**SENATE VETERANS AFFAIRS COMMITTEE**

OVERSIGHT HEARING

**State Assessment and Support of Incarcerated Veterans**

1:30 p.m. - Tuesday, May 10, 2016

John L. Burton Hearing Room (4203)

**Background Paper**

**Justice-Involved Veterans**

As with other Americans, military veterans can run afoul of the law and become involved with the criminal justice system. Penal Code 1170.9 provides veterans who suffer from service-connected traumatic brain injury (TBI), post-traumatic stress disorder (PTSD), military sexual trauma (MST), and who have committed a specified criminal offense, opportunities for diversion from incarceration and into treatment programs, and possible expungement of their criminal record.

This legislation serves as the backbone of the 24 veteran treatment courts (VTCs) currently operating within the state. The veteran population within these 24 counties is approx. 1.3 million.

Recidivism rates as low as 8% have been reported within VTCs for those eligible to participate, although the manner in which a particular VTC operates can vary from county to county.

The California Department of Veterans Affairs (CalVet) supports VTCs by providing educational materials and outreach to the criminal justice community, as well as providing mentoring by outside veterans to those going through the VTC process.

Since 2013 CalVet’s Prop 63 Grant program has provided incentive for county veterans service officers (CVSOs) to connect with incarcerated veterans within their local jails. This is significant as the CVSOs can play a crucial role in the identification, eligibility, and overall success of a veteran participating within a VTC, and the functionality of the process overall.

Nevertheless, some veterans become incarcerated within the California Department of Corrections and Rehabilitation (CDCR).

**Incarcerated Veterans: Population**

According to CDCR, California’s total in-custody population is approximately 128,000, which includes approximately 6,800 incarcerated veterans (5.3%).

CDCR states that the prison system’s veteran population is determined by two means: Self-reporting and data derived from the federal Veteran Reentry Search Services (VRSS).

Self-reporting cannot be relied upon exclusively because too many former service members choose not to verify their veteran status.

VRSS is a searchable, web-based, database managed by the U.S. Department of Veterans Affairs (VA). It allows correctional and other criminal justice system entities to identify inmates or defendants who have served in the U.S. military. The VA makes this service available to facilitate its own direct outreach to these veterans, and to inform the development of veteran-specific programs in the criminal justice system. To use the site, a user must provide the following information about the justice-involved individual of concern:

* Name
* Social Security Number
* Date of Birth
* Gender
* Prisoner/Defendant ID number
* Cell Location
* Facility/Court Name
* Facility/Court ZIP Code
* Facility/Court State
* Parole Date
* Release or Hearing Date

VA will use the information provided to identify individuals for whom it has a record of military service. Once this process of identification is complete, the searcher will be able to access on VRSS’ secure Web site a list of the booking numbers or prison ID numbers of individuals with a record of military service. VA will also provide its outreach staff with sufficient information to locate and contact individuals identified through this process.

**Incarcerated Veterans: Lifestyle**

The Senate Veterans Affairs Committee asked CDCR if there are observable behavioral differences between incarcerated veterans and non-veteran inmates. CDCR responded that department field representatives report that there are no significant differences except that (1) veteran inmates tend to be more respectful than non-veteran inmates, and (2) veteran inmates often suffer from substance abuse issues.

Correctional institutions generally permit inmates to form self-help inmate activity groups (IAG), which help group members work on self-improvement and contribute to greater stability within the facilities. Some IAGs raise funds for donating to charitable organizations and causes in neighboring local communities.

Veterans groups are among the most common self-help groups. CDCR reports that veteran support groups engage in various activities, such as:

* Fundraisers (to donate to various veteran or military charities) and other charitable events.
* Discussing receipt of veteran benefits.
* Patriotic flag ceremonies.
* Strategies on how to file group appeals and complaints, etc.
* Group meetings such as Wounded Warrior, Veterans of Foreign Wars, American Legion, ROTC, etc.

CDCR stated that, while they are unaware of any empirical studies focusing on incarcerated veterans, there is a “consensus” within the department that veteran support groups “have an intangible positive effect on participating inmates.”

