

# The American Legion Department of Indiana Incarcerated Veterans Guide

*This guide provides information for “justice involved” veterans, before, during and after incarceration*

## **During Legal Proceedings:**

Veterans Justice Outreach (VJO) Specialists work with local courts to develop and manage Veterans Treatment Courts: a specialized court structured to address the underlying issues contributing to criminal behavior. VJO specialists find treatment programs for veterans going through the court system. Those treatment programs help veterans avoid future criminal activities, and often avoid the need for court ordered incarceration. Veterans facing criminal legal proceedings should contact the VA Veterans Justice Outreach (VJO) Specialist at their local VA Medical Center for assistance and advice. VJOs are not attorneys. The veteran should still obtain an attorney, but VJOs specialists could help the veteran fare better in court and avoid future legal problems.

## **After Conviction:**

Veterans in receipt of disability compensation and/or disability pension benefits are subject to having their VA benefits either reduced or discontinued following their 61<sup>st</sup> day of incarceration. If the incarcerated veteran continues receiving full VA compensation or pension benefits after the 60th day of incarceration, VA will establish an overpayment in their account. VA will then withhold future compensation and/or pension benefits until the overpayment is recouped in full. This could happen at the very worst time possible after the veteran is released from incarceration and in desperate need of funds. Veterans should therefore make sure to inform the VA regional office as soon as they learn when they will be incarcerated for more than 60 days.

### **During incarceration:**

After 60 days of incarceration for a felony (a crime punishable by death or imprisonment for a term exceeding one year), VA will reduce the veteran's compensation benefits payable to what is paid for a 10% compensation rate if the veteran has a 20% or higher compensation rating during incarceration. Veterans rated 10% service connected disabled during incarceration will have their benefits reduced to ½ of what is paid at the 10% compensation rate. The limitation of compensation payable to incarcerated veterans does not lower the veteran's service connected disability rating – only the amount paid. After 60 days of incarceration for any crime, VA will stop the veteran's VA non-service connected pension benefits.

Also, VA will not provide medical services that are part of care provided by correctional institutions, nor will VA provide treatment, prescribe medication, and other health care services prior to the veteran release from incarceration.

Dependents of incarcerated veterans may file a claim for an apportionment of the VA compensation or pension benefit being withheld. Claimants may do this by sending a written request or a completed VA Form 21-0788 to the VA regional office. Dependents for this purpose include the veteran's spouse, child or children, and dependent parents. The incarcerated veteran may file for an apportionment for the dependent, or the dependent may apply directly with VA. The veteran's dependent does not need the incarcerated veteran's permission to file an apportionment claim. VA may but is not required to issue an apportionment equal to the full amount of the withheld compensation or pension benefit. VA will pay an apportionment based upon the dependent's need taking into consideration the amount of compensation available for apportionment, the dependent's income, living expenses, and special needs, and the same for any other dependents also applying for an apportionment. Apportionment benefits may be paid retroactive from the date VA reduced the veteran's compensation benefits if VA receives the apportionment claim within one year of VA's reduction letter; otherwise, VA will pay apportionment benefits only from the date of claim. The apportionment is subject to immediate discontinuance upon the incarcerated veteran's total release or participation in a work release or halfway house program.

Veterans may still apply for and seek higher service connected compensation ratings while incarcerated even though the actual amount of compensation they receive is limited after the 61<sup>st</sup> day of incarceration. VA must assist all veterans, including incarcerated veterans, with the processing of their disability compensation claims. In doing so, VA must consider all medical evidence of record and make compensation rating decisions based upon the current severity of the service connected disability. Experience has shown that it's almost impossible for

incarcerated veteran's to obtain quality VA compensation examinations. Of course, in most all cases, the prison will not let incarcerated veterans attend compensation examinations at VA facilities, and it's difficult for VA to find qualified compensation examination doctors willing to perform compensation examinations at prisons. VA will ask for copies of the veteran's medical treatment records from the prison, and sometimes even attempt to have prison doctors conduct compensation examinations. Veterans believing their applications for higher compensation benefits were denied because of an inadequate compensation examinations are therefore encouraged to initiate and continue their appeal until VA provides an adequate examination. Incarcerated veterans having difficulty obtaining an adequate VA compensation examination should remind VA to review the following provisions of law: [VA Fast Letter 11-22](#) (Sept. 8, 2011). *See also* Jonathan Hager, [VAs Duty to Assist Incarcerated Veterans](#), 1 *Veterans L. Rev.* 231 (2009).

### **After Release:**

If a conviction was overturned on appeal, the veteran is entitled to retroactive payment of all compensation benefits withheld during incarceration. This includes the time between a court ordered conviction and when that conviction is remanded by a higher court even if the next court decision once again issued a conviction. Of course, the benefits are then still subject to reduction or discontinues following the 60<sup>th</sup> day after the final court ordered conviction.

The same is not true if the conviction is not overturned; the government keeps what it withheld. VA may reinstate compensation benefits, however, retroactively effective from date of the veteran's release from incarceration if the veteran supplies VA notice of release within one year of the release date; otherwise, full benefits are only reinstated from the date of claim. For VA purposes release from incarceration includes participation in a work release or halfway house program, parole, and completion of sentence.

Eligible veterans may also apply or reapply for non-service connected pension benefits immediately upon their release from incarceration. This will require sending a completed VA Form 21-527EZ to the VA regional office along with a copy of the veteran's DD Form 214 and incarceration release papers.

VA has a Health Care for Re-entry Veterans (HCRV) Program to identify and assist veterans within 6 months of being released from incarceration. HCRV services include:

- Outreach and pre-release assessments services for Veterans in prison,
- Referrals and linkages to medical, psychiatric, and social services, including employment services upon release, and
- Short term case management assistance upon release

Veterans incarcerated in correctional institutions in Indiana may contact their Health Care for Re-Entry Veterans (HCRV) Program Specialist at the following address:

Health Care for Re-Entry Veterans (HCRV) Program Specialist  
VISN 11 Southern Tier  
750 North Broadway  
Peru, Indiana 46970

If the incarcerated veteran had not received assistance from a HCRV program specialist before being released, the veteran may enroll for VA healthcare services after released from incarceration by taking a copy of his or her DD Form 214 and the incarceration release papers to the enrollment office at the nearest VA health care facility.

All Veterans, including incarcerated veterans, needing VA claims and/or appeals representation may contact:

The American Legion Department of Indiana Veterans Service Office  
Room 325  
575 North Pennsylvania Street  
Indianapolis, Indiana 46204

Phone: 317-916-3605

Fax: 317-916-3406

e-mail: [al.vbaind@va.gov](mailto:al.vbaind@va.gov)