No apportionment payable if VA receives notice of incarceration AFTER incarceration has ended, but can be granted only to reduce veteran's overpayment
 - Manual M21-1, VI.iii.1.B.1.f., 2.e

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BARS TO APPORTIONMENT



- Bars to apportionment include:
 - Total benefit is so small it does not allow payment of a reasonable amount to any apportionee
 - Spouse has been found guilty of conjugal infidelity by a court
 - Spouse has lived with someone else and held themselves out to be their spouse
 - Child of vet was legally adopted by another person
 - Apportionment will not be authorized to an estranged spouse unless and until a claim for children is filed on their behalf
 - 38 C.F.R. § 3.458

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CONTESTING APPORTIONMENT



- VA will notify both parties of a decision
- VA can take action before the 60-day appeal period expires
 - Manual M21-1, VI.iii.3.C.2.a
- Either party may appeal the decision, which will be treated as a contested claim
 - Both parties have 60 days to appeal to BVA
 - This is the only review option for contested claims
 - Decision notices don't include favorable findings or elements required to grant the claim that were not met

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HYP0 #3

- A veteran with a 100% SC disability rating is incarcerated for a felony
- It has been 6 months since the incarceration began following conviction of a felony
- The veteran has a dependent spouse

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SURVEY #3

- Which of the following is true?
 - A. The spouse can apply for apportionment of the entire amount, but the Vet must submit the application
 - B. The Vet can receive payment at the 10% rate and the spouse can be apportioned the rest
 - C. The spouse can apply for apportionment of the entire amount and must submit the application
 - D. The Vet is still entitled to the entire amount of compensation because it's only been 6 months since the incarceration began

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**SURVEY #3
ANSWER****B**

- The veteran can receive payment at the 10% rate and the spouse can be apportioned the rest
- Either the spouse or Vet may apply
- Veterans with a 20% SC disability rating or higher can receive payment at the 10% rate after the 61st day of incarceration for a felony

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APPORTIONMENT PROPOSED RULE



- VA has proposed to stop awarding apportionments of compensation and pension benefits of Vets and surviving spouses in many circumstances
- **BUT, VA intends to continue making apportionment awards where a Vet or surviving spouse is incarcerated or where an incompetent veteran, who does not have a fiduciary, is institutionalized at government expense, without regard to financial contributions to the claimant**
- VA does not intend to discontinue as a result of this rulemaking any apportionments currently being paid
 - Apportionments, 86 Fed. Reg 57,084 (proposed Oct. 14, 2021)


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BENEFITS POST-RELEASE AND ADVOCACY TIPS



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UPON RELEASE....



- “Release from incarceration”: If paroled, participating in a work-release or half-way housing program, and completion of sentence
 - 38 C.F.R. § 3.665(b)
- **Any benefits received by an incarcerated veteran after 60 days of incarceration (beyond what permitted by law) will be considered an overpayment that the veteran must pay back to VA**
- When a veteran’s benefits are restored, any apportionment ends
 - Manual M21-1, VI.iii.1.B

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UPON RELEASE.... RESTARTING BENEFITS




- No specific form needs to be filed with VA
 - Mail, email, phone call, or claim submission to VA will trigger re-start of benefits
- If re-starting pension, no need to file new report re income and net worth
- If w/in 30 days of release and confirmed by an official source such as a parole board, VA will adjust to reflect the future re-start date
- VA will ask for confirmation of release from an official source in most circumstances
 - Manual M21-1, VI.iii.1.A.5

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UPON RELEASE.... OFFICIAL SOURCES




- Federal, state, and local gov't authorities, such as
 - law enforcement officials
 - officials at correctional facilities
 - prosecutors
 - parole officers
- Federal Bureau of Prisons website www.bop.gov
- Official websites of individual correctional facilities
 - Manual M21-1, VI.iii.1.A.3.b

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POTENTIAL OVERPAYMENT




- It is important for Vet to notify VA promptly when period of incarceration has started and ended
 - If notification w/in 1 year of release, regular benefits payments will be resumed at the full rate to which the beneficiary is entitled retroactive to the date of release
 - If notification more than 1 year from release, benefits will be resumed as of the date of receipt of the notice of release
 - Manual M21-1, VI.iii.1.A.5.e

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HEALTH CARE FOR REENTRY VETERANS PROGRAM



- VA program designed to prevent homelessness
- Includes outreach and pre-release assessment services for veterans in prison
- Referrals and linkages to medical, mental health, and social services, including employment services and short-term case management assistance on release
- Each VISN and state has a specialist point of contact on the VA website
 - www.va.gov/homeless/reentry.asp

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SURVEY #4



A veteran has just been released from a 5-year prison sentence. What is the BEST step to make sure VA benefits are properly restored?