In December, 2015, the California Institution for Women in Corona launched a newly created veterans group called Veterans In Prison (VIP). The formal ceremony recognizing VIP Post #1 included the participation of Secretary Peter Gravett from the California Department of Veterans Affairs (CalVet), Acting Warden Kimberly Hughes, a CDCR honor guard, and representative various veterans groups.

In addition, some traditional veterans groups authorize chapters of incarcerated veterans to form and be officially recognized within correctional facilities around the nation, including in California. One example is the Vietnam Veterans of America (VVA) Incarcerated Chapter 1065 at the Correctional Training Facility (Soledad), which, among other things, conducts an annual Memorial Day observance in the facility’s gym. The most recent observance was themed “Honor the Dead by Helping the Living.” The CTF chapter reportedly made substantial monetary donations to the Food Bank of Monterey County, Monterey County Veteran Transition Center, Monterey County Stand Down, and CalVet’s Central Coast Veterans Cemetery at Fort Ord.

In addition, the VVA has established the nationwide Veterans Incarcerated program to promote awareness about the special needs of veterans who are presently or formerly incarcerated. Through research about each state’s department of corrections, the program explores ways to implement new programs for presently or formerly incarcerated veterans and to build cooperation at the federal VA.

At CDCR’s Correctional Training Facility in Soledad, two incarcerated veterans have run a functioning veteran services Office for more than a decade. Supervised and supported by a correctional officer, they have helped more than 1,000 other incarcerated veterans access VA benefits. They work closely with the accredited CVSOs at the nearby Monterey County Office of Military and Veterans Affairs.

**Incarcerated Veterans: Eligibility for VA Benefits**

In general, federal law mandates significant reductions in federal VA benefits available during the period of the veteran’s incarceration.

VA can pay certain benefits to veterans who are incarcerated in a federal, state, or local penal institution; however, the amount depends on the type of benefit and reason for incarceration.

*Disability Compensation*

The VA rates disabilities to facilitate health care and compensation claims for injuries or diseases that happened during active duty, or were made worse by active military service. The amount of basic benefit paid varies depending on the rated severity of the condition.

A veteran need not be totally disabled in order to be eligible for compensation. USDVA rates disability along a continuum of 0%-to-100% in 10% increments, depending upon the level of disability determined. The disability percentage also can be derived by analyzing the composite condition of an individual veteran with multiple disabilities.

The 10% rating is the lowest for which compensable income is awarded. A veteran with a 100% rating will have one or more disabilities that significantly interfere with normal life functions. A veteran with a 0% rating may have a service-connected condition, but the condition does not interfere with normal life functions. The majority of disabled veterans are rated between10% to 30%.

Sometimes a veteran receives a 0% rating (which is not monetarily compensable). Nevertheless, this process documents a service-connected health condition, which may deteriorate later into a more serious, perhaps compensable disability. In addition, individuals with a 0% rating may be eligible for federal and state veterans’ benefits other than monetary compensation.

As time passes, a veteran’s disability claim may require re-ratings. The re-ratings can be caused by changes in law, advances in medical knowledge, or fluctuations in the veteran’s physical or mental condition. A re-rating can cause an individual’s percentage to go up or down.

VA disability compensation payments are reduced if a veteran is convicted of a felony and imprisoned for more than 60 days. Veterans rated 20% or more are limited to the 1% disability rate. For a veteran whose disability rating is 10%, the payment is reduced by one-half. Once a veteran is released from prison, compensation payments may be reinstated based upon the severity of service connected disabilities at that time. Payments are not reduced for recipients participating in work release programs, residing in halfway houses (also known as "residential re-entry centers"), or under community control. The amount of any increased compensation awarded to an incarcerated veteran that results from other than a statutory rate increase may be subject to reduction due to incarceration.

A veteran released from incarceration may reactivate the full compensation benefit by submitting a completed VA Form 21-4193 to the VA. This form may be submitted up to thirty days prior to release to help expedite reactivation...

