



Department of

Veterans Services

Effects of Incarceration of Entitlement to Receive VA Compensation and Pension Benefits

Overview

- Incarcerated beneficiaries and fugitive felons—
Compensation
 - 38 U.S.C. 501(a), 5313, 5313B; Sec. 506, Pub. L. 107-103, 115 Stat. 996-997)
 - 38 C.F.R. 3.665
 - M21-1, Part III, Subpart v, Chapter 8, Section A
- Incarcerated beneficiaries and fugitive felons—Pension
 - 38 U.S.C. 501(a), 5313, 5313B
 - 38 C.F.R. 3.666
 - M21-1, Part III, Subpart ii, Chapter 2, Section B
- M21-1, Part III, Subpart v, Chapter 8, Section A - Effects of an Individual's Incarceration on Department of Veterans Affairs (VA) Benefits

Overview

- Limitations on Disability Compensation, Dependency and Indemnity Compensation (DIC) and Total Disability Individual Unemployability (TDIU) during Incarceration
- Apportionment of Benefits to Beneficiary's Family During Beneficiary's Period of Incarceration
- Limitations on Pension Payments During Incarceration
- Restoration of Withheld Compensation Benefits in Event of Conviction Overturned on Appeal
- The Effect of Being a Fugitive Felon on Receipt of VA Compensation, DIC, and Pension Benefits
- VA Benefits
- VA Programs for Justice-Involved Veterans

Definition

III.v.8.A.1.a. Definition: Incarceration

- Refers to the confinement of an individual in a penal institution, even though the individual may be allowed outside the institution temporarily on furlough or for medical treatment, and
- includes confinement at any of the following, as long as confinement is pursuant to a criminal sentence:
 - medical facility or mental institution, or
 - other locations, such as work camps, forestry camps, or boot camps

Terms

- The term release from incarceration includes participation in a work release or halfway house program, parole, and completion of sentence.
- For purposes of this presentation, a felony is any offense punishable by death or imprisonment for a term exceeding 1 year, unless specifically categorized as a misdemeanor under the law of the prosecuting jurisdiction.

Incarcerated Veterans

Veterans can sometimes run into issues with law enforcement and the criminal justice system resulting in incarceration. It is important that justice-involved Veterans are familiar with VA benefits including:

Incarcerated Veterans

- What VA benefits they may still be eligible to receive
- What happens to the VA benefits they are already receiving if they become incarcerated
- What programs are available to assist them with reintegrating back into the community once released from incarceration

Incarcerated Veterans - Compensation

Disability Compensation, DIC and TDIU

VA disability compensation payments are reduced if a Veteran is convicted of a felony and imprisoned for more than 60 days. Veterans rated 20 percent, or more are limited to the 10 percent disability rate. For a Veteran, whose disability rating is 10 percent, the payment is reduced by one-half of 10 percent.

Incarcerated beneficiaries of DIC and TDIU are also restricted to half the amount that is paid to a veteran receiving compensation payments at the 10 percent disability level.

Incarcerated Veterans - Compensation

The VA uses the following analysis to determine whether the beneficiary of VA benefits has been incarcerated for over 60 days for a felony:

1. The beneficiary must be incarcerated
2. The incarceration must be in a federal, state, or local penal institution, or a penal institution run by a private entity under contract with federal, state, or local government
3. The incarceration must be in excess of 60 days and the incarceration must be a result of a felony conviction.

Incarcerated Veterans - Compensation

- Once a Veteran is released from prison, compensation payments may be reinstated based upon the severity of the service-connected disability(ies) 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.

Incarceration – (Poll #1)

- VA claimants who are incarcerated, can they apply for service-connected disability compensation, pension, survivors' dependency and indemnity compensation (DIC), or education assistance?
- Yes or No?

Incarceration – (Poll #1)

- Yes- VA claimants who are incarcerated **are not restricted** from applying for service-connected disability compensation, pension, survivors' dependency and indemnity compensation (DIC), or education assistance. However, Congress has greatly restricted and in some cases, even eliminated, the amount and manner in which these benefits may be paid while the veteran, dependent, or survivor entitled to these benefits is incarcerated for a felony.

Incarcerated Veterans - Pension

Pension

Veterans in receipt of VA pension will have 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.

Incarceration – (Poll #2)

- VA compensation benefits are stopped for any type of conviction that results in incarceration excess of 60 days, whether the offense is a misdemeanor or a felony.
- True or False?

Incarceration – (Poll #2)

- False – VA Compensation benefits are stopped when incarcerated in excess of 60 days and the incarceration must be a result of a felony conviction.
- VA pension benefits are stopped for any type of conviction that results in incarceration in excess of 60 days, whether the offense is a misdemeanor or a felony.

Apportionment

- 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.

Apportionment

- 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 dependent(s) must file a claim for an apportionment.

Apportionment

VA Form 21-0788

INFORMATION REGARDING APPORTIONMENT OF BENEFICIARY'S AWARD

<https://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf>

Restoration of Withheld Compensation

- If the conviction that served as a basis of incarceration is overturned on appeal, the beneficiary is entitled to retroactive payment of all compensation or DIC benefits withheld during the period of incarceration.
- It is important to notify the VA of any successful appeal
- Restoration does not include benefits apportioned to the beneficiary's family during the beneficiary's incarceration.
- Repayment of withheld non-service-connected pension benefits also is not permitted *38 C.F.R 3.666*

Effects of Being a Fugitive Felon

- Payment of benefits is completely prohibited either to a veteran or a survivor of a veteran while he or she is a fugitive felon, or to a dependent while either the veteran or the dependent is a fugitive felon. The prohibition applies to disability compensation, DIC, pension, medical care, life insurance, vocational rehabilitation, and education benefits.
- No apportionment of these VA benefits is permitted, even if the fugitive felon veteran and his or her spouse are estranged.

Effects of Being a Fugitive Felon

- A fugitive felon is defined as:
- A person who is fleeing to avoid prosecution, 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 a person who has violated the terms of his or her probation or parole imposed for commission of a felony under federal or state law.
- A person stops being a fugitive felon when the warrant for his or her arrest is cleared by (1) arrest, (2) surrender to the issuing authority, (3) dismissal, or (4) court documents (dated after the warrant for the arrest of the felon) showing that the individual is no longer a fugitive.

Effects of Being a Fugitive Felon

- ****Advocacy Tip**** Advocates should be aware of the existence of some veteran-favorable arguments with regard to fugitive felon cases. First, VA's Adjudication Procedures Manual M21-1 (Manual M21-1) provides that the VA regional office should contact the VA's Office of Inspector General's (OIG) Fugitive Felon Coordinator for advice.

Effects of Being a Fugitive Felon (Poll #3)

- If a surviving spouse entitled to DIC or improved death pension becomes a fugitive felon, he or she loses eligibility for DIC or death pension benefits, and the entire payment must stop. Does this include any additional benefits payable to that surviving spouse for the children of the veteran?
- Yes or No?

Effects of Being a Fugitive Felon (Poll #3)

- Yes
- However, the children themselves would have independent eligibility for death pension or DIC benefits and could file a claim for the benefits in their own right.

When will VA Benefits be Resumed?

- Veterans may inform the VA to have their benefits resumed within 30 days or less of their anticipated release date based on evidence from a parole board or other official prison source showing the Veteran's scheduled release date.

When will VA Benefits be Resumed?

- Compensation or pension benefits shall be resumed the date of release from incarceration if the VA receives notice of release within one year following release. Depending on the type of disability, VA may schedule him/her for a medical examination to see if their disability has improved.
- They are considered to have been released from incarceration if you are paroled or participating in a work release or half-way housing program.

VA Benefits

Despite the circumstances, some justice-involved Veterans may be eligible for VA benefits. Disability compensation, pension, education and training, health care, home loans, insurance, vocational rehabilitation and employment, and burial. See Veterans page for an overview of the benefits available to all Veterans. Please be aware many VA benefits can be affected by incarceration. The following sections provide information for justice-involved Veterans.

VA Programs for Justice-Involved Veteran

Health Care for Re-entry Veterans (HCRV) Program

- The 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.
- Learn more about the [Health Care for Re-entry Veterans Program](#).

VA Programs for Justice-Involved Veteran

Veteran Justice Outreach (VJO) Initiative

- The 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.
- Learn more about the [Veteran Justice Outreach Initiative](#).

Additional Information

Tennessee VA Regional Office has a Homeless Veterans Outreach Coordinator who assists justice-involved Veterans. They are a direct point of contact for you to learn more about what benefits they qualify for, assist them with applying for those benefits, and refer you to other organizations and resources that will help with their specific needs. To find your local Homeless Veterans Outreach Coordinator, please call VA's National Call Center for Homeless Veterans at 1-877-4AID-VET (1-877-424-3838).

Questions?