- A. Call VA to inform them of the release
- B. Send a Statement in Support of Claim form to VA about the release along with a letter from a prison official
- C. Do nothing. VA's system will automatically check prison records and restore benefits

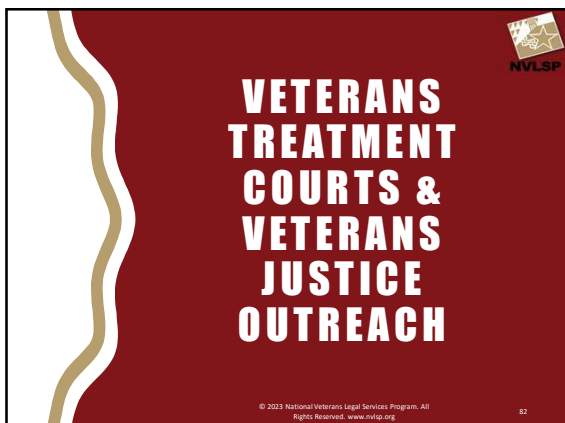
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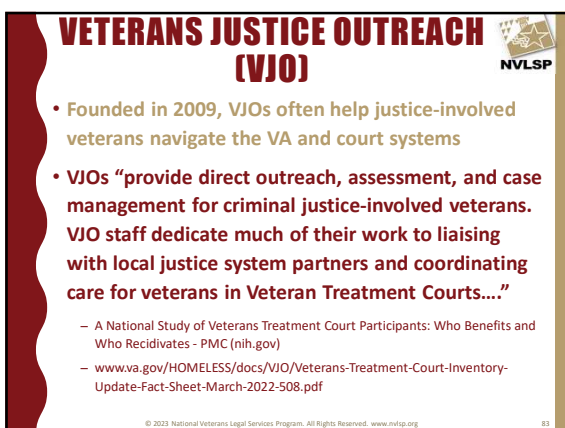
SURVEY #4 ANSWER

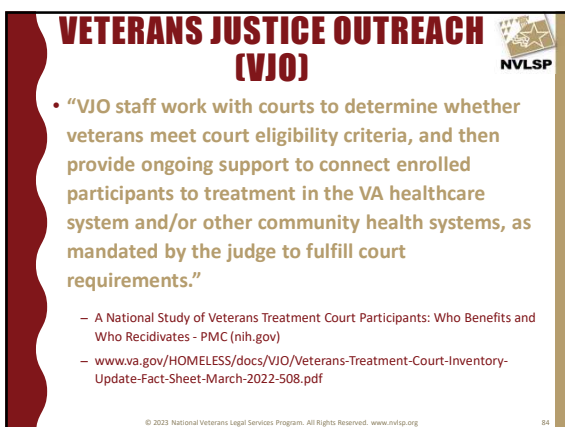
B

- Send a Statement in Support of Claim form to VA about the release along with a letter from a prison official
- VA will usually request supporting evidence from an official regarding the release


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VETERANS TREATMENT COURTS (VTC)



- Specialty courts, modeled after drug courts, that are targeted towards veterans facing criminal charges and utilize community partners, treatment providers, court staff, and VA
- If successful in the program, participants may have charges dropped, reduced, or avoid incarceration
- Eligibility varies between courts and programs
 - Ex: some will prohibit participation based on discharge status or commission of a felony, or require a SC mental health condition

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VETERANS TREATMENT COURTS (VTC)