*Pension*

The VA offers two broad categories of pension benefit programs to eligible veterans:

* Veterans Pension: Tax-free monetary benefit payable to low-income wartime veterans.
* Survivors Pension: Tax-free monetary benefit payable to a low-income, un-remarried surviving spouse and/or unmarried children of a deceased veteran with wartime service.

Veterans in receipt of VA pensions will have their payments terminated effective the 61st day after imprisonment in a federal, state, or local penal institution for conviction of a felony or misdemeanor. Payments may be resumed upon release from prison if the veteran meets VA eligibility requirements. Failure to notify VA of a veteran's incarceration could result in the loss of all financial benefits until the overpayment is recovered.

*Apportionment to Spouse or Children*

All or part of the compensation not paid to an incarcerated veteran may be apportioned to the veteran's spouse, child or children, and dependent parents on the basis of individual need. In determining individual need, consideration shall be given to such factors as the claimant's income and living expenses, the amount of compensation available to be apportioned, the needs and living expenses of other claimants as well as any special needs, if any, of all claimants.

The VA will inform a veteran whose benefits are subject to reduction of the right of the veteran's dependents to an apportionment while the Veteran is incarcerated, and the conditions under which payments to the veteran may be resumed upon release from incarceration.

VA will also notify the dependents of their right to an apportionment if the VA is aware of their existence and can obtain their addresses.

No apportionment may be made to or on behalf of any person who is incarcerated in a federal, state, or local penal institution for conviction of a felony.

An apportionment of an incarcerated veteran's VA benefits is not granted automatically to the veteran's dependents. The dependents must file a claim for an apportionment.

*Education Benefits*

Beneficiaries incarcerated for other than a felony can receive full monthly benefits, if otherwise entitled. Convicted felons residing in halfway houses (also known as "residential re-entry centers"), or participating in work-release programs also can receive full monthly benefits.

Claimants incarcerated for a felony conviction can be paid only the costs of tuition, fees, and necessary books, equipment, and supplies. VA cannot make payments for tuition, fees, books, equipment, or supplies if another federal, state or local program pays these costs in full.

If another government program pays only a part of the cost of tuition, fees, books, equipment, or supplies, VA can authorize the incarcerated claimant payment for the remaining part of the costs.

**Incarcerated Veterans: Release and Reintegration**

Re-entering society after incarceration, especially long-term incarceration, is riddled with challenges. Persons with criminal histories face many barriers to receiving public benefits, gaining successful employment, regaining custody of children, and obtaining housing. Vocational programs may not be available in some institutions or upon release, limiting the ability of those with criminal histories to update their job skills in order to obtain employment. Many are suffering with mental or physical illnesses with limited means of getting adequate treatment. All of these issues are in addition to problems borne out of the societal stigma associated with serving time in jail or prison.

Several factors are crucial to successful reintegration. They include:

* Employment
* Family support
* Financial stability (being able to cover the costs of housing and basic necessities)
* Involvement in substance abuse programs
* Stabilization of any mental illness

*Health Care for Re-entry Veterans (HCRV) Program*

The federal HCRV Program is designed to help incarcerated veterans successfully reintegrate back into the community after their release. A critical part of HCRV is providing information to veterans while they are incarcerated, so they can plan for re-entry themselves. A primary goal of the HCRV program is to prevent veterans from becoming homeless once they are reintegrated back into the community.

Each region of the U.S. has an assigned re-entry specialist. These specialists help veterans prepare for release from state and federal custody. They assist in determining eligibility for resources, especially for VA healthcare. They assist with VA enrollment, restarting disability benefits, securing a copy of DD Form 214 (DD214), providing the individual with resource points of contact.

VA-eligible individuals meet with the re-entry specialist as they near their release dates. When time is available the re-entry specialist will also arrange a group meeting for any interested veterans wishing to learn about any recent veteran specific updates or have general questions.

*Veteran Justice Outreach (VJO) Initiative*

The federal VJO initiative is designed to help veterans avoid unnecessary criminalization of mental illness and extended incarceration by ensuring eligible justice-involved veterans receive timely access to VA health care, specifically mental health and substance use services (if clinically indicated) and other VA services and benefits as appropriate.

*VA Housing Programs*

The federal VA offers a variety of housing supported programs for veterans, including those being released from incarceration. Housing options include:

* *Grant & Per Diem housing (GPD)*: Promotes the development and provision of supportive housing and/or supportive services with the goal of helping homeless veterans achieve residential stability, increase their skill levels and/or income, and obtain greater self-determination. (Veterans ineligible for VA healthcare enrollment may be eligible to receive GPD housing when available.)
* *Health Care for Homeless Veterans Contracts (HCHV)*: Provides emergency housing, shelter and treatment through local community providers. Local VA facilities contract with community agencies for beds which are available to veterans enrolled in VA healthcare.
* *Supportive Services for Veteran Families Grants (SSVF)*: VA grants provided to nonprofit organizations to assist homeless and at-risk of homeless veterans and their families to maintain or return to permanent housing. (Veterans ineligible for VA healthcare enrollment may be eligible to receive SSVF assistance if available.
* *VA Supportive Housing (HUD-VASH) Program*; is a joint effort between the U.S. Department of Housing and Urban Development (HUD) and VA to move veterans and their families out of homelessness and into permanent housing. HUD provides housing assistance through its Housing Choice Voucher Program (Section 8) that allows homeless veterans to rent privately owned housing. VA offers eligible homeless veterans clinical and supportive services through its health care system.
* *Mental Health Residential Rehabilitation and Treatment Programs (MH RRTPs)*: MH RRTPs provide state-of-the-art, high-quality residential rehabilitation and treatment services for veterans with multiple and severe medical conditions, mental illness, addiction, or psychosocial deficits. The MH RRTP identifies and addresses goals of rehabilitation, recovery, health maintenance, improved quality of life, and community integration in addition to specific treatment of medical conditions, mental illnesses, addictive disorders, and homelessness. The residential component emphasizes incorporation of clinical treatment gains into a lifestyle of self-care and personal responsibility.

*California VHHP Program*

In addition to the above federal programs, the State of California manages its Veterans Housing and Homelessness Prevention (VHHP) Program. Created by the Legislature and enacted by the statewide electorate, VHHP focuses on veterans at risk of homelessness or experiencing temporary or chronic homelessness. This program funds the acquisition, construction, rehabilitation, and preservation of affordable multifamily supportive housing, affordable transitional housing, affordable rental housing, or related facilities for veterans and their families to allow veterans to access and maintain housing stability.

**Incarcerated Veterans: State Policy**

In response to legislation passed in 2012 and 2014, CDCR was charged with developing policies to assist veteran inmates in pursuing claims for federal veterans’ benefits, or in establishing rights to any other privilege, preference, care, or compensation provided under federal or state law because of honorable service in the military. CDCR and CalVet have established an interagency agreement that allows for facility access and data sharing between the two departments. This partnership serves as an effort to streamline outreach and services to veteran inmates.

The goal has been to develop a system that will educate all incarcerated veterans on benefits and services while creating a best practice delivery apparatus that could be replicated by all California prisons and jails. Along with physical visits and providing information to each CDCR institution’s library, CalVet’s objectives are to identify gaps in current services related to veterans accessing their benefits, develop a best practice model for other CDCR veteran groups, and connect veterans to benefits and services related information and forms.

The incarcerated veteran program at CalVet works to provide the following outcomes:

* Identify incarcerated veterans within CDCR facilities.
* Educate and assist incarcerated veterans on applying for benefits and services.
* Identify gaps in providing services to those veterans.

CalVet services include:

* Providing information such as forms, California Veterans Resource Book, The Guidebook for California Incarcerated Veterans, and the Federal Benefits for Veterans, Dependents and Survivors.
* Ensuring that CalVet outreach staff meets regularly onsite with inmates to address questions they have regarding benefits or services.
* Responding to frequent questions from incarcerated veterans about applying for benefit deferment, DD214s, housing in the counties that they are scheduled to be released to, and health benefits.
* Providing contact information for the respective counties for each veteran to use when they are released.

Providing all identified veterans with the necessary tools to develop a plan for successful release at least 180 days prior to their release. CalVet sends information via physical mail to all identified veterans within state penitentiaries who are 180 days from their projected release date with information tailored to service providers in their county of release, and their current and future CVSO.

In addition, CalVet Prop 63 grant funds are used by several counties to provide outreach and claims support to veterans, who are incarcerated within prisons and jails, but are ineligible for VTC.

**Summary of Relevant Law**

Existing federal law:

* Limits the veterans’ benefits a veteran may receive while he or she is incarcerated for a felony, except provides a 60-day grace period where the incarcerated veteran may still receive full benefits. The withholding of benefits begins on the 61st day of incarceration.
* States that an incarcerated veteran is entitled to full benefits while he or she is participating in a work-release program or is residing in a halfway house.
* Allows the dependents of an incarcerated felon to receive an apportionment of the benefits to which the incarcerated veteran would have been entitled, unless the dependent is incarcerated for a felony.
* Prohibits compensation on behalf of a veteran for any period during which he or she is a “fugitive felon.”
* Defines a “fugitive felon” as a person who is a fugitive by reason of:
* Avoiding prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or
* Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

Existing state law:

* Requires restoration of withheld benefits if a conviction is overturned on appeal.
* Requires CDCR to develop guidance policies relative to the release of veterans who are inmates. The policies shall be developed with the intent to assist veterans who are inmates in pursuing claims for federal veterans’ benefits, or in establishing rights to any other privilege, preference, care, or compensation provided under federal or state law because of honorable service in the military. In developing the policies, the department may coordinate with the CalVet and the county veterans service officer or veterans service organizations.
* Allows a veterans service organization to volunteer at CDCR to serve as a veterans service advocate.
* Requires the veterans’ service advocate to be responsible for developing a veterans economic recidivism prevention plan within 180 days prior to the inmate’s release date.
* Requires the veterans economic recidivism prevention plan to include:
* Facilitating access of each inmate who is a veteran to county veterans service officers, CalVet and the federal VA officers and personnel, so that the inmate may pursue claims for federal veterans’ benefits or any other privilege, preference, care, or compensation provided under federal or state law because of the inmate’s service in the military.
* Developing a plan for how an inmate who is a veteran will access earned veterans’ benefits that he or she may be eligible for upon the inmate’s release.
* Requires CDCR to facilitate access by the advocate to each inmate who is a veteran, subject to those department screening and clearance guidelines and training requirements that are imposed on other visitors and volunteers.
* Requires CDCR to provide the advocate with access to existing resources, including, but not limited to, computer and Internet access, that would assist the advocate in implementing the veterans economic recidivism prevention plan, to the extent it does not pose a threat to the security or safety of the facility, or to inmates and staff.
* Requires the advocate to coordinate with the federal VA in order to provide each inmate who is a veteran with access to earned veterans’ benefits.
* Requires the advocate to coordinate with CalVet and the county veterans service officer in the county in which the facility is located for advice, assistance, and training, and to evaluate the effectiveness of the veterans economic recidivism prevention plan.
* Provides the following definitions:
* “Advocate” means a veterans service organization that is federally certified and has volunteered to serve as a veterans service advocate pursuant to this title.
* “Veteran” means a person who has been discharged from the U.S. Army, Navy, Air Force, Marine Corps, Coast Guard, Merchant Marine, or American Red Cross.
* Requires a court:
* To consider its conclusion that a defendant eligible for probation was, or currently is, a member of the U.S. military and that the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of that service as a factor in favor of granting probation.
* If it concludes that a defendant convicted of a felony offense is, or was, a member of the U.S. military, who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service, to consider those circumstances as a factor in mitigation when imposing a term pursuant to the above provisions.
* Provides that this consideration does not preclude the court from considering similar trauma, injury, substance abuse, or mental health due to other causes as evidence or factors in mitigation.