

Veterans Programs – Impact of Incarceration

Included in the Department of Corrections' (SCDC) October 29, 2019 letter to the House Legislative Oversight Committee (LOC). This information was provided in response to the following question in LOC's October 8, 2019, letter to the Department of Corrections: "1. In regards to veterans' rights, which, if any, continue while a veteran is incarcerated and post-incarceration? Does SCDC have any recommendations on this topic and, if so, what is the basis for the recommendation? "

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Please see 38 CFR §21.276 – Incarcerated Veterans, and the M28R (Vocational Rehabilitation and Employment Service Manual) Part V, Section D, Chapter 3.

The Veteran's Administration (VA) can pay certain benefits to Veterans who are incarcerated in a Federal, State, or local penal institution; however, the amount that will be paid depends on the type of benefit and reason for incarceration. This fact sheet provides information about the benefits most commonly affected by imprisonment:

- 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. 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. Compensation benefits are not reduced if imprisoned for a misdemeanor.
- If imprisoned in a federal, state, or local penal institution as the result of conviction of a felony or misdemeanor, the pension payment will be discontinued effective on the 61st day of imprisonment following conviction. Failure to notify the VA of a veteran's incarceration could result in the loss of all financial benefits until the overpayment is recovered.
- 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.
- Incarcerated veterans do not forfeit their eligibility for medical care; however, current regulations restrict the VA from providing hospital and outpatient care to an incarcerated veteran who is an inmate in an institution of another government agency when that agency has a duty to give the care or services.
- The VA may provide care once the veteran has been unconditionally released from the penal institution. 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.
- The award for 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, the VA may schedule the offender for a medical examination to see if his/her disability has improved. Generally, the reentry case manager sets this up during the discharge planning phase.

Recommendation:

Due to the complexity, time constraints, and obstacles that are associated with completing federal or state applications for returning citizens, the process can be intimidating. Increased barriers, such as obtaining necessary documentation, also increases the probability of incomplete applications. SCDC recommends that qualified discharge planners are allowed to continue assisting in filing applications, which will help streamline the process and ensure paperwork is completed prior to release. This process will promote positive reintegration back into society.