- State and Federal
 - First VTC started in Buffalo, NY in 2008 with Judge Robert Russell
 - As of 3/2022, there were 623 VTCs and other veteran-focused court programs across the U.S.
 - There are other treatment courts available that veterans may be eligible for (drug, mental health, opioid)
 - Raftery, William E. - Current Research on Veteran Treatment Courts – Problem Solving Courts, National Center for State Courts (2022), available at <https://cdm16501.contentdm.oclc.org/digital/collection/spcts/id/532>

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VETERANS TREATMENT COURTS (VTC)



- A Vet's participation in treatment court is voluntary
- Vets who choose to participate are often assessed by a mental health professional and their treatment needs are determined
- Most Vets receive treatment through the VHA network. VTCs allow the Vet to remain in the community.
- Judge regularly checks on progress while Vet is in treatment
- If the Vet fails to meet the requirements of the program—for example, fails drug screens or disobeys court orders—the Court will impose sanctions which may include community service, fines, jail time, or re-arrest back through the legal system
 - www.ptsd.va.gov/professional/treat/care/vets_justice_system.asp

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VETERANS TREATMENT COURTS (VTC)



- In 2008, the Buffalo VTC adopted with slight modifications the essential tenets of the 1997 DOJ publication "Defining Drug Courts: The Key Components"
- **TEN KEY COMPONENTS:**
 1. VTCs integrate alcohol, drug treatment, and mental health services with justice system case processing
 2. Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights
 3. Eligible participants are identified early and promptly placed in the VTC program

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VETERANS TREATMENT COURTS (VTC)




- **TEN KEY COMPONENTS (cont'd):**
 4. VTCs provide access to a continuum of alcohol, drug, mental health and other related treatment and rehabilitation services
 5. Abstinence is monitored by frequent alcohol and other drug testing
 6. A coordinated strategy governs VTC responses to participants' compliance
 7. Ongoing judicial interaction with each Veteran is essential

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VETERANS TREATMENT COURTS (VTC)




- **TEN KEY COMPONENTS (cont'd):**
 8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness
 9. Continuing interdisciplinary education promotes effective VTC planning, implementation, and operations
 10. Forging partnerships among VTC, VA, public agencies, and community-based organizations generates local support and enhances VTC effectiveness
- Veterans Treatment Courts: A Second Chance for Vets who have lost their way. National Institute for Corrections (May 2016)

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VTC EFFECTIVENESS




- Using data on 7,931 Vets in VJO programs across 115 VA sites who entered a VTC from 2011 to 2015, a study examined the housing, employment, income, and criminal justice outcomes of VTC participants
 - VTC participants spent an avg of nearly a year in the program and 14% experienced a new incarceration (compared to 23–46% 1-year recidivism rate of U.S. prisoners)
 - From program admission to exit, 10% more participants were in their own housing, 12% more were receiving VA benefits, but only 1% more were employed

• Tsai J, Finlay A, Flatley B, Kasprow WJ, Clark S. A National Study of Veterans Treatment Court Participants: Who Benefits and Who Recidivates. Adm Policy Ment Health. 2018 Mar

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TIPS FOR ASSISTING JUSTICE-INVOLVED VETERANS



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ADVOCACY TIPS



- Fugitive Felon Status: VA does not always get this right. If presented with a veteran who has payments stopped or an overpayment due to this status, check court records to make sure it is accurate and follow up with the recommend paperwork.
- Determining Conviction/Felony/Misdemeanor: Searching local court dockets may confirm whether case is still in progress, whether there has been a conviction, and whether conviction is for a felony or misdemeanor

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ADVOCACY TIPS




- Follow jail/prison rules for written communication
- Connect Vet with VJO as soon as possible post-arrest and when they are getting ready to be released
- You are in the best position as an advocate to ensure VA does not improperly stop (or continue) benefits and to make sure the Vet is getting paid the correct amount
- Assisting an apportionment claimant may be a conflict of interest for an attorney/VSO who is representing the Vet
- Ensure VA is fulfilling its duty to assist in terms of records requests and exams

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NVLSP VA BENEFIT IDENTIFIER APP




- Questionnaire/App: Helps Vets and advocates figure out what VA service-connected disability benefits or non-service-connected pension benefits they might be entitled to
- 3 WAYS to Access:
 - [NVLSP Website](https://www.nvlsp.org)



